IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1261 OF 2015

Pr.Commissioner of Income Tax-21. ... Appellant.
V/s.
GK AK Rathi (HUF). ... Respondent.

Mr.Suresh Kumar for the appellant.

CORAM : A.S.OKA AND A.K.MENON, JJ.

DATE : 29th November 2017.

P.C.:

Heard the learned counsel appearing for the appellant-revenue. The appeal pertains to the assessment year 2002-03. After filing of the return by the respondent- assessee, a notice dated 28th March 2007 under section 148 of the Income Tax Act, 1961 (for short "the said Act of 1961") was served to the respondent- assessee. An order of assessment was made under sub-section (3) of section 143 read with section 148 of the said Act of 1961. In an appeal preferred by the respondent- assessee, the Commissioner of Income Tax (Appeals) proceeded to set aside reassessment proceedings. On 23rd March 2009, another notice under section 148 of the said Act of 1961 was served to the respondent- assessee on the basis of which an order was made on 29th December 2009. An appeal was preferred against the said order by the respondent- assessee before the Commissioner (Appeals) which came to be dismissed. In the appeal preferred by the respondent- assessee before the Income Tax Appellate Tribunal (for short “Appellate Tribunal”), by the impugned judgment and order dated 28th November 2014, the Appellate Tribunal has interfered and set aside the reassessment proceedings. The impugned order is based on two findings. The first finding is that the notice issued under section 148 is not within the period prescribed under section 149. The second ground on which reassessment proceedings were set aside and held to be void is that the reasons for reopening, recorded in the notice issued on 23rd March 2009, were in sum and substance the same as the notice issued on 28th March 2007.

2. After having heard the learned counsel appearing for the appellant, we find that the finding of fact recorded in the impugned order that the reasons for reopening recorded in the impugned notice issued in the year 2007 and the subject notice issued in the year 2009 were the same. We find no error in the said finding. In fact, in paragraph- 4 of the impugned order, the reasons for reopening of the assessment in the notice issued on 28th March 2007 and reasons recorded in notice issued on 23rd March 2009 have been reproduced. On plain reading of the said reasons, we are agree with the finding recorded in paragraph-8 of the impugned judgment. The reassessment proceedings based on notice dated 28th March 2007 were set aside by the Commissioner (Appeals) and the said order was not challenged by the appellant. Therefore, the impugned judgment and order deserves to be confirmed only on this ground.

3. As regards the period of limitation, it appears to us that the notice of reopening was issued before the expiry of period of six years from the end of assessment year. However, it has no relevance now, as the finding recorded in paragraph-8 is confirmed by us.

4. Hence, no substantial questions of law arises. There is nothing wrong with the ultimate order passed by the Appellate Tribunal. Accordingly, the appeal is dismissed.

(A.K.MENON, J.) (A.S.OKA, J.)