

Reassessment held invalid as it was not followed by a prior assessment or best judgment assessment

Summary – The High Court of Allahabad in a recent case of P. N. Sharma, (the Assessee) held that where no assessment order was passed either under section 143(1)(a), 143(3) or 144, re-assessment order under section 147 could not be passed.

ORDER

1. The present appeal has been filed by the Department under section 260A of the Income-tax Act, 1961 against the judgment and order dated 19.05.2006, passed by the Income Tax Appellate Tribunal, Lucknow in ITA No.333/Luc/2003, for the assessment year 1998-99.

On 17.01.2007, a Co-ordinate Bench of this Court has admitted the appeal on the following substantial questions of law:—

1. "Whether on the facts and in the peculiar circumstances of the case the notice u/s 148 was not valid when there was a clear case of escapement of income and also when the considering of the return of income filed u/s 139(4), by the Assessing Officer on the request of the assessee, was in order, within the meaning of the proviso to section 139(9).
2. Whether on the facts and in the peculiar circumstances of the case the notice u/s 148 cannot be issued within 12 months from the end of the month in which the return of income had been filed especially when there is a clear cut case for the escapement of income within the meaning of Section 147 of the I.T. Act, 1961.
3. Whether on the facts and peculiar circumstances of the case the notice u/s 143(2) was barred by time."

3. The brief facts of the case are that during the assessment year under consideration, the assessee was working with Kuber Group of Companies in the capacity of GM, Eastern Region. The assessee has filed his return of income declaring income of Rs.12,59,728/- On 22.03.2001, a notice was issued for the deficiency. After considering the submissions of the assessee, the AO has completed the assessment at the total income of Rs.36,35,740/- under Section 147 of the Act. The CIT(A) by following the ratio laid down in the case of *U.P. Rajya Vidyut Utpadan Nigam v. Dy. CIT* [\[1993\] 202 ITR 93 \(All.\)](#) declaring the assessment year as annulled. The Tribunal *vide* its impugned order has dismissed the appeal filed by the Department. Still not being satisfied, the Department has filed the present appeal.

4. With this background, Sri Manish Mishra, learned counsel for the Department has relied on the order passed by the AO.

5. On the other hand, Sri K.R. Rastogi, learned counsel for the assessee relied on the order of the appellate authorities. He submits that the concurrent findings have been given by the appellate authorities. So, the appeal may kindly be dismissed.
6. We have heard both the learned counsel for the parties at length and gone through the material available on record.
7. From the record, it appears that in the instant case, the assessee has voluntarily filed his return under Section 139 of the Act. On 23.06.2000, a notice under Section 139(9) was issued for the removal of the defects. These defects were not removed. So, again, a notice was sent on 25.10.2002. Ultimately, the defects were removed. But, there is no reference to this effect in the assessment order passed by the AO for the assessment year under consideration.
8. Further, on 22.03.2001, a notice under Section 148 was issued and the assessee has submitted that original return may be treated as return in response to the notice under Section 148. Thereafter, the AO has made the additions under Section 147 of the Act.
9. But fact remains that in the instant case, no assessment order was passed either under Section 142(1)(a); 143(3); or 144 of the Act. Without passing the assessment order, there is no occasion to pass the re-assessment order under Section 147 of the Act, as per the ratio laid down in the case of *U.P. Rajya Vidyut Utpadan Nigam (supra)*. When it is so, then we find no reason to interfere with the impugned order. Hence, both the orders passed by the appellate authorities are hereby sustained along with reasons mentioned therein.
10. The answer to the substantial questions of law are in favour of the assessee and against the department.
11. In view of above, the appeal filed by the department is dismissed, as stated above.