

2018 (1) TMI 195 - BOMBAY HIGH COURT**Smt. Kalpana Shantilal Haria Versus Assistant Commissioner of Income Tax Circle-27 (2) , Navi Mumbai & Others**

Writ Petition (L) No. 3063 of 2017

Dated: - 22 December 2017

Reopening of assessment - non-application of mind on the part of the sanctioning authority while granting the sanction - Held that:- There can be no dispute with regard to the application of Section 292B of the Act to sustain a notice from being declared invalid merely on the ground of mistake in the notice. However, the issue here is not with regard to the mistake / error committed by the Assessing Officer while taking a sanction from the Joint Commissioner of Income Tax but whether there was due application of mind by the Joint Commissioner of Income Tax while giving the necessary sanction for issuing the impugned notice.

It is a settled principle of law that sanction granted by the higher Authority for issuing of a reopening notice has to be on due application of mind. It cannot be an mechanical approval without examining the proposal sent by the Assessing Officer. Prima facie, it appears to us that if the Joint Commissioner of Income Tax would have applied his mind to the application made by the Assessing Officer, then the very first thing which would arise is the basis of the notice, as the provision of law on which it is based is no longer in the statute. Non pointing out the mistake / error by the Joint Commissioner of Income Tax on the part of the Assessing Officer is prima facie evidence of non-application of mind on the part of the sanctioning authority while granting the sanction.

Judgment / Order**M. S. Sanklecha And Riyaz I. Chagla, JJ.****Mr. Sunil Lala a/w P.C. Tripathi i/b Atul Jasani for the petitioner****Mr. Charanjeet Chanderpal a/w Ms. Namita Shirke a/w Ms. Hardeep Kaur for the respondents****ORDER****P. C.**

1. Heard. Admit.
2. Mr. Lala, learned Counsel appearing for the petitioner undertakes to have the objections removed and the petition allotted its regular number on or before 8th January, 2018.
3. This petition under Article 226 of the Constitution of India challenges notice dated 8th March, 2017 issued under Section 148 of the Income Tax Act, 1961 (the Act) seeking to reopen the assessment for Assessment Year 2014-15. The impugned notice was issued by the Assistant Commissioner of Income Tax after having obtained necessary sanction from the Joint Commissioner of Income Tax in terms of Section 151(2) of the Act.
4. In its objection, the petitioner objected to the reasons recorded in impugned reopening notice dated 8th March, 2017 and inter alia pointed out that the Joint Commissioner of Income Tax has mechanically granted the sanction without due application of mind. The Assessing Officer rejected the petitioner's objection.
5. Our attention is invited to the sanction given by the Joint Commissioner of Income Tax on the application by the Assessing Officer seeking his approval in the prescribed form. The prescribed form filled by the Assessing Officer indicated that the notice has been issued under Section 143(b) of the Act. The Joint Commissioner of Income Tax has while granting the sanction has recorded the word "satisfied".
6. The grievance of the petitioner is that there is no proper sanction in view of non application of mind by the Joint Commissioner of Income Tax. The Assessing Officer has invoked a provision of law to sustain the impugned notice which is admittedly not in the statute and the Joint Commissioner has yet approved it.

7. Mr. Chanderpal, learned Counsel appearing for the Revenue tendered a copy of the letter dated 19th December, 2017 issued to the petitioner wherein the Assessing Officer has stated that the words "147(b)" were inadvertently filled in the prescribed form, instead of Section 147 of the Act while obtaining the sanction from the Joint Commissioner of Income Tax. It is further submitted on behalf of the Revenue that the same is a curable defect under section 292B of the Act. Therefore, the impugned notice cannot be held to be bad for mere incorrect mentioning of section on account of the mistake.

8. There can be no dispute with regard to the application of Section 292B of the Act to sustain a notice from being declared invalid merely on the ground of mistake in the notice. However, the issue here is not with regard to the mistake / error committed by the Assessing Officer while taking a sanction from the Joint Commissioner of Income Tax but whether there was due application of mind by the Joint Commissioner of Income Tax while giving the necessary sanction for issuing the impugned notice. It is a settled principle of law that sanction granted by the higher Authority for issuing of a reopening notice has to be on due application of mind. It cannot be an mechanical approval without examining the proposal sent by the Assessing Officer. Prima facie, it appears to us that if the Joint Commissioner of Income Tax would have applied his mind to the application made by the Assessing Officer, then the very first thing which would arise is the basis of the notice, as the provision of law on which it is based is no longer in the statute. Non pointing out the mistake / error by the Joint Commissioner of Income Tax on the part of the Assessing Officer is prima facie evidence of nonapplication of mind on the part of the sanctioning authority while granting the sanction.

9. In the above view, there shall be interim stay in terms of prayer clause (d).

10. It is made clear that other submissions made by on behalf of the petitioner have not impressed us. The petition is admitted solely on the issue of prima facie non-application of mind by the Joint Commissioner of Income Tax while granting the sanction for issuing the impugned notice.

11. Petition is expedited.