

Before G. C. Mital & S. S. Sodhi, JJ.

**THE COMMISSIONER OF INCOME TAX (CENTRAL),
LUDHIANA,—Applicant.**

versus

**M/S. PEARL MECH. ENGG. & FOUNDRY WORKS (P)
LTD.,—Respondent.**

Income Tax Reference No. 108 of 1979.

1st February, 1989.

Income Tax Act 1961—Ss. 142(1), 143(2) & 146—Assessment framed under Section 144—Assessee not complying with Notice under Section 142(1)—Such non-compliance confers jurisdiction on I.T.O. to frame assessment under Section 144—Orders passed under Section 146—Appeal against assessment framed under Section 144 is not maintainable in absence of appeal against order passed under section 146.

Held, that where there has been non-compliance on the part of the assessee with the terms of the notice issued under Section 142(1) of the Income Tax Act, 1961, such non-compliance having been established, the requisite jurisdiction was thereby clearly conferred upon the Income Tax Officer to frame the assessment under Section 144 of the Act. That being so there can be no escape from conclusion that the Tribunal clearly fell in error in holding the assessment framed to be contrary to law. (Para 5)

Held, that the law is thus well settled that without filing an appeal against the order passed under section 146 of the Act, the appeal against the assessment framed under Section 144 is not maintainable. (Para 4)

Reference under Section 256(1) of the Income-tax Act, 1961 arising out of Tribunal's order in ITA No. 917/1976-77, dated 21st August, 1978 to refer the following questions of law to the Hon'ble High Court of Punjab and Haryana for its opinion:—

- "1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in allowing the assessee to raise objection regarding the non-issuing of notice under Section 143(2) by the ITO despite the assessee having not pursued its application under Section 146 after the ITO stage ?*
- 2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessment framed was contrary to law and had to be struck down ?*

3. *Whether, on the facts and in the circumstances of the case and in any view of the matter, the Appellate Tribunal was justified in quashing the assessment instead of merely setting aside the same with a direction to redo it from the point of irregularity or illegality, if any."*

R.A. No. 118(ASR)/1978-79 (Assessment Year 1963-64)

Ashok Bhan Sr. Advocate with Ajay Mittal, Advocate, for the Applicant.

S. S. Mahajan, Advocate, for the Respondent.

JUDGMENT

S. S. Sodhi, J.

(1) The matter here pertains to the assessment year 1963-64.

(2) The original assessment for the assessment year in question was completed on March 21, 1968. This assessment was, however, later reopened under Section 147(a) of the Income Tax Act, 1961 (hereinafter referred to as the Act) on the ground that the Income Tax Officer had reason to believe that certain income of the assessee Company chargeable to tax had escaped notice. As the assessee, despite several opportunities failed to account for the imports on the basis of which the Income Tax Officer had come to believe that certain income had escaped assessment, he proceeded to frame assessment under Section 144 of the Act on September 12, 1973. Earlier a specific notice had been served upon the assessee under Section 142(1) of the Act, on August 17, 1973 which the assessee had not complied with.

(3) The assessee thereafter filed an application under Section 146 of the Act against the assessment framed by the Income Tax Officer on September 12, 1973. This was rejected by the order of February 25, 1974. No appeal was thereafter filed against this order, but the assessee proceeded instead to file an appeal against the re-assessment order of September 12, 1973. The main ground urged being that no notice had been served upon it under Section 143(2) of the Act and the assessment framed was, therefore, a nullity. This contention prevailed with the Tribunal and the re-assessment was consequently cancelled. It is in this factual background that the following questions of law have now been referred to this Court for its opinion :—

- "1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in allowing

The Commissioner of Income Tax (Central), Ludhiana v. M/s. Pearl Mech. Engg. & Foundry Works (P) Ltd. (S. S. Sodhi, J.)

the assessee to raise objection regarding the non-issuing of notice under Section 143(2) by the ITO despite the assessee having not pursued its application under Section 146 after the ITO stage ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessment framed was contrary to law and had to be struck down ?
3. Whether, on the facts and in the circumstances of the case and in any view of the matter, the Appellate Tribunal was justified in quashing the assessment instead of merely setting aside the same with a direction to redo it from the point of irregularity or illegality, if any ?”

(4) In dealing with this matter, the first question that arises is with regard to the competency of the appeal by the assessee seeking to challenge the assessment framed by the Income Tax Officer, under Section 144 of the Act in the context of the facts and circumstances of the case here. The view of this Court as expressed in *Gopal Singh v. Commissioner of Income Tax* (1), is clearly against the assessee on this point. That was a case under the Indian Income-tax Act, 1922. It was held there that in an appeal against the assessment under Section 23(4) of that Act, the validity of the notice under Section 34(1)(a) in pursuance of which the assessment was made, cannot be raised without resorting to proceedings under Section 27. The law is thus, well settled that without filing an appeal against the order passed under Section 146 of the Act, the appeal against the assessment framed under Section 144 is not maintainable.

(5) To overcome this hurdle, learned counsel for the assessee sought to press in aid, the plea that notice under Section 143 (2) of the Act was mandatory and as no such notice had been served upon the assessee therefore, the assessment framed by the Income Tax Officer on September 12, 1973 could not be sustained. Counsel for Revenue on his part, sought to contend that the notice served upon the assessee by the Income Tax Officer on September 17, 1973 be read as a notice under Section 143(2) of the Act. In the alternative, the argument raised was that this was, at any

(1) (1968) 70 I.T.R. 840.

rate, a notice under Section 142(1) of the Act, which had not been complied with by the assessee and such non-compliance fully justified the framing of the assessment under Section 144 of the Act, as was done by the Income Tax Officer on September 12, 1973. This alternative plea must indeed prevail. A reference to the record here would show that there is a clear finding by the Income Tax Officer, not in any manner upset in appeal, that there has been non-compliance on the part of the assessee with the terms of the notice issued to it, under Section 142(1) of the Act on September 17, 1973. Such non-compliance having been established, the requisite jurisdiction was thereby clearly conferred upon the Income Tax Officer to frame the assessment under Section 144 of the Act. This being so there can be no escape from the conclusion that the Tribunal clearly fell in error in holding the assessment framed to be contrary to law. The second question referred must consequently be answered in the negative in favour of the Revenue and against the assessee. In view of this answer, the two other questions referred are rendered academic and are consequently returned unanswered. This reference is disposed of accordingly. There will, however, be no order as to costs.

R.N.R.

Before J. V. Gupta, A.C.J.

IMPROVEMENT TRUST, JIND (DISSOLVED) THROUGH CHIEF
EXECUTIVE OFFICER, MUNICIPAL COMMITTEE, JIND,—
Petitioner/J.D.

versus

NARINDER KUMAR, SON OF RAGHBIR SARUP BHAGTNAGAR,
—*Respondent/D.H.*

Civil Revision No. 2644 of 1989.

20th February, 1990.

*Land Acquisition Act, of 1894, Section 3(a) and Section 23
(1-A)—Definition of land—'trees' included in the term 'land'—claim
of solatium on amount assessed for trees—Validity of such claim—
Amount of compensation as enhanced by the Tribunal deposited—
No increase awarded by High Court—High Court awarding higher
interest and other statutory benefits—Claimants adjusting amount of
compensation towards interest and costs—Such adjustment invalid*