

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 6758 OF 2004

DEPUTY COMMISSIONER OF
INCOME TAX & ANOTHER

... Appellants

VERSUS

ZUARI ESTATE DEVELOPMENT &
INVESTMENT COMPANY LIMITED

... Respondent

O R D E R

The admitted facts are that the income tax return filed by the respondent-assessee for the assessment year 1991-92 was accepted under Section 143(1) of the Income Tax Act. After sometime, the assessing officer came to know that there was a sale agreement dated 19.06.1984 entered into between the respondent and Bank of Maharashtra to sell a building for Rs. 85,40,800 on the condition that the sale would be completed only after the five years of the agreement but before expiration of sixth year at the option of the purchaser and the purchaser can rescind the same at certain consideration. After the Bank had paid to the assessee company on 20th June, 1984 the sum of Rs.84,47,111/-, being 90% of the consideration agreed upon, the Assessee put and handed over possession in part performance of the Agreement of Sale to the Bank on 20th June, 1984 itself. By letter dated 12th June, 1990, in

terms of clause 5 of the Agreement of sale dated 19.6.1984, the Bank called upon the assessee to complete the transactions and convey the property to the Bank by 18th June 1990. By a letter dated 16th June, 1993, the Assessee confirmed that the assessee company had put the premises in possession of the Bank and that the assessee company would take all necessary steps for transfer of the said premises on or before 30th September, 1993. Even after the said date the Assessee was unable to complete the transaction on the pretext that certain dispute had arisen owing to which the assessee did not complete the transaction. The Assessee's accounts for the year 1991, had disclosed the amount of Rs.84,47,112/- by it as a current liability under the heading "Advance against deferred sale of building". In the course of assessment proceedings for the assessment year 1994-95, the Assessing Officer raised a query as to why the capital gains arising on the sale of the premises should not be taxed in the assessment year 1991-92. On this basis, notice dated 04.12.1996 under Section 143 read with Section 147 of the Income Tax Act was served upon the assessee on the ground that the assessee had escaped tax chargeable on its income in the assessment year 1991-1992. Challenging the validity of this notice, the respondent preferred writ petition in the High Court of Bombay. The High Court has allowed the writ petition vide the impugned

orders which are subject matter of challenge in the present appeal.

After going through the detailed order passed by the High Court, we find that the main issue which is involved in this case is not at all addressed by the High Court. A contention was taken by the appellant-Department to the effect that since the assessee's return was accepted under Section 143(1) of the Income Tax Act, there was no question of "change of opinion" inasmuch as while accepting the return under the aforesaid provision no opinion was formed and therefore, on this basis, the notice issued was valid. We find that this aspect is squarely covered by the judgment of this Court in *Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers Private Limited* [2008 (14) SCC 208] in the following manner: -

"15. In the scheme of things, as noted above, the intimation under Section 143(1)(a) cannot be treated to be an order of assessment. The distinction is also well brought out by the statutory provisions as they stood at different points of time. Under Section 143(1)(a) as it stood prior to 1-4-1989, the assessing officer had to pass an assessment order if he decided to accept the return, but under the amended provision, the requirement of passing of an assessment order has been dispensed with and instead an intimation is required to be sent. Various circulars sent by the Central Board of Direct Taxes spell out the intent of the legislature i.e. to minimise the departmental work to scrutinise each and every return and to concentrate on selective scrutiny of returns. These aspects were highlighted by one of us (D.K. Jain, J.) in *Apogee International Ltd. v. Union of India*.

16. It may be noted above that under the first proviso to the newly substituted Section 143(1), with effect from 1-6-1999, except as provided in the provision itself, the acknowledgment of the return shall be deemed to be an intimation under Section 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgment is not done by any assessing officer, but mostly by ministerial staff. Can it be said that any "assessment" is done by them? The reply is an emphatic "no". The intimation under Section 143(1) (a) was deemed to be a notice of demand under Section 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. And nothing more can be inferred from the deeming provision. Therefore, there being no assessment under Section 143(1) (a), the question of change of opinion, as contended, does not arise."

The offshoot of the aforesaid discussion is to hold that judgment of the High Court is erroneous and warrants to be set aside. We allow this appeal setting aside the impugned judgment of the High Court.

We find that pursuant to the notice issued under Section 143 of the Income Tax Act, the assessing officer had computed the income by passing the assessment orders on merits and rejecting the contention of the respondent that the aforesaid transaction did not amount to a sale in the assessment year in question. Against that assessment order, the respondent had preferred the appeal before the Commissioner of Income Tax (Appeals) which was also dismissed. Further appeal was preferred before the Income

Tax Appellate Tribunal. This appeal, however, has been allowed by the Tribunal vide orders dated 29.01.2004, simply following the impugned judgment of the High Court, whereby the assessment proceedings itself were quashed. Since we have set aside the judgment of the High Court, as a result, the orders dated 29.01.2004 passed by the Income Tax Appellate Tribunal also stands set aside. The matter is remitted back to the Income Tax Appellate Tribunal to decide the appeal of the respondent on merits.

....., J.
[A.K. SIKRI]

....., J.
[ROHINTON FALI NARIMAN]

New Delhi;
April 17, 2015.

ITEM NO.105

COURT NO.14

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 6758/2004

DY.COMMNR. OF INCOME TAX & ANR.

Appellant(s)

VERSUS

ZUARI ESTATE DEV. & INVESTMENT COMP.LTD.

Respondent(s)

(with office report)

Date : 17/04/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Ms. Pinky Anand, ASG.
Mr. Arijit Prasad, Adv.
Ms. Purnima Bhat Kak, Adv.
Ms. Saudamini Shaina, Adv.
Ms. Anil Katiyar, Adv.
Mr. B. V. Balaram Das, Adv.

For Respondent(s)

Mr. Dhruv Aggarwal, Sr. Adv.
Mr. Joseph Pookkatt, Adv.
Ms. Awantika Manohar, Adv.
Mr. Prashant Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

(Nidhi Ahuja)
COURT MASTER

(Suman Jain)
COURT MASTER

[Signed order is placed on the file.]