Delhi High Court Apogee International Ltd. vs Union Of India & Anr. on 4 March, 1996 Equivalent citations: 1996 220 ITR 248 Delhi Author: D Jain Bench: D Jain, Y Sabharwal JUDGMENT D.K. Jain, J. 1. Since the issues involved and the prayers in both the writ petitions are the same, both the petitions can be dealt with under a common judgment. 2. In respect of the asst. yr. 1989-90, the petitioners submitted their returns of income, which were accompanied by statements showing computation of taxable income. It appears that though initially the AO had issued to the petitioners notices under s. 143(2) of the IT Act, 1961 (for short, "the Act"), as also a questionnaire to the petitioners in CWP No. 496 of 1994, calling for information on certain points but ultimately the returns filed by them were accepted and intimations under s. 143(1)(a)(i) of the Act were issued. Subsequently the AO issued fresh notices under s. 143(2) of the Act calling upon the petitioners to appear and clarify certain points with a view to assess their income for the relevant assessment year. It is these notices which are under challenge in these petitions. 3. Although in the writ petitions, the petitioners have challenged the constitutional validity of s. 143(2) of the Act, as it existed at the relevant time, Mr. P. V. Kapoor, senior advocate, appearing for the petitioners, did not press before us the question of constitutional validity of the said section. Thus, the other issue which survives for consideration is about the legality and validity of the notices issued under s. 143(2) of the Act after the afore noted intimations had been sent to the petitioners. 4. The main plank of Mr. Kapoor's argument is that the intimation sent to the petitioners under s. 143(1)(a)(i) of the Act, after issuing notices under s. 143(2) of the Act, tantamounts to a regular assessment under s. 143(2) of the Act, exhausting the power of the AO to issue afresh a notice under s. 143(2) of the Act for the purpose of making another assessment under s. 143(3) of the Act. That being so, it is urged, no fresh proceedings could be commenced with reference to the completed assessments without a proper and valid reopening of the assessments in terms of ss. 147 and 148 of the Act. To buttress the argument that an intimation under s. 143(1)(a)(i) has all the attributes of a regular assessment under s. 143(3) and assessment proceedings should be taken to have been concluded in all respects, support is sought from the language of sub-s. (1)(a)(i) of s. 143, providing that intimation under the said section will be deemed to be a notice of demand issued under s. 156 for the amounts specified thereunder, which can be recovered from the assessee in accordance with the provisions of the Act. In our view, the stand of the petitioners is devoid of any merit. 5. The provisions of s. 143(1), material for our purpose, sub-ss. (2) and (3) read as under : "143(1)(a) Where a return has been made under s. 139, or in response to a notice under sub-s. (1) of s. 142, - (i) if any tax or interest is found due on the basis of such return, after adjustment of any tax deducted at source, any advance tax paid and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of sub-s. (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under s. 156 and all the provisions of this Act shall apply accordingly; and (ii) if any refund is due on the basis of such return, it shall be granted

to the assessee : Provided that in computing the tax or interest payable by, or refundable to, the assessee, the following adjustments shall be made in the income or loss declared in the return, namely : (i) any arithmetical errors in the return, accounts or documents accompanying it shall be rectified; (ii) any loss carried forward, deduction, allowance or relief, which, on the basis of the information available in such return, accounts or documents, is prima facie admissible but which is not claimed in the return, shall be allowed; (iii) any loss carried forward, deduction, allowance or relief claimed in the return, which, on the basis of the information available in such return, accounts or documents, in prima facie inadmissible, shall be disallowed.... (2) Where a return has been made under s. 139, or in response to a notice under sub-s. (1) of s. 142, the AO shall, if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return : Provided that no notice under this sub-section shall be served on the assessee after the expiry of twelve months from the end of the month in which the return is furnished. (3) On the day specified in the notice issued under sub-s. (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the AO may require on specified points, and after taking into account all relevant material which he has gathered, the AO shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him on the basis of such assessment." 6. From a bare reading of sub-cl. to (i) sub-s. (1)(a) of s. 143 of the Act, it is evident that giving of intimation in terms of the provisions is "without prejudice" to the provisions of sub-s. (2), which means that an intimation sent to the assessee specifying the sum payable by him in terms of that sub-section does not preclude the operation of the provisions of sub-s. (2). By force of the expression "without prejudice", the jurisdiction of the assessing authority to proceed under sub-s. (2) of s. 143 is preserved despite intimation under sub-s. (1). This is so also for the reason that under the recast section, w.e.f. 1st April, 1989, the power of the AO to make adjustments in terms of its proviso is very limited. The power under s. 143(1) can be exercised only in the circumstances mentioned in the proviso strictly within the bounds fixed therein. The phraseology of the first proviso makes it clear that only those adjustments can be made which are prima facie justified. Only those disallowances, can be made which are prima facie inadmissible, that is to say, which are clearly and patently inadmissible on the very face of the return and documents accompanying it and not a matter of debate or doubt. This is evident from the language of the section. If any enquiry or proof is required in connection with the claim for deduction, the AO has to necessarily issue a notice under sub-s. (2) of s. 143 of the Act. The prime reason for amendment of sub-cl. (i) of s. 143(1)(a) of the Act is that earlier under s. 143(1)(a), as it stood prior to its substitution in the present form by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1st April, 1989, the AO had to pass an assessment order if

he decided to accept the return but under the new section, the requirement of passing an assessment order in all cases, where returns of income are filed, has been dispensed with and in turn only an intimation is required to be sent if on the basis of the return, after prima facie adjustments, any amount is found due from the assessee. As a matter of fact various circulars issued by the CBDT after the amendment of s. 143 clearly spell out the intention of the legislation to minimise the volume of the Department's work to scrutinise each and every return and to concentrate on selective scrutiny of returns. The new procedure, referred to as the "summary assessment scheme" envisaged under s. 143(1) is an exception to the normal procedure of assessment under s. 143(3) after issue of a notice under s. 143(2) of the Act and an assessee cannot, therefore, demand as a matter of right to be treated as an exceptional case. An order of assessment is made only after a roper scrutiny of the return and the materials produced in support thereof takes place. 7. It is true that a notice under s. 143(2) puts into motion the normal procedure of assessment but we are unable to read in Chapter XIV, prescribing the procedure for assessment, any prohibition to the issue of intimation under s. 143(1)(a)(i) after a notice under sub-s. (2) of the section has come to be issued. In our view, therefore, intimation to the assessee under s. 143(1)(a)(i) of the amounts payable by him as tax or interest even after issue of notice under s. 143(2), does not oust the jurisdiction of the AO to issue a fresh notice under s. 143(2) of the Act, where he considers it to be necessary or expedient to ensure that the assessee has declared his income correctly. 8. We are also not impressed with the submission that an intimation has to be treated as a conclusion of the assessment process merely because the intimation under s. 143(1)(a)(i) is by itself deemed to be a notice of demand issued under s. 156 of the Act, after completion of assessment proceedings for a particular assessment year. From the scheme of the new assessment procedure it is obvious that the purpose for which the said fiction has been created in sub-s. (1)(a)(i) of s. 143 to treat the intimation as a notice of demand under s. 156 is to make the machinery provision of recovery of tax applicable to the recovery of tax assessed in terms of the said sub-section and nothing more. By the fiction so created, all incidents of a notice of demand shall become applicable even to that intimation even though no regular recovery notice of demand in the prescribed form under s. 156 is served on an assessee, which otherwise is mandatory to enforce any recovery of tax or interest on an assessee. 9. In view of the foregoing discussion the stand of the petitioners that on issuance of an intimation under s. 143(1)(a)(i), the AO cannot proceed to issue a notice under s. 143(2) of the Act and the only remedy available to him to make a fresh assessment is to reopen it by taking recourse to ss. 147 and 148 of the Act is misconceived. We are, therefore, of the view that the impugned notices issued to the petitioners under s. 143(2) of the Act are valid. 10. There is, thus, no merit in the writ petitions and the same are accordingly dismissed. The rule is discharged with no order as to costs.