

A PR. COMMISSIONER OF INCOME TAX 6

v.

NOKIA INDIA PVT. LTD.

(Civil Appeal No. 3450 of 2019)

B APRIL 08, 2019

**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]**

- Income Tax Act, 1961 – ss.260-A, 148 – Assessing officer (AO) issued notice to the respondent u/s.148 – Objections raised by the respondent were accepted by the ITAT – Aggrieved, Revenue filed appeal in the High Court – High Court dismissed the appeal in limine on the ground that it did not involve any substantial question of law within the meaning of s.260A of the Act – On appeal, held: The order of the High Court legally not sustainable – The following four questions need to be answered by the High Court on their respective merits while deciding the appeal filed by the Revenue u/s.260-A of the Act – (i) Whether the ITAT was justified in holding that the notice issued by the AO u/s.148 was bad in law when admittedly the impugned notice was issued in the case where the assessment was made u/s.143(1) of the Act but not u/s.143(3) of the Act – (ii) Whether the ITAT was justified in holding that the notice issued u/s.148 of the Act was bad because it was based on mere change of opinion by overlooking the fact that there was no foundation to form any such opinion – (iii) When admittedly the notice in question satisfied the requirements of s.148 of the Act as it stood, namely, that first, it contained the facts constituting the “reasons to believe” and second, it furnished the necessary details for assessing the escaped income of the assessee, whether the ITAT was still justified in declaring the notice as being bad in law without taking into consideration any of these admitted facts – (iv) In case, if the notice is held proper and legal, whether the finding recorded by the ITAT on the merits of the case on each item, which is subject matter of the notice, is legally sustainable – Thus, case remanded to the High Court for answering the aforementioned questions on merits in accordance with law.*

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CIVIL APPELLATE JURISDICTION: Civil Appeal No.3450 of 2019 A

From the Judgment and Order dated 21.04.2017 of the High Court of Delhi at New Delhi in ITA No. 854 of 2016.

Ms. Rekha Pandey, Akshay Amritanshu (for Mrs. Anil Katiyar), Advs. for the Appellant. B

Vikas Srivastava, Jatinder Pal Singh, Sumit Mangal, Vikrant A. Maheshwari (for Mayank Pandey), Advs. for the Respondent.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. C

1. Leave granted.

2. This appeal is filed against the final judgment and order dated 21.04.2017 passed by the High Court of Delhi at New Delhi in ITA No.854 of 2016 whereby the Division Bench of the High Court dismissed the appeal filed by the appellant herein. D

3. A few facts need mention hereinbelow for the disposal of this appeal, which involves a short point.

4. By impugned order, the Division Bench of the High Court dismissed the Revenue's (appellant herein) appeal filed under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") on the ground that it did not involve any substantial question of law within the meaning of Section 260-A of the Act. E

5. In other words, the High Court was of the view that since the appeal did not involve any substantial question of law, it deserves dismissal in *limine*. F

6. The appellant is the Revenue (Commissioner of Income Tax) and the respondent is an assessee. The issue arises out of an assessment year (1999-2000).

7. The issue essentially relates to legality and correctness of the notice issued by the Assessing Officer (AO) to the respondent under Section 148 of the Act and to the consequential determination made by the AO in the assessment order for which the impugned notice was issued to the respondent. G

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- A 8. The objections raised by the respondent (assessee) to the notice contending *inter alia* that since the impugned notice was based on “change of the opinion” and hence bad in law was upheld by the ITAT resulting in allowing the respondent’s appeal and further by dismissing the Revenue’s appeal by the High Court. The Revenue has felt aggrieved by the order of the High Court dismissing their appeal in *limine* and has filed the present appeal by way of special leave in this Court.
- B 9. The short question, which arises for consideration in this appeal, is whether the High Court was right in dismissing the Revenue’s appeal in *limine* holding that it did not involve any substantial question of law.
- C 10. Having heard the learned counsel for the parties and on perusal of the record of the case, we are of the view that the High Court was not justified in dismissing the appeal on the ground that the appeal did not involve any substantial question of law. We are, therefore, constrained to allow this appeal, set aside the impugned order and remand the case to the High Court for deciding the appellant’s appeal afresh on merits in accordance with law.
- D 11. In our considered view, the following substantial questions of law do arise in this appeal filed by the Revenue (appellant herein) under Section 260-A of the Act in the High Court against the order dated 03.06.2016 passed by the ITAT in Appeal No. 1870/DEL/2010 and the same should have been framed by the High Court for deciding the appeal on merits in accordance with law:
- F **1. Whether the ITAT was justified in holding that the notice issued by the AO under Section 148 was bad in law when admittedly the impugned notice was issued in the case where the assessment was made under Section 143(1) of the Act but not under Section 143(3) of the Act.**
- G **2. Whether the ITAT was justified in holding that the notice issued under Section 148 of the Act was bad because it was based on mere change of opinion by overlooking the fact that there was no foundation to form any such opinion.**
- H **3 When admittedly the notice in question satisfied the requirements of Section 148 of the Act as it stood, namely, that first, it contained the facts constituting the “reasons to believe” and second, it furnished the necessary details**

for assessing the escaped income of the assessee, whether the ITAT was still justified in declaring the notice as being bad in law without taking into consideration any of these admitted facts. A

4. In case, if the notice is held proper and legal, whether the finding recorded by the ITAT on the merits of the case on each item, which is subject matter of the notice, is legally sustainable. B

12. In our considered view, the aforementioned four questions framed need to be answered by the High Court on their respective merits while deciding the appeal filed by the Revenue (appellant herein) under C Section 260-A of the Act.

13. We are, therefore, of the view that such order is not legally sustainable in law and hence deserves to be set aside.

14. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned order is set aside. The case is remanded to the High Court for answering the aforementioned questions on merits in accordance with law. D

15. Since we have formed an opinion to remand the case to the High Court for its fresh disposal on merits, we have not expressed any opinion on the merits of the case while deciding this appeal. The High Court will, therefore, decide the appeal uninfluenced by any observation made by this Court in this order. E

Ankit Gyan

Appeal allowed.