REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).2984/2008

COMMISSIONER OF INCOME TAX, GUJARAT CENTRAL **APPELLANT(S)**

VERSUS

SAURASTHRA CEMENT & CHEM. INDUSTRIES LTD **RESPONDENT(S)**

WITH
CIVIL APPEAL NO(S).4971/2016
(Arising out of SLP(C) No. 13766/2011)

M/S. SARAYA SUGAR MILLS PVT. LTD. **APPELLANT(S)**

VERSUS

COMMISSIONER OF INCOME -A WARD, GORAKHPUR **RESPONDENT(S)**

J U D G M E N T

A.K. SIKRI,J.

Leave granted in SLP(C) No. 13766/2011.

2. The Commissioner of Income Tax, Gujarat Central, Ahmedabad- the appellant (hereinafter referred to as "the Revenue"), is aggrieved by the judgment dated 20.01.2005 passed by the High Court of Gujarat whereby the High Court has dismissed the appeal of the Revenue affirming the order of the Income Tax Appellate Tribunal (hereinafter referred to as "ITAT") holding that the assessment

order dated 01.09.1984 passed by the Assessing Officer in respect of Assessment Year 1981-82 was time barred. We may mention at the outset that in terms of Section 153 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), time limit for completion of the assessment to be made under Sections 143 or 144 of the Act is at any time after the expiry of two years from the end of the Assessment Year in which the income is first assessable, where Assessment Year is commencing on or after 01.04.1969. On this reckoning, the date by which assessment should have been carried out by the Assessing Officer in respect of Assessment Year 1981-82 was 31.03.1984. The assessment order was, however, passed on 01.09.1984. The Revenue claimed that this assessment order was still within the prescribed period of limitation because of the reason that on 13.03.1984 draft assessment order was passed pertaining to the aforesaid Assessment Year and forwarded to the Inspecting Assistant Commissioner, Central Range-II, Ahmedabad (hereinafter referred to as "the IAC") on 13.03.1984 (i.e. before 31.03.1984). The IAC issued instructions under Section 144B of the Act on 31.08.1984 and based on that the Assessing Officer framed the assessment on 01.09.1984 under Section 143(3) of the Act read with Section 144B of the Act.

3. The position that was taken by the Revenue was that the period from 13.03.1984 to 31.03.1984, when the matter was before the IAC, had to be excluded while computing the period of limitation of two years and once the period is excluded the assessment order was passed within the period of limitation. The

contention of the respondent/assessee, on the other hand, was that, by order dated 29.08.1983, the Commissioner of Income Tax, Central, Ahmedabad (hereinafter referred to as "the CIT") passed under Section 125A(1) of the Act had assigned all the powers and functions of the Income Tax Officer, Central Circle, Jamnagar (hereinafter referred to as "the ITO") to the IAC. This order was passed specifically in the case of the respondent herein which became effective from 01.09.1983. It was their submission that once, by virtue of the aforesaid order dated 29.08.1983 passed by the CIT, the IAC is conferred concurrent jurisdiction, along with ITO, empowering him to make assessment order in the case of the assessee, there was no question of forwarding the draft assessment order by the ITO to the IAC and this unnecessary and superfluous exercise would not enure to the advantage of the Revenue giving it the benefit of the period from 13.03.1984 to 31.08.1984 while calculating the period of limitation of two years provided under Section 153 of the Act. In nutshell, the submission was that the conferment of the powers of the Assessing Officer upon the IAC, he is in the same position as the ITO and draft assessment order could not be sent to him who was brought at par with the ITO.

4. The Assessing Officer was not amused by the aforesaid contention of the assessee and repelled the same resulting in framing of the assessment order dated 01.09.1984. However, the ITAT found force in the said submission of the assessee and allowed the appeal thereby setting aside the assessment order. The High Court, as pointed out above, has upheld this view of the ITAT, resulting

in the dismissal of the appeal of the appellant.

5. Before proceeding further, we may mention that in the appeal arising out of SLP(C) No.13766/2011 which is preferred by the assessee-M/s. Saraya Sugar Mills Pvt. Ltd., in the same circumstances, on the same question, the Allahabad High Court has taken a contrary view. The High Court of Allahabad has found merit in the stand taken by the Revenue and excluded the period during which the draft assessment was forwarded to the IAC till the date of receiving the instructions from the IAC under Section 144B of the Act. We are, thus, faced with two conflicting views and to decide as to which High Court has correctly decided the issue of limitation.

6. We have already stated, in detail, the facts of Civil Appeal No. 2984 of 2008. Before we embark upon our detailed discussion on the issue, we would like to place on record the relevant provisions of the Act which have bearing on the issue. As mentioned above, Section 153 prescribes limitation of two years for making assessment under Section 143 or Section 144 of the Act. Avoiding those portions of these Sections with which we are not concerned, the material provisions are re-produced below:

> **"153. Time-limit for completion of assessments and reassessments. - (1) No order of assessment shall be made under section 143 or section 144 at any time after -**
>
> **(a) the expiry of - ...**
>
> **(iii) two years from the end of the assessment year**

in which the income was first assessable, where such assessment year is an assessment year commencing on or after the 1st day of April, 1969; or....

whichever is latest. . . .

(3) The provisions of sub-sections (1) and (2) shall not apply to the following classes of assessments, reassessments and re-computations which may, subject to the provisions of sub-section (2A), be completed at any time - ...

(ii) where the assessment, reassessment or re-computation is : made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, 254, 260, 262, 263 or 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act;...

Explanation 1. - In computing the period of limitation for the purposes of this section - . . .

(iv) the period (not exceeding one hundred and eighty days) commencing from the date on which the Income-tax Officer forwards the draft order under sub-section (1) of section 144B to the assessee and ending with the date on which the Income-tax Officer receives the directions from the Inspecting Assistant Commissioner under sub-section (4) of that section, or, in a case where no objections to the draft order are received from the assessee, a period of thirty days, or (iva) the period (not exceeding sixty days) commencing from the date on which the Income-tax Officer received the declaration under sub-section (1) of section 158A and ending with the date on which the order under sub-section (3) of that section is made by him, or. . . .

shall be excluded. . . ."

7. Section 123 of the Act lays down the jurisdiction of the IAC and reads as under:

"123. Jurisdiction of Inspecting Assistant Commissioners - (1) The Inspecting Assistant Commissioners shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of income

or of such cases or classes of cases as the Commissioner may direct.

(2) Where any directions issued under sub-section (1) have assigned to two or more Inspecting Assistant Commissioners, the same area or the same persons or classes of persons or the same incomes or classes of income or the same cases or classes of cases, they shall have concurrent jurisdiction and shall perform such functions in relation to the said area or persons or classes of persons or incomes or classes of income or cases or classes of cases as the Commissioner may, by general or special order in writing, specify, for the distribution and allocation of the work to be performed."

8. Section 124, on the other hand, deals with the jurisdiction of the Income Tax Officer and reads as under:

"124. Jurisdiction of Income-tax Officers. - (1) Income-tax Officers shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of income or of such cases or classes of cases as the Commissioner may direct.

(2) Where any directions issued under sub-section (1) have assigned to two or more Income-tax Officers, the same area or the same persons or classes of persons or the same incomes or classes of income or the same cases or classes of cases, they shall have concurrent jurisdiction and shall perform their functions in relation to the said area, or persons or classes of persons, or incomes or classes of income, or cases or classes of cases, in accordance with such general or special orders in writing as the Commissioner or the Inspecting Assistant Commissioner authorised by the Commissioner in this behalf may make for the purpose of facilitating the performance of such functions.

(3) Within the limits of the area assigned to him, the Income-tax Officer shall have jurisdiction -

(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is

carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(b) in respect of any other person residing within the area.

(4) Where a question arises under this section as to whether an Income-tax Officer has jurisdiction to assess any person, the question shall be determined by the Commissioner; or where the question is one relating to areas within the jurisdiction of different Commissioners, by the Commissioners concerned or, if they are not in agreement, by the Board.

(5) No person shall be entitled to call in question the jurisdiction of an Income-tax Officer -

(a) after the expiry of one month from the date on which he has made a return under sub-section (1) of section 139 or after the completion of the assessment, whichever is earlier :-

(b) where he has made no such return, after the expiry of the time allowed by the notice under sub-section (2) of section 139 or under section 148 for the making of the return.

(6) Subject to the provisions of sub-section (5), where an assessee calls in question the jurisdiction of an Income-tax Officer, then the Income- tax Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-section (4) before assessment is made.

(7) Notwithstanding anything contained in this section or in section 130A, every Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income accruing or arising or received within the area for which he is appointed.

9. Likewise, Section 125 of the Act prescribes the powers of the Commissioner with respect to specified areas, cases, persons etc. Section 125A of the Act, to which we shall advert at a later stage, discusses the concurrent jurisdiction of IAC and ITO under certain circumstances. Further, Section 130A of the Act deals with competency of the ITO to perform any function or functions under

certain specified circumstances. Sections 131 to 136 provide for various powers of the Income Tax Authorities with which we are not concerned in the present case. The important provisions directly relevant for the controversy in issue are contained in Chapter XIV, namely, Sections 144A and 144B of the Act. Section 144A authorises the IAC to issue directions in certain cases and Sections 144B provides that in certain cases reference is to be made to the IAC by the ITO before framing the final assessment order. Under Section 144A, the IAC may, on his own motion or on a reference being made to him by the ITO or on the application of an assessee, call for and examine the record of any proceedings in which the assessment is pending and, if he considers that, having regard to the nature of the case or the amount involved or for any other reason, it is necessary or expedient so to do, he may issue such directions as he thinks fit for the guidance of the ITO to enable him to complete the assessment. Directions so issued are binding on the ITO.

10. Section 144B of the Act deals with a situation where the ITO intends to pass an assessment order which is in variation to the income or loss that is shown in the return of the assessee and the amount of such variation exceeds the amount that can be fixed by the Board under sub-Section (6) thereof. In such a situation, the ITO is under obligation to first forward a draft of the proposed order of assessment to the assessee who can file his objections within 7 days thereof and if the objections are received, the ITO is to forward the draft order together with the objections to the IAC. The IAC, after considering the draft order and the objections,

is empowered to issue such directions as he thinks fit for the guidance of the ITO to complete the assessment.

11. From the reading of Section 153, the period (not exceeding 180 days) commencing from the date on which the ITO forwards the draft order under sub-Section (1) of Section 144B to the assessee and ending with the date on which the ITO receives the directions from the IAC under sub-Section (4) of Section 144B, is to be excluded while computing the period of limitation.

12. There is no quarrel up to this stage. However, as pointed out in the earlier portion of this judgment, as per the assessee when the IAC was vested/empowered with same powers as that of ITO, by specific order of the CIT in respect of the respondent/assessee itself and with the conferring of said powers the IAC and ITO had concerned jurisdiction over the assessee, there was no reason to send the draft assessment order by the ITO to the IAC. To appreciate this contention, we at this stage, reproduce the provisions of Section 125A of the Act under which concurrent powers can be assigned to the IAC as well.

> **"125A. Concurrent jurisdiction of Inspecting Assistant Commissioner and Income-tax Officer. - (1) The Commissioner may, by general or special order in writing, direct that all or any of the powers or functions conferred on, or assigned to, the Income-tax Officer or Income-tax Officers by or under this Act in respect of any area, or persons or classes of persons, or incomes or classes of income, or cases or classes of cases, shall be exercised or performed concurrently by the Inspecting Assistant Commissioner.**

(2) Where under sub-section (1), an Inspecting Assistant Commissioner exercises concurrent jurisdiction with one or more Income-tax Officers in respect of any area, or persons or classes of persons, or incomes or classes of income, or cases or classes of cases, the Income-tax Officer or Income-tax Officers shall exercise the powers and perform the functions under this Act in relation-thereto as the Inspecting Assistant Commissioner may direct.

(3) Without prejudice to the generality of the provisions contained in sub-section (3) of section 119, every Income-tax Officer shall also observe and follow such instructions as may be issued to him for his guidance by the Inspecting Assistant Commissioner within whose jurisdiction he performs his functions in relation to any particular proceeding or the initiation of any proceeding under this Act :

Provided that no instructions, which are prejudicial to the assessee, shall be issued before an opportunity is given to the assessee to be heard.

Explanation. - For the purposes of this sub-section, no instruction as to the lines on which an investigation connected with the assessment should be made shall be deemed to be an instruction prejudicial to the assessee.

(4) Where an order is made under sub-section (1) and the Inspecting Assistant Commissioner exercises the powers or performs the functions of an Income-tax Officer in relation to any area, or persons or classes of persons, or incomes or classes of income, or cases or classes of cases, references in this Act or in any rule made thereunder to the Income-tax Officer shall be construed as references to the Inspecting Assistant Commissioner and any provision of this Act requiring approval or sanction of the Inspecting Assistant Commissioner shall not apply.

12. From the aforesaid sections, it is apparent:

(i) Under section 123 of the Act, the Inspecting Assistant Commissioners have jurisdiction in respect of such areas or of such persons or classes of persons or of such incomes or classes of income or of such cases or classes of cases as per the direction of the Commissioner. Where there are two

or more Inspecting Assistant Commissioners, they are having concurrent jurisdiction and are required to exercise their powers and perform their functions as per the order in writing made by the Commissioner specifying for the distribution and allocation of the work to be performed.

(ii) Similarly, under section 124(1), the Income-tax Officers are also required to perform their functions as per the direction of the Commissioner. If there are two or more Income-tax Officers, they are having concurrent jurisdiction and are required to perform their functions as per the general or special orders in writing made by the Commissioner or Inspecting Assistant Commissioner authorised by the Commissioner in this behalf. Sub-section (3) provides that within the limits of the area assigned to him, the Income-tax Officer shall have jurisdiction in respect of any person carrying on business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area and in respect of any other person residing within the area. Sub-section (4) provides as to who shall decide the dispute arising with regard to the jurisdiction of an Income-tax Officer to assess any person. Sub-section (5) provides that no person shall be entitled to call in question the jurisdiction of an Income-tax Officer beyond the time-limit prescribed therein;

(iii) In section 125, an exception is carved out with regard to the jurisdiction of an Income-tax Officer which provides that the Commissioner may by general or special order in writing direct that the powers conferred on the Income-tax Officer by or under the Act shall, in respect of any specified case or class of cases or of any specified person or class of persons, be exercised by the Inspecting Assistant Commissioner. By an order of the Commissioner under section 125(1)(a), the Income-tax Officer is divested of his jurisdiction to deal with the specified case or class of cases or specified person or persons. Hence, even though the Income-tax Officer is having jurisdiction in respect of any specified case or person, the Commissioner is empowered to direct that the said powers shall be exercised by the Inspecting Assistant Commissioner. Where such order is made

under section 125(2)(a), any provision of the Act requiring approval or sanction of the Inspecting Assistant Commissioner will not be applicable.

(iv) Section 125A carves out further exception with regard to the jurisdiction of an Income-tax Officer. It does not oust the jurisdiction of Income Tax Officer but confers concurrent jurisdiction on the Inspecting Assistant Commissioner. It provides that the Commissioner may, be general or special order in writing, direct that all or any of the powers or functions conferred on, or assigned to, the Income-tax Officer or Income-tax Officers by or under this Act in respect of any are, or persons of classes of persons, or incomes or classes of income, or cases or classes of cases, shall be exercised or performed concurrently by the Inspecting Assistant Commissioner. Sub-section (2) of section 125A also empowers the Inspecting Assistant Commissioner to issue direction to the Income-tax Officer and the Income-tax Officer is required to exercise his powers and perform his functions under the Act as per the said direction. Sub-section (3) thereto clarifies that the Income-tax Officer is also required to observe and follow such instructions as may be issued to him for his guidance by the Inspecting Assistant Commissioner within whose jurisdiction he performs his functions in relation to any particular proceedings or the initiation of any proceeding under the Act. The proviso clarifies that no instructions which are prejudicial to the assessee shall be issued before an opportunity is given to the assessee to be heard."

13. Thrust of the counsel for the assessee was on sub-Section (4) of Section 125A with the submission that on the conferment of the concurrent jurisdiction, provisions of the Act requiring approval and the sanction of the IAC are not applied and, therefore, the provisions of Section 144B seize to apply and should not have been invoked by the ITO in the instant case. It was also argued that the High Court in the impugned judgment has rightly discussed that with the passing of a specific order dated 29.08.1983 by the CIT

directing that all the powers and functions assigned to the ITO, Central Circle, Jamnagar are thereby available to the IAC, Central Range II, Ahmedabad, the IAC, Central Range II, Ahmedabad was brought at par with the ITO, insofar as it pertains to the assessment of the assessee herein and he did not remain an Officer higher in status than ITO insofar as assessment of the assesse is concerned and for this reason also no such reference to the IAC was called for.

14. These arguments are without any force and the result which the respondent/assessee wants does not flow from the reading of Section 125A of the Act. A bare reading of sub-Section(4) of Section 125A of the Act provides that where-

> **(a) an order is made under sub-section (1), and**
>
> **(b) the Inspecting Assistant Commissioner exercises the powers or performs the functions of an Income-tax Officer in relation to any area, or persons or classes of persons, or incomes or classes of income, or cases or classes of cases, -**
>
> **(i) references in this Act or in any rule made thereunder to the Income-tax Officer shall be construed as references to the Inspecting Assistant Commissioner, and**
>
> **(ii) any provision of this Act requiring approval or sanction of the Inspecting Assistant Commissioner will not be applicable.**

15. Hence, the provision of the Act requiring the approval or sanction of the Inspecting Assistant Commissioner will not be applicable only in those cases where both the aforementioned conditions (a) and (b) are satisfied. It would mean that, even though an order is made under section 125A(1) empowering the Inspecting Assistant Commissioner to perform the functions of an Income-tax Officer, yet if he has not exercised the power or performed the function of an Income-tax Officer, the provisions requiring approval or sanction of the Inspecting Assistant Commissioner will be applicable. Sub-section (4) nowhere provides that, if some directions by the Inspecting Assistant Commissioner are issued as provided under sub-section (2), then provisions requiring approval or sanction of the Inspecting Assistant Commissioner will not be applicable.

16. In the instant case, we find that it is not the IAC who exercises the powers or performs the functions of the ITO, even when such a power was conferred upon him, concurrently with the ITO. The significant feature of Section 125A of the Act is that even when the IAC is given the same powers and functions which are to be performed by the ITO in relation to any area or classes or person or income or classes of income or cases or classes of cases, on the conferment of such powers, the ITO does not stand denuded of those powers. With conferment of such powers on the IAC gives him "concurrent" jurisdiction which means that both, ITO as well as the

IAC, are empowered to exercise those functions including passing assessment order. It is still open to the ITO to assume the jurisdiction and pass the order in case the IAC does not exercise those powers in respect of the assessment year. Provisions of Section 144B would not apply only if the IAC exercises powers or performs the functions of an ITO. What is important is the actual exercise of powers and not merely conferment of the powers that are borne out from the bare reading of sub-Section (4) of Section 125B.

17. The position becomes abundantly clear when we read Section 144B, particularly, sub-Section (7) thereof, though for the sake of clarity we reproduce hereunder the entire provision:

> **"(7) Nothing in this section shall apply to a case where an Inspecting Assistant Commissioner exercises the powers or performs the functions of an income-tax Officer in pursuance of an order made under section 125 or section 125A."**

18. Sub-Section (7), in no uncertain terms, mentions that Section 144B will not apply only in that case where the IAC "exercises the powers or performs the functions of an ITO" in pursuance of an order made under Section 125 or Section 125A.

19. In the instant case, as already noted above, no such power was exercised or function of an ITO was performed by the IAC. We would like to point out here that the High Court of Gujarat while dismissing the appeal of the Revenue failed to take into account the earlier judgment of the Co-ordinate Bench of the High Court in

CIT vs. Shree Digvijay Woollen Mills Ltd. **[1995] 212 ITR 310], which has taken the view that we have expressed above. We agree with the view taken in *CIT vs. Shree Digvijay Woollen Mills Ltd.* thereby allowing Civil Appeal No. 2984 of 2008 and setting aside the impugned judgment.**

20. For these reasons, the Civil Appeal arising out of SLP(C)No.13766/2011 filed by the assesee against the judgment of the Allahabad High Court is dismissed affirming the view in the said case which is reported as *Commissioner of Income tax vs. Saraya Sugar Mills P. Ltd.* [2011] 336 ITR 572 (All).

21. The Revenue shall be entitled to costs in both the appeals.

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

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

NEW DELHI;
MAY 02, 2016.