

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

D.B. Income Tax Appeal No. 279 / 2005

C I T Kota

----Appellant

Versus

Amar Nath Arora, 284 A, Talwandi, Kota

----Respondent



For Appellant(s) : Mrs. Parinitoo Jain

For Respondent(s) : Mr. Mahendra Gargeiya

HON'BLE MR. JUSTICE K.S. JHAVERI

HON'BLE MR. JUSTICE INDERJEET SINGH

Judgment

25/07/2017

1. By way of this appeal, the appellant has assailed the judgment and order of the Tribunal whereby Tribunal has partly allowed the appeal of the department and dismissed the cross objections filed by the assessee.
2. This court while admitting the appeal on 21.10.2005 framed following substantial question of law:-

“(i) Whether the findings of the Tribunal are perverse in holding that for the purpose of limitation under Section 158 BE, the period is to be counted from the date on which the direction under Section 142(2A) is served on the assessee and not from the date of issue of direction by the Assessing Officer under Section 142(2A)?

(ii) whether the order of the Tribunal is perverse in holding that the block assessment order was barred by limitation despite there being specific provision of Section 158BE explanation 1 clause (ii) that period for exclusion will commence from

the day on which the AO gives a direction under Section 142 (2A)?"

3. This court in the case of same assessee in tax appeal no.262/2005 (Commissioner of Income Tax, Kota vs. Shri Amar Nath Arora) decided on 6.12.2016 observed as under:-

"9. In this appeal, sub clause (ii) is required to be interpreted. However, counsel for the appellant has taken us to Section 153 & 153A which came up for consideration before the Kerala High Court and other Courts.

10. It can not be disputed that period of exclusion will commence from the day on which the AO gives a direction under Section 142 (2A) and would end on the day when the assessee furnishes such audit report. According to us, the date of issuance of the notice (i.e. 18.01.2001) is the day on which the AO taken a decision to get the bond audited, when such decision is conveyed to the assessee then only it results into direction. A purpose of interpretation of clause (ii) above, read with the decision of Ho'ble Supreme Court (supra) would mean, the date on which the decision/notice is served on the assessee.

11. In that view of the matter, 23.01.2001 will be the crucial date from which the period to be excluded is to be reckoned, and therefore, the period which is required to be excluded in the period from 23.01.2001 to 17.07.2001 from 18.01.2001 to 23.01.2001 it was only decision, and not the direction.

12. Learned ITAT has thus committed no error of law in holding the assessment order to be time barred.

13. In that view of the matter, the issue is required to be answered in favour of the assessee and against the department."

4. In that view of the matter, the decision in the aforesaid case will govern the parties in the present case also. Therefore, the



issue is answered in favour of the assessee and against the department.

The appeal stands dismissed.

(INDERJEET SINGH),J.

(K.S. JHAVERI),J.



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