

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 556/2011**
W.P.(C) 557/2011
W.P.(C) 558/2011

Date of decision: 25th April, 2011.

SPRINT COMMUNICATIONS COMPANY LP Petitioner
Through Mr. Salil Kapoor, Mr. Sanat Kapoor
and Mr. Ankit Gupta, Advocates.

versus

DEPUTY DIRECTOR INCOME TAX Respondent
Through Mr. Sanjeev Sabharwal, Sr. Standing
Counsel.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

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In these connected writ petitions notice was directed to be issued on 31st January, 2011 and this Court while issue notice had recorded as follows:-

“Heard Mr. Dastur, learned senior counsel along with Mr.Nishant Thakkar, Mr. Sanat Kapur and Mr.Ankit Gupta, learned counsel for the petitioner and Mr. Sanjeev Sabharwal, learned counsel for the revenue.

It is submitted by Mr. Dastur, learned senior counsel that a notice under Section 148 of the Income Tax Act, 1961 (for brevity 'the Act') was issued to Sprint International Holdings Inc. but in the draft assessment order, as contained in Annexure P-24, the name of the assessee has been mentioned as Sprint Communication Company LP through Sprint International Holdings Inc. (Liaison Office). In essence, the submission of learned senior counsel for the petitioner is that the present petitioner was never served the notice under Section 148 of the Act and, therefore, the draft assessment order could not have been framed against him. It is further submitted by Mr. Dastur, learned senior counsel that the petitioner is a firm which is assessed at Bombay and it cannot be given the status of a foreign company but the assessing officer, for the purpose of realization of tax, has roped in the firm in the net being fully aware that a foreign firm, namely, Sprint International Holdings Inc. is not amenable to assessment in view of the provisions contained in Section 144C of the Act.

Mr. Sanjeev Sabharwal, learned standing counsel for the revenue prays for some time to obtain instructions and if necessary to file a reply indicating how the notice was issued against a particular company and the draft assessment has been framed against the partnership firm. Be it W.P.(C) 556/2011 noted, though we have stated the issue in this compartment, it does not necessarily mean that all other issues are closed. Let the counter affidavit be filed within four weeks hence. Matter be listed on 25th April, 2011.

2. As an interim measure, further proceedings before the Assessing Officer pursuant to the draft order of assessment passed by the Assessing Officer were also stayed.
3. As noticed in the order dated 31st January, 2011, the principal

contention raised was that notice under Section 147/148 of the Income Tax Act, 1961 (Act, for short) was issued to Sprint International Holdings Inc., but the draft assessment order, Annexure P-24 to the writ petition, the name of the assessee has been mentioned as Sprint Communication Company LP through Sprint International Holdings Inc. (Liaison Office). Thus, notice under Section 147/148 was issued to a different company 'A' i.e. Sprint International Holdings Inc. but in the draft assessment order the name of the assessee is mentioned as company 'B' i.e. Sprint Communication Company LP.

4. The petitioner has filed the present writ petitions on the ground that no notice under Section 147/148 of the Act was issued to them and no draft assessment order, therefore, can be made against them and neither can the petitioner be forced to file objections and appear before the Dispute Resolution Panel as per Section 144C of the Act. It is also the case of the petitioners that they have not been heard but a draft assessment has been passed.

5. We have heard Mr. Sanjeev Sabharwal, learned Senior Standing Counsel for the department. He states that he admits and accepts the factual position that the notices under Section 147/148 of the Act were issued to Sprint International Holdings Inc. but in the draft assessment order the

assessee mentioned is different, namely, Sprint Communications Company LP, the petitioner herein. He submits that this Court may pass necessary orders as is deemed appropriate and necessary.

6. In view of the admitted factual position, we have no option but to quash the draft assessment order passed against the petitioner Annexure P-24 to the writ petition as the same cannot be sustained. The re-assessment proceedings have not initiated against the petitioner and no notice under Section 147/148 of the Act has been issued to the petitioner. The respondent has not evoked provisions of Section 160 or 163 and other provisions relating to representative assessee/agent in the present case. The draft assessment order, therefore, cannot be passed against the petitioner, and the petitioner cannot be compelled to participate in proceedings under section 144C of the Act. There is lack of jurisdiction. The writ petition is allowed to the extent indicated above. It is, however, clarified that it is open to the respondents to proceed in accordance with law against the petitioner. It is further clarified that this Court has not quashed the re-assessment notice issued under Section 147/148 of the Act. The interim stay order passed on 31st January, 2011 will be treated as passed in the case of the petitioner and the proceeding initiated pursuant to the notices issued u/s 147/148 against Sprint International Holidays Inc.

The writ petitions are disposed of. There will be not order as to costs.

SANJIV KHANNA, J.

CHIEF JUSTICE

APRIL 25, 2011

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