

**(1992) 09 BOM CK 0077**

**Bombay High Court**

**Case No:** Income-tax Reference No. 300 of 1981

Nagpur Zilla Krushi Audyogik  
Sahakari Sangh Ltd.

APPELLANT

Vs

Second Income Tax Officer

RESPONDENT

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**Date of Decision:** Sept. 9, 1992

**Acts Referred:**

- Income Tax Act, 1961 - Section 143, 143(3), 144, 144(B), 144B(1)

**Citation:** (1994) 207 ITR 213

**Hon'ble Judges:** V.A. Mohta, J; B.P. Saraf, J

**Bench:** Division Bench

**Advocate:** S.V. Manohar, for the Appellant; P.N. Chandurkar, for the Respondent

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**Judgement**

V.A. Mohta, J.

This is the assessee's reference on the following two questions :

"1. Whether, on the facts and in the circumstances of the case, the assessee was estopped from appealing before the Commissioner of Income Tax (Appeals) on the grounds on which he had not objected to the draft assessment order u/s 144B of the Income Tax Act ?

2. Whether, on the facts and in the circumstances of the case, the draft of the proposed assessment order forwarded by the Income Tax Officer to the assess u/s 144B(1) of the Income Tax Act which was not signed by the Income Tax Officer was a valid draft ?"

2. By consent, the first question is reframed thus :

"Whether, on the facts and circumstances of the case, the appeal filed by the assessee before the Commissioner of Income Tax (Appeals) was maintainable even though the assessee had not raised objection to the draft assessment order u/s 144B ?"

3. The draft unsigned assessment order dated January 30, 1979, for the assessment year 1976-77, was served on the assessee on March 31, 1979, as required u/s 144B of the Income Tax Act ("the I. T. Act"), with a duly signed covering letter, to state objections, if any, to the same within seven days of its receipt. The period of seven days expired on April 5, 1979. No application for extension of time as envisaged u/s 144B was filed, but objections were submitted on April 18, 1979, in the afternoon. On that day by that point of time, the Income Tax Officer had confirmed the assessment u/s 143(3) on the basis that no objections were filed. The assessee preferred an appeal before the Commissioner of Wealth-tax (Appeals). The said appeal was dismissed on the ground that having failed to file objections within the time stipulated by section 144B(2), it was not open to the assessee to challenge the additions at the belated stage of appeal. The objections were not examined on merits. The assessee preferred a second appeal before the Tribunal. The Tribunal, upholding the preliminary objection of the Revenue, held that the appeal before the Commissioner of Wealth-tax (Appeals) was not maintainable in law.

4. Section 246 categorises the orders which are appealable. Section 246(1)(a), which is material for our purposes, reads thus :

"246. Appealable orders. - (1) Subject to the provisions of sub-section (2), any assessee aggrieved by any of the following orders of an Assessing Officer (other than the Deputy Commissioner) may appeal to the Deputy Commissioner (Appeals) against such order -

(a) an order against the assessee, where the assessee denies his liability to be assessed under this Act or any order of assessment under sub-section (3) of section 143 or section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed; . . ."

5. The order passed by the Income Tax Officer was u/s 143(3) though after following the mandatory procedure laid down in section 144B. Only because the procedure u/s 144B was followed, the order does not cease to be one u/s 143(3). After inserting section 144B, section 246(1)(a) was not amended. This clearly establishes that the right of appeal was not intended to be taken away in situations like this. After all, this right of appeal was a valuable right and could not have been lost unless that was taken away expressly or by necessary implication. The right of appeal could not have also been held to be abandoned only by reason of not filing objections in time u/s 144B. It may be mentioned that section 246(2)(f) provided an appeal to the Commissioner (Appeals) against an order of assessment u/s 143(3) made on the basis of directions issued by the Deputy Commissioner u/s 144B.

6. The view we are taking is also supported by (a) the Calcutta High Court in [Indian Aluminium Co. Ltd. Vs. Commissioner of Income Tax](#), (b) the Kerala High Court in the matter of [Commissioner of Income Tax Vs. K.N. Thankappan Pillai](#), . Reliance by

the Revenue on a Bombay High Court decision in the case of [Jivatlal Purtapshi Vs. Commissioner of Income Tax, Bombay](#), is misplaced. That was a case where the Department having agreed to delete a particular amount from the assessment, had preferred an appeal against the said deletion. The preliminary objection raised on behalf of the assessee to the maintainability of such an appeal was upheld. The ratio of the said decision, therefore, will have no application to the matter at hand. In our view, the appeal was clearly maintainable and had to be disposed of on merits.

7. This takes us to the consideration of the second question. The only purpose behind section 144B was to afford to the assessee early opportunity to raise objections to the proposed additions to the income. The law required forwarding of the draft of the proposed order of assessment by the Income Tax Officer. This communication, no doubt, required authenticity. The signature of the Income Tax Officer on the forwarding letter provided that authenticity. By virtue of the mere fact that the draft order was not signed, it cannot be said that the condition precedent was not signed, it cannot be said that the condition precedent was not fulfilled and the entire proceedings were rendered invalid. The defect, if any, must be held to be only technical keeping in view the object behind section 144B. The Gujarat High Court in the case of [Meeraben P. Desai Vs. Union of India and Others](#), has also held that such defects are not fatal to the proceedings.

8. Hence we record the answers to the questions as under :

Reframed question No. 1 : Affirmative and in favour of the assessee.

Question No. 2 : Affirmative and in favour of the Revenue.

9. No costs.