(2021) 08 GAU CK 0069

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3986 Of 2021

CMJ Breweries Private Limited — APPELLANT

Vs

Union Of India And 3 Ors — RESPONDENT

Date of Decision : 19-08-2021

Acts Referred:

Income Tax Act 1961 — Section 263, 263(1)

Citation : (2021) 08 GAU CK 0069

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : Dr. A Saraf

Judgement

1. Heard Dr. A Saraf, learned senior counsel for the petitioner. Also heard Mr. S Sarma, learned standing counsel for the Income Tax Department.

2. An order under Section 263 of the Income Tax Act 1961 (for short, the IT Act) dated 31.03.2021 is assailed in this writ petition on the ground that

the condition precedent of initiating a proceeding under Section 263 of the IT Act is absent in the present case and, therefore, the order impugned

would be an order without jurisdiction.

3. Dr. Saraf, learned senior counsel for the petitioner by referring to the provisions of Section 263 of the IT Act has raised the contention that in order

to invoke the power under Section 263 of the IT Act, the Principal Commissioner or the Commissioner may call up and examine the records of any

proceeding under the IT Act and if he considers that any order passed therein by the Assessing Officer is erroneous and prejudicial to the interest of

revenue, he may after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry to be deemed necessary, pass order(s) thereon.

4. According to Dr. A Saraf, learned senior counsel a basic reading of the provisions of Section 263(1) of the IT Act goes to show that in order to

invoke the jurisdiction under Section 263 of the IT Act, the condition precedent is that the Principal Commissioner or the Commissioner may arrive at

a satisfaction that any order passed by the Assessing Officer to be erroneous and to be prejudicial to the interest of revenue.

5. Dr. Saraf, learned senior counsel in support of his contention also refers to the propositions laid down by the Supreme Court in paragraph 10 of

Commissioner of Income Tax, Mumbai, Vs. Amitabh Bachchan, reported in (2016) 11 SCC 748 wherein it has been held that the satisfaction that an

order passed by the authority under the IT Act is erroneous and to be prejudicial to the interest of revenue is the basic pre-condition for exercise of

jurisdiction under Section 263 of the IT Act.

6. It is, further, provided that both the pre-conditions would have to be conjointly present. In other words, the two conditions of the order being

erroneous and prejudicial to the interest of revenue have to be present at the stage when the Principal Commissioner or the Commissioner initiates the

exercise of the jurisdiction under Section 263 of the IT Act. By referring to the order impugned dated 31.03.2021 passed by the Principal

Commissioner Income Tax Guwahati-1 in clause 4.0, it is submitted that the Principal Commissioner of Income Tax while arriving at his conclusion on

examination of the matter could not confirm accurately whether the assessee had not claimed the deduction in the earlier assessment orders and,

accordingly, although the explanation of the assessee may be plausible, in the opinion of the Principal Commissioner it would be better if the matter

was examined in depth. The very reading of the clause 4.0 of the order dated 31.03.2021 would go to show that the Principal Commissioner, Income

Tax is yet to arrive at his prima facie conclusion that the order of the Assessing Officer was erroneous and in order to arrive at a satisfaction whether

it was erroneous, the Principal Commissioner requires the matter to be examined further in depth. From such point of view, it is submitted by Dr.

Saraf that the pre-condition to be present for invoking the Section 263 of the IT Act is absent in this case inasmuch as there is no prima facie

satisfaction by the Principal Commissioner on the basis of the materials available as to whether the order of the Assessing Officer which is sought to

be reviewed under Section 263 of the IT Act was an erroneous order.

7. Mr. S Sarma, learned counsel for the Income Tax Department prays for an adjournment to examine the matter.

8. Prayer is allowed.

9. List again on 26.08.2021. Till then, no action be taken against the petitioner pursuant to the proceeding initiated under Section 263 of the IT Act.