(1992) 09 BOM CK 0006

In the Bombay High Court

Case No : IT Reference No. 414 of 1984

Commissioner of Income Tax — APPELLANT

Vs

Central India Excise Traders — RESPONDENT

Date of Decision : 29-09-1992

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 147(b), 256(1), 263, 80HH

Citation : (1995) 80 TAXMAN 307

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

Bench : Division Bench

Advocate : P.N. Chandurkar, Smt. Chandurkar and Smt. Wandile, for the Appellant; L.S. Dewani, for the Respondent

Judgement

V.A. Mohta, J.—Following question has been referred to this court at the instance of the Commissioner, Nagpur, u/s 256(1) of the income tax Act, 1961 (''the Act''): "Whether, on the facts and in the circumstances of the case, the order of the Commissioner u/s 263 of the income tax Act, 1961, for the assessment year 1979-80 will not constitute ''information'' for the purpose of an action u/s 147(b) in spite of the absence of a direction given by the Commissioner to the income tax Officer for reopening the assessment for the assessment year 1978-79 u/s 147(b) ?"

The assessment was originally completed u/s 143(3) of the Act on 22-6-1978 for the assessment year 1978-79 allowing a relief of Rs. 46,146 u/s 80HH of the Act. For the next assessment year 1979-80, the Commissioner passed an order u/s 263 of the Act holding that the assessee was not entitled to relief u/s 80HH for that year since it had not fulfilled the conditions laid down. On the basis of the said order, the ITO reopened the assessment for the assessment year 1978-79 u/s 147(b) of the Act and withdrew the relief originally allowed u/s 80HH for that year. The Commissioner (Appeals) confirmed the order of the ITO but the Tribunal set aside that order taking a view that the Commissioner in his order u/s 263 had not laid down any general proposition of law to the effect that the assessee was not eligible for relief u/s 80HH. The Tribunal held that no further information had come in the hands of the ITO justifying action u/s 147(b). The Commissioner had not even given any direction for reopening the assessment for the assessment year 1978-79.

2. The point involved stands concluded by a Supreme Court decision in the case of Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, . In view of the above decision and in the context of the basic facts narrated above, the question is answered in the affirmative and in favour of the assessee. No order as to costs.

