
(2007) 05 MP CK 0018
In the Madhya Pradesh High Court

Commissioner of Income Tax

APPELLANT

Vs

Deepak Kumar Garg

RESPONDENT

Date of Decision : 11-05-2007

Acts Referred:

Income Tax Act, 1961 — Section 142, 143, 260A, 263

Citation : (2007) 212 CTR 152 : (2008) 299 ITR 435 : (2007) 2 MPLJ 477

Hon'ble Judges : S.K. Seth, J;S.K. Kulshreshtha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Seth, J.

This order shall also govern the disposal of connected IT Appeal No. 64 of 2006 and IT Appeal No. 52 of 2006 as all of them are directed against the composite and common order passed by the Tribunal involve common question of law between the revenue and the assessee pertaining to assessment years 1994-95, 1995-96 and 1999-2000. In all these appeals following question of law was formulated at the time of admission:

Whether the Tribunal erred in law in setting aside the order Annex. P/3 passed by the Commissioner u/s 263 by its order Annex. P/2 on the ground that the order of the assessing officer was not erroneous or prejudicial to the interest of the revenue ?

For the sake of convenience, facts, which lie in narrow compass, have been taken from above appeal which pertains to the assessment year 1999-2000. Assessee is in the business of purchase of agricultural land and sale of developed residential plot. For assessment year assessee filed the return showing Rs. 9,982 as the total income. After scrutiny, notice u/s 143(2) read with Section 142(1) was issued to the assessee. In response, Authorised Representative appeared along with documents. The assessing officer framed the assessment order on 28-3-2002 holding Rs. 5,90,290 as taxable income in the hands of assessee for

that assessment year. Against the said order, Commissioner Ujjain initiated proceedings u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act for short). Accordingly notice was issued to assessee and after affording opportunity of hearing, the Commissioner passed order u/s 263 and after setting aside the assessment orders, remanded the case to the assessing officer for passing fresh assessment orders on merit after affording opportunity of hearing to the assessee. Against the order of the Commissioner assessee preferred an appeal before Tribunal. Said appeal was allowed by the Tribunal holding that the revisional order u/s 263 was uncalled for and consequently set aside the order of Commissioner and restored the order of the assessing officer. It is against this order of the Tribunal, revenue has come up in appeal u/s 260A of the Act.

Learned standing counsel for the revenue assailed the order of Tribunal and submitted that assessing officer's order was erroneous and prejudicial to interest of revenue therefore, Commissioner was justified in invoking revisional jurisdiction u/s 263 of the Act. Per contra learned senior counsel appearing for the assessee supported the Tribunal's order and submitted that no interference is warranted with it and appeal being devoid of substance deserves dismissal. In support of his contention learned senior counsel for the assessee placed reliance on the decision of the Supreme Court reported in *Malabar Industrial Co. Ltd. v. CIT* (2000) 243 ITR 83 CIT v. *Ratlam Coal Ash Co.* (1988) 171 ITR 141 *Kesharimal Bapulal (HUF) Vs. Commissioner of Income Tax*, ; *Commissioner of Income Tax Vs. Gabriel India Ltd.*, .

After hearing rival submissions and considering material available on record, we are of the view that the Tribunal's order is unsustainable. At the outset, it is clarified that we have no quarrel with the principles laid down in the cases relied upon by the learned senior counsel for the assessee. After going through them, we can safely say that no thumb rule of universal application is evolved or laid down for the exercise of revisional power u/s 263 of the Act. It will depend on facts of each case but Commissioner must be satisfied of existence of the twin conditions, viz. that the order of the assessing officer is erroneous and that it is prejudicial to the interest of revenue. We are also conscious of the fact that Section 263 cannot be resorted to, to correct each and every type of mistake or error, unless aforesaid two elements exist in the order of assessing officer. In the case in hand, after hearing Authorised Representative, the Commissioner has recorded a clear finding that the order of assessing officer was erroneous as well as prejudicial to the interest of revenue. From the order of the assessing officer, it is clear that for want of time, assessing officer had done only a semblance of enquiry and that too, in very slipshod manner, as is clear from the post script in the order of assessing officer. Assessing Officer accepted the version of the assessee without proper enquiry as a result substantial amount of taxable income was not brought to tax. In such case assessment order would be erroneous and prejudicial to the interest of the revenue because law enjoins upon the assessing officer to make assessment order bringing all taxable income to tax. The enquiry held in a perfunctory manner could not be said to be a proper

enquiry before passing the assessment order. This cannot be ground to shut out the jurisdiction of the Commissioner that an adequate enquiry was conducted by the assessing officer. We may clarify that order of the Commissioner is in two parts. Part one consists of reasons for issuing the show cause notice, and later part deals with findings recorded by the Commissioner after affording opportunity of hearing to the assessee. As stated above, Commissioner has recorded a categorical finding that order of assessing officer for want of adequate enquiry, was erroneous and prejudicial to the interest of revenue and after setting aside the assessment order, remanded the matter to the assessing officer for fresh assessment on merits. The Commissioner also directed assessing officer to observe rules of natural justice and to provide opportunity of hearing to assessee before making fresh assessment order on merit. This adequately safeguards the interest of the assessee and would cause no prejudice. It seems that Tribunal was carried away by the first part of the order of Commissioner as a result the later part of the order escaped from the notice of the Tribunal and the Tribunal branded the order of the Commissioner as based upon probabilities, surmises and conjectures.

In view of the foregoing discussion, we hold that Tribunal erred in law in setting aside the order of the Commissioner and answer the question in favour of the revenue. In the result, this appeal is allowed. Let a copy of this order be retained in file and record of connected appeals. There shall be no orders as to costs.