
(2014) 03 RAJ CK 0161

In the Rajasthan High Court

Case No : Income Tax Appeal No. 581 of 2011

Commissioner of Income Tax

APPELLANT

Vs

Deepak Real Estate Developers (I.) P. Ltd.

RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Income Tax Act, 1961 — Section 10(38), 143(2), 143(3), 260A, 263

Citation : (2014) 3 ITR 377

Hon'ble Judges : Amitava Roy, C.J.;Veerender Singh Siradhana, J

Bench : Division Bench

Advocate : Parinitoo Jain, Advocate for the Appellant; Sidharth Ranka, Advocate for the Respondent

Judgement

Amitava Roy, C.J.

1. Heard Ms. Parinitoo Jain, the learned counsel for the appellant and Mr. Sidharth Ranka, the learned counsel for the respondent. The present is an appeal under section 260A of the Income-tax Act, 1961 (for short, hereafter referred to as "the Act").

2. The factual background in the bare minimum is that the respondent-assessee is engaged in the business of investment in real estate and market securities. For the assessment year 2006-07, in question, it disclosed its income from gains of investment in shares besides from trading in shares and from other sources. The Assessing Officer, i.e., the Income-tax Officer (OSD), Range-1, Kota, completed the assessment under order 143(3) of the Act, vide his order dated September 25, 2008. As the said order would reveal, in response to the notice issued under section 143(2) of the Act, the representative of the respondent-assessee duly appeared before the said authority and produced the requisite information/details with supporting vouchers of expenditure, as disclosed in the profit and loss account besides the books of account, which were duly examined. The Assessing Officer, on a scrutiny of the return submitted by the respondent-assessee disclosing its main source of income from gain on investment of shares

as well as from trading in shares and from other sources, observed that it was duly supported by necessary evidence. It was recorded as well that complete details of debtors and creditors had been furnished by the respondent-assessee and that no adverse material/discrepancies had been noticed during the verification of the books of account maintained by it as well as the details submitted in endorsement thereof. The return of the respondent-assessee was, thus, accepted.

3. The Commissioner of Income-tax, Kota (for short, hereafter referred to as "the CIT"), however, in exercise of his power under section 263 of the Act issued notice to the respondent-assessee being of the opinion that the assessment of the Assessing Officer was erroneous and was further prejudicial to the interests of the Revenue. The respondent-assessee entered appearance and submitted its detailed reply to the queries, set out in the show-cause notice. The learned Commissioner of Income-tax, thereafter, by his order dated January 7, 2010, interfered with the assessment of the Assessing Officer and directed him (Assessing Officer) to verify the details/documents, as mentioned therein and to decide the issues and pass a speaking order as per law, after affording an opportunity of hearing. While arriving at this conclusion, the learned Commissioner of Income-tax, however, held that the sale transactions pertaining to 3,39,496 Zyden Gentec equity shares and effected on April 20, 2005, April 28, 2005, May 6, 2005, May 12, 2005, and September 8, 2005, could not be construed to be disputed as those were supported by documentary evidence and that the Assessing Officer was justified in taking a view that those shares of Overseas Capital Ltd., as appearing in sale bill, and those of Zyden Gentec Ltd. were the same. It was, however, of the view that the Assessing Officer, having drawn that conclusion, ought to have, before accepting the said transaction as long-term capital gain, examined whether the respondent-assessee was holding the same for a period of more than one year, so as to claim exemption on that count. The Commissioner of Income-tax, however, acknowledged that the learned representative of the respondent-assessee had brought to his notice the fact that complete details of long-term gain on sale of shares, had been filed along with computation of income and was available with the Assessing Officer during the assessment proceedings and that the materials at his disposal did contain the date of purchase of the said shares. That the period of holding of the shares involved was more than one year and that those being held as investment and STT being paid while selling the same justified the claim for exemption under section 10(38) of the Act was mentioned. The Commissioner of Income-tax accepted as well the sale of 3,39,496 shares on the aforementioned dates through its broker Inventure Growth and Securities Ltd. under the aegis of the Bombay Stock Exchange for a total consideration of Rs. 3,71,81,627.01. He held as well that the Assessing Officer was correct to conclude that shareholding of 2,18,000 shares out therefrom, was for a period of more than one year, for which the respondent-assessee had been validly granted exemption from tax under section 10(38) of the Act. Vis-a-vis the balance shares, i.e., 1,21,496 (3,39,496 -

2,18,000), the Commissioner of Income-tax noticed the stand of the respondent-assessee that the same were in physical form. Referring to the supporting documents produced on behalf of the respondent-assessee, the learned Commissioner of Income-tax observed that the same had not been filed during course of the assessment proceedings and thus, were not verified and commented upon by the Assessing Officer. It held the view that proper verification thereof was necessary by the Assessing Officer to ensure that 1,43,000 shares of Overseas Capital Ltd., which were received and delivered in physical form to the director of the respondent-assessee, were transferred to its demat account, so as to ensure that these were held by it (respondent-assessee) in physical form for a period of more than one year to entitle it to the benefit of exemption under section 10(38) of the Act. With regard to the amount of loan of Rs. 43,28,000, taken by the respondent-assessee from one Smt. Usha Gupta, the learned Commissioner of Income-tax held that the documents and records produced before him in connection therewith, had not been laid before the Assessing Officer earlier. He, thus, concluded that in view of the lack of enquiry and non-application of mind on the part of the Assessing Officer, the assessment was erroneous and prejudicial to the interests of the Revenue. Noticeably, the learned Commissioner of Income-tax did not record any categorical finding on any aspect of the assessment made, vide order dated September 25, 2008, that the related conclusion of the Assessing Officer was either factually incorrect or unsustainable in law, having regard to the complete materials on record.

4. Be that as it may, being aggrieved by the above determination, the respondent-assessee preferred an appeal before the Income-tax Appellate Tribunal, Jaipur Bench "A", Jaipur (for short, hereafter referred to as "the Tribunal"), which by its rendering dated March 25, 2011, interfered with the above referred decision of the learned Commissioner of Income-tax. As the text of this order, impugned in the present appeal, would reveal the learned Tribunal did notice the relevant facts in extenso and observed that the only dispute was with regard to 1,43,000 shares received in physical form and eventually shown in the demat account of the respondent-assessee. Referring to the documents/records produced before the learned Commissioner of Income-tax, the learned Tribunal recorded that he (Commissioner) had not formed any opinion that these shares had not been held by the respondent-assessee for more than one year. The learned Tribunal expressed the view that in the face of the materials before him, the learned Commissioner of Income-tax could not have formed any opinion that the assessment order was erroneous. It recalled the findings of the Assessing Officer, as adverted to hereinabove and concluded that the learned Commissioner of Income-tax not having come to the conclusion that the assessment order was erroneous and no reasons having been recorded to demonstrate that the same was prejudicial to the interests of the Revenue, he was not justified to refer the matter back to the Assessing Officer and that too, without examining the materials produced before him on the merits.

5. Learned counsel for the appellant has urged that having regard to the scope of

section 263 of the Act, the learned Commissioner of Income-tax was within his jurisdiction to remit the matter to the Assessing Officer bearing in mind the interests of the Revenue and thus, the learned Tribunal erred in law in interfering with his decision.

6. Mr. Sidarth Ranka, the learned counsel for the respondent assessee, per contra, has urged that in absence of any finding whatsoever of the learned Commissioner of Income-tax that any of the conclusions recorded by the Assessing Officer in his order dated September 25, 2008 was unfounded being de hors the record or in contravention of the mandate of any provision of the Act, he had apparently acted beyond his jurisdiction in purported exercise of section 263 of the Act and in the face of the detailed consideration of all relevant aspects by the learned Tribunal, no interference in the instant appeal is called for.

7. Upon hearing the learned counsel for the parties and on a consideration of the materials on record, we are inclined to sustain the plea taken on behalf of the respondent-assessee. The salient facts bearing on the debate have been outlined hereinabove. To reiterate, a bare perusal of the order dated September 25, 2008, of the Income-tax Officer (OSD), Range-1, Kota, would testify that the Assessing Officer had consciously examined all relevant records in accepting the return submitted by the respondent-assessee. Noticeably, the learned Commissioner of Income-tax, in spite of his incisive analysis of the factual details, did not find fault with any of the findings of the Assessing Officer, culminating in the ultimate conclusion that the return of the respondent-assessee was acceptable as a whole. The text of the decision of the learned Commissioner of Income-tax authenticates that the respondent-assessee had furnished to him all relevant records and documents in support of its return accepted by the Assessing Officer. The learned Commissioner of Income-tax did neither reject the said documents/records to be irrelevant, nor lacking in their probative worth. It simply remanded the matter to the Assessing Officer observing that these ought to have been laid before him and examined at the time of assessment.

8. It is no longer *res integra* that the revisional jurisdiction available to a Commissioner under section 263 of the Act is essentially circumscribed by the determinant that the order of the Assessing Officer is erroneous so much so that it is prejudicial to the interests of the Revenue. This statutory enjoinder carves out an extremely constricted ambit of such discretionary jurisdiction. The word "considers" applied in the statutory provision involved, signifies a genuine satisfaction of that authority that the order of the Assessing Officer is erroneous and that the interests of the Revenue is prejudicing thereby. Any exercise of the revisional jurisdiction, bereft of such satisfaction and/or finding that the order of the Assessing Officer is erroneous and that it is prejudicial to the interests of the Revenue and that too, based on tangible materials on record, is impermissible rendering the resultant order void.

9. Judged on the above touchstone, we are of the unhesitant opinion, having regard to the materials on record, that no interference with the impugned order

of the learned Tribunal is warranted, in the facts and circumstances of the case. No substantial question of law, as contemplated by section 260A of the Act, exists to be examined. The appeal is dismissed.