

(2001) 06 GAU CK 0005

In the Gauhati High Court

Case No : Income Tax Reference No. 6 of 1998 12 June 2001 & Income-tax Reference No. 6 of 1998

Commissioner of Income Tax

APPELLANT

Vs

George Williamson (Assam) Ltd.

RESPONDENT

Date of Decision : 12-06-2001

Acts Referred:

Income Tax Act, 1961 — Section 143, 143(1), 263

Citation : (2001) 250 ITR 747

Hon'ble Judges : R.S. Mongia, Acting C.J.; D. Biswas, J

Bench : Division Bench

Advocate : K.P. Sarma and B. Das, for the Appellant; A.K. Saraf and S. Agarwal, for the Respondent

Judgement

R.S. Mongia, Actg. C.J.

1. In this Income Tax reference, the following questions have been referred for our opinion :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that no proceedings can be taken u/s 263 of the Income Tax Act, 1961, on assessment order completed u/s 143(1) of the Income Tax Act, 1961, even if such orders are prejudicial to the interests of the Revenue ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in quashing the order passed u/s 263 of the Income Tax Act, 1961, in this case ?"

2. Briefly, the facts giving rise to the present reference may be noticed. For the assessment years 1986-87 and 1987-88 summary assessments were made u/s 143(1) of the Income Tax Act, 1961, on March 27, 1989. The assessee (respondent) is engaged in the business of cultivation and manufacturing of tea. During the years of assessment, referred to above, the sums of Rs. 1,14,97,386 and Rs. 2,90,96,036 were claimed as deduction towards lease rent payment.

These were allowed by the assessing authority. However, the Commissioner of Income Tax exercising powers u/s 263 of the Act passed an order on March 27, 1991, remanding the case to the Assessing Officer for the aforesaid years by directing that the same be done after enquiries are made relating to the lease rent. The assessee filed an appeal against the aforesaid order before the Tribunal which was allowed vide order dated July 12, 1996 (copy appended as annexure C with this Income Tax reference). In fact, two appeals were filed against two separate orders for the two assessment years referred to above. Both the appeals were disposed of by one order. The appellate authority after relying on the judgments reported as Commissioner of Income Tax Vs. Smt. Sangeeta Agarwal, ; Commissioner of Income Tax Vs. M.M. Khambhatwala, ; Gee Vee Enterprise Vs. Additional Commissioner of Income Tax, and Smt. Tara Devi Aggarwal Vs. Commissioner of Income Tax, West Bengal, Calcutta, came to the conclusion that for exercise of power u/s 263, the Commissioner of Income Tax should not only come to the conclusion that the order of assessment is erroneous but also that the same is prejudicial to the Revenue. Both the conditions must co-exist.

3. We have heard Mr. K. P. Sarma, learned standing counsel for the appellant, and also Dr. A. K. Saraf assisted by Mr. Suresh Agarwal, learned counsel for the respondent.

4. The apex court in MALABAR INDUSTRIAL CO. LTD. Vs. COMMISSIONER OF INCOME TAX, held that both the conditions that the order of assessment is erroneous and the same is prejudicial to the Revenue must simultaneously co-exist before power u/s 263 of the Act can be exercised by the Commissioner of Income Tax. In other words, a mere erroneous order would not give the power to the Commissioner of Income Tax u/s 263 to ask the assessing authority to pass fresh orders of assessment.

5. We are further of the view that there must be some material either intrinsic in the order of assessment itself or otherwise before the Commissioner of Income Tax to order reassessment or enquiry into the matter. A Division Bench of the Punjab and Haryana High Court in Commissioner of Income Tax Vs. Chawla Trunk House, held that it cannot be disputed that the assessing authority in the summary proceedings u/s 143 may accept the return as it is without holding any enquiry. Consequently, it would follow that the Commissioner of Income Tax must have some material on the file which may compel him to pass an order u/s 263 of the Act that the matter needs to be further enquired into. In the present case, the assessing authority accepted the return filed by the assessee whereby deduction for the lease rent to the extent of the amounts mentioned above was accepted. From the order passed by the Commissioner of Income Tax it is nowhere mentioned as to what was the material with him to order enquiry into the matter by the assessing authority.

6. For the foregoing reasons, the reply to the questions in the opening paragraph is in the affirmative, i.e., against the Revenue. The Tribunal was justified in

quashing the order of the Commissioner of Income Tax.