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**(1989) 02 P&H CK 0089**

**In the Punjab And Haryana At Chandigarh**

**Case No : Income-tax Reference No. 61 of 1985**

Commissioner of Income Tax

APPELLANT

Vs

Kanda Rice Mills

RESPONDENT

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**Date of Decision : 01-02-1989**

**Acts Referred:**

Income Tax Act, 1961 — Section 263

**Citation :** (1990) 85 CTR 5 : (1989) 178 ITR 446 : (1989) 44 TAXMAN 316

**Hon'ble Judges :** S.S. Sodhi, J;Gokal Chand Mital, J

**Bench :** Division Bench

**Advocate :** L.K. Sood, for the Appellant; N.K. Sood and Subhash Nagpal, for the Respondent

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## **Judgement**

Gokal Chand Mital, J.—For the assessment year 1979-80, the Income Tax Officer completed the assessment on March 19, 1982. The Commissioner of Income Tax called for the record of the case and found that the business loss of Rs. 30,000 was determined, after adjusting deductions u/s 80J of the Income Tax Act, 1961, (for short "the Act"), and was allowed to be carried forward. He also took note of certain other infirmities and issued notice u/s 263 of the Act. By order dated March 5, 1984, the assessment made by the Income Tax Officer was set aside with a direction to make fresh assessment on re-examining the points contained in paras 7 to 10 of his order. The assessee challenged the order in appeal and the Income Tax Appellate Tribunal, Chandigarh, came to the conclusion that no firm conclusions were arrived at by the Commissioner in revisional jurisdiction, and therefore, it could not be said that the assessment made by the Income Tax Officer was erroneous and that was one of the prerequisites for revisional jurisdiction. As a result, the appeal was allowed and the order of the Commissioner of Income Tax was set aside. On these facts, the Tribunal has referred the following question for the opinion of this court at the instance of the Revenue :

"Whether, on the facts and in the circumstances of the case, the Income Tax

Appellate Tribunal is right in law in vacating the order of the Commissioner of Income Tax (Appeals), Ludhiana, passed u/s 263 of the Income Tax Act, 1961 ?"

2. We have gone through the order of the Commissioner. In para 7, the contention on behalf of the assessee to the effect that the business of dehusking of paddy was a manufacturing process and three judgments of the Supreme Court cited in this behalf were noticed and the conclusion of the Commissioner was as follows :

"It is observed that these decisions have some relevance with the point at issue. However, whether they apply squarely "to the facts of this case is to be examined."

3. In para 8, the default of not filing a report prescribed under Sub-section (6A) of Section 80J of the Act along with the return was noticed. Learned counsel for the assessee had offered to file the same at that stage. The Commissioner left the matter undecided with the following observations :

"It is doubtful whether this report, which was required to be filed with the return of income and for which omission the assessee has no reasonable and sufficient cause, can now be entertained."

4. In para 8, the Commissioner further observed :

"As there were no profits and gains from the industrial undertaking, no deduction u/s 80J could have been allowed during the assessment year."

5. In spite of the aforesaid findings, whether conclusive or inconclusive, it was observed that it will be appropriate to set aside the assessment so that the question of allowability and carry forward of deduction u/s 80J may be examined afresh as per law.

6. In para 9, the Commissioner observed that the decision on the question of investment allowance will also depend on the finding to be recorded on the issue mentioned in para 7 above.

7. In para 10, the matter of determination of loss of Rs. 30,000 was considered and the following inconclusive decision was taken :

"In case it is found that the assessee is not entitled to any deduction u/s 80J or the same is not to be allowed in this assessment but is to be carried forward, the question of determining the balance business loss will arise. The assessment is, therefore, set aside to be made afresh."

8. A reading of the entire order of the Commissioner clearly goes to show that he did not furnish his opinion or consider the cited cases or the argument raised and merely observed that these were the points which deserved consideration and after setting aside the order of the Income Tax Officer, issued a direction for making assessment, afresh. This is not permissible under the provisions contained in Section 263 of the Act. The Commissioner had to come to a firm

decision that the order of the Income Tax Officer was erroneous and was prejudicial to the interests of the Revenue. Since no decision about the erroneous nature of the order was firmly taken, the Tribunal was right in vacating the order. Accordingly, we answer the question in favour of the assessee, that is, in the affirmative, with no order as to costs.