
(2014) 04 CAL CK 0094

In the Calcutta High Court

Case No : G.A. No. 3284 of 2013 and I.T.A.T. No. 187 of 2013

Commissioner of Income Tax

APPELLANT

Vs

Ritesh Kumar Boyed

RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Income Tax Act, 1961 — Section 131, 143(3), 263

Citation : (2014) 04 CAL CK 0094

Hon'ble Judges : Sudip Ahluwalia, J;G.C. Gupta, J

Bench : Division Bench

Advocate : Mamta Bhargava, Advocate for the Appellant; R. Bharadwaj, Advocate for the Respondent

Judgement

1. The subject matter of challenge in this appeal is a judgment and order dated 16th May, 2013 by which the learned Tribunal allowed the appeal preferred by the assessee against an order dated 23rd March, 2012 passed by the C.I.T. in exercise of power u/s 263 of the Income Tax Act which reads as follows:

In view of the above, the assessment order u/s. 143(3) dated 21.12.2009 passed by the ITO, Ward-42(4), Kolkata is found to be erroneous and prejudicial to the interest of revenue and accordingly the order u/s. 143(3) dated 21.12.2009 is set aside with the direction to pass a fresh assessment order after examining the evidences and documents in respect of various issues raised after giving opportunity to the assessee and in accordance with law.

2. Aggrieved by the order of C.I.T. the assessee preferred an appeal which was allowed by the learned Tribunal by the impugned judgment and order holding inter alia as follows:

The Id. CIT could not find any defect except come to the conclusion that the variance in the gross profit rate whether could be varied or not on the accepted purchases and the closing stock remaining constant. In this view of the matter we do find merit in the contention of the Id. Counsel for the assessee that the

impounded books after the survey were not to be kept for a subsequent finding in so far as the assessee was to reconcile the difference if any and therefore sales whether converted to debtors as income received in bank whether could be reconciled by verifying the purchases and the closing stock which valuation has not been disturbed by the AO was on the basis of cost of sales. Therefore clinches the issue in favour of the assessee that the determination of the profit, if any, over and above as computed by the AO would be a futile exercise. In other words the assumption of jurisdiction u/s. 263 of the Act by the Id. CIT would have led to a nullity, in so far as it would have been again an exercise to estimate and not on the basis of the figures considered which is not permissible under the law in view of the case law cited by the Id. Counsel for the assessee in the case of *Malabar Industries Co. Ltd. vs. CIT (supra)* as no error or loss of revenue could be determined. We have no hesitation in allowing the appeal of the assessee and quash the order passed by the Id. CIT u/s. 263 of the IT Act.

3. Aggrieved by the order of the learned Tribunal the revenue has come up in appeal. The direction issued by the C.I.T. to pass a fresh assessment order after examining the evidence and documents, is in the backdrop of the fact that pursuant to the notice issued u/s 131 of the Income Tax Act and subsequent proceedings thereunder, it transpired that the assessee had omitted to disclose sale of a sum of Rs. 1,52,83,632/-. The assessing officer taxed the gross profit at the rate of 9.33 per cent. The C.I.T. was of the opinion that the rate of gross profit could not have been less than 17 per cent.

4. The learned Tribunal, in its judgment, held that the purchases and the closing stock remained constant. If that is so, the sum of Rs. 1,52,83,632/- is clearly to be added to the profits of the assessee.

5. Mr. Bharadwaj submitted that it would appear from the evidence that there were additional purchases. The additional purchases have been ruled out by the Tribunal in its order under challenge where it was held ".....on the accepted purchases and the closing stock remaining constant". In case any further scrutiny of the evidence is required, as submitted by Mr. Bharadwaj, the learned Tribunal was not justified in tinkering with the order of the C.I.T. passed u/s 263 of the I.T. Act.

6. We are, as such, of the opinion that the learned Tribunal erred in allowing the appeal of the assessee. The order of the Tribunal is, therefore, set aside and the order of the C.I.T. passed u/s 263 of the I.T. Act is restored.