

(1997) 01 MAD CK 0076
In the Madras High Court
Case No : Tax Case No. 1090 of 1980

Commissioner of Income Tax

APPELLANT

Vs

V.V.A. Shanmugam

RESPONDENT

Date of Decision : 07-01-1997

Acts Referred:

Income Tax Act, 1961 — Section 144(B), 144A, 144A(1), 263, 28

Citation : (1998) 147 CTR 463 : (1999) 236 ITR 878

Hon'ble Judges : S.M. Siddick, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Thanikkachalam, J.—At the instance of the Department, the Tribunal referred the following question for the opinion of this Court under s.

256(1) of the IT Act, 1961.

Whether s. 263 of the IT Act, 1961 can be invoked to revise an order of assessment passed by the ITO on the basis of directions issued by the

IAC under s. 144A of the said Act ?

2. In the asst. yr. 1971-72, the ITO had made an assessment. The principal matter was assessment of capital gains arising on the sale of buses.

The assessment matter came up in appeal at the instance of the ITO before the Tribunal. Then they referred the case back to the ITO to make the

fresh assessment. While making the fresh assessment the IAC to whom the ITO had under s. 144A of the IT Act, 1961 referred the matter for

guidance, had issued directions for the guidance of the ITO, which directions according to the said provision is binding on the ITO. In the

directions issued by the IAC about the computation of capital gains, the IAC had

permitted deduction of Rs. 1,72,500 as cost of improvements

borne by the assessee. The fresh assessment was completed on that basis.

3. The CIT acting under s. 263 of the IT Act, 1961 thought that this deduction of Rs. 1,72,500 in the computation of capital gains was a matter

prejudicial to the interest of the Revenue. One of the grounds of objection of the assessee before the CIT was that the CIT had no jurisdiction to

interfere with an order of assessment made on the directions given to the ITO under s. 144A of the IT Act, 1961. The CIT overruled that

objection and directed the ITO to make a fresh assessment according to law after disallowing the deduction of Rs. 1,72,500.

4. The assessee appealed to the Tribunal against that order of the CIT. The Tribunal held that the provisions of s. 263 cannot be invoked by the

CIT to revise an order that emerged from the ITO on the binding directions of the IAC given statutorily under s. 144A(1) of that Act. Accordingly,

the Tribunal cancelled the order of the CIT without going into the merits of the case.

5. In order to support this contention, the learned standing counsel for the Department relies upon various decisions of various High Courts that the

assessment order passed by the ITO in accordance with the direction given by the IAC under s. 144A is also amenable to the jurisdiction of the

CIT under s. 263 of the IT Act, 1961. Therefore, according to the learned standing counsel that this order by the Tribunal in holding that the CIT

was not correct in exercising the jurisdiction under s. 263 of the Act is not sustainable.

6. On the other hand, the learned counsel for the assessee supported the order passed by the Tribunal.

7. We have heard the rival submissions. The fact remains that originally an assessment was made by the ITO for the asst. yr. 1971-72. The

Principal matter in the assessment was levy of capital gains against sale of buses. The matter went upto the Tribunal. The Tribunal remanded back

this issue, before the ITO to ascertain whether the sale of buses and the root permit would have had any value for the purpose of levying capital

gain tax. The ITO, after receiving directions from the IAC under s. 144A of the Act, determined the capital gain. By determining the capital gain,

the ITO determined the cost of the same at Rs. 1,72,500 and deducted the

same. According to the CIT, this deduction is erroneous and prejudicial to the interest of the Revenue. Therefore, by exercising his jurisdiction under s. 263 of the Act, after hearing the assessee, revised order was passed by the CIT and directed the ITO to re-determine the value of assessment.

8. As against the order passed by the CIT under s. 263 of the Act, the assessee went in appeal before the Tribunal. The Tribunal held the CIT has no jurisdiction under s. 263 of the Act to interfere with the order passed by the ITO in the present case. Accordingly, the order passed by the CIT under s. 263 of the Act was set aside and the order passed by the ITO was restored.

9. The question whether the order passed by the ITO in accordance with the direction given by the IAC under s. 144A or under s. 144B of the Act is amenable to the jurisdiction of the CIT under s. 263 of the Act came up for consideration before the Gauhati High Court in Tarajan Tea Co.

Pvt. Ltd. Vs. Commissioner of Income Tax, wherein the Gauhati High Court following the decisions cited hereunder :

Commissioner of Income Tax (Central) Vs. Christian Mica Industries Ltd., , Commissioner of Income Tax Vs. K.L. Rajput, , Torson Products

Ltd. Vs. Commissioner of Income Tax, , Commissioner of Income Tax Vs. Vithal Textiles, , Commissioner of Income Tax Vs. Dulichand Bhatia, ,

Commissioner of Income Tax Vs. East Coast Marine Products (P.) Ltd. and Another, , Commissioner of Income Tax Vs. Satish Kumar and Co.,

, Commissioner of Income Tax Vs. Gangaram Mohanlal Mittal and Sons., , Premier Cable Company Ltd. Vs. Govt. of India, and Commissioner

of Income Tax Vs. Vincentian Orissa Society, .

held that the order passed by the ITO as per the direction given by the IAC under s. 144B of the Act is amenable to the jurisdiction exercised by

the CIT under s. 263 of the Act. A similar view was taken by the Bombay High Court in Commissioner of Income Tax Vs. M.M. Virwani, . In

view of the foregoing decisions, we hold in the present case that the Tribunal was not correct in coming to the conclusion that the CIT has got no

jurisdiction under s. 263 of the Act to interfere with the order passed by the ITO as per the direction given by the IAC under s. 144A of the Act.

The Tribunal, though dealt with the question relating to jurisdiction, did not deal

with the appeal on merits. Inasmuch as we held that the order passed by the Tribunal with regard to the jurisdiction clause under s. 263 of the Act is unsustainable, now the matter has to go back to the Tribunal for the purpose of disposing of the appeal on merits. In that view of the matter, we answer the question referred to us in the negative and in favour of the Department. No costs.