(1993) 08 DEL CK 0017

In the Delhi High Court

Case No : Income Tax Reference No. 286 of 1977

Duggal and Co. APPELLANT

Vs

Commissioner, Income Tax RESPONDENT

Date of Decision : 25-08-1993

Acts Referred:
Income Tax Act, 1961 — Section 263

Citation : (1994) 122 CTR 171 : (1994) RLR 457

Hon'ble Judges : K. Shivshankar Bhat, J;D.K. Jain, J

Bench : Division Bench

Judgement

K.S. Bhatt, J.

(1) The Income Tax Officer . had completed the assessment of the firm. Commissioner scrutinised the proceedings and noticed that Rs. 19,981.00 had been allowed as ''Interest'' expenditure as it paid interest on borrowing @ 9-12% while it charged from Atul Glass Ind. interest @4% only. In these circumstances the Commissioner was of the view that prima facie case for taking action u/S. 263 of the Act existed. The Commissioner felt that the firm was probably diverting a part of its borrowings for its investment with M/s Atul Glass Ind. and allied concerns for considerations other than that of business. This order of the Commissioner was challenged before the Appellate Tribunal. The Tribunal declined to interfere with the order of the Commissioner. The Tribunal in support of its conclusion held as follows :

"ON a careful consideration of the rival contentions, we have to hold that the increasingly large advances made by the assessed firm to M/s Atul Glass Industries. (P) Ltd, on which an evidently concessional rate of interest was being charged, deserve a careful scrutiny by the Income Tax officer, who is not only an adjudicator but also an investigator. He had evidently not considered the implications of the assessed''s transactions with M/s Atul Glass Industries (P) Ltd., (described in the Accounts as investment but stated to be mere advances). The Commissioner of Income Tax took pains to consider the relevant matters missed by the Income Tax officer and he has issued directions which do not in our view, circumscribe the Income Tax Officer''s discretionary powers. All that he has directed is that only such part of the interest shall be disallowed as is not ascribable to the carrying on of the assessed firm''s business activity. As such we decline to interfere with the order u/s 263."

(2) We do not think that a question of law arises from the order of the Appellate Tribunal on the facts of this case. The Commissioner was perfectly competent to exercise his powers u/S. 263 whenever he found, prima facie, that there was need to enquire if the interest of the revenue had suffered by an order of assessment. He has given certain reasons. The basis for the order of the Commissioner is a question of fact and whether it is correct or not shall have to be found out after enquiry by the Income Tax Officer . The Commissioner has found that the Income Tax Officer . has omitted to enquire into this question found by the Commissioner implicit in the manner in which the amounts were borrowed and advanced by the assessed company.

(3) In Gee Vee Enterprise Vs. Additional Commissioner of Income Tax, this Court held that the I.T.O. is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry and that it is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. It is incumbent on the Income Tax Officer . to further investigate the facts stated in the return, when circumstances would make such an inquiry prudent and the word "erroneous" in S. 263 includes failure to make such an enquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct. Consequently the question is answered in the affirmative and in favor of the revenue.