* **THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on : 10.09.2008

+ ITA No.1038/2008

Commissioner of Income Tax Delhi-IV ..... Appellant

versus

Goyal M.G.Gases Pvt. Ltd. ..... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Prem Lata Bansal

For the Respondent : Mr Prakash Kumar

CORAM :-

HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether the Reporters of local papers may be allowed to see the judgment ?
2. To be referred to Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. This appeal is directed against the order passed by the Income Tax Appellate Tribunal on 23.11.2007 in the assessee's appeal before it for the assessment year 1999-2000. The facts relevant for the present appeal are that an assessment was framed under Section 143(3) of the Income Tax Act, 1961. The Commissioner, Income

Tax invoking the provisions of Section 263 of the said Act passed an order on 25.3.2004 setting aside the said assessment order and directing the Assessing Officer to calculate taxable income according to the merchantile system of accounting. The Commissioner of Income Tax gave a specific direction that the Assessing Officer shall pass the consequential orders "within a period of three months approximately".

The assessee being aggrieved by this order passed by the Commissioner, Income Tax preferred the said appeal before the Tribunal. When the appeal came to be heard by the Tribunal on 13.11.2007, the learned counsel for the assessee pointed out that the Assessing Officer had not framed any assessment order in consequence of the impugned order and that the time limit for framing such order had already expired. The learned counsel for the appellant submitted that the appeal had, therefore, become infructuous. The Tribunal had directed the departmental representative to examine the case records and inform as to whether any consequential order had been passed pursuant to the order passed by the Commissioner Income Tax on 25.3.2004. The impugned order indicates that the departmental representative

produced their case records on 15.11.2007 and pointed out that no such consequential order had been passed by the Assessing Officer. The learned counsel for the assessee also made a statement at the Bar that no consequential order had been passed pursuant to the order passed by the Commissioner. In these circumstances, the Tribunal was of the view that the appeal before it had become infructuous and any decision on any of the grounds of appeal would only be of academic interest. The Tribunal, therefore, dismissed the appeal as having become infructuous by virtue of the impugned order dated 23.11.2007.

It is the revenue's contention in this appeal before us that no period of limitation has been prescribed in respect of orders which are to give consequential effect to orders passed by the Commissioner of Income Tax in exercise of his powers under Section 263 of the Act. The learned counsel for the appellant referred to the provisions of Section 153(2A) and 153(3)(ii) to submit that no period of limitation has been prescribed for passing orders consequential to the order passed by the Commissioner Income Tax under Section 263. She submitted that the period of limitation that has been prescribed by virtue of Section 153(2A) only

relates to cases where the entire assessment order has been set aside and a fresh assessment has been directed by the Commissioner in exercise of his powers under Section 263 of the said Act. She submits that to this extent the Tribunal has gone wrong in agreeing with the assessee that the appeal had become infructuous because no assessment order was framed within the time limit for framing such an order.

Having heard counsel for the parties, we are of the view that the order passed by the Tribunal does not call for any interference. There are several reasons for this. First of all, the Tribunal has not invoked any statutory provision to set up a statutory bar of limitation for passing a consequential order. Therefore, the submissions made by the learned counsel for the appellant pertaining to the provisions of Section 153(2A) and 153(3)(ii) are of no consequence. This is so because the Tribunal has not referred to these provisions. Secondly, the Tribunal has only gone by the direction given by the Commissioner in his order passed under Section 263 of the said Act. Under Section 263(1) the Commissioner is empowered to call for and examine the record of any proceeding under the Act and if he considers that any order passed by an Assessing Officer is erroneous

in so far as it is prejudicial to the interest of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to make such enquiry as he deems fit, "*pass such order thereon as the circumstances of the case justify*", including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment. In view of this provision it is clear that the Commissioner may pass any order as the circumstances of the case justify. In the present case we find that the Commissioner while passing the order under Section 263 has given a specific direction that the Assessing Officer shall pass the consequential orders within a period of three months approximately. This direction would certainly fall within the expression "such order thereon as the circumstances of the case justify" appearing in Section 263(1) of the said Act. It appears that it is in this context that the Tribunal concluded that the time for passing the order had expired. The consequential order had not been passed for over a period of approximately three years and eight months. Thirdly, we are of the view that where no period of limitation is prescribed then, in any event, a reasonable period of limitation ought to be adopted. The non-specification of a period of limitation does mean that the

Assessing Officer can wait interminably or for an infinite period before passing the consequential order. And, in the context of the direction given by the Commissioner for passing the consequential orders within three months approximately, a period of three years and eight months is certainly much beyond the reasonable period that could be allowed to the Assessing Officer to pass the consequential order.

For all these reasons, we find that the Tribunal has come to the correct conclusion that the time limit for framing the consequential order had expired and in accepting the assessee's plea that its appeal before the Tribunal had consequently become infructuous. We see no reason to interfere with the impugned order. No substantial question of law arises for our consideration. The appeal is dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

September 10, 2008
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