IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1879 OF 2013

Commissioner of Income Tax-4 ..Appellant
Vs.
M/s Shreepati Holdings & Finance Pvt. Ltd. ..Respondent

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Mr. Suresh Kumar, Advocate for Appellant.
Mr. Atul Jasani, Advocate for Respondent.

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CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 5 OCTOBER 2015

P.C.:

This appeal by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the order dated 6 February 2013 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). The Assessment Year involved is A.Y. 2007-08.

2. Mr. Suresh Kumar, the learned Counsel for the appellant-revenue urges the following question of law for our consideration:

> "Whether on the facts and the circumstances of the case, the Tribunal was justified in law in, quashing order u/s 263 of the Act without going into the merits of the case?"

3. The Assessing Officer by an order dated 24 December 2009 determined the respondent-asseesse's total income at Rs.17.13 crores under Section 143(3) of the Act. This was after allowing rebate of Rs.4.36 crores under Section 88E of the Act. Thereafter, the Assessing Officer by an order dated 26 April 2010 allowed a rectification application working out the rebate under Section 88E of the Act to Rs.4.80 crores.

4. Thereafter the Commissioner of Income Tax (the 'CIT') in exercise of powers under Section 263 of the Act passed an order on 15 March 2012. By the above order, the CIT directed the Assessing Officer to reframe the assessment denovo after allowing rebate under Section 88E of the Act on more careful examination.

5. Being aggrieved, the respondent-assessee carried the issue in appeal to the Tribunal. The impugned order allowed the respondent-assessee's appeal by holding that merely because the CIT has a different view in respect of the claim made for rebate under Section 88E of the Act, would not warrant exercise of

jurisdiction under Section 263 of the Act. Further more careful examination would not warrant exercising of jurisdiction under Section 263 of the Act as it would then be a case of inadequate enquiry and not lack of enquiry. Inadequate enquiry does not justify invoking jurisdiction under Section 263 of the Act.

6. We find that that there is no prescribed formula under Section 88E of the Act to determine the quantum of the rebate thereunder. Therefore the same has to be computed on a reasonable and scientific manner by the Assessing Officer. Further the impugned order has placed reliance upon the decision of this Court in ***CIT Vs. Gabriel India Ltd.***[1] wherein this Court held that the order cannot be held to be erroneous merely because according to the CIT, the order should have been written more elaborately or for substituting the view of the Assessing Officer with that of the CIT. The Court held that merely because the CIT had a different view from that reached by the Assessing Officer would not by itself make the view of the Assessing Officer erroneous. To be an erroneous order it must be in breach of law. It is axiomatic that

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jurisdiction under Section 263 of the Act can only be exercised on cumulative satisfaction of the twin conditions viz. of the order being erroneous in law and the order being prejudicial to the interest of the revenue. Thus in this case, one of the two conditions precedent to exercise jurisdiction under Section 263 of the Act viz. Order being erroneous in law is not satisfied.

7. Moreover the CIT in exercise of powers under Section 263 of the Act directed the Assessing Officer to redetermine the rebate allowable under Section 88E of the Act after holding that the same needs more careful examination on the part of the Assessing Officer. This itself indication of the fact that this is not the case of lack of enquiry, but at the highest it can be a case of inadequate enquiry. It is settled position in law that inadequate enquiry by itself would not justify invoking the jurisdiction under Section 263 of the Act unless the order is erroneous. In the present facts, the CIT has not exercised jurisdiction under Section 263 of the Act on the ground that the order is erroneous. We find that the impugned order has correctly applied the principles laid down by this Court in Gabriel

(I) Ltd. (supra). Accordingly, the question as formulated does not give rise to any substantial question of law. Thus not entertained.

8. Accordingly, appeal is dismissed. No order as to costs.

[G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**

CERTIFICATE

Certified to be true and correct copy of the original signed Order.