IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

INCOME TAX APPEAL NOS. 78 & 79 OF 2009.

The Commissioner of Income Tax-III, Nagpur.

-VERSUS-

Sanvijay Rolling and Engineering Ltd. Nagpur.

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

CORAM : B.P.DHARMADHIKARI & P.N. DESHMUKH, JJ.

DATE : OCTOBER 12, 2015.

Shri S.N. Bhattad, learned Counsel for the appellant and Shri K.P. Dewani, learned Counsel for respondent assessee.

2. Learned counsel for the appellant points out that order and action under Section 263 of the Income Tax Act, set aside by the ITAT vide the impugned orders in these appeals, is questioned by revenue in Appeal Nos. 37, 38, 39, 40, 65 of 2009 and 13 of 2010, which are admitted today for final hearing. According to him, in this situation, present appeals also needs to be admitted, as the credit for quantum of self-assessment tax deposited by the assessee was removed on account of fresh assessment after Section 263 orders.

3. Learned counsel for respondent assessee submits that the fresh exercise after Section 263 orders, had infact no bearing on the interest and it is a credit given to the assessee under Section 234A in original proceedings. He points out that, that error is noticed by ITAT and then additionally it has also been found that action under Section 263 was unwarranted. He therefore, states that even if the appeals, as filed by the revenue and admitted today by this Court are allowed, the findings on fact by the ITAT cannot be disturbed.

4. We find that the ITAT has in paragraph no.8 of its order for Assessment Years 2004-05 and 2006-07, made the following observations.

> “ *In A.Y. 2004-05, it is noted that, originally, the assessment proceedings were completed u/s 143[3] r/w section 153A of the Act, which was a subject matter of the appeal before the Ld. CIT (A) and as a consequence of appellate order, the A.O., while giving effect to the*

same u/s 250 of the Act, had given credit for self-assessment tax paid on 30.1.2004 and 31.3.2005 amounting to Rs.3.00 crores and rs. 2.20 crores respectively in computing the interest under sections 234A and 234B of the Act. However, when action u/s 263 of the Act was taken which resulted into denial of deduction u/s 80IB of the Act, the A.O. in computing the interest under sections 234A and 234B of the Act has not given credit for the amounts so paid and no reasons have been given. Thus, this conduct of the A.O. is itself contradictory. Further the order passed u/s 263 for Assessment Year 2004-05 was also the subject matter of appeal before the Tribunal and the Tribunal vide its order dated 6.3.2009, quashed the action of the Ld. CIT(A) in denying deduction u/s 80IB to the assessee and sustained the addition in respect to the rate of depreciation in respect of electrical installation which is very minimal and, therefore, for this reason also, the basis of levy of interest under sections 234A and 234B of the Act does not exist to a very substantial extent."

5. Thus, the setting aside of the orders under Section 263 of the Act is given as an additional reason by the ITAT. The ITAT has specifically found contradiction in the approach of the Assessment Officer itself. There is a finding of fact that while concluding the assessment proceedings earlier under Section 143[3] read with Section 153A, the credit for self-assessment tax was extended to the assessee. It's denial after Section 263 order is found to be unsustainable. This independent finding which has nothing to do with the setting aside of action under Section 263 of the Act. We therefore, find substance in the contentions of Shri Dewani, learned counsel for the respondent assessee. No substantial questions of law arise in the matter. Appeals are therefore, rejected. No cost.

JUDGE **JUDGE**

Rgd.