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

INCOME TAX APPEAL NO. 2 OF 2010

(The Commissioner of IncomeTax-I vs. Forest Development Corporation of Maharashtra Ltd.)

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 &
S.B. SHUKRE, JJ.
APRIL 06, 2015.

Heard Shri Parchure, learned counsel for the appellant and Shri Thakar, learned counsel for the respondent.

The Income Tax Appellate Tribunal (ITAT) by impugned order dated 30.06.2009 found interference by Commissioner of Income-Tax (CIT) under Section 263 of the Income Tax Act, 1961, unwarranted.

Shri Parchure, learned counsel submits that CIT has intervened under Section 263 of the Act only because of its finding that while completing assessment for the Assessment Year 2004-05, the Assessing Officer (AO) omitted to look into correctness or otherwise of the apportionment of common expenses to agricultural and non agricultural segments. Shri Parchure, learned counsel submits that CIT has found that AO has acted mechanically in the matter. According to the learned counsel, percentage of apportionment between two expenditures was different in every year, thereby necessitating application of mind to relevant facts and as assessment order does not disclose this approach, it is vitiated. He further submits that CIT has placed back the matter for fresh consideration and, therefore, no prejudice is caused to the assessee.

Shri Thakar, learned counsel, has invited our attention to previous history. According to him, since Assessment Year 1996-97, this practice is in vogue and the percentage of agricultural and non agricultural receipt is worked out and in that proportion expenses are also bifurcated under these two heads. He submits that as the system is well settled, in return filed, the apportionment was accordingly shown and it has been accepted by the Assessing Officer. As such, there was no scope for intervention under Section 263 of the Act. He has also relied upon the Division Bench judgment of Rajasthan High Court in the case of *Commissioner of Income Tax vs. Rajasthan Financial Corporation*, reported at (1998) ITR 246 (RAJ).

With the assistance of respective counsel, we have perused the papers. The facts show that proportion of agricultural and non agricultural income/ receipts has been used even while working out the apportionment of expenditure under that head. The previous history not in dispute shows that since 1996-97, the said method is being adopted. It is not in dispute that in return filed by the assessee (State Government Corporation), the receipts were accordingly mentioned and expenditure for those receipts was accordingly apportioned and appropriated. This return has been accepted. As such, it cannot be said that the assessment order does not show any application of mind.

The perusal of above mentioned judgment shows the limited scope available to CIT while exercising jurisdiction under Section 263 of the Income Tax Act, 1961. Here, a long settled practice has been lost sight of and without observing anything in concrete about irrelevance of the method or apportionment being followed, matter has been sent back. Had CIT noted some facts which necessitated departure from this method, its intervention could have been understood. However, that is not the position here.

In this situation, we do not see any error in the Appellate order of ITAT. No case is made out and no substantial question of law arises. Appeal is rejected. No order as to costs.

JUDGE **JUDGE**

*GS.