

HON'BLE SRI JUSTICE G.CHANDRAIAH
&
HON'BLE SRI JUSTICE CHALLA KODANDA RAM
I.T.T.A. No.175 of 2015

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JUDGMENT:- (per Hon'ble Sri Justice Challa Kodanda Ram)

This Appeal is filed by the Revenue under Section 260-A of the Income Tax Act, 1961 (for short, "the Act"), questioning the order dated 19.07.2013, passed by the Income Tax Appellate Tribunal, Hyderabad Bench 'B', Hyderabad, in I.T.A. No.2067/H/2011, for the assessment year 2007-2008, raising the following question of law for consideration of this Court:

"Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in law in setting aside the order of the CIT passed u/s.263 of the Act?"

Heard learned Senior Standing Counsel Sri J.V. Prasad for the Income Tax Department.

The assessee challenged the order passed by the Commissioner revising the assessment in exercise of the power under Section 263 of the Act. After going through the order of the Commissioner revision passed under Section 263 of the Act, the Tribunal recorded as under:

"8. We are not pronouncing our judgment on the merits of the case. However, we have to hold that as there is more than one view possible on this purely legal issue, the order of the AO cannot be said as legally unsustainable. In these circumstances, we refer to the decision of the Apex Court in the case of Malabar Industries reported in 243 ITR 83 wherein it has been held as under:-

"The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For example, when an Income-tax Officer adopted one of the courses permissible in law and it has

resulted in loss of Revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue, unless the view taken by the Income-tax Officer is unsustainable in law.”

9. Respectfully following the decision of the Apex Court we hold that the CIT erred in assuming jurisdiction under Section 263 with respect of the issue of set off of carried forward of depreciation of Rs.22,37,711/- to subsequent years. Accordingly, we set aside the order of revision of the CIT and allow the appeal of the assessee.”

In the ultimate analysis, the Tribunal came to a conclusion that there is more than one view is possible with respect to the transaction in issue and in that view of the matter the view taken by the Assessing Officer cannot be found fault. In the said Order, the Tribunal quoted the judgment of the Punjab & Haryana High Court in **Commissioner of Income-tax Vs. G.T.M. Synthetics Ltd.**,^[1] and also the judgment of Gujarat High Court in **General Motors India (P) Ltd. Vs. DCIT.**^[2]

In that view of the matter, this Court also in number of cases had considered where there is two views possible, the view taken by the Assessing Officer cannot be found fault and exercise of power by the Commissioner under Section 263 of the Act is bad. In that view of the matter and in the facts of the present case, we do not see any reason to entertain the appeal.

Accordingly, this Appeal is dismissed. No order as to costs. Miscellaneous Petitions, if any pending, shall also stand dismissed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

Date:08.10.2015
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[\[1\]](#) 347 ITR 458
[\[2\]](#) [2012] 25 taxmann.com 364 (Guj.)