

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No. 310 of 2016 (O&M)
Date of decision: 25.04.2017**

Pr. Commissioner of Income Tax (Central), Ludhiana

.....Appellant

Vs.

M/s Vardhman Industries Limited, New Delhi

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Rajesh Katoch, Senior Standing counsel for the appellant-revenue.
Ms. Radhika Suri, Senior Advocate with Mr. Manpreet Singh Kanda, Advocate for the respondent-assessee.

Ajay Kumar Mittal,J.

1. The following substantial questions of law have been claimed by the appellant-revenue in the instant appeal filed under Section 260A of the Income Tax Act, 1961 (in short, “the Act”) against the order dated 15.03.2016, Annexure A.III, passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (in short, “the Tribunal”) for the assessment year 2004-05:-

“(i) Whether on the facts and in the circumstances of the present case, the Hon’ble ITAT has erred in setting aside the

order, passed under Section 263 of the Income Tax Act, 1961 by the Commissioner of Income Tax(Central), Ludhiana whereas the said order contains a concrete finding regarding disallowability of expenditure on account of sales tax and also a specific finding that the assessment order, sought to be revised, was erroneous and prejudicial to the interest of the revenue ?

(ii) Whether on the facts and in the circumstances of the present case, the Hon'ble ITAT has erred in setting aside the order, passed under Section 263 of the Income Tax Act, 1961 without appreciating that the Commissioner of Income Tax(Central), Ludhiana had rightly exercised jurisdiction under Section 263 of the Income Tax Act, 1961 as the assessment order, sought to be revised had been passed by the Assessing Officer on an incorrect assumption of facts, incorrect application of law, without application of mind and without making proper enquiry and verification?

(iii) Whether the Hon'ble ITAT has erred in law in setting aside the order under Section 263 of the Income Tax Act, 1961 without appreciating that assessment order, sought to be revised had been passed without making proper enquiry as to how the sales tax can be claimed by the assessee as an expenditure when the same was not included in the sales?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee is a limited company. It deals with manufacturing of Steel Ingots, Vanaspati Ghee/Refined Oil, G.P. sheets/coils, G.C. sheets, CCL sheets and generation of power. A search under Section 132 of the Act was conducted on 10.06.2009. The assessee filed its return in pursuance to the notice under Section 153A of the Act, declaring income of ₹4,81,513/- on 22.06.2010. The assessment under Section 153A read with Section 143(3)

of the Act was completed vide order dated 29.12.2011 at an income of ₹ 9,63,880/-. A perusal of the Assessing Officer's proposal, for initiating proceedings under Section 263 of the Act and on perusal of the assessment records, the Commissioner of Income Tax(Central), Ludhiana (CIT) found the assessment order under Section 153A/143(3) of the Act dated 29.12.2011 to be erroneous and prejudicial to the interest of the revenue. A show cause notice under Section 263 of the Act dated 02.1.2014 was issued to the assessee. The CIT noticed that in the profit and loss account, the assessee had claimed expenses of ₹1,12,50,000/- on account of sales tax included in the selling and distribution expenses which had been allowed by the Assessing Officer. According to notes on the accounts, the sales did not include sales tax. In fact, the expenditure was not allowable and should have been disallowed. The CIT after examining the assessment records and the submissions of the assessee found that the Assessing Officer had not been properly examined the issue of allowability of sales tax expenditure of ₹1,12,50,000/- and consequently passed the impugned order under Section 263 of the Act holding that the assessment order dated 29.12.2011 under Section 153A/14(3) of the Act was erroneous and prejudicial to the interest of the revenue. The CIT set aside the impugned order with the direction to the Assessing Officer to make fresh assessment after examining the facts of the case and the relevant provisions of the Act. Aggrieved by the order, the assessee filed an appeal before the Tribunal. Vide order dated 15.03.2016, Annexure A-III, the Tribunal allowed the appeal of the assessee holding that the CIT himself had not given any concrete finding as to the merits of the case and directed the Assessing Officer to make further enquiry. It was further held that the assumption of jurisdiction

under Section 263 of the Act by the CIT was not as per law. Hence, the instant appeal by the appellant-revenue.

3. We have heard learned counsel for the parties.

4. Learned counsel for the appellant-revenue submitted that the quantum of sales shown by the assessee did not include sales tax and therefore the amount of ₹1,12,50,000/- claimed on account of sales tax paid under the Compound Levy Scheme was inadmissible. On the aforesaid premises, assumption of jurisdiction under Section 263 of the Act was urged to be proper.

5. On the other hand, learned counsel for the assessee argued that the sales tax payment of ₹1,12,50,000/- under Compound Levy Scheme was allowable under Section 43B of the Act. It was claimed that even in the reply submitted to the Assessing Officer, it was specifically stated that the sales appearing in the balance sheet were inclusive of sales tax and hence, the sales tax paid was allowable expense. Learned counsel for the assessee produced a copy of the paper book which was filed before the Appellate Tribunal. It is taken on record.

6. The relevant extract of Section 263 of the Act is reproduced as under:-

“263- Revision of orders prejudicial to revenue-(1) The Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, 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.

Explanation.....”

7. The above provision provides for exercise of revisional jurisdiction by the CIT. According to the said provision, the two conditions are required to be satisfied i.e. (i) the order sought to be revised is erroneous and at the same time, it should be prejudicial to the interest of the revenue. Both conditions have to be conjointly present. Once such satisfaction is reached, jurisdiction to exercise the power under Section 263 would be available subject to complying with the principles of natural justice. Opportunity of hearing is also required to be given to the assessee. Reference may be made to the judgment of the Apex Court in ***Commissioner of Income Tax, Mumbai Vs. Amitabh Bachchan***, Civil Appeal No. 5009 of 2016 arising out of S.L.P.(C) No. 11621 of 2009 decided on 11.05.2016.

8. In the present case, once the assessee had shown that the sales appearing in the balance sheet were inclusive of sales tax, there was no occasion to disallow the claim made by the assessee relating to payment of sales tax, on the basis of Compound Levy Scheme. The revenue was unable to produce any material on record to substantiate that the assessee had excluded the amount of sales tax from the sales. Once that was so, it could not be said that the order sought to be revised was either erroneous or prejudicial to the interest of the revenue. Thus, both the limbs of Section 263 of the Act were not satisfied. Consequently, the exercise of revisional jurisdiction by the CIT under Section 263 of the Act was unwarranted.

9. In view of the above, it is concluded that no illegality or perversity could be shown by the learned counsel for the appellant-revenue so as to hold that the assumption of revisional jurisdiction by the CIT under Section 263 of the Act was justified. Consequently, no substantial question of law arises and the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

April 25, 2017
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes