HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

I.T.T.A.No.218 of 2018

ORDER: (Per Hon'ble Sri Justice Sanjay Kumar)

This appeal by the Revenue under Section 260A of the Income-tax Act, 1961 (for short, 'the Act of 1961'), arises out of the order dated 11.10.2017 passed by the Income Tax Appellate Tribunal, Visakhapatnam Bench, Visakhapatnam, in I.T.A.No.232/Vizag/2017 in relation to the Assessment Year 2009-10. The following substantial question of law is sought to be raised:

> "Whether, on the facts and in the circumstances of the case, the Tribunal is correct in holding that the order under Sec.263 of the Income-tax Act, 1961, consequent to which the assessment order under consideration was passed, has been set aside by the Tribunal and hence there is no valid order in force to give effect to, without considering the fact that the order of the Tribunal against the order under Sec.263 of the Income-tax Act, 1961, is contested before this Hon'ble Court?"

The Revenue filed I.T.A.No.232/Vizag/2017 before the Tribunal aggrieved by the order dated 23.02.2017 passed by the Commissioner of Income Tax (Appeals)-1, Guntur, setting aside the assessment made under Section 143(3) read with Section 263 of the Act of 1961 *vide* order dated 25.03.2015. The said assessment was in relation to the return filed by the respondent/assessee declaring the total income of Rs.1,96,340/- upon claiming deduction under Section 80C of the Act of 1961, apart from a claim of agricultural income. Originally, the Assessing Officer (A.O.) concluded that the agricultural land sold by the respondent/assessee was a capital asset and was therefore exigible to capital gains tax. He accordingly brought the sale proceeds of agricultural land under the head 'long term capital gains' and completed the assessment by order dated 27.12.2011. In second appeal, the Tribunal, *vide* order dated 11.12.2015, decided the issue in favour of the respondent/assessee holding that the agricultural land was not a capital asset within the meaning of Section 2(14) of the Act of 1961. In the meanwhile, the Commissioner of Income Tax, Guntur, exercised revisionary power *suo motu* under Section 263 of the Act of 1961 and held that the cash received in respect of sale of the subject land was taxable under the head 'income from other sources'. He accordingly directed the A.O. to assess the sale consideration as 'income from other sources', *vide* order dated 18.03.2014 passed in exercise of revisionary power under Section 263 of the Act of 1961. Aggrieved thereby, the respondent/assessee carried the matter to the Tribunal and, by order dated 23.12.2016, the Tribunal set aside the revisionary order of the Commissioner of Income Tax holding that there was no case for exercise of such revisionary power. However, in the meanwhile, pursuant to the revisionary order passed under Section 263 of the Act of 1961, the A.O. re-assessed the sale proceeds of the agricultural land under the head of 'income from other sources' by way of Assessment Order dated 25.03.2015. The respondent/assessee appealed against the same and the Commissioner of Income Tax (Appeals)-1, Guntur, cancelled the said Assessment Order. It is against this order that the present appeal, viz., I.T.A.No.232/Vizag/2017, was filed by the Revenue before the Tribunal. Taking note of the fact that the revisionary order passed by the Commissioner of Income Tax under Section 263 of the Act of 1961 was already set aside by it by way of a separate order, the Tribunal opined that there was no basis for a fresh assessment. On this short ground, the Revenue's appeal was dismissed. It is in this context that the Revenue now seeks to raise a substantial question of law in relation to the revisionary order passed under Section 263 of the Act of 1961.

While so, we are now informed by Ms.M.Kiranmayee, learned counsel for the Revenue, that the order dated 23.12.2016 passed by the Tribunal in I.T.A.No.414/Vizag/2014 was the subject matter of appeal before this Court in I.T.T.A.No.546/2017 and this Court dismissed the said appeal by order dated 08.11.2017. In effect, the order passed by the Tribunal setting aside the revisionary order under Section 263 of the Act of 1961 stands confirmed. In consequence thereof, the A.O. could not have given effect to the said revisionary order and passed a fresh Assessment Order. We are therefore of the opinion that the order of the Tribunal holding to this effect does not warrant interference, be it on facts or in law, and no question of law, much less a substantial question of law, arises for consideration in this appeal.

The appeal is accordingly dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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SANJAY KUMAR, J

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T.AMARNATH GOUD, J

04.06.2018.
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