IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 103 ITA No. 319 of 2016 (O&M)
Date of decision : 10.05.2018

Pr. Commissioner of Income Tax-2, Ludhiana .... Appellant

VERSUS

M/s Deepak International Ltd., Ludhiana ..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Zora Singh Klar, Advocate, for the appellant.

. . .

RAJESH BINDAL, J:

Revenue is in appeal against the order dated 25.04.2016, passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (for short, the 'Tribunal') in ITA No. 400/CHD/2013, for the assessment year 2008-09, raising the following substantial questions of law: -

> "1. Whether on the facts and the circumstances, the Hon'ble ITAT is right in law in quashing the order u/s 263 of the Income Tax Act, 1961 passed by the CIT-2, Ludhiana?
>
> 2. Whether on the facts and circumstances, the Hon'ble ITAT was right in ignoring the facts that AO should have looked into all the eligible items from the point of view of disallowance under the concerned section and since the same was not done, these items were not subject matter of appeal and the issue did not merge with the order of the CIT(A)?"

In the memo of grounds of appeal it is mentioned that tax effect involved in the case is nil.

It is a case in which the assessment of the respondent-assessee was framed under Section 143(3) of the Income Tax Act, 1961 (for short, the 'Act') on 29.12.2008. The order was revised by the Commissioner of Income Tax (for short 'CIT'), exercising powers under Section 263 of the Act on 21.03.2013. The aforesaid order passed by the CIT under Section 263 of the Act was challenged by the assessee before the Tribunal. The appeal was accepted. It is the aforesaid order, which is under challenge before this Court.

On March 15, 2017 this Court passed the following order: -

> "A perusal of assessment order dated 20.12.2008 (Annexure A-1) passed in pursuance to order under Section 263 of the Income Tax Act, 1961 (in short, 'the Act') by the Commissioner of Income Tax-2, Ludhiana shows that the Assessing Officer has made additions of ₹17,15,561/- and ₹5,17,173/- as discernible from page No.49 of the paper book. Thus, the total addition made comes to ₹22,32,734/- and the tax thereon @ 30% would make the tax effect much below the limit of ₹20 lacs as prescribed in Circular No.12/2015 issued on 10.12.2015 by the Central Board of Direct Taxes for filing of appeals under Section 260A of the Act.
>
> Learned counsel for the appellant-Revenue prays for time to examine the same.
>
> Adjourned to 28.03.2017."

The aforesaid order notices that after the matter was referred back by the CIT to the assessing officer, assessment of the respondent was framed and the amount finally assessed was found to be ₹7,58,906/-. As the amount was below the limit prescribed, the Central Board of Direct Taxes (for short the 'Board') issued circular No.21/2015, on 10.12.2015, for filing appeals in the High Court.

Today, affidavit of Avdhesh Kumar Mishra, Pr. Commissioner of Income Tax-2, Ludhiana, dated 08.05.2018, has been filed endorsing the same view. Para 7 of the affidavit specifically states that tax effect as a result of order passed under Section 143(3) of the Act after the matter was referred back by the CIT while exercising powers under Section 263 of the Act, was ₹7,58,906/-.

In view of the aforesaid circular issued by the Board, the present appeal cannot be entertained.

However, learned counsel for the revenue sought to raise an issue that the ultimate tax effect after the order is passed by the CIT under Section 263 of the Act should not to be taken into consideration for examination of the validity of that order. Para 9 of the instructions provide for exceptions thereto. A perusal of para 9 of the instructions provide that decision to file appeal in the cases where tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under Section 12A of the Act is to be decided on the merits of each case and the limits prescribed and the instructions will not be applicable.

However, we are not impressed with the argument as it is not a case where either the tax is not quantifiable or it is not involved as it is not a case pertaining to registration of trusts or institutions under Section 12A of the Act where order may have long terms consequences with regard to taxes on the assessee therein. There is no particular period involved.

Even the contention that the order specifically passed under Section 143(3) of the Act after the matter was referred back by the CIT in exercise of powers under Section 263 of the Act is not to be seen, is also totally misconceived as ultimate tax effect arising out of any order which is sought to be impugned before the High Court is to be considered.

Keeping in view the circular issued by the Board itself, as referred to above, the present appeal is not maintainable.

Dismissed.

[RAJESH BINDAL]
JUDGE

[DEEPAK SIBAL]
JUDGE

10.05.2018

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Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No