IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 430 of 2017 (O&M)

Date of Decision: 27.04.2018

M/s Osho Forge Ltd. ......Appellant

versus

Commissioner of Income Tax Central, Ludhiana and another

......Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE AVNEESH JHINGAN, JUDGE

Present: Mr. Aman Bansal, Advocate
for the appellant.

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AVNEESH JHINGAN, J.

The appeal is against the order of Income Tax Appellate Tribunal, Chandigarh allowing the appeal of the Department. The matters pertain to the assessment years 2007-08.

According to the appellant, following substantial questions of law arise in this appeal:

> "(i) Whether the Ld. Tribunal committed gross illegality in remanding the matter back to the CIT to decide it on merit though no mandatory prior approval/permission was obtained by the Assessing Officer under Section 153D?
> (ii) Whether in the absence of prior approval/permission the assessment order passed by Assessing Officer is null and void?
> (iii) Whether in fact and circumstances of the case, the action of the ld. Tribunal passing the impugned order dated 02.01.2017 Annexure-A7 is legally sustainable in the eyes of law?"

The assessee is a limited company engaged in the business of forging tractor parts and auto parts at Ludhiana. A search was conducted at the business premises of the assessee on 26.08.2008 and some incriminating documents were seized. On 10.08.2009 a notice under Section 153A of the Income Tax Act, 1961 (for short 'the Act') was issued. In response to the notice, assessee filed return on 30.10.2007 declaring the income of Rs.1,85,09,520/-. The Assessing Officer (A.O.) vide order dated 24.12.2010 framed the assessment under Section 153A read with Section 143(3) of the Act. An addition of Rs.2 lac was made to the declared income. This order was passed after seeking approval under Section 153D of the Act from Additional CIT Central Range, Ludhiana. Approval was given vide letter No. 698 dated 24.12.2010.

A notice dated 28.09.2012 was issued by the Commissioner of Income Tax (Central) Ludhiana for revising the assessment order.

The Commissioner vide order dated 22.03.2013 set aside the assessment order dated 24.12.2010 and direction was issued to the A.O. to make fresh assessment denovo after properly examining the issues, conducting an inquiry and affording opportunity of hearing.

The A.O. in pursuant to the remand, passed order dated 18.03.2014 making an addition of Rs.55,21,700/-.

Aggrieved of the order, the assessee filed an appeal before the CIT(Appeals). The said appeal was allowed vide order dated 21.03.2016. The CIT allowed the appeal only on the ground that no fresh approval was taken by the A.O. under Section 153D of the Act before passing order dated 18.03.2014.

The Department filed appeal before the Tribunal. The appeal was allowed. The Tribunal in the order dated 25.01.2017 set aside the order of the CIT. The matter was restored to CIT for deciding the case on merits irrespective of the fact that there was no approval under Section 153D before passing the order dated 18.03.2014.

Although the assessee claims that three substantial questions of law arise, in fact the issue involved in the present appeal is:-

> "Whether under Section 153D of the Act there is a requirement of fresh approval for complying with the remand directions under Section 263, in a case where the assessment under Section 153A of the Act was originally framed after compliance of Section 153D of the Act?"

We answer the question against the assessee.

Section 153D is as under:

> "153D. No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of (sub-section (1) of) Section 153A or the assessment year referred to in clause (b) of sub-section (1) of Section 153B, except with the prior approval of the Joint Commissioner:)"

As per Section 153-D, no order of assessment under Sections 153A and 153B can be passed by the A.O. without prior approval of the Joint Commissioner.

The assessment order dated 24.12.2010 was passed under Section 153A read with Section 143(3) of the Act after obtaining approval under Section 153D of the Act. The approval was vide letter dated 24.12.2010. Thereafter the said order was taken up in revision. The order was set aside and the matter was remitted to the A.O. to pass a fresh assessment order. The approval under Section 153D was not set aside. There was no question thereupon of the A.O. seeking fresh approval under Section 153D. The order dated 18.03.2014 passed by the A.O. was in compliance with the remand directions. It was not a case of the A.O.

assuming jurisdiction under Section 153A of the Act. That stage was over when order dated 24.12.2010 was passed. The A.O. was complying with the directions of the revisional authority. Section 153D of the Act is only applicable for passing an assessment order or re-assessment order. There is no requirement under Section 153D for prior approval for complying the remand directions. The approval dated 24.12.2010 in fact was to the effect that assessment of assessee can be passed under Section 153A. Remand direction was that the assessment under Section 153A should be framed again. There was no occasion of fresh assumption of jurisdiction to frame assessment. Rather it was in continuation of earlier proceeding which was duly approved. Even otherwise there is no question of seeking an approval from the Joint Commissioner or the Additional Commissioner Officer lower in rank than Commissioner for complying with the directions given by the Commissioner.

The CIT (Appeals) allowed the appeals of the assessee on the basis that compliance of Section 153D of the Act was mandatory. It is not the issue whether the provision is procedural or the requirement of approval is mandatory. The fact is that Section 153D of the Act had been duly complied with by the A.O. The contention raised that even an order of remand cannot be passed without complying with Section 153D of the Act is beyond the scope of the section. The Tribunal rightly held that Section 153D of the Act is for assuming jurisdiction to pass an assessment order under Section 153A of the Act and the A.O. would not loose the jurisdiction to frame assessment while complying with remand order.

The contention of learned counsel for the appellant that the order dated 18.03.2014 was passed under Section 143(3) read with Section 263 of the Act is not well founded. Though in the heading Section 143(3)/ 263 of the Act are referred to from the order it is clear that it has been passed under Section 153A read with Section 143(3) of the Act and the same has been passed pursuant to the remand under Section 263 of the Act. In the heading the A.O. has mentioned Section 143(3) read with Section 263 of the Act only to show that the assessment is being framed as per the directions of the CIT in revisional proceedings.

The questions of law are answered against the appellant.

Appeal is therefore dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

27.04.2018
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Whether speaking/reasoned √ Yes/No
Whether Reportable: √ Yes/No