IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

109 **Income Tax Appeal No.185 of 2019 (O&M).**
Date of Decision: 09.12.2019.

The Pr. Commissioner of Income Tax, Patiala ....Appellant.

Versus

M/s Shri Shyam Enterprises Pvt. Ltd. ....Respondent.

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CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Kunal Sharma, Senior Standing Counsel, with
Mr. Jitin Kohli, Junior Standing Counsel
for the appellant.

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Ajay Tewari, J. (Oral)

1. This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (for short 'the Act') against the order of Income Tax Appellate Tribunal, Chandigarh Bench "B", in ITA No. 1299(chd)/ 2017 dated 24.09.2018 for the assessment year 2014-2015, whereby it has set aside the revisional order dated 27.07.2017 of the Commissioner of Income Tax under Section 263 of the Act.

2. Brief facts of the case are that the assessee had obtained certain unsecured loans during the year in question. The assessee had filed a return declaring income of Rs. Nil on 26.09.2015. His case was selected for limited scrutiny through CASS and notice u/s 143 (2) of the Act was issued and on being satisfied the Assessing Officer accepted the return income of the assessee. Thereafter, a show cause notice under Section 263 (1) of the Act was issued and the Commissioner of Income Tax set aside the order and held the Assessing Officer should have called a record of the computation

of income/balance sheet along with the returns of income to prove their creditworthiness of the persons in providing the assessee unsecured loans and remitted the matter back for fresh order in accordance with law.

3. Aggrieved against the order of the CIT, the assessee challenged the same before the Tribunal and the Tribunal found as a fact that the documents relating to the persons who had granted the loans had not only been submitted before the Assessing Officer but had also been produced before the Commissioner and at no stage was it pointed out that from a perusal of those documents, a case was made out for further requiring the assessee to obtain the balance sheets of all those persons and the Tribunal in these circumstances firstly held that the Commissioner erred in holding that the bank statement and the income tax returns had not been filed before the Assessing Officer and secondly the Tribunal noticed and further held as follows:-

> *"And we find that no infirmity has been pointed out by the Ld. Pr. CIT in the same in his entire order which would show that the creditworthiness of the loanees was doubtful and the AO having not taken cognizance of the same had committed an error causing prejudice to the Revenue. Further we fail to understand the relevance of the balance sheet of the loanees for establishing their creditworthiness when all other relevant documents for the same, i.e. return of income of the loanees and copy of their bank statement from which the loans were advanced were filed and no adverse observation with respect to the same has been made by the Ld. Pr. CIT effecting the creditworthiness of the loanees. Nor was the same brought to our notice by the Ld. DR during the course of hearing before us. We therefore hold that the Ld. Pr. CIT has failed to point out any error in the order of the AO vis-a-vis the loans taken by the assessee also."*

4. Learned counsel for the appellant-revenue has argued that the following substantial questions of law still arose in this case:-

(i) Whether on facts and circumstances of the case, the Hon'ble ITAT, Chandigarh is right to set aside the order passed by the Worthy Pr. CIT u/s 263(1) of the I.T. Act, 1961 on account of non-proper verification of unsecured loans made by the A.O. with regard to the loans raised by the assessee during the year under consideration from various loanees/ persons, whose creditworthiness to give these huge loans were not justified according to their low income and further source of income shown in their returns of income & other documents placed on record. The Hon'ble Delhi High Court in ITA No.55/2017 dated 25.08.2017 in the case of Worthy Pr. CIT VS. Bikram Singh has confirmed additions made on account of unsecured loans of Rs.2,68,00,000/- on account of non-proving the transaction were genuine and the creditworthiness of the loanee persons were not justified according to their income and source of income shown in their return of income, which were deleted by the Hon'ble ITAT.

(ii) Whether on facts and circumstances of the case, the Hon'ble ITAT, Chandigarh is right to ignore the decisionof the Hon'ble Supreme Court in the case of Malabar Industrial Company Ltd. Vs. CIT reported at 243 ITR 83 (SC). Further, in the case of Gee Vee Enterprises Vs. Addl. CIT & Ors. 99 ITR 375 (Del), the Hon'ble Delhi High Court have held in that not making an inquiry warranted on the facts of a case will make the assessment order erroneous. Similar view has been taken by the Hon'ble Madras High Court in the case of K.A. Ramaswamy Chettiar & Anr. Vs. CIT 220 ITR 657 (Mad.). Moreover, the facts of the case are squarely covered by Explanation 2 of Section 263 of the I.T. Act, 1961 which is inserted w.e.f. 01.06.2015."

5. Learned counsel has relied upon decision dated 04.01.2012 of Hon'ble The High Court of Karnataka in case of ***Commissioner of Income Tax vs. Infosys Technologies Ltd.*** ***I.T.A. No.588 of 2006,*** particularly Paras 23 to 27, which are reproduced hereunder:-

> *23. In the present situation, the Commissioner having only directed the assessing authority to compute it or re-compute it and make it explicit as to the entitlement of the assessee, an order of this nature, in fact, could not have been contended as detrimental to the interest of the assessee, as it was always open to the assessee to justify the claim in terms of the double taxation avoidance agreements. In a situation of this nature, we are also of the opinion that it was not a case which warranted interference by the tribunal, more so far setting aside the order of the commissioner and for ensuring that the order passed by the assessing authority was left in tact.*
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> *24. One should bear in mind that a relief which is required to be given to any litigant in any given case should be commensurate to the gravity of the situation, to the needs and necessity of the situation and warranting such relief and with reference to the governing statutory provisions. Just because the tribunal has appellate jurisdiction over the orders passed by the commissioner, it does not mean that the tribunal should interfere with each and every order of the commissioner when it is really not warranted and in a situation of the present nature, by calling in aid all legal principles, particularly questions of jurisdiction and by interpreting a statuary provision, to limit or curtail the scope and operation of the provision even when there is no need for it.*
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> *25. We are also not in a position to accept the submission that the materials had been placed before the assessing authority and therefore there should be a conclusion that the authority has applied his mind to the same and there was no question of the commissioner interfering by taking a different view etc.*

26. Assessing authority performs a quasi-judicial function and the reasons for his conclusions and findings should be forthcoming in the assessment order. Though it is urged on behalf of the assessee by its learned counsel that reasons should be spelt out only in a situation where the assessing authority passes an order against the assessee or adverse to the interest of the assessee and no need for the assessing authority to spell out reasons when the order is accepting the claim of the assessee and the learned counsel submit that this is the legal position on authority, we are afraid that to accept a submission of this nature would be to give a free hand to the assessing authority, just to pass orders without reasoning and to spell out reasons only in a situation where the finding is to be against the assessee or any claim put forth by the assessee is denied.

27. We are of the clear opinion that there cannot be any dichotomy of this nature, as every conclusion and finding by the assessing authority should be supported by reasons, however brief it may be, and in a situation where it is only a question of computation in accordance with relevant articles of a double taxation avoidance agreements and that should be clearly indicated in the order of the assessing authority, whether or not the assessee had given particulars or details of it. It is the duty of the assessing authority to do that and if the assessing authority had failed in that, more so in extending a tax relief to the assessee, the order definitely constitutes an order not merely erroneous but also prejudicial to the interest of the revenue and therefore while the commissioner was justified in exercising the jurisdiction under Section 263 of the Act, the tribunal was definitely not justified in interfering with this order of the commissioner in its appellate jurisdiction.

6. In this view of the matter, the above paragraphs would not strictly be relevant in the facts and context of the present case.

7. Consequently, we find no merit in the appeal and the same is dismissed

8. Since the main case is dismissed, pending civil misc. application, if any, stands disposed of.

(Ajay Tewari)
Judge

(Lalit Batra)
Judge

09.12.2019
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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No