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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-299-2004 (O&M)
DECIDED ON: 06.08.2024

COMMISSIONER OF INCOME TAX .....APPELLANT

VERSUS

M/S V.K. SOOD ENGG. & CONTRACTORS P LTD. .....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH.

Present: Mr. Yogesh Putney, Senior Standing Counsel, and
Mr. Vaibhav Gupta, Standing Counsel,
for the appellant.

Mr. Shantanu Bansal, Advocate,
Mr. Sunil Kumar Mukhi, Advocate, and
Mr. Yugank Goyal, Advocate,
for the respondent – assessee.

SANJEEV PRAKASH SHARMA, J (ORAL)

1. The Revenue is in appeal challenging the order passed by the Income Tax Appellate Tribunal dated 04.09.2003, whereby it dismissed the order passed by the Commissioner of Income Tax (CIT), under Section 263 of the Income-tax Act, 1961 (for short, 'the Act'), revising the assessment order dated 02.05.1995, and upheld the order passed by the Assessing Officer (AO).

2. Learned counsel for the appellant has submitted that the Commissioner of Income Tax (CIT) has rightly held the order passed by the Assessing Officer (AO) to be erroneous and prejudicial to the interest of the Revenue.

Learned counsel for the appellant has further submitted that the ITAT has erred in giving a finding relating to the award passed in favour of the assessee, as limited to the assessment years 1989-90 and 1990-91.

It is further submitted that the Assessing Officer (AO) has failed to examine the issue of taxing the money which had been withdrawn from the Suspense Account in view of the fact that the amount against the bank guarantee shown under Suspense Account reduced from Rs.3,23,02,222/- in the previous year to Rs. 'Nil' during the assessment year under consideration.

Learned counsel for the appellant has further argued that under Section 263 of the Act, the power is available with the Commissioner of Income Tax (CIT) to examine the order of the Assessing Officer (AO), and if he reaches to a conclusion that the Assessing Officer has committed grave error resulting in causing loss to the Revenue, he can make observations, and it is for the Assessing Officer thereafter to pass a fresh assessment order. The ITAT has, however, erred in not appreciating the order of the CIT (Appeals) in its correct form and the order ought to be not have been interrupted with.

3. *Per contra,* learned counsel appearing on behalf of the respondent – assessee has vehemently argued and supported the order passed by the ITAT and submits that the award was given for the period relevant to the assessment years 1989-90 and 1990-91 and the additions which were made in the said assessment years were deleted on appeal by the CIT (Appeals). Since, there was no sum awarded to the assessee during the assessment year under consideration, there was no occasion for taxing

the amount which was received in the said assessment years i.e. 1989-90 and 1990-91.

It is further submitted that there was no material available with the CIT to hold that the order passed by the Assessing Officer was in any manner erroneous. It is also submitted that so far as the jewellery found in the locker is concerned, it was fully explained even in the Wealth-tax Returns of the person concerned and therefore, the CIT had clearly erred in treating the said jewellery as part of the amount against the company.

4. Both the counsel have relied upon the judgment passed in the case of ***"Malabar Industrial Co. Ltd. vs. CIT, (2000) 2 SCC 718",*** with regard to the scope of Section 263 of the Act.

5. We have considered the submissions and carefully examined the order impugned, and find that the ITAT has given its findings relating to the award and in regard to the jewellery found from the locker. It is an admitted position that an arbitration award was passed in favour of the company for the period relevant to assessment years 1989-90 and 1990-91 when the amount was received. The additions were made in these assessment years but the same were deleted on appeal, by the CIT (Appeals), and at no point of time actually the company received any amount by way of award during the current assessment year, namely, 1993-94.

6. Thus, the ITAT is found to have rightly taken a decision of holding that the CIT was not justified for including award money in the assessment and directed for re-assessment by invoking power under Section 263 of the Act. The ITAT has also considered the second

aspect with regard to the observations of CIT that the assessee had withdrawn Rs.3.6 crores in cash on 29.10.1992 and converted the same into foreign exchange purchase in black market and deposited in the name of Shri V.K. Sood and his minor children. Neither there is any such material available to support the above assertion of buying foreign exchange in black nor there is any such documentary evidence showing depositing of the said amount in NRI accounts. These findings of fact have not been controverted.

7. We also find that the reference made by the CIT relating to the amount of Rs.3,23,02,000/- has been examined by the Tribunal and it has reached to the conclusion based upon the order passed by the Assessing Officer (AO) that a proper inquiry has been made by him before making the assessment.

8. On reading the order passed by the CIT under Section 263 of the Act, we find that the entire order is based on surmises and presumptions. As held by the Hon'ble Apex Court in the case of ***"The Commissioner of Income Tax 7 vs. M/s Paville Projects Private Limited, 2023 (5) Scale 425,*** if one view has been adopted by the Assessing Officer, merely because the CIT may have a different view based on his own presumptions and assumptions, the order passed by the Assessing Officer (AO) cannot be held to be erroneous resulting in loss of Revenue.

The view expressed by Hon'ble the Apex Court is based upon the judgment passed in the case of **Malabar Industrial Co. Ltd. (supra)** and held as under:-

> *"<u>7.2</u> Thus, even as observed in paragraph 9 by this Court in the case of Malabar Industrial Co. Ltd. (supra) that the scheme of the Act is to levy and collect tax in*

accordance with the provisions of the Act and this task is entrusted to the Revenue. It is further observed that if due to an erroneous order of the Income Tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue. However, only in a case where two views are possible and the Assessing Officer bas adopted one view, such a decision, which might be plausible and it has resulted in loss of Revenue, such an order is not revisable under Section 263.

7.3 *Applying the law laid down by this Court in the case of Malabar Industrial Co. Ltd. (supra) to the facts of the case on hand and even as observed by the Commissioner, the order passed by the Assessing Officer is erroneous as well as prejudicial to the interest of the Revenue. Having gone through the assessment order as well as the order passed by the Commissioner of Income Tax, we are also of the opinion that the assessment order was not only erroneous but prejudicial to the interest of the Revenue also. In the facts and circumstances of the case, it cannot be said that the Commissioner exercised the jurisdiction under Section 263 not vested in it. The erroneous assessment order has resulted into loss of the Revenue in the form of tax. Under the Circumstances and in the facts and circumstances of the case narrated hereinabove, the High Court has committed a very serious error in setting aside the order passed by the Commissioner passed in exercise of powers under section 263 of the Income Tax Act."*

9. In view of the aforesaid proposition of law as settled, we need not refer to other judgments as cited at Bar, and confirm the view already taken by the Income Tax Appellate Tribunal (ITAT) and the questions of law as framed at that time of filing of the present appeal, is accordingly answered in favour of the respondent – assessee.

10. Accordingly, present appeal stands dismissed.

11. Pending miscellaneous applications, if any, also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

06.08.2024
Lavisha

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*