209 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-383-2006 (O&M)
Date of Decision:14.10.2024

THE COMMISSIONER OF INCOME TAX, KARNAL *.........Appellant*

V/s.

SHRI RAJESH MAHAJAN, MAHAJAN HOUSE, PANIPAT

........Respondent

ITA-384-2006 (O&M)
Date of Decision: 14.10.2024

THE COMMISSIONER OF INCOME TAX, KARNAL *.........Appellant*

V/s.

SMT. SANGEETA MAHAJAN, MAHAJAN HOUSE, PANIPAT

........Respondent

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

(Through Video Conferencing/Hybrid Mode)

Present Ms. Gauri Neo Rampal, Senior Standing counsel for the appellant/Income Tax Department.

Mr. Shantanu Bansal, Advocate and
Mr. Yugank Goyal, Advocate for the respondent(s)/assessee(s).

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SANJEEV PRAKASH SHARMA, J. (Oral)

1. The present appeals have come up before this Court after the order dated 31.10.2011 passed by the Hon'ble Supreme Court in Civil Appeal No.8955-8956 of 2011, wherein the apex Court has held as under:-

> *"We are of the view that, in this case, detailed reasons were required to be given by the division Bench of the High Court, particularly when, by the impugned judgement, the High Court has overruled the decision of ITAT. Since statutory appeal lies to the High Court under Section 260A of the Act, the High Court ought to have given it's findings in detail, particularly on the question whether there was any error of law in the decision*

of ITAT and whether that error caused prejudice to the Revenue. In any event, this Court is of the view that, on the facts and circumstances of this case, since the appellant (assessee) was not heard, indulgence is being shown to him to appear before the High Court on the appointed date and argue the matter. For this reason alone, we set aside the impugned judgement of the High Court and remit the case for de novo consideration in accordance with law. We do not wish to express any opinion on the merits of the case. The impugned judgement is set aside only on the ground that an opportunity needs to be given to the appellant (assessee) to argue his case before the High Court.

The civil appeals are, accordingly, allowed."

2. It is noticed that earlier the present Appeals were decided by this Court on 01.02.2011 without giving opportunity of hearing to the respondent(s) and the Division Bench held that the Assessing Officer had mechanically accepted the returned income without scrutinizing or referring to any material examined during examining during block assessment proceedings.

3. Learned counsel for the appellant/Revenue has again asserted its submissions that the order dated 03.03.2005 passed by the Commissioner Income Tax under Section 263 of the Income Tax Act, 1961 (for short "the Act of 1961") dated 03.05.2005 whereby it set aside the order of the Assessing Officer dated 03.09.2003, did not call for any interference and the order passed by the Income Tax Appellate Tribunal (for short "the ITAT") for the various block periods was liable to be set aside.

4. On the other hand, learned counsel appearing for the respondent(s)/assessee(s) submits that before the Assessing Officer passed an order, a questionnaire was put to him with regard to various entries and to explain the source of cash found during the course of search and seizure. A detailed enquiry was conducted by the Assessing Officer before reaching to conclusionsand on four issues i.e. (a) cash found at the premises of the assessee at Panipat House; (b) cash found at Delhi House; (c) unsecured loans; and (d) fresh investment, the respondent(s)/assessee(s) had submitted its details and it is thereafter the Assessing Officer passed an order of assessment.

5. Learned counsel for the appellant/Revenue has, however, pointed out that even after the explanations having been submitted by the respondent(s), the issue regarding availability of cash with the respondent(s) as on the date of search remained to be examined and the Assessing Officer ought to have made its own enquiries with regard to the same.

6. We have carefully examined the order passed by the ITAT. Finding of the fact has been arrived at by the ITAT that the queries were raised by the Assessing Officer and supporting evidence was produced by the respondent(s) regarding the cash found at Panipat House and Delhi House which is on record at particular Pages as mentioned in the ITAT order (namely Pages 130 to 150 and Pages 151 to 154) of the paper book.

7. We are of the considered view that in the final order passed by the Assessing Officer, he need not mention about the detailed enquiry which he has conducted and merely because the Assessing Officer's order may be one page order, imposing the required tax to be paid by the respondent(s), if so required, or reaches to a conclusion that no payment is required to be made, the entire enquiry proceedings can be seen from the paper-book since, the ITAT has examined the paper-book and found that queries were raised by the Assessing Officer and after due enquiry and after examining the necessary evidence, the assessment order has been passed. Its observations that the order is not erroneous, cannot be again re-examined by us in Appeal as it would be examining the factual aspects again.

8. The question before this Court would only arise to the aspect regarding invoking of powers under Section 263 of the Act of 1961.The *sine qua non* for invoking powers under Section 263 of the Act of 1961 are (i)*that the Assessing Officer has passed the order erroneously; and (ii) the order has resulted in causing loss of revenue and against the interest of the Revenue.*On both the counts, we find that the order of the Assessing Officer was not required to be interfered with as has been already found by the ITAT.

9. No substantial question of law arises for examination in both the Appeals. Accordingly, these appeals are ***dismissed***.

10. All pending applications filed in these Appeals shall stand disposed of accordingly.

[SANJEEV PRAKASH SHARMA]
JUDGE

[SANJAY VASHISTH]
JUDGE

October 14, 2024
Ess Kay

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