



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

ITA-221-2011 (O&M)

Date of Decision : 16.07.2024

COMMISSIONER OF INCOME TAX-I, LUDHIANA APPELLANT

Versus

M/S JAIN UDAY FABRICS PVT. LTD ... RESPONDENT

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present :- Mr. Ranvijay Singh, Senior Standing Counsel
for the appellant.

Mr. Divya Suri, Advocate, for the respondent.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The brief facts for adjudication of this appeal are that the Assessing Officer passed an order dated 24.12.2007 under Section 145 (3) of the Income Tax Act, 1961 (for short 'the Act') in absence of the assessee rejecting his books of accounts. The assessee moved an application under Section 144A of the Act to the Joint Commissioner, Ludhiana, who vide his order dated 28.12.2007 directed the Assessing Officer to comply the assessment at the returned income on the basis of their books of accounts. Accordingly, the Assessing Officer passed order complying the assessment dated 31.12.2007 afresh at the returned income making certain additions upto ₹ 1,55,25,300.87. The Commissioner Income Tax exercising powers under Section 263 of the Act set aside the order of the AO vide his order dated 29.03.2010. The assessee preferred an appeal before the Income Tax Appellate Tribunal and vide its order dated 22.10.2010, order passed by the CIT

VARINDER SINGH
2024.07.25 12:52
I attest to the accuracy and
authenticity of this
order/judgment



under Section 263 of the Act was set aside and the order of the AO was upheld. It relied on *M/s Malabar Industrial Company Limited vs Commissioner of Income Tax, Kerala State* 2000 (243) ITR 83 holding that the order passed by the AO could not be said to be erroneous in the eyes of law.

2. Learned counsel for the appellant-revenue submits that the Joint Commissioner while passing order under Section 144A of the Act ought not to have directed the AO to pass order in terms laid down by him and the AO ought to have examined the entire case independently. It was also submitted that the books of accounts were never produced before the Joint Commissioner and, therefore, his order passed under Section 144A of the Act was laconic and defective. Further, it was argued that ITAT heard and set aside the order of CIT exercising its powers under Section 263 of the Act finding that the AO findings were erroneous.

3. Learned counsel for the assessee, however, supports the order and points out that the record and books of accounts had been produced before the Assessing Officer who had independently passed a final order making certain additions in the return.

4. We have carefully considered the submissions and perused the orders passed by various authorities, as mentioned above. We find that initially the Assessing Officer failed to take notice of the reply of the assessee and had hurriedly passed the order in the absence of the assessee. The said order was challenged under Section 144A of the Act before the Joint Commissioner, who remanded the matter to the Assessing Officer to consider the reply. The record was produced before the Joint Commissioner who also noticed that the AO in his order initially noted that the books of accounts had been produced and test checked. Information was asked from the assessee which had also been answered but the reply was not considered. We also note that the Assessing Officer upon remand has



examined the case afresh taking into consideration all the record of books of accounts and has made additions upto total amount of ₹ 1,55,25,300.87. In these circumstances, it cannot be said that the AO had not applied his mind or that he had not conducted diligent enquiry which is essential for reaching to conclusion and passing of the assessment order.

5. The Commissioner of Income Tax while exercising powers under Section 263 of the Act i.e. *suo moto* jurisdiction would be entitled to look into the order of the AO provided he reaches to the conclusion that the same is erroneous to the extent that it is prejudice to the interest of the revenue. The twin conditions necessary for interference under Section 263 of the Act have been laid down in **M/s Malabar Industrial Company Limited** (supra) as under:-

- (i) the order of Assessing Officer sought to be revised is erroneous; and
- (ii) it is prejudicial to the interest of the revenue.

6. Both the conditions are, therefore, required to be satisfied. As observed by the Apex Court, every loss of revenue as a consequence of the order of the Assessing Officer cannot be treated as prejudice to the interest of the revenue. Thus, if two views are possible to reach to a conclusion and an assessment, merely because the Commissioner does not agree with the view adopted by the AO, cannot be a ground to hold the order as erroneous. The error has to be found from the provisions of law and the order can be set aside only when the view taken by the AO is unsustainable in law.

7. We find that ITAT in appeal while relying on the aforesaid judgment reached to the conclusion that the view taken by the AO cannot be said to be erroneous. We also find that the additions have been made based on the provisions of law by the AO and, therefore, do not find any reason for interfering with the



well reasoned order of the ITAT which is based on facts. More so, no substantial question of law can be said to be required to be examined by this Court. Even other wise, we are satisfied after examining the order of the ITAT that factually too there is no error. Therefore, no interference is warranted.

8. Pending miscellaneous application, if any, also stands disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

16.07.2024

anju/vs

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No