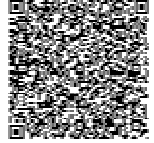


2024:PHHC:151393-DB



ITA-145-2016 (O&M)

Date of Decision: 19.11.2024

Principal Commissioner of Income Tax-2, Chandigarh ...Appellant

Vs.

Shri Kirti Anand

...Respondent

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH****Present:** Mr. Yogesh Putney, Sr. Standing Counsel along with
Mr. Vaibhav Gupta, Sr. Standing Counsel for the appellant.

Mr. Divya Suri, Advocate for the respondent.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The revenue assails the order passed by the Income Tax Appellate Tribunal (for short 'the ITAT') dated 14.10.2015, whereby the appeal filed by the assessee was allowed and order passed by the Commissioner of Income Tax-II, Chandigarh dated 21.03.2013, was set aside and the order of assessment passed by the Assessing Officer dated 16.12.2010, was restored.

2. Learned counsel for the appellant submits that order was passed by the CIT-II, Chandigarh, under Section 263 of the Income Tax Act, 1961 and the basis for passing of the said order was that after the assessment proceedings were conducted by the Assessing Officer, the audit objections were raised and it was pointed out in the objections that the inquiry was not conducted as required by the concerned Assessing Officer relating to the

ownership and entitlement of the cars and houses which were said to be the alleged source of income for investment in the mutual funds amounting to Rs.58.30 Lakh approximately.

3. While admitting this appeal, the following question of law was framed on 03.10.2016:-

Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in quashing the order passed under Section 263 of the Income Tax Act, 1961, by the Pr. Commissioner of Income Tax directing the AO to pass an order afresh after making necessary inquiries in accordance with law after keeping in view the observations made and allowing opportunity of bearing heard to the assessee on the finding that the assessee had failed to explain the issue with cogent evidence and the Assessing Officer had failed to make relevant enquiries in respect of such issues."

4. To answer the said question, learned counsel for the appellant submits that the ITAT has fallen in error in interpretation of law relating to the scope of inquiry under Section 263 of the Act and submits that the explanation under Section 263 of the Act defines 'record' which means all record relating to any proceedings under the Act available at the time of examination by the Commissioner. The commissioner, therefore, has absolute power to examine the record of the proceedings to reach at the conclusion as to whether the order of the Assessing Officer is erroneous and secondly has been prejudicial to the interest of the revenue. For reaching to a conclusion as to whether the order is erroneous, the CIT can also look into

the objections raised by the audit and if they are found to be valid, the order of the Assessing Officer would have to be held as erroneous.

5. We have carefully considered the submissions as above and we find that Section 263 of the Act, provides as under:-

263. Revision of orders prejudicial to revenue.

(1)The [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner] or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, [including]—

(i)an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or

(ii)an order modifying the order under section 92CA; or

(iii)an order cancelling the order under section 92CA and directing a fresh order under the said section].

Explanation 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

(a)an order passed on or before or after the 1st day of June, 1988] by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] shall include—

(i)an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;

(ii)an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer [or the Transfer Pricing Officer, as the case may be,] conferred on, or assigned to, him under the orders or directions issued by the Board or by the

Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under section 120;

[(iii) an order under section 92CA by the Transfer Pricing Officer;]

(b)"record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner;

(c)where any order referred to in this sub-section and passed by the Assessing Officer 92[or the Transfer Pricing Officer, as the case may be,] had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.*

Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner,—

(a)the order is passed without making inquiries or verification which should have been made;

(b)the order is passed allowing any relief without inquiring into the claim;

(c)the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d)the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the

jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

[Explanation 3.—For the purposes of this section, "Transfer Pricing Officer" shall have the same meaning as assigned to it in the Explanation to section 92CA.]

(2)No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

(3)Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.

Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

6. Thus, the *sine-qua non* for interference by the CIT under Section 263 of the Act to the assessment order passed by the Assessing Officer is of satisfaction of certain conditions as noticed above i.e. that the order passed by Assessing Officer is erroneous and secondly that the order results in prejudice to the revenue.

7. In the present case, it is an admitted position that after the assessment order was passed, audit objections were raised with regard to inquiry said to have been conducted by the Assessing Officer and the audit - party recorded several major audit objections with respect to the investment made by the assessee in mutual funds/shares. There was no verification done

by the Assessing Officer during the assessment proceedings relating to the explanation to be forwarded by the assessee.

8. We, therefore, are satisfied that the order passed by the CIT under Section 263 of the Act in the facts and circumstances of the case cannot be said to be such which was to be interfered with by the ITAT. The view taken by the ITAT based on the judgment passed by the Hon'ble Guhawati High Court in **B & A Plantation and Industries Ltd. and another vs. CIT and others 2007 (290) ITR 395**, cannot be said to be correct interpretation of Section 263 of the Act and the record relating to any proceedings under the Act available at the time of examination by the Commissioner would also include the audit objections. In **CIT vs. P.V.S. Beedies Pvt. Ltd. 1998 (9) SCC 272** the Hon'ble Apex Court held as under:-

“2. We have considered the matter. It appears that the reopening was done because in the original assessment donations made to a body known as P.V.S. Memorial Charitable Trust was held by the Income Tax Officer to be eligible for deduction under Section 80G. But subsequently it was pointed out by the internal audit party that the recognition which had been granted to the P.V.S. Memorial Charitable Trust had expired on 22-9-1972. That means it had expired before 1-4-1973. Therefore, in the relevant years of account this Trust was not a recognised charitable trust. In that view of the matter the donation to P.V.S. Memorial Charitable Trust did not qualify for deduction under Section 80G as a donation made to a recognised charity.

3. We are of the view that both the Tribunal and the High Court were in error in holding that the information given by internal audit party could not be treated as information within the meaning of Section 147(b) of the Income Tax Act. The audit party has merely pointed out a fact which has been overlooked by the Income Tax Officer in the assessment. The fact that the recognition

granted to this charitable trust had expired on 22-9-1992 was not noticed by the Income Tax Officer. This is not a case of information on a question of law. The dispute as to whether reopening is permissible after audit party expresses an opinion on a question of law is now being considered by a larger Bench of this Court. There can be no dispute that the audit party is entitled to point out a factual error or omission in the assessment. Reopening of the case on the basis of a factual error pointed out by the audit party is permissible under law. In view of that we hold that reopening of the case under Section 147(b) in the facts of this case was on the basis of factual information given by the internal audit party and was valid in law. The judgment under appeal is set aside to this extent.

4. The appeals are allowed. There will be no order as to costs.”

9. In view of the above, the question framed is decided in favour of the revenue.

10. At this stage, learned counsel for the assessee submits that after the order was passed under Section 263 of the Act, the Assessing Officer has again passed another order under Section 143(3) of the Act and has made certain additions. The subsequent order was passed by the Assessing Officer dated 28.01.2014, was challenged before the CIT (Appeals-2) in Appeal No.702/13-14. The same was decided by the CIT (A) on 19.12.2014, whereby certain additions were deleted. The revenue further challenged the order of CIT (A) before the Income Tax Appellate Tribunal and cross-objections were also filed by the assessee. The same was decided on 15.12.2015, whereby the departmental appeal as well as cross-objections were disposed of on the basis of order passed by the ITAT dated 14.10.2014, which is impugned in the present appeal.

13. All pending misc. application(s) also stand disposed of.

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No