IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

125 **Through Hybrid Mode**

2024:PHHC:038674-DB
ITA-152-2023 (O&M)
ITA-149-2023 (O&M)

Date of Decision:- 18.03.2024

Manjit Krishan Malhotra

...Appellant

Vs.

Pr.Commisisoner of Income Tax

...Respondent

CORAM:- HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS.JUSTICE SUDEEPTI SHARMA

Present: Mr.Salil Kapoor, Advocate for the appellant.
Ms. Gauri Neo Rampal, Sr.Standing Counsel
for respondents-Income Tax

SANJEEV PRAKASH SHARMA, J. (Oral)

CM-13631-CII of 2023 in ITA No.152-2023
CM-13417-CII of 2023 in ITA No.1149-2023

For the reasons mentioned therein, applications are allowed and delay of 76 and 124 days in refilling the respective appeals is condoned.

ITA No.152-2023
ITA No.1149-2023

We dispose of both the aforesaid appeals with a common order as those have arisen out of the same impugned orders.

Learned counsel for the appellant has assailed the order passed by the Pr. Commissioners of Income Tax as well as affirmation order by the Income Tax Appellate Tribunal (IT) confirming the order passed by the Pr. Commissioner of Income Tax Pr.CIT whereby the order passed under Section 271(D) of the Income Tax Act by the JCT was reviewed and penalty orders passed by the CIT were held to be erroneous and prejudicial to the interest of revenue. The order passed by the JCIT dated 10.02.2014 was cancelled.

Learned counsel for the appellant submits that the powers contained in section 263 of the Act, excludes the jurisdiction of the Pr.CIT to review the orders passed by the JCIT under Section 271 (D) and 271(E). He takes this Court to the explanation appended to Section 263 explanation-1, to submit that, the instant mention in explanation (A) would be only in the cases where the Pr.CIT would be empowered to review the orders of the CIT. He submits that in this case, the appellant is not falling under Section 140 of the Act.

We have considered the submissions.

It would be apposite to quote Section 263 (1) of the Act along with explanations 1 and 2 for ready reference.

> *"263(1) The Principal Chief Commissioner or Chief Commissioners or Principal Commissioner or Commissioners may call for and examine the record of any proceedings under this Act, and if he considers that any oder 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 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,*
> *(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 144 A;*
> *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 authorized 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 Commisisoner or Principal Commissioner or Commissioner*
> *c) where any order referred to in this sub-section and passed by the Assessing Officer or the Transfer Pricing Officer as the case may be, had been the subject matter or any appeal filed on or before or after 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 to 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".*

Having noticed above, this Court finds that the explanation does not supersede or exclude the main provision of Section 263 (1), it only explains circumstances wherein orders passed in specific matters relating to various sections provided therein, can also be looked into. It is an inclusive clause and is not exclusive one. Thus, the word "any proceedings under this Act as provided under Section 263(1)" will apply to all the proceedings which may be passed under the Act, which would include orders passed under Section 271(D) as well as under Section 271 (E) by the Joint Commissioner of Income Tax.

We, therefore, hold that the powers exercised by the Pr. Commissioner Income Tax, do not warrant any interference. The aforesaid appeals filed by the appellant, were rightly rejected and no case for interference is made out. Accordingly both the aforesaid appeals are dismissed.

(SANJEEV PRAKASH SHARMA)
JUDGE

18.03.2024 **(SUDEEPTI SHARMA)**
sd **JUDGE**

Whether speaking/reasoned: Yes/No.
Whether reportable: Yes/No.