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T.C.A.No.112 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2025

CORAM

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

T.C.A.No.112 of 2016

Commissioner of Income Tax,
Central I, 108, Nungambakkam High Road,
Chennai 600 034.

.. Appellant

-VS-

M/s.Vellore Institute of Technology,
54, Thennamaram Street,
Vellore 632 001.

.. Respondent

Prayer: Appeal filed under Section 260A of the Income Tax Act, 1961, against the order dated 17.04.2015 passed in I.T.A.No.1441/Mds/2014 on the file of Income Tax Appellate Tribunal, 'C' Bench, Chennai, for the Assessment Year 2009-10.

For Appellant : Ms.V.Pushpa

For Respondent : Mr.Suhrith Parthasarathy

* * * * *



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JUDGMENT

WEB COPY(Judgment of the Court was delivered by the Hon'ble Chief Justice)

During the course of hearing, one of us (Sunder Mohan,J.) stated that he had attended a function in the year 2024 in a college run by assessee. Learned Standing Counsel for appellant and counsel for assessee expressed their no objection for this Bench hearing the appeal.

This appeal by the Revenue impugns an order by the Income Tax Appellate Tribunal dated 17.04.2015 for Assessment Year 2009-10. On 16.02.2016, the following questions of law were framed:

- i. *Whether on facts and circumstances of the case and in law, the Appellate Tribunal is correct in holding that the Commissioner of Income Tax exercised his jurisdiction in any arbitrary manner and lacks jurisdiction in passing order under Section 263 of the Income Tax Act, 1961?*
- ii. *Whether on the facts and in the circumstances of the case and in law, is it correct on the part of the Appellate Tribunal to hold that it is unnecessary to place all the details in the assessment records by the Assessing Officer?*
- iii. *Whether on the facts and in the circumstances of the case and in law, is it correct on the part of the Appellate Tribunal to hold that the consideration of the Commissioner of Income Tax as to an order is erroneous in so far as it is prejudicial to the interest of the Revenue must be based on the materials on the record of proceedings called for by him? "*



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2. The assessee is an educational institution and had filed the return of income for Assessment Year 2009-10, on 08.02.2011 admitting 'nil' income. The return was selected for scrutiny assessment and a regular assessment order under Section 143(3) of the Income Tax Act, 1961, (in short, 'the Act') was made on 14.12.2011 accepting the exemption under Sections 11 and 12 of the Act.

3. Admittedly, before the assessment order was made under Section 143(3) of the Act, the Assessing Officer had issued a questionnaire under Section 142(1) with 34 questions on various issues. The assessee replied to the questionnaire and submitted documents and thereafter, the assessment order came to be passed.

4. Thereafter, appellant issued a notice dated 07.03.2014 under Section 263 of the Act. For ease of reference, the notice is reproduced below:

" On perusal of your assessment records for the Asst.



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year 2009-10, it is seen that the assessment has been completed u/s 143(3) on 14.12.2011 allowing exemption u/s 11 and 12 of the I.T.Act as claimed. However, on verification of your P&L. A/c, it is noted that your institution is in receipt of the following income.

1. Special fees - Rs.10.72 Crore
2. Bus pass collection - Rs.1.63 Crore
3. Hostel establishment charges - Rs.16.55 Crore
4. Hotel admission fees - Rs.1.90 Crore
5. Mess maintenance - Rs.1.93 Crore
6. Electricity Charges Collection - Rs.5.71 Crore
7. Water charges collected - Rs.0.48
8. Miscellaneous receipt - Rs.0.450 Crore

2. The above receipts indicate that they are business receipts and the receipt of the income such as about do not qualify the trust for being treated as a charitable one and do not conform to the objects of the trust. Exemption u/s 11 has been allowed by the AO without making verification regarding the entitlement of the trust to the exemption with reference to the above issue.

3. In view of the above the assessment order passed by the Assessing Officer u/s.143(3) dated 14.12.2011 is prima facie erroneous and prejudicial to the interest of revenue. Your are therefore requested to show cause as to why provisions of Section 263 should not be invoked to verify the allowability of income as exempt u/s 11 of the Act. Your compliance to this show cause notice shall be made either in person or through an authorized representative or by way of a written reply on or before 14.03.2014 at 11.30 A.M. failing which it will be presumed that you have no objection for the proposed revision."



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5. The assessee challenged this notice by filing an appeal before the Income Tax Appellate Tribunal. The appeal was allowed vide the impugned order and the notice was set aside. It is against that order the present appeal is preferred by the Revenue.

6. In the meanwhile, appellant passed an order dated 28.03.2014 under Section 263 of the Act directing the Assessing Officer to examine the nature, mode and method of collecting donations, etc. In effect, the Assessing Officer was directed to re-assess the income tax return filed for the Assessment Year 2009-10. The Assessing Officer passed a fresh assessment order dated 30.03.2015 giving effect to the order under Section 263 of the Act. The appeal before the Commissioner of Income-tax (Appeals) [in short 'the CIT(A)'] was rendered infructuous by virtue of the order impugned in this appeal.

7. Ms.Pushpa states that the order of CIT (A) was challenged before the Income Tax Appellate Tribunal, which confirmed the order of CIT(A) and a separate appeal being Tax Case Appeal No.456 of 2018 was filed in this Court and the same is pending. Ms.Pushpa, in fairness, agreed that if



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this Court is against the Revenue in this present appeal, the other appeal would be rendered infructuous.

8. Section 263 of the Act reads 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



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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 92or 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,



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*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."

Under the said provision, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record of any proceedings under the Act and if he considers that any order passed therein by the Assessing Officer is

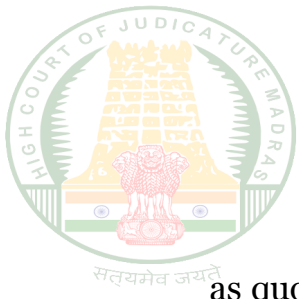


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erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify. The Commissioner may order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment. In this case, the Commissioner has cancelled the assessment order and directed a fresh assessment. Therefore, even if there is no pre-condition for calling for any record of any proceedings under this Act, before he even issues a notice, he should have come to a finding that the assessment order passed was erroneous and it was prejudicial to the interests of the Revenue. We say this because he has to give an opportunity to the assessee of being heard. If the assessee has to be heard, the assessee should be told on what he has to answer. But, if he has to be told on what he has to answer, the Commissioner should have formed a *prima facie* opinion at least that the assessment order was erroneous and it was prejudicial to the interests of the Revenue.

9. Now let us consider the notice dated 07.03.2014 that was issued,

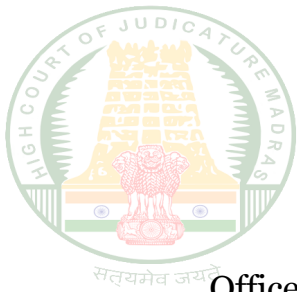


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as quoted above. It only says that “the above receipts indicate that they are business receipts and the receipt of the income such as above do not qualify the trust for being treated as a charitable one and do not conform to the objects of the trust.” Why so, there is no discussion on this? The officer, thereafter, says that exemption under section 11 has been allowed by the Assessing Officer without making verification regarding the entitlement of the trust to the exemption with reference to the above issue. Why so, it is not discussed? Why does he feel that the Assessing Officer has not made a verification, there is no discussion. The whole thing appears to be a mere conjecture and a fishing enquiry by appellant.

10. It is true that the assessment order dated 14.12.2011 does not discuss the queries raised or the answers given thereto. But the fact is, the Assessing Officer had issued a questionnaire dated 26.07.2011 under Section 142 (1) of the Act raising 34 questions on various issues and assessee had given an explanation and also submitted materials. In our view, once a notice is issued and assessee is called upon to show cause or give explanation or submit documents and assessee has complied, not giving a finding or discussing the same would mean that the Assessing



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Officer was satisfied with the explanation given by the assessee.

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11. In *Aroni Commercial Limited vs. Deputy Commissioner of Income-Tax-2(1) and Another*, a Division Bench of the Bombay High Court, while dealing with the provisions of Section 148 of the Act, held that once a query is raised during the assessment proceedings and assessee has replied to it, it follows that the query was subject matter of consideration of the Assessing Officer while completing the assessment and the same is deemed to have been accepted. The Court also held that it is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of each and every query raised. Therefore, as there is no discussion or finding on the 34 questions raised under Section 142(1) of the Act, vide the communication dated 26.07.2011, the Assessing Officer should be taken as having accepted assessee's explanation. Paragraph 14 of *Aroni Commercial Limited* (supra) reads as under:



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" 14) We find that during the assessment proceedings the petitioner had by a letter dated 9 July 2010 pointed out that they were engaged in the business of financing trading and investment in shares and securities. Further, by a letter dated 8 September 2010 during the course of assessment proceedings on a specific query made by the Assessing Officer, the petitioner has disclosed in detail as to why its profit on sale of investments should not be taxed as business profits but charged to tax under the head capital gain. In support of its contention the petitioner had also relied upon CBDT Circular No.4/2007 dated 15 June 2007. (The reasons for reopening furnished by the Assessing Officer also places reliance upon CBDT Circular dated 15 June 2007). It would therefore, be noticed that the very ground on which the notice dated 28 March 2013 seeks to reopen the assessment for assessment year 2008-09 was considered by the Assessing Officer while originally passing assessment order dated 12 October 2010. This by itself demonstrates the fact that notice dated 28 March 2013 under [Section 148](#) of the Act seeking to reopen assessment for A.Y. 2008-09 is based on mere change of opinion. However, according to Mr. Chhotaray, learned Counsel for the revenue the aforesaid issue now raised has not been considered earlier as the same is not referred to in the assessment order dated 12 October 2010 passed for A.Y. 2008-09. We are of the view that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. If an Assessing Officer has to record the consideration bestowed by him on all issues raised by him during the assessment proceeding even where he is satisfied then it would be impossible for the Assessing Officer to complete all the assessments which are required to be scrutinized by him under [Section 143\(3\)](#) of the Act. Moreover, one must not forget that the manner in which an assessment



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order is to be drafted is the sole domain of the Assessing Officer and it is not open to an assessee to insist that the assessment order must record all the questions raised and the satisfaction in respect thereof of the Assessing Officer. The only requirement is that the Assessing Officer ought to have considered the objection now raised in the grounds for issuing notice under Section 148 of the Act, during the original assessment proceedings. There can be no doubt in the present facts as evidenced by a letter dated 8 September 2012 the very issue of taxability of sale of shares under the head capital gain or the head profits and gains from business was a subject matter of consideration by the Assessing Officer during the original assessment proceedings leading to an order dated 12 October 2010. It would therefore, follow that the reopening of the assessment by impugned notice dated 28 March 2013 is merely on the basis of change of opinion of the Assessing Officer from that held earlier during the course of assessment proceeding leading to the order dated 12 October 2010. This change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment.

(emphasis supplied)

12. Therefore, we agree with the Tribunal that the Commissioner has exercised his power under Section 263 of the Act in an arbitrary manner and hence, the impugned order requires to be quashed. The substantial questions of law framed are answered accordingly.

The Tax Case Appeal is dismissed. There shall be no order as to costs.



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(K.R.SHRIRAM, C.J.)

(SUNDER MOHAN, J.)

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Index : Yes

Neutral Citation : Yes

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The Hon'ble Chief Justice
and
Sunder Mohan, J.

(sra)

To

1. The Income Tax Appellate Tribunal,
'C' Bench, Chennai.
2. The Commissioner of Income Tax,
Central I, 108, Nungambakkam High Road,
Chennai 600 034.

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