R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 1127 OF 2016
WITH
INCOME TAX APPEAL NO. 1276 OF 2016

Pr. Commissioner of Income Tax -8 .. Appellant

Versus

M/s. Royal Western India Turf Club Ltd .. Respondent

....

- Mr. Suresh Kumar for the Appellant
- Mr. Salil Kapoor a/w Mr. Sumit Lalchandani i/by Jitendra Singh for the Respondent

....

CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.

DATE : JANUARY 29, 2019.

P.C.:

1. These appeals arise out of common background. We may refer facts from Income Tax Appeal No. 1127 of 2016.

2. This appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short) dated 22.7.2015. Following questions are presented for our consideration:-

"(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in holding that the addition towards entrance fees and annual subscription made by the Assessing Officer in the proceedings under Section 143(3) read with Section 263 is beyond the jurisdiction of the Assessing Officer ignoring the facts that the Commissioner of Income Tax has set side the assessment order with a direction to decide the case afresh?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in not adjudicating on the merits of the case of entrance fee treated as revenue receipt by the Assessing Officer?

(iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in not adjudicating on the merits of the case of subscription fee treated as revenue receipt by the Assessing Officer and duly confirmed by the Commissioner of Income Tax (Appeals)?

3. The chronology of the events needs to be recorded at the outset.

(a). For the assessment year 2006-07, the respondent assessee had filed return of income claiming loss of Rs. 2.71 crore (rounded off). The Assessing Officer passed the order of assessment on 29.12.2018 assessing total income / loss as NIL. In such order, the Assessing Officer had not initiated penalty proceedings under Section 271(1)(c) of the Income Tax Act, 1961 ("the Act" for short) though he had downgraded the loss declared by the assessee. The Commissioner of Income Tax, therefore, took the subject order in suo motu revision under Section 263 of the Act. After giving an opportunity of hearing to the assessee, he passed revisional order on 17.3.2011. In such order, besides finding fault with the Assessing Officer not initiating penalty proceedings, the Commissioner was also of the opinion that the Assessing Officer had not examined the details of the expenses of Rs. 44.78 crore and further that he had not verified the correctness of the following receipts :-

a)	Rent receipts	..	Rs. 52,87,646/-
b)	Interest receipts	..	Rs. 52,87,646/-
c)	Receipts as contractors	..	Rs. 15,96,543/-
d)	Cash deposit	..	Rs. 72,60,000/-
e)	Mutual Fund Investment	..	Rs.1,45,00,000/-

He also commented that the Assessing Officer had not verified the correctness of the claim for set off of long term capital loss against short term capital gain. In the result, he passed the following order:-

> "5. It is seen that the assessee had not made any compliance before the Assessing Officer. Before me however, certain

details were filed. After considering the submissions of the assessee, details filed and examining the assessment records, it is seen that there was no compliance to any of the notices issued by the Assessing Officer from time to time. Penalty u/S. 271(1)(b) is therefore leviable and the Assessing Officer should have initiated the same. Also, total income was assessed at Rs. Nil against loss of Rs. 2,71,93,000/- claimed by the assessee, and as discussed above, the income was simply determined at Nil without bringing any facts on record and without making any outdoor enquiries in the absence of compliance from the assessee. This cannot be said to be a best judgment assessment.

6. Even on the disallowances of expenses, no penalty u/S. 271(1)(c) has been initiated as required by Explanation 1 to Section 271(1)(c). No penalty u/S. 271(1)(c) was initiated for non compliance of the notice.

7. In view of the foregoing, the assessment order passed by the Assessing Officer dated 29.12.2008 is considered to be erroneous and prejudicial to the interest of revenue. The assessment order is, therefore, set aside with a direction to the Assessing Officer to make a fresh assessment after making proper enquiries and verification and to initiate penalty u/S. 271(1)(b) and 271(1)(c), for the assessment year under consideration on merits of the case. The Assessing Officer shall provide adequate opportunity to the assessee before passing a fresh assessment order."

(b). The assessee carried the matter in appeal before the Tribunal and argued that the revisional order passed by the Commissioner was without jurisdiction. The Tribunal rejected such a contention by its judgment dated 22.7.2015 and thus upheld the validity of the revisional order.

(c). The Assessing Officer passed order under Section 143(3) read with Section 263 of the Act pursuant to the revisional order passed by the Commissioner. In such order, the Assessing Officer examined the nature of entrance fees received by the assessee. He rejected the assessee's contention that the amount of Rs. 2.02 crore received by way of entrance fee was a capital receipt and therefore, not taxable.

(d) The assessee had filed appeal against the original order of assessment. He also filed appeal against the order passed by the Assessing Officer pursuant to the revisional order passed by the Commissioner. Both these appeals were consolidated by the Commissioner and disposed of by common order. On the question of entrance fees, he held in favour of the assessee and deleted the addition holding that the receipt was capital in nature. Though, this question did not arise out of the original order of assessment in relation to the assessee's appeal, against such order also, the Commissioner commented that the receipt should be treated as capital. This common order of the Commissioner gave rise to two appeals before the Tribunal. The Tribunal by the said judgment dated 22.7.2015 dismissed the Revenue's appeal.

4. The questions suggested by the Revenue arise out of these proceedings. With respect to the first question, the Tribunal held that the Commissioner's revisional order required the Assessing Officer to examine certain aspects arising out of the return. He could not have travelled beyond such assessment and therefore, his action of making addition of Rs. 2.02 crore towards the entrance fee receipts was beyond the scope of revisional order.

5. Having heard the learned counsel for the parties and having perused the documents on record, we are in agreement with the view of the Tribunal. The revisional order passed by the Commissioner has to be read as a whole. It is for this purpose that we have reproduced relevant portion thereof. This order would suggest that the Commissioner found fault with the Assessing Officer on clear four specific aspects arising out of the order of the assessment and require that the Assessing Officer passes fresh order after making proper inquiries. The question of the treatment to the entrance fees was by then nowhere in picture. The Assessing Officer on his own examined said issue. The Commissioner, undoubtedly, has powers under Section 263 of the Act to annul the entire assessment and required passing of fresh assessment order. However, when the Commissioner, as in the present case, requires the Assessing Officer to carry out inquiries with respect to specified issues, the jurisdiction of the Assessing Officer to pass fresh order must be confined to such issues, failing which we would be giving the power to the Assessing Officer to make reassessment.

6. Gujarat High Court in similar background in the case of **CIT Vs. D.N. Dosani**[1] has observed as under:-

> " 12. The scheme of the Act has provided different powers to different authorities and these are required to be exercised after satisfying the pre-requisite conditions and jurisdictional facts. The assessing officer

1 [2006] 280 ITR 275 (Guj)

can disturb / re-open a finalized assessment by invoking his powers either under Section 154 or under Section 147 of the Act, provided he can show that the necessary requirements are fulfilled. If, what the Revenue contends today is accepted, these and other such provisions which empower different authorities to exercise jurisdiction at different point of time in distinct settings would be rendered otiose and that can never be the legislative intent. It is almost akin to providing separate keys for separate locked doors and the person wanting to open a particular door is required to apply the correct key which matches the concerned lock. Therefore, in proceedings, to give effect to order under Section 263 of the Act, the assessing officer cannot be permitted to undertake an exercise not warranted by the legislative scheme."

7. We may record that along the same line, the Assessing Officer had made disallowance to annual subscription fee which was also not part of the revisional order of the Commissioner. For the reasons recorded above, the said action of the Assessing Officer was not correct.

8. Question Nos. (ii) and (iii) would automatically fail the moment we have held the first question against the Revenue. In the result, the Income Tax Appeals are dismissed.

[M.S. SANKLECHA, J.] **[AKIL KURESHI, J]**