IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-301-2015 (O&M)

Date of Decision: 22.10.2018

M/s The Patiala Improvement Trust, Patiala

....Appellant.

Versus

Assistant Commissioner of Income Tax, Patiala and another

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AVNEESH JHINGAN.

PRESENT: Mr. Sanjay Ghalawat, Advocate for
Mr. Rohit Sud, Advocate for the appellant.

Mr. Denesh Goyal, Sr. Standing Counsel for the respondents.

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AJAY KUMAR MITTAL, J.

1. Delay of 37 days' in refiling the appeal is condoned.

2. This order shall dispose of two appeals bearing ITA Nos.301 and 351 of 2015 as according to learned counsel for the parties, similar issues are involved therein. For brevity, the facts are being extracted from ITA-301-2015.

3. ITA-301-2015 has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 31.10.2014 (Annexure A-6) passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A', Chandigarh (hereinafter referred to as “the Tribunal”) in ITA No. 1184/Chd/2013, for the assessment year 2008-09, claiming the following substantial questions of law:-

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i) Whether there could be two assessment orders for one assessment year at a given point of time?

ii) Whether the original assessment order could have been received by the Tribunal, once it was defaced on the date of passing of the reassessment order?

iii) Whether the impugned orders are sustainable in view of Hon'ble Supreme Court judgment in the case of [Income-Tax Officer And Anr. vs. K.L. Srihari (HUF), K.L. Narayana (1992) 197 ITR 694 KAR] and [Income-Tax Officer And Anr. vs. K.L. Srihari And Ors. (2001) 250 ITR 193 SC]?

iv) Whether the CIT(A) could pass two appellate orders for the same assessment year on the same date?

4. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed its return of income on 30.9.2008 declaring Nil income. The assessment was completed under Section 143(3) of the Act by the Assessing Officer vide order dated 8.12.2010 (Annexure A-1) by making an addition of ₹ 11,00,000/-. Feeling aggrieved by the said order, Annexure A-1, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT (A)"]. During the pendency of the said appeal, the assessment was reopened under Section 147 of the Act by the Assessing Officer. Vide re-assessment order dated 18.3.2013 (Annexure A-2), the Assessing Officer assessed the income of the assessee at ₹ 7,45,80,229/-. Against the said reassessment order, Annexure A-2, the assessee filed an appeal before the

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CIT(A). The CIT(A) vide orders dated 17.10.2013 (Annexures A-3 and A-4, respectively) dismissed the appeal challenging the reassessment order dated 18.3.2013 (Annexure A-2) thereby reviving the original assessment order and allowed the appeal filed against the order dated 8.12.2010 (Annexure A-1). Being aggrieved by the orders, Annexures A-3 and A-4, the assessee filed appeals before the Tribunal. The Tribunal vide order dated 9.7.2014 (Annexure A-5) allowed the appeal and annulled the reassessment proceedings as well as the reassessment order. Still dissatisfied, the assessee filed an appeal before the Tribunal against the setting aside of the reassessment proceedings and that of reviving the original assessment order. The Tribunal vide order dated 31.10.2014 (Annexure A-6), dismissed the appeal. Hence, the present appeals by the assessee.

5. After hearing learned counsel for the parties, we do not find any merit in the appeals.

6. The reassessment proceedings were initiated to assess the income which had escaped assessment during the original assessment proceedings. Ordinarily, whenever an reassessment order is made, in that eventuality the original assessment order would cease to exist. There can be only one assessment. Once a particular income had been assessed and subsequently, it was found that certain income had escaped assessment, the Assessing Officer is empowered to issue notice under Section 148 of the Act and bring the escaped income or other income to tax which had been found taxable during such reassessment proceedings. It is clarified that in the reassessment proceedings, the income which had already been determined or assessed to tax is also added to the escaped income. If the

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reassessment proceedings were held to be invalid by the Tribunal or a Court of Law, in that situation, it cannot be held that the original assessment stands obliterated. In other words, if the initiation of reassessment proceedings is held to be invalid, the assessee would revert back to the situation where he originally stood, i.e. the original assessment order would revive. The doctrine of merger would have no application in the present case as the subsequent order was held to be unsustainable in law. The said doctrine would apply only in a situation where the subsequent reassessment order has been held to be valid in law.

7. The Tribunal had rightly held that where the reassessment order was annulled, the original assessment order would automatically get restored. The relevant observations of the Tribunal read thus:-

> "18. Above issue can also be examined from another angle by referring to the doctrine of merger. Normally doctrine of merger states that when an order is passed by a higher authority then order passed by the lower authorities stands merged with the order of higher authorities but this is not universal principle for every situation. This becomes clear from the decision in case of **CIT v. Shri Arbuda Mills Ltd. 231 ITR 50.** In that case assessment was completed u/s 143(3) of the Act and net business loss was computed at ₹ 3,61,086/- and the income under the head "capital gain" was determined at ₹ 38,874/-. The ITO made certain disallowances and while computing the loss and income as above but had accepted the following three claims:-

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(i) deduction of a sum of ₹ 23,82,621/- by way of provisions for gratuity;

(ii) Depreciation on ₹ 4,21,000/- which was paid by the assessee to United Textile Industries as consideration for transfer of installed property of ₹ 17,480/- spindles and 400 looms of Old Manek Chowk Mills;

(iii) loss on account of difference in exchange rate which was referable of the purchase of machinery etc. as revenue expenditure."

The assessee filed an appeal in respect of item for which the additions were made. Later on an order u/s 263 was passed in respect of allowance of above three items. Therefore, the question arose before the Hon'ble Supreme Court whether these three items merged with the appellate order. The Hon'ble supreme Court observed as under:-

"We may refer to the amendment made in Section 263 of the IT Act by the Finance Act, 1989 with retrospective effect from June 1, 1988. The relevant part thereof for the present case is as under:

"Explanation – for the removal of doubts, it is hereby declared that, for the purposes of this sub-section-

(c) where any order referred to in this sub-

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section and passed by the Assessing officer had been the subject matter of any appeal filed on or before or after June 1, 1988 the powers of the 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."

The consequence of the said amendment made with retrospective effect is that the powers u/s 263 of the Commissioner shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in an appeal. Accordingly, even in respect of the aforesaid three items, the powers of the Commissioner u/s 263 shall extend and shall be deemed always to have extended to them because the same had not been considered and decided in the appeal filed by the assessee. This is sufficient to answer the question which has been referred."

Thus from above it becomes clear that doctrine of merger has limited application and would not lead to the conclusion that every item in one order would get merged in another order if the same is appealed or other order is passed in accordance with law. Therefore clearly whatever income is assessed u/s 143(3) will stand and

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would not get merged in the reassessment order passed u/s 147 if the latter reassessment order is annulled because of some reason. Same principle of doctrine of merger was laid down by the Hon'ble Supreme Court in case of **CIT v. Alagendran Finance Ltd. (supra)**.

19. If the contention of the assessee is accepted then it would lead to totally undesired wild results. For example if the assessee files return declaring income of ₹ 1 crore and an addition of ₹ 25 lakhs is made then the assessed income would be ₹ 1.25 crores u/s 143(3). Let us say later on an item of income is found to have escaped for ₹ 10 lakhs and notice is issued u/s 148 to bring such item of escaped income into tax and in reassessment order income assessed at ₹ 1.35 crores. Let us further say that such reassessment is found without jurisdiction later on in appeal proceedings because of non recording of reasons or the issue is time barred and such reassessment is annulled. Then if it is held that since reassessment order has effaced, the original order, then the result would be that the assessee would not be liable to pay the tax on admitted income of ₹ 1 crore as well as the addition made on ₹ 25 lakhs. This is totally against the scheme of the Act as well as principle laid in the case of CIT v. Shelly Products (supra). No doubt we agree to the extent that the assessee has right to challenge the addition of ₹ 25 lakhs. But if the interpretation made by

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the Ld. Counsel for the assessee is accepted, it would lead to undesired wild results which are totally against the scheme of Act and, therefore, same cannot be accepted.

20. Therefore, in view of above discussion, we hold that where reassessment order is annulled later on then original assessment order would automatically get restored. Accordingly, we dismiss grounds No.2 and 3 of assessee's appeals."

8. No illegality or perversity could be pointed out by learned counsel for the assessee in the findings recorded by the Tribunal. No question of law, much less, substantial question of law arise in these appeals. Accordingly, finding no merit in the appeals, the same are hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

October 22, 2018 **(AVNEESH JHINGAN)**
gbs **JUDGE**

Whether Speaking/Reasoned **Yes**

Whether Reportable **Yes**

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