

Court No. - 35

Case :- INCOME TAX APPEAL No. - 198 of 2009

Appellant :- The Commissioner Of Income Tax

Respondent :- M/S Alok Glass Works

Counsel for Appellant :- Piyush Agarwal

Counsel for Respondent :- Amit Mahajan, Krishan Agrawal

Hon'ble Bharati Sapru, J.

Hon'ble Vinod Kumar Misra, J.

Heard Sri Piyush Agrawal, learned Counsel for the department and Sri Amit Mahajan, learned Counsel for the assessee.

This is a department's appeal under Section 260A of the Income Tax Act, 1961 against an order of the Tribunal dated 12.09.2008 for the assessment year 2003-04. The questions of law sought to be answered are hereunder:-

"(1) Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in coming to the conclusion that the order of the A.O. was neither erroneous nor prejudicial to the interest of Revenue as such the CIT had no jurisdiction to exercise his power u/s 263 of the Act ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in setting aside the order u/s 263 holding that the assessment was not erroneous and prejudicial to the interest of revenue despite the fact that necessary enquiries as to the source of investment in building and plant and machinery, capital introduced, unsecured loans, existence of fixed assets were not made by the A.O. even though the Hon'ble Allahabad High Court in the case of Jagdish Kumar Gulati Vs. 269 ITR 71 has held the assessment completed without enquiries was erroneous as well as prejudicial to the interest of revenue ?

(3) Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that assessment order was not erroneous and prejudicial to the interest of revenue if the A.O. accepted the argument of the assessee that no valuation of building and plant and machinery was got done by registered valuer and the case was not referred to valuation cell even though the authorized officer u/s 133A had recommended reference to the valuation cell?

(4) Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that the capital introduced by the partners and unsecured loans were explained in the hands of the assessee firm even though no necessary enquiries as to the capacity of partners and lenders to advance sums were made ?

(5) Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that depreciation on assets was allowable though no enquiries as to the existence and user of assets were conducted by the A.O. during the assessment proceedings ?

(6) Whether after recording finding that the order of the Assessing Officer was justified in exercise of powers under Section 263 of the Income Tax Act, the Tribunal was justified in proceeding with the assessment by entering into the details of the assessee?"

The facts of the case are that the assessee firm carries on the business of manufacturing of glass and glass wares. It filed its original Return of Income (ROR) on 27.11.2003 declaring as income of Rs.6,40,000/-. The assessee firm also filed a revised Return of Income on 30.11.2004 declaring loss of Rs.15,25,510/-. A survey had been conducted in this case, u/s 133A, on 13.03.2003. The assessment was completed by Id. Assessing Officer by assessing loss at Rs.14,25,110/- on 06.12.2005.

The learned CIT was of the view that the Assessment Order in question was erroneous insofar as it was prejudicial to the interest of the Revenue. Therefore, a requisite notice u/s 263 dated 31.12.2007 was issued to the assessee firm after hearing it, the Id. CIT-II, Agra, revised above assessment order on 24.03.2008, by setting aside some findings of the Id. A.O. with a direction to redo them as directed. Against which the assessee firm was aggrieved and filed an appeal before the ITAT.

The ITAT has examined the every aspect of the matter and has set aside the order passed under Section 263 of the Act after recording categorically in paragraphs no.14 & 15 of its judgement that full and proper enquiries were made in the case of the assessee. The proper verifications have been made and also has noted that since it was a survey because a detailed questionnaire had been issued to the assessee seeking many details from the assessee.

The A.O. while examining the facts as provided by the assessee found them to be correct. One fact, which came to light was that there was a change in the constitution of the firm in the second period i.e. from 01.11.2002 to 31.03.2003 and upon examining them also the facts have been found to be correct in respect of the fixed assets.

The Tribunal further records that no defects were pointed out either by the A.O. or by the CIT while examining the books of account of the assessee. The Tribunal has, therefore, come to the conclusion that two essential ingredients of Section 263 of the Act are not attracted in the present case (A) no error has been found in the decision taken by the A.O. and (B) no prejudice to the revenue has been found in respect of the books of account of the assessee.

Insofar as the capital assets of the assessee are concerned, the details with regard to the capital assets and his partners have also been examined and no irregularity was found in that also.

In view of the findings of fact recorded by the Tribunal, we are of the view that the provisions of Section 263 of the Act are not attracted in the present case. The Tribunal has taken the correct view. The questions of law are, therefore, answered in favour of the assessee and against the department.

The appeal is dismissed as above. No costs.

Order Date :- 8.2.2017
S.P.

(Vinod Kumar Misra, J.) (Bharati Sapru, J.)