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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 26th November, 2014

\+ **ITA 511/2013**

COMMISSIONER OF INCOME TAX CIRCLE – II..Appellant
Through Ms. Suruchi Aggarwal, Sr. Standing Counsel.

versus

M/S ANKIT GARMENTS MANUFACTURING CO.
.... Respondent
Through Mr. Ved Jain and Mr. Pranjal Srivastava, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J. (ORAL)

The present appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (Act, for short) relates to assessment year 2008-09 and impugns the findings recorded by the Income Tax Appellate Tribunal (Tribunal, for short) in their order dated 26th March, 2013. Findings recorded in the said order are primarily factual and it has been observed that the assessee had submitted copies of accounts duly confirmed by all trade creditors and debtors, whose balances were in excess of Rs.1 lac at the closing date of the year under consideration. The Tribunal accordingly set aside and quashed the order under

Section 263 of the Act passed by the Commissioner of Income Tax.

2. The respondent-assessee is a partnership firm engaged in the business of readymade garments. Search and seizure proceedings were carried out under Section 132 of the Act on 16th October, 2007 in the case of Shri Dwarka Das Agarwal Group and search had also taken place in the business and residential premises of the respondent-assessee. Subsequently, a notice under Section 142(1) of the Act was issued and the respondent-assessee filed return on 2nd April, 2009, declaring the same income as was declared in its original return i.e. Rs.2,94,87,060/-.

3. The assessment records produced before us reveal that possibly no effective proceedings were held till 26th October, 2009. Order sheet for the said period is not available. Effectuate steps were taken for the first time by issue of notice dated 7th October, 2009, by the Assessing Officer under Section 142(1) of the Act, enclosing therewith a questionnaire going into nine closely typed pages asking for information on 24 questions/points. Some of the questions were also having sub questions. Voluminous data, confirmations and details were asked. One such direction was to furnish copies of accounts

duly confirmed by all trade debtors and creditors, whose balances at the end of the year, were in excess of Rs.1 lac. The turnover of the assessee as declared in the return of income for the year in question was Rs.16,01,30,230/-. The assessee attended the proceedings, filed replies and other details. Hearings were held on 23rd November, 2009, 11th December, 2009, 15th December, 2009 and 29th December, 2009. Order sheets for proceedings held on 26th October, 2009 and thereafter till 23rd November, 2009 are not on record. However, the assessment records are bulky and show that numerous papers, confirmations, particulars, explanations etc. were furnished. Confirmations submitted by the respondent-assessee are more than 100 in number. The debtors and creditors, it was stated, were located all over India and the assessee had written and asked them for confirmations to be submitted to the department.

4. As noticed above, the last hearing before the Assessing Officer was held on 29th December, 2009. On the said date, the assessee had furnished several confirmations and documents.

5. In assessment order passed on 31st December, 2009, two additions of Rs.11,94,982/- and Rs.3,64,696/-, on account of discrepancies, were made.

6. The Assessing Officer, it is claimed by the revenue, had

recorded the following office note:-

> ***"Office Note***
> 1. All the documents/materials seized/impound during the course of the search/survey operation conducted on 16.10.2007 in Dwarka Das Agarwal Group of cases have been examined and nothing adverse pertaining to this assessee in previous year under consideration; was noticed as a result thereof.
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> 2. Copy of accounts of the assessee existing in this Circle have been verified from their respective assessment records and of the assessees existing elsewhere are being sent to their respective AOs for necessary verification at their end.
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> 3. During the course of the assessment, the assessee was required to produce copies of accounts duly confirmed by the concerned parties in respect of fresh loans/deposits as also in respect of debtors and creditors whose balances were in excess of Rs. 1 lac. Since all of such confirmed copies of accounts have not been filed so far and since the assessment in this case is getting barred by time today, the assessment in this case is completed subject to the condition that the same shall be reopened in case any discrepancy is noticed subsequently in the aforesaid accounts."

7. The Commissioner of Income Tax issued notice under Section 263 of the Act on the ground that the assessment order was erroneous and prejudicial to the interest of the Revenue as the Assessing Officer had passed the assessment order despite noticing the fact that the assessee had not submitted confirmed copies of accounts in all cases (See paragraph 3 of the above office note).

8. Thereafter, the Commissioner of Income Tax, set aside the assessment for fresh assessment as per law after affording opportunity to the assessee and upon making proper inquires and verifications. The reasoning of the Commissioner of Income Tax in his order under Section 263 of the Act dated 27th March, 2012 reads:-

> "It was observed that assessment has been completed by the Assessing Officer without obtaining the complete reply to the questionnaire annexed to notice u/s 142(1) dated 07/10/2009. In the above questionnaire, the assessee was inter alia asked to furnish copy of account, duly confirmed, of the parties from whom loans/deposits were given or taken and also in respect of debtors and creditors having balance above Rs.1 Lakh. The above information was not fully furnished by the assessee inspite of specific request. Provisions of Section 68 of the Income Tax Act, 1961 clearly lays down that where any sum is found credited in the books of an assessee and the assessee offers no explanation about the nature and source thereof, or the explanation offered is unsatisfactory, the sum so credited will be added to the income of the assessee. Since, the assessee had failed to furnish the confirmed copy of accounts till the fag end of the proceedings, inspite of specific request made by the Assessing Officer in the questionnaire annexed to notice u/s 142(1), the provisions of section 68 were attracted."

9. The Commissioner of Income Tax had documented the stand of the assessee that they had furnished confirmations from all trade creditors and debtors having a balance of Rs.1 lac and above. In the impugned order, the Tribunal has accepted that

the assessee's contention that they had furnished confirmations of all the creditors and debtors having a balance of Rs.1 lac and above. The said finding was recorded by the tribunal after examining the assessment records, which were produced on directions before the Tribunal. In this factual background, it has been held that the Commissioner of Income Tax could not have exercised power under Section 263 of the Act. Thus the order of the Tribunal is that the Commissioner of Income Tax had proceeded on wrong facts and assumptions.

10. It is noticeable that in the grounds of appeal filed before us, names and details of a single creditor or debtor having a balance of Rs.1 lac or more from whom confirmation had not been furnished has not been indicated or stated. The order passed by the Commissioner of Income Tax under Section 263 also does not give names and details of any creditor or debtor who had not furnished or given confirmation. Thus, the finding of the Tribunal cannot be held to be perverse.

11. Learned senior standing counsel for the Revenue had submitted that confirmations were filed on the last day and, therefore, they were not verified. Thus, Commissioner of Income Tax was justified in holding that the assessment order was erroneous and prejudicial to the interest of the Revenue.

The said contention must fail for a number of reasons. Firstly, with regard to the confirmations already submitted, note No.2 of the office note is relevant. It records that copy of the accounts of the confirming parties had been verified from their respective assessment records with the said Assessing Officer. In respect of the confirming assessees assessed under another charge, details had been sent to the respective Assessing Officer for verification at their end. It is not the allegation of the Revenue that on verification any of the conformation given by the creditors or debtors was found to be wrong or incorrect. Secondly, this is not the ground or reason why the Commissioner of Income Tax had invoked his power under Section 263 of the Act and passed the said order. The power and order under the said section is predicated that confirmations from all debtors and creditors were not furnished. The order does not proceed or hold that the Assessing Officer had failed to carry out required verification of the confirmations furnished and, therefore, the assessment order was erroneous and prejudicial to the interest of the Revenue. By accepting the arguments of the Revenue, we would be creating a new case, which was not the basis of the notice and the order under Section 263 of the Act.

12. It is unfortunate that in the present case, the Assessing Officer waited till the end and took up the assessment proceedings only three months before the end of the limitation period. A detailed questionnaire was only issued in October, 2009 and the first effective hearing was fixed on 26th October, 2009. Surprisingly, even the order sheets between 26th October, 2009 till 23rd November, 2009 are not on record and have not been shown. A reading of the questionnaire going into 9 pages would indicate that enormous and magnitudes of details/information were asked for. This would have required time for compilation, affirmation and clarification. The queries were answered by several letters on record. For confirmations, the assessee had to write letters to the creditors and debtors all over the India and wait for their response. The Tribunal has noted that the assessee had submitted bill, invoices, vouchers etc. to the Assessing Officer.

13. Normally, scrutiny assessment order under Section 143(3) of the Act should be presumed and hypothesised as made after due verification and ascertainment of facts. Principle of finality has sound and salutatory basis, but can be disturbed as per the statute and within confines of the provision applicable. Therefore, it has to be ensured administratively that

the Assessing Officer act and proceed promptly, keeping in mind the limitation period and also the factum that the assessee may require time to furnish details, confirmations etc.

14. In view of the finding of the Tribunal that the assessee had furnished confirmations from all debtors and creditors, with balances in excess of Rs.1 lac; a finding of fact that we do not see any reason to disturb, the present appeal by the Revenue has to be dismissed. We order accordingly. In the facts of the present case, there will be no order as to costs.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

NOVEMBER 26, 2014
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