

HIGH COURT OF MADHYA PRADESH, JABALPUR

M.A.I.T. Appeal No.81/2004

Commissioner of Income Tax-II.....Appellant

Versus

Shri Ramesh Singh.....Respondent

For the appellant : Shri Sanjay Lal, Advocate.

For the respondent: Shri G. N. Purohit, Senior Advocate, with
Shri Abhishek Oswal, Advocate.

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Present : HONOURABLE SHRI JUSTICE AJIT SINGH
HONOURABLE SHRI JUSTICE R. S. JHA
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ORDER
(24.4.2012)

The following order of the Court was delivered by :

Ajit Singh, J. This appeal against the order dated 16.3.2004 passed in ITA No.30/JAB/2002 by the Income Tax Appellate Tribunal, Jabalpur Bench (in short "the Tribunal") has been admitted on the following substantial questions of law :

1. Whether on the facts and in the circumstances of the case, the learned Tribunal was right in law in holding that the CIT was not justified in holding that the addition of Rs.25,000/- to the trading results in the opinion of assessing officer just and proper and merely because the C.I.T. feels that the additions is not adequate he cannot seek to invoke his powers under Section 263 of the Act?
2. Whether on the facts and in the circumstances of the case the learned CIT was not justified in holding that the credits did not relate to or was not availed in the previous years but was an old balance of earlier years, no enquiry could have been validly undertaken by the assessing officer regarding these credits, the CIT was not justified in invoking his powers under Section 263 of the Act on this ground?

3. Whether on the facts and in the circumstances of the case the learned Tribunal was right in law in quashing the order of CIT under Section 263 of the Act without giving any finding on the issue of valuation of closing stock of stores/spare parts?

2. The facts in brief are these. The respondent assessee is an individual. He is an authorized dealer of car manufacturer. The name and style of his proprietary business is M/s Star Line Automobiles. He is also a partner in the partnership firm named as M/s Star Automobiles. For the assessment year 1997-1998 he filed his return of income declaring total income of Rs.13,02,090/- along with audit certificate under section 44AB of the Income Tax Act (in short "the Act"). The Assessing Officer (in short, "AO") selected the case of respondent for scrutiny and issued notice under section 143(2) to him. In response to the notice, respondent explained the facts of the case to the AO through his counsel and accountant. The books of accounts produced by the respondent were examined by test check and during the course of proceedings he filed written reply along with other details. The AO in his assessment order dated 1.10.1999 observed that the expenses debited in the profit and loss account were on the higher side compared to last year. He also under facts and circumstances of the case and for want of evidence and vouchers added lump sum of Rs.25,000/- to the total income to cover up possible leakages. The AO thus computed the total income of respondent at Rs.13,27,090/-.

3. The Commissioner of Income Tax – II, Jabalpur (in short, "CIT"), however, in exercise of his powers under section 263 of the Act called for the record to examine the same as well as the order dated 1.10.1999 passed by the AO. He then issued a show cause notice to the respondent.

4. The respondent responded to the show cause notice by submitting a detailed reply. But the CIT did not agree with the

same and held that there were no details before the AO as to whether the respondent was an authorized dealer of Hindustan Motors in the matter of selling cars or whether the sales were done in any other capacity and also whether the respondent was dealing in sales of cars produced by other manufacturers. The CIT observed that the terms and conditions between the manufacturers of cars and the respondent were not furnished which was a very vital information necessary to ascertain the correctness of the profit earned by the respondent. He also observed that while authorized dealer carries out free services, free replacement and free repair within the warranty period, the manufacturer reimburses all these cost to the dealer and likewise the manufacturer generally pay all the expenses that are incurred in transporting vehicles from the place of manufacture to the sales-offices of the dealer. According to the CIT valuation of closing stock of stores and spare parts and tax paid goods were based on respondent's estimate after applying a pre-determined gross profit at his whims and fancies and that the account of expenses claimed at Satna and Jabalpur offices ought to have scrutinized by the AO especially the labour charges incurred in respect of these two establishments. The CIT has even referred to some excessive expenses which the respondent claimed to have incurred at Satna office when there was no business transaction there. As regard to unsecured loan of Rs.6,70,000/- appearing in the balance sheet of respondent, the CIT held that though the same did not relate to previous year but was a old balance, the AO should have examined the genuineness of these credits and if it was not found to be genuine then the question of making addition in the year in which it was availed should have been considered by the AO. The CIT, therefore, held that the AO should have conducted an enquiry. For these reasons, the CIT set aside the assessment order dated 1.10.1999 and remanded the matter to the AO to make a fresh assessment after holding detailed enquiry/investigation.

5. Aggrieved, the respondent filed an appeal before the Tribunal and argued that the CIT committed an illegality by setting aside the assessment order in exercise of his powers under section 263 of the Act particularly when the order was neither erroneous nor prejudicial to the interest of the revenue.

6. The Tribunal, relying upon the Division Bench decision of the Bombay High Court in *Commissioner of Income Tax Vs. Gabriel India Limited* (1993) 203 ITR 108 (Bombay) regarding the revisional jurisdiction of CIT under section 263 of the Act and also after examining the materials placed on record by a detailed order dated 16.3.2004 has held that interference in the present case with the assessment order was not justified.

7. Later, a Division Bench of this High Court also in *Commissioner of Income Tax Vs. M/s Associated Food Products Pvt. Limited, Jabalpur*, decided on 21.11.2005 followed the above decision of the Bombay High Court and held that it is clear as crystal that before exercise of powers under section 263 of the Act two requisites are imperative to be present. In the absence of such foundation exercise of a *suo motu* power is impermissible. It should not be presumed that initiation of power under *suo motu* revision is merely an administrative act. It is an act of a quasi judicial authority and based on formation of an opinion with regard to existence of adequate material to satisfy that the decision taken by the Assessing Officer is erroneous as well as prejudicial to the interest of the Revenue. The concept of 'prejudicial to the interest of revenue' has to be correctly and soundly understood. It precisely means an order which has not been passed in consonance with the principles of law and which has in ultimate eventuate affected realization of lawful revenue. These two basic ingredients have to be satisfied as *sine qua non* for exercise of such power.

8. In the light of the settled legal position with regard to the powers of CIT under section 263 of the Act we shall now examine whether, in the present fact situation of the case, the Tribunal rightly interfered with the order dated 13.12.2001 passed by the CIT. The Tribunal has noted that complaint of CIT in the show cause notice was that the trading result compared to the past was not better for the assessment year 1997-98; the expenditure claimed under the various heads lacked details; the closing stock was not valued properly; the expenses at Satna Head Office were claimed without there being any business; genuineness of credits appearing in the balance sheet had not been examined by the AO and payment to specified persons under section 40A(2)(b) had not been examined by the AO but in the order CIT took up certain issues like manufacturer must be bearing all costs of pre-delivery expenses; about free servicing and free replacement of parts and the respondent, as authorized dealer, could not have claimed those expenses, and these issues were not mentioned in the show cause notice. The Tribunal has also taken note that in the order CIT has observed that the AO did not ask for any information voluntarily and considered the information furnished by the respondent mechanically in the assessment proceedings. In this regard the Tribunal has held that the AO, in fact, had applied his mind to the various items of expenditure claimed by the respondent in his profit and loss account and, therefore, the AO found the expenses claimed were excessive and he accordingly added lump sum of Rs.25,000/- to the total income to cover up possible leakages. The Tribunal has also held that the AO in his order has clearly observed that he had scrutinized the books of accounts of the respondent on a test check basis and this observation by him cannot be brushed aside. According to the CIT, the enquiries made by the AO were not adequate. But this was not a case where the enquiry had been conducted. The Tribunal has, therefore, rightly held that CIT cannot be allowed to substitute his judgment with that of the AO and the order of AO was not erroneous warranting

interference under section 263 of the Act. Apart from this, we also find that CIT has nowhere held as to how the order of AO for lack of enquiry was prejudicial to the interest of revenue.

9. We are in complete agreement with the finding of the Tribunal that since the credits appearing in the balance sheet of respondent did not relate to or were not availed in the previous year but was old balance of earlier years, no enquiry could have been validly undertaken by the AO regarding these credits. Further, with regard to the question of disallowance to be made under section 40A(2)(b) the Tribunal has held that CIT has not given any definite finding of error on this point in the order of AO and for this reason the order of AO also could not have been set aside under section 263 of the Act. We find no good ground to disagree with these finding of the Tribunal as there is no finding of the CIT on this point.

10. We, therefore, answer the questions against the appellant, which are even otherwise essentially questions of fact and not substantial questions of law.

11. The appeal has no merit. It is accordingly dismissed but without any order as to costs.

(AJIT SINGH)
JUDGE

(R. S. JHA)
JUDGE

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