

Court No. - 35**Case :-** INCOME TAX APPEAL No. - 259 of 2013**Appellant :-** Commissioner Of Income Tax**Respondent :-** M/S Green Land Motors**Counsel for Appellant :-** S.S.C. I.T., Shubham Agrawal**Counsel for Respondent :-** Ashish Bansal, S.K. Garg, Satish Madhyan**Hon'ble Bharati Sapru, J.****Hon'ble Dinesh Kumar Singh, J.**

1. Vide order dated 20th September, 2013 the present appeal was admitted on the ground that two substantial questions of law, as mentioned herein below, framed in the memo of appeal, arise for consideration:-

"1. Whether the Income Tax Appellate Tribunal is justified in law and on facts of this case in holding that the CIT was not vested with the power of revision u/s 263 of the Act?

2. Whether the Income Tax Appellate Tribunal was justified in law and on facts in deleting the addition of Rs.2,83,277/-, Rs.1,70,00,000/-, Rs.50,579/- and Rs.1,09,00,000/- made by the CIT?"

2. The Commissioner, Income Tax, Allahabad (hereinafter referred to as 'C.I.T.') issued a show-cause notice under Section 263 of Income Tax Act, 1961 (hereinafter referred to as 'Act') to the assessee on 09.08.2012 on the ground that the assessment order passed by the Assessing Officer (hereinafter referred to as 'A.O.') under Section 143(3) of the Act on 03.05.2011 was prejudicial to the interest of Revenue. The show-cause-notice mentioned that assessment order dated 03.05.2011 was erroneous and prejudicial to the interest of Revenue inter alia, for the reasons (i) Capital account of partner reflected that Shri Anil Khetrapal introduced

Rs.83,00,000/- as capital through cheques on various dates. However, the cheques were never encashed, but the capital account had been inflated by the cheque amount and money withdrawn Rs.55,00,000/- for amount deposited last year through cheque, in similar manner assessee had passed a reverse entry amounting to Rs.55,00,000/-. Further in the case of partner, Sri Sunil Khetrapal Rs.87,00,000/- had been introduced as capital through cheques on various dates. However, the cheques were never encashed, but the balance in the capital account had been inflated by the cheque amount and reverse entry had been passed for Rs.74,69,000/- for amount deposited last year. The nature of these transactions were not very clear and, therefore, the assessee was asked to explain why the capital introduction not explained be not treated as unexplained cash credit to the extent of Rs.83,00,000/- + Rs.87,00,000/-, total Rs. 1,70,00,000/- for the Assessment Year (hereafter referred to as 'A.Y.') under consideration and; (ii) As per the tax audit report and loan confirmation letters the assessee had accepted Rs.66,34,000/- from Benu Khetrapal and Rs.99,26,000/- from Shabnam Khetrapal for the A.Y. 2009-2010. Ledger account of Shabnam Khetrapal in the account books of the assessee on the other hand inter alia, reflected a credit of Rs.59,00,000/- on 31.03.2009 by way of a cheque (cheque number was not mentioned) which was stated to be not encashed and subsequently claimed to have been returned after one year on 31.03.2010. Similarly ledger account of Benu Khetrapal in the account books of the assessee had reflected a credit of

Rs.50,00,000/- on 31.03.2009 by way of cheque (cheque number was not mentioned) which was stated to be not encashed and subsequently claimed to have been returned after one year on 31.03.2010. It was said that these transactions were not properly explained by the assessee as it was not clear as to when the assessee had further received deposits of Rs.1,05,00,000/- in case of Shabnam Khetrapal and Rs.70,00,000/- from Benu Khetrapal on various dates between 01.04.2009 to 31.03.2010 (A.Y. 2010-2011) and why this amount should not be treated as unexplained cash credit.

3. The C.I.T. passed the order under Section 263 of the Act on 03.05.2011 and added sum of Rs.83,00,000/- + 87,00,000/-, total Rs.1,70,00,000/- as unexplained cash credit under Section 68 of the Act for the A.Y. under consideration. As regards capital accounts of partners Shri Anil Khetrapal and Shri Sunil Khetrapal the Commissioner also added credit of balance amount, namely, Rs.59,00,000/- from Shabnam Khetrapal and Rs. 50,00,000/- from Benu Khetrapal on the ground that the source of amount of Rs.1,09,00,000/- credited by the assessee in its books of account remained unexplained for which the assessee could not put forward any plausible explanation.

4. The income of the assessee was assessed to be Rs.2,87,53,420/- and the A.O. was directed to issue demand notice and challan for the total revised assessed income after giving effect to the order passed by the C.I.T. and after

computing interest payable by the assessee as per the provisions of the Act.

5. Aggrieved by the aforesaid order passed by the C.I.T. under Section 263 of the Act, the assessee filed an appeal before the Income Tax Appellate Tribunal, Allahabad Bench, Allahabad (hereinafter referred to as 'Tribunal'). The Tribunal in its judgment, under challenge in this appeal, held that the power of suo motu revision by the Commissioner exists under Section 263 of the Act only if on examination of records of any proceeding under the Act, he comes to the conclusion that any order passed therein by the Income Tax Officer is erroneous in so far as it is prejudicial to the interest of Revenue. However, this power is not an arbitrary and uncharted power and it can be exercised on fulfillment of requirements laid down under sub-Section (1) of Section 263 of the Act. Whether an order passed by the A.O. concerned is erroneous and prejudicial to the interest of Revenue can be decided only on materials available on record of the proceedings. The Tribunal held that the A.O. in its assessment order has categorically decided the points raised for selection of scrutiny. Other points were also raised and written submissions/explanations were sought from time to time and requisite evidences/explanations were furnished by the assessee. Book of accounts were also produced before the A.O. which was examined and the case was discussed at length.

6. The Tribunal held that same ground/opinion than the

opinion of the Income Tax Officer would not entitle the Commissioner to exercise suo motu power under Section 263 of the Act. The Tribunal held that the assessee had duly explained the transactions regarding Rs.1,70,00,000/- on account of partner's capital account with facts and figures by referring to various pages of paper book. The partners gave cheque which was not realized at the year end and, therefore, the entries were reversed. The Tribunal held that there was nothing wrong in such accounting entries. The relevant accounting entries itself showed the explanation of transaction and, therefore, the C.I.T. was not correct in saying that the assessee had failed to explain the transaction.

7. In regard to addition of sum of Rs.1,09,00,000/- in respect of unsecured loan from Smt. Benu Khetrapal and Smt. Shabnam Khetrapal the assessee had explained the facts to A.O. that in anticipation of availability of resources to the lenders (family members of the partners of the firm) in individual capacity in future, the cheques were given to the firm. The cheque numbers were mistakenly not mentioned. The Tribunal held that the cheques were produced and furnished to A.O. to substantiate that those cheques remained un-encashed and reflected in bank reconciliation statement of the bank. The Tribunal was of the view that the assessee had explained the amount of Rs.1,09,00,000/-, the amount of two cheques which were not encashed and, therefore, it deleted the addition of Rs.1,09,00,000/-.

8. We have heard Mr. Shubham Agrawal, learned counsel

appearing for the appellant, and Mr. Ashish Bansal, learned counsel appearing for the respondent-assessee.

9. It is clear that suo motu power under Section 263 of the Act can be exercised by the Commissioner if two conditions; firstly the assessment order passed is erroneous; and secondly the order is prejudicial to the interest of Revenue are satisfied. The Commissioner, while exercising power under Section 263 of the Act, in the present case was of the opinion that the assessee did not properly explain the transactions of Rs.1,70,00,000/- for which the partners gave cheques, but the cheques were not encashed and cheques were given by the family members to partners for amount of Rs.1,09,00,000/-. However, the A.O. after looking into the accounts of the assessee was satisfied by the explanation offered and we do not find any illegality in accounting entries made in the books of account of the assessee in respect of these transactions. Therefore, we affirm the order passed by the Tribunal.

10. The Commissioner has to form an opinion with respect to two conditions on the material available on record to exercise power under Section 263 of the Act. We find that the sufficient material was not available to satisfy the two conditions for exercising power under Section 263 of the Act by the Commissioner and, therefore, the Tribunal was correct on this count also. We, thus, dismiss the appeal and affirm the order passed by the Tribunal.

Order Date :- 13.7.2018
MVS Chauhan/-