A.F.R.
Reserved on 06.02.2017
Delivered on 14.02.2017

Court No. - 3

Case :- INCOME TAX APPEAL DEFECTIVE No. - 125 of 2015
Appellant :- Commissioner Of Income Tax (Exemption) Ashok Marg Lucknow
Respondent :- M/S. Allahabad Agricultural Institute Naini Allahabad
Counsel for Appellant :- Alok Mathur
Counsel for Respondent :- Abhinav Trivedi

Along with

Case :- INCOME TAX APPEAL DEFECTIVE No. - 126 of 2015
Appellant :- Commissioner Of Income Tax (Exemption) Ashok Marg Lucknow
Respondent :- M/S. Allahabad Agricultural Institute Naini Allahabad
Counsel for Appellant :- Alok Mathur
Counsel for Respondent :- Abhinav Trivedi

Along with

Case :- INCOME TAX APPEAL DEFECTIVE No. - 127 of 2015
Appellant :- Commissioner Of Income Tax (Exemption) Ashok Marg Lucknow
Respondent :- M/S. Allahabad Agricultural Institute Naini Allahabad
Counsel for Appellant :- Alok Mathur
Counsel for Respondent :- Abhinav Trivedi

Along with

Case :- INCOME TAX APPEAL DEFECTIVE No. - 128 of 2015
Appellant :- Commissioner Of Income Tax (Exemption) Ashok Marg Lucknow
Respondent :- M/S. Allahabad Agricultural Institute Naini Allahabad
Counsel for Appellant :- Alok Mathur
Counsel for Respondent :- Abhinav Trivedi

Hon'ble Sudhir Agarwal,J.
Hon'ble Ravindra Nath Mishra-II,J.

(Delivered by Hon'ble Sudhir Agarwal, J.)

1. Instant appeals have been preferred by Income Tax Department (herein after referred to "Revenue") under Section 260A of Income Tax Act, 1961 (herein after referred to as "Act, 1961") arising from a common judgment and order dated 29.08.2014 passed by Income Tax

Appellate Tribunal, Allahabad Bench, Allahabad (herein after referred to as "Tribunal") relating to different Assessment Years (herein after referred to as "A.Y."). Details of appeals are given in the following chart:

Sl. No.	I.T.A. Number	Assessment Year	I.T.A.T. Number
1	125 of 2015	2001-02	360/ALLD/2014
2	126 of 2015	2003-04	362/ALLD/2014
3	127 of 2015	2004-05	363/ALLD/2014
4	128 of 2015	2005-06	364/ALLD/2014

2. Though appellants have formulated six substantial questions of law, but after some arguments, we find following three substantial questions of law arising in these appeals. Learned counsel for parties have also agreed and addressed us on these substantial questions of law:-

I). Whether order dated 25.03.2014 passed by C.I.T. under Section 263 of Act, 1961 was beyond its jurisdiction, in the facts and circumstances discussed by Tribunal, and whether it (Tribunal) was justified in holding so;

II). Whether Assessing Authority could have examined applicability of Sections 11 and 12 when Trust or Institution is already granted registration under Section 12A after following procedure laid down under Section 12AA of Act, 1961; and

III). Whether Tribunal was justified in holding that applicability of Sections 11 to 13 was to be governed by C.I.T. (A)'s order dated 21.11.2013, which was passed in appeal against order dated 28.12.2010 and that being so, order dated 01.12.2001 passed by Assessing Authority was in the same line, hence C.I.T. had no jurisdiction to pass order under Section 263 of Act, 1961 questioning applicability of Sections 11 to 13 in the case in hand.

3. Before dealing with aforesaid questions on merits, it would be useful to have a bird-eye view of relevant facts, giving rise to present dispute.

4. Assessee was granted Registration Certificate dated 16.08.1975 by Commissioner of Income Tax, Lucknow (herein after referred to as "C.I.T.") under Section 12A of Act, 1961 for A.Ys. 2001-2002 to 2005-2006. Assessments were finalized in December, 2006 and 2007 and details thereof are given as under:

S.No.	A.Y.	Asstt. Section	Date of Asstt.	Assessing Officer
1	2001-2002	147/143(3)	31.12.2007	ACIT-Smt. Belu Sinha
2	2003-2004	147/143(3)	31.12.2007	ACIT-Smt. Belu Sinha
3	2004-2005	143 (3)	26.12.2006	ITO- Shri Vipul Singh
4	2005-2006	143(3)	31.12.2007	ACIT-Smt. Belu Sinha

5. These assessments were subjected to appeals and ultimately Tribunal, by a consolidated order dated 24.04.2009, decided various appeals relating to aforesaid A.Ys., set-aside assessments observing that Assessing Authority cannot reopen question of registration of institution from year to year as it solely falls within jurisdiction of C.I.T. Tribunal directed Assessing Authority to make assessments, afresh.

6. While fresh assessments were pending, C.I.T. cancelled registration under Section 12AA (3) vide order dated 28.12.2010. Said order, however, was set-aside by Tribunal vide order dated 21.06.2011 and it restored registration dated 16.08.1975 granted under Section 12A. Consequent thereto, C.I.T. passed an order under Section 254/12AA (3) on 27.12.2011 giving effect to the order of Tribunal and making registration under Section 12A, effective retrospectively.

7. Fresh assessments were made under Section 143 (3) Act, 1961, in respect to A.Ys. 2001-2002 to 2005-2006, vide order dated 28.12.2010.

Assessed income under order dated 28.12.2010 for various A.Ys. is as under:

Particulars	**A.Y. 2001-02**	**A.Y. 2002-03**	**A.Y. 2003-04**	**A.Y.2004-05**	**A.Y. 2005-06**
	Amount (Rs)	Amount (Rs)	Amount (Rs)	Amount (Rs)	Amount (Rs)
Income as disclosed	NIL	NIL	NIL	NIL	NIL
Gross Receipts	5,52,52,919/-	8,37,41,099/-	19,41,49,106/-	32,72,61,085/-	48,10,52,399/-
Less: Expenses for purpose of the objects	4,66,29,625/-	6,67,77,119/-	14,69,75,740/-	25,10,55,354/-	36,79,12,648/-
Add: Expenses disallowed	29,62,933/-	35,56,761/-	44,08,599/-	77,34,092/-	74,64,819/-
Total income	1,15,86,230/-	2,05,20,740/-	5,15,81,970/-	8,39,39,820/-	12,06,04,570/-
Demand raised	12,49,941/-	1,35,47,688/-	3,76,85,344/-	4,37,21,360/-	6,93,66,047/-

8. Assessing Authority disallowed claim of exemption under Section 12A relying on C.I.T.'s order dated 08.03.2010 since that was operating on the date of assessment order passed by Assessing Authority. It further proceeded to assess status of Assessee that of Association of persons, as a business entity, and verified nature of quantum of expenses in relation to activity of Assessee namely imparting education. Assessing Authority disallowed certain expenses for reasons such as expenses being not made for business purpose or lacking in documentary evidence or explanation justifying particular expenditure were capital in nature.

9. The order dated 28.12.2010 was appealed by Assessee before C.I.T.(A). Appeal was allowed partly vide order dated 21.11.2013 and

expenditures claimed by Assessee which were disallowed by Assessing Authority vide order dated 28.12.2010 were allowed by C.I.T.(A).

10. During pendency of appeal before C.I.T.(A), since C.I.T.'s order dated 08.03.2010 stood set aside by Tribunal's vide order dated 21.06.2011, Assessing Authority on its own gave effect to consequences of order dated 21.06.2011 passed by Tribunal and demand created under order dated 28.12.2010 was modified in view of entitlement of exemption arising in favour of Assessee.

11. Assessed income, as aforesaid, was revised by order dated 01.12.2011 after granting relief with respect to accumulation allowable under Section 11 and capital expenditure as under:

Particulars	**A.Y. 2001-02**	**A.Y. 2002-03**	**A.Y. 2003-04**	**A.Y.2004-05**	**A.Y. 2005-06**
Assessed income	1,15,86,230/-	2,05,20,740/-	5,15,81,970/-	8,39,39,820/-	12,06,04,570/-
Total Relief Allowed on the basis of extension of benefits of registration u/s 12A	1,15,86,230/-	2,05,20,740/-	4,75,83,670/-	8,39,39,820/-	12,06,04,570/-
Net taxable income	NIL	NIL	39,98,300/-	NIL	NIL

12. C.I.T., however, in exercise of power under Section 263 of Act, 1961 issued notice dated 21.11.2013 to Assessee to show cause, why assessment order dated 01.12.2011 relating to A.Ys. 2001-2002 to 2005-2006 be not revised. Reason given by C.I.T. is that mere registration under Section 12-A would not preclude Assessing Authority from examining allowability under Section 11 of Act, 1961. Assessing Authority while revising assessments vide order dated 01.12.2011 has not made any effort or inquiry to find out whether assessee has complied with Section 11 to 13 of Act, 1961 and this non-application of

mind by A.O. has rendered aforesaid assessment order erroneous and the same is prejudicial to interest of Revenue. For technical reasons i.e. non-service upon Assessees aforesaid notice was dropped and a fresh notice under Section 263 on 11.12.2013 was issued by C.I.T., reiterating the same grounds.

13. Assessee submitted reply on 15.01.2014. Besides other, it stated that notice is founded on change of opinion and not tenable in law. It is also said that Assessing Authority while making assessments has complied with the order of Tribunal and, therefore, C.I.T. cannot examine the matter under Section 263 of Act, 1961.

14. C.I.T. however passed order dated 25.03.2014 under Section 263 of Act, 1961 and annulled order dated 01.12.2011 passed by Assessing Authority in respect of A.Ys. 2001-2002 to 2005-2006. Aggrieved thereto, Assessees preferred appeals before Tribunal, which have been allowed. The order passed by C.I.T. under Section 263 has been set aside. It is in these circumstances, Revenue has preferred these appeals.

15. C.I.T. passed order dated 25.03.2014 ignoring the fact that another co-ordinate authority in statutory quasi-judicial proceedings has already held Assessee entitled for certain exemption/benefits. Tribunal has noticed this fact, referring to C.I.T.(A)'s order dated 21.11.2013, in its order as under:

> *"The said order remained under challenge before the ld. CIT(A) who vide order dated 21.11.2013 for the assessment year 2003-04 allowed certain relief to the assessee because the registration u/s 12AA have been restored in favour of the assessee and disallowance of expenses were examined in the light of provisions of section 11 of the IT Act. Certificate of the auditor was also considered and at PB-177 and 179 (internal*

page of the order 23 to 25), the ld. CIT(A) examined the issue in the light of registration restored to the assessee u/s 12A and examined the expenses with application of income u/s 11 of the IT Act. The ld. CIT(A) also considered those expenses which stand the test of genuineness and application of funds for charitable and religious purpose in India. Each disallowance was separately considered and the appeal of the assessee for the assessment year 2003-04 was partly allowed (copy of order placed in PB-153). Thus on the date of passing of the impugned order u/s 263 on dated 25.03.2014, the issue of applicability of provisions of section 11 to 13 on account of registration granted u/s 12AA have not only been examined by the AO but also by the ld. CIT(A) and appropriate relief has been granted to the assessee."

16. These findings have not been shown by learned counsel for Revenue to be incorrect or contrary to record. If that be so, its result is that assessment order dated 28.12.2010 stood merged with C.I.T.(A)'s order dated 21.11.2013. Order dated 01.12.2011 was not an independent order but a partial revision of assessment order dated 28.12.2010. This was passed by Assessing Authority in order to give effect to Tribunal's order dated 21.06.2011 whereby C.I.T.'s order dated 08.03.2010 cancelling registration was set aside and registration was restored. The issue of applicability of Sections 11 to 13 of Act, 1961 having been examined by C.I.T.(A) and decided in favour of Assessee, it was not open to C.I.T. to exercise power under Section 263 to re-agitate the same as it was beyond its jurisdiction.

17. In this regard, we may refer to decision of **CIT Vs. Arbuda Mills Ltd. (1998) 231 ITR 50 (SC)** wherein Court considered the

amendment made in Section 263 by Finance Act, 1989 with effect from 01.06.1988 and said:

> *" ... powers under Section 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 under Section 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."*

(Emphasis added)

18. This judgment is very clear to show that any issue, if, has already been decided in appeal preferred by Assessee, to that extent C.I.T. will stand denuded of its power under Section 263.

19. A similar question was considered in **Mehra Brothers Partnership Firms Filling Vs. Commissioner of Income Tax and others 2015 (5) ADJ 441 (Division Bench) (Alld.)** wherein Court examined the concept of merger as recognized in Act, 1961 in the light of various authorities on the subject. The relevant part of the judgment reads as under:

> *"21. The above general concept of 'merger' in respect to judicial and quasi-judicial orders has been considered and recognised time and again.*
>
> *22. In **Chandi Prasad and Others Vs. Jagdish Prasad and Others [2004 (8) SCC 724]**, the Court said:*
>
>> *"It is trite that **when an Appellate Court passes a decree, the decree of the trial court merges with the decree of the Appellate Court** and even if and subject to*

any modification that may be made in the appellate decree, the decree of the Appellate Court supersedes the decree of the trial court. In other words, ***merger of a decree takes place irrespective of the fact as to whether the Appellate Court affirms, modifies or reverses the decree passed by the trial court."*** *(emphasis added)*

23. In ***Gangadhara Palo Vs. The Revenue Divisional Officer & Another [2011 (4) SCC 602)****, the Court said :*

"According to the ***doctrine of merger, the judgment of the lower court merges into the judgment of the higher court****. Hence, if some reasons, however meagre, are given by this Court while dismissing the special leave petition, then by the doctrine of merger, the judgment of the High Court merges into the judgment of this Court and after merger there is no judgment of the High Court.* ***Hence, obviously, there can be no review of a judgment which does not even exist."*** *(emphasis added)*

24. However, in taxing statutes like Act, 1961, the Legislature has not thought it fit to apply general 'Doctrine of Merger', but 'Doctrine of 'Partial Merger' has been adopted. Once the issue of merger is governed by statutory provisions, then, obviously, it is the statute which shall prevail over general doctrine of 'merger'. Herein general 'doctrine of partial merger' and to the extent it would apply for the purpose of Section 263 of Act, 1961, we find relevant provisions in Explanation 'C' of Section 263(1) of Act, 1961."

"26. Words "filed on or before or after 1st day of June, 1988" and further words "and shall be deemed always to have

extended" came to be inserted in Clause (c) by Finance Act, 1989, which was given effect from 01.06.1988."

20. Thereafter this Court referred to judgment in **CIT Vs. Arbuda Mills Ltd. (supra)** and therein, in paras 28 to 31, Court has said as under:

"*28. Matter again came to be considered in **CIT Vs. Jai Kumar B. Patil [(1999) 236 ITR 469 (SC)]**, the two questions up for consideration before the Court were as under:-*

"The Revenue sought the reference of the following two questions :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law, in holding that the commissioner of Income-tax had no jurisdiction and powers to initiate proceedings under section 263 of the Income Tax Act, 1961, in respect of issues not touched by the Commissioner of Income-tax (Appeals) in his appellate order?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that not only the issues dealt with in the assessment order but also the other issues were merged in the Commissioner of Income-tax (Appeals)'s order ignoring the provisions contained in clause (c) of Explanation to sub-section (1) of section 263 of the Income-tax Act, 1961?"

Relying on CIT Vs. Abuda Mills Ltd. (Supra), the Court answered both the aforesaid questions in negative i.e. in favour of Revenue and against Assessee.

*29. In **EIMCO K.C.P. Ltd. Vs. C.I.T. [(2000) 242 ITR 659***

***(SC)]**, a question arose whether Commissioner can exercise power under Section 263 of Act, 1961, while agreeing with the order of assessment against which appeal is pending before Commissioner (A), involving the point upon which notice under Section 263 is issued, the Court up held the notice issued under Section 263 and held that such notice can be issued.*

*30. The decision in **CIT Vs. Abuda Mills Ltd. (Supra)** has also been followed by this Court in **CIT Vs. Dhampur Sugar Mills Co. Ltd. [(2004) 270 ITR 576 (All)]**, **CIT Vs. Indo Persian Rugs [(2008) 299 ITR 300 (All)]** and **CIT Vs. Span International [(2004) 270 ITR 538 (All)]**.*

*31. In **CIT Vs. Amrit Banaspati Co. Ltd. [(2005) 277 ITR 559 (All)]**, Court held that in respect of items which have not been considered in appeal, power of Commissioner under Section 263(1) shall be extended to that extent."*

21. Tribunal has also looked into the said aspect of the matter and in para 14.1 and 18, has said as under:

"14.1. Section 263(1)(c) of the IT Act provides that where any order referred to in this sub-section and passed by the AO had been the subject matter of any appeal, the powers of CIT under this sub-section shall extend to such matters as had not been considered and decided in such appeal. Since the issue of registration u/s 12AA has been decided in favour of the assessee and a valid registration u/s 12A exists in favour of assessee, therefore, the assessee would be entitled for deduction of exemption u/s 11 and 12 of the IT Act. The <u>AO originally passed the order on 27.03.2006 granting relief u/s 11 to 13 of the IT Act and after cancellation of registration, the AO again passed the</u>

order on 28.12.2010 denying benefit of section 11 and 12 to the assessee on cancellation of registration. The said order remained in appeal before the ld. CIT(A) who vide order dated 21.11.2013 granted relief to the assessee u/s 11 to 13 of the IT Act when registration u/s 12A was effective in favour of the assessee. Therefore, the assessment order dated 28.12.2010 stood merged with the appellate order dated 21.11.2013 and as such the same issue of benefit u/s 11 to 13 in appeal before the ld. CIT(A) could not be subject matter of proceedings u/s 263 of the Act. Thus, the assessee succeeds on this point as well because ITNS-150 dated 01.12.2011 giving appeal effect is related to ITNS 150 dated 28.12.2010 passed as per assessment order dated 28.12.2010.

18. Considering the above decisions and the facts of the case, it is clear that the AO granted relief u/s 11 to 13 of the Act to the assessee in ITNS 150 because registration u/s 12AA was restored in favour of the assessee by the Tribunal and the capital expenditure and benefit u/s 11 were allowed to the assessee. These deductions are allowable when the registration is effective in favour of the assessee and have also been granted originally in favour of the assessee. Therefore, the AO is bound to follow the decision of superior authorities. Merely because the AO has followed the order of superior authorities would not give rise to occasion to treat ITNS 150 as erroneous and prejudicial to the interest of Revenue. The order u/s 263 thus could not be sustained. The ld. Counsel for the assessee also relied upon the decisions of the Supreme Court in the case of S.RM.M.CT.M Tiruppani Trust Vs. CIT, 230 ITR 636, in which it was held that capital expenses to be allowed as deduction."

(Emphasis added)

22. In absence of anything to show that aforesaid findings recorded by Tribunal, are contrary to any provision or any judicial precedent or otherwise due to any misreading or perverse finding, we find ourselves in full agreement therewith and have no reason to take a different view.

23. In view of above discussions, the substantial questions of law, formulated above, are answered against Revenue and in favour of Assessee.

24. All the appeals lack merits. Dismissed.

Order Date: 14.02.2017
M.V.S.Chauhan/Arvind

Hon'ble Sudhir Agarwal,J.
Hon'ble Ravindra Nath Mishra-II,J.

Dismissed.

For order see our order of date passed on separate sheets.

Order Date: 14.02.2017
M.V.S.Chauhan/Arvind