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

% **DECIDED ON: 16.04.2014**

+ ITA 511/2013

COMMISSIONER OF INCOME TAX CIRCLE – II

..... Appellant

Through: Ms. Suruchi Aggarwal, Sr.
Standing Counsel with Mr. Judy James, Jr.
Standing Counsel.

versus

M/S ANKIT GARMENTS MANUFACTURING CO.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.V. EASWAR

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

1. Service is complete upon the respondent/assessee. However, there is no appearance on its behalf.

Appeal is admitted.

The following question of law arises for consideration: -

“Did the Tribunal fall into error in setting aside the Commissioner’s order made in exercise of the revisional jurisdiction under Section 263 of the Income Tax Act in the given circumstances of the case?”

2. A search and seizure operation was conducted on 16.10.2007 in the establishment of one Shri Dwarka Das Aggarwal (TNG Group).



Notice under Section 142 (1) was issued to the assessee - whose accounts too were centralized on 17.02.2009. Later jurisdiction was transferred along with cases of that group to the ACIT, Central Circle IX. In response to a notice under Section 142 (1), the assessee filed a return declaring income of ₹2,94,87,060/-. The original return of 13.10.2008 was in the same terms. Notices under Section 143 (2) along with the questionnaire was issued calling for detailed information. The AO on the basis of the material placed before him was of the opinion that the stock of finished goods was short by ₹86,25,505/- and stock of raw material found was in excess by ₹3,64,696/- as compared with the stock as per the books of account and no satisfactory explanation is given. In these circumstances, an addition to the extent of ₹11,94,982/- by reason of unaccounted sales was made and the assessment order framed on 31.12.2009.

3. The Commissioner after considering the materials thought it fit to issue notice calling for explanation as to why his revisional powers ought not to be invoked to set aside the assessment order since the AO's order was *prima facie* erroneous and prejudicial to the interest of Revenue.

4. The assessee/respondent resisting the move for revision contended that all the information sought for by the AO had in fact been furnished and that the assessment was framed on 31.12.2009 after taking into consideration these materials. The Commissioner by his order of 27.03.2012 set aside the order of the AO after noticing that contrary to the observations made in the course of the assessment order by the AO, there was incomplete information and that full



disclosure of all the materials and information sought for from the assessee had not been made. The CIT relied upon an "office note" appended to the assessment order which set out these circumstances. Invoking the ruling of the Supreme Court in *Malabar Industrial Co. Ltd. v. CIT*, 243 ITR 83 (SC), the Commissioner felt that the approach and order of the AO were both erroneous and prejudicial to the interest of the Revenue.

5. The assessee's appeal was successful. The ITAT in its impugned order recorded as follows: -

"8. To this letter were enclosed a number of accounts copies of various parties. These account copies have been countersigned by the creditors/parties. The PAN numbers have been furnished. This means that confirmation of accounts have been furnished in these cases. The Assessing Officer has not stated as to which further confirmation letters are required by him. He did not ask for any further details from the assessee.

9. We also find filed on record a number of accounts copies, statements etc, which as extracted from the books of accounts of the assessee were filed before the Assessing Officer. These are part of assessment record. We do not find any adverse inference drawn by the Assessing Officer on these documents.

10. The assessee has also furnished list of debtors in excess of Rs.1 lakh along with the full addresses, amounts due etc. to the AO. Similar particulars have been given in the case of loans and deposits. On verification of these details the AO, apparently has not drawn any adverse inference nor sought to make addition under Section 68 of the Income Tax Act, 1961. The Assessing Officer has accepted these entries in the books."



The Tribunal disagreed with the Commissioner's revisional order which had held that the assessment was completed without obtaining full reply in the form of confirmation of the concerned creditors. The Tribunal was of the opinion that the rationale for the revision itself appears to be baseless. After noticing that the CIT invoked the revisional powers on the ground that assessment was completed without obtaining full particulars and the confirmation from the party for the loan, deposits given etc. in respect of those who had balance above Rs.1 lakh, the Tribunal observed as follows: -

“This reason demonstrates that the revision in this case is sought to be made for conducting fishing and roving enquires though the Assessing Officer in point (2) states that he had carried out such an exercise. In our opinion no error has been pointed out by the CIT. The CIT cannot sit in judgment over type of investigation or extent of enquiry that the AO should conduct. If the AO, on verification of account copies and certain confirmations, with his own jurisdictional record and with the record of his other I.T. Officer jurisdiction and then comes to a conclusion that no addition under Section 68 of the Income Tax Act, 1961 is warranted and does not make such an addition the CIT cannot revise the order for making such an addition that too without any evidence or material. The comment of the CIT that the AO should have added the said sum as income in the hands of the assessee is against the well settled principles of law that such conclusions cannot be drawn without evidence.”

6. The pre-requisite for exercise of power under Section 263 is the independent satisfaction to be expressed by the Commissioner that the AO's order is erroneous and prejudicial to the interest of the Revenue. Whilst there is no gainsaying that every error is not capable of



correction, at the same time, the Commissioner's powers in terms of the text of Section 263 are wide. To characterize the use of that power as a "fishing or roving enquiry" in the circumstances of the case - especially when the AO's record itself admitted that the assessee was required to produce the copies of the accounts or confirmation in excess of ₹ 1 lakh which had not been filed - in the opinion of the Court displays grave error in the approach of the Tribunal. In fact the note to the extent it is material cited that since there was pressure of time, the AO would finalize the assessment and invoke the powers to reopen the assessment later, if necessary, and so required. Such an approach, in the opinion of this Court, is clearly erroneous and betrays an injudicious approach. Completion of the assesment without obtaining the full and complete information asked for by the AO himself would amount to a serious error in procedure and causes prejudice to the interest of the Revenue. When the CIT directed the AO to get the full information before taking a view, he was certainly not directing a fishing or roving enquiry nor was he directing the AO to follow a particular line of enquiry or investigation. This Court also notices that in the final order all that the Commissioner did was to set aside the original assessment order and restored back the matter for reconsideration by the AO after granting opportunity of hearing to the assessee. This final order, in the opinion of the Court, balanced the interest of the Revenue with the rights of the assessee who was afforded an opportunity to back its claim that such loans, deposits etc. were legitimate and genuine.



7. For the above reasons, the Court is of the opinion that the appeal has to succeed. The question of law framed is accordingly answered in favour of the Revenue and against the assessee. The impugned order of the ITAT is accordingly set aside.

8. The appeal is allowed.

S. RAVINDRA BHAT, J

APRIL 16, 2014/vks/

R.V.EASWAR, J

