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

+ **ITA 294/2014**

Date of decision: 23<sup>rd</sup> July, 2014

COMMISSIONER OF INCOME TAX-IV ..... Appellant  
Through Mr. Kamal Sawhney, Sr. Standing  
Counsel with Mr. Sanjay Kumar, Jr. Standing  
Counsel.

versus

HOTZ INDUSTRIES LTD. .... Respondent  
Through

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

**SANJIV KHANNA, J. (ORAL)**

Having heard learned counsel for the Revenue in this appeal against the order of the tribunal dated 25<sup>th</sup> October, 2013, quashing the order under Section 263 of the Income Tax Act, 1961 (Act, for short) passed by the Commissioner, we are not inclined to interfere. We need not examine the issue whether the Commissioner was precluded from passing an order under Section 263 because disallowance under Section 14A made in the order under Section 143(3) was subject matter of first appeal as we have to hold that the order passed by the Commissioner under Section 263 of the Act dated 31<sup>st</sup> October, 2011, did not meet the two jurisdictional pre-conditions i.e., the assessment



order was erroneous and prejudicial to the interest of the Revenue.

2. The Assessing Officer had made disallowance under Section 14A of Rs.45,07,413/-. The Commissioner felt that the correct disallowance should have been Rs.1,25,39,364/-. This was disputed by the assessee pointing out that the figures taken by the Commissioner were incorrect. Without pronouncing whether the figures given by the assessee were incorrect, the Commissioner recorded that this required verification from the records and, therefore, the assessment order to this extent should be set aside for fresh examination. This is impermissible and cannot be allowed under Section 263 as the Commissioner must reach the finding that the assessment order restricting disallowance under Section 14A to Rs.45,07,413/- was erroneous and incorrect. The Commissioner on the other hand was uncertain and undecided, whether he was correct or not.

3. The second issue related to loans/assets written off to the tune of Rs.6,25,245/-. The assessee was a non-banking financial company dealing in investments etc. The assessee in response to the notice had submitted that the deduction as claimed was examined by the Assessing Officer and he was satisfied with the claim made and the same was admissible under Section 36(1)(vii) of the Act. Commissioner in the order under Section 263 did not go into the said



question on merits, but observed that the “Assessing Officer appears” had not caused any inquiries or investigation, but accepted the contention of the assessee. Commissioner observed, “therefore, meaningful inquiry should be conducted”. This does not meet the requirement that the decision of the Assessing Officer should be erroneous. Once inquiries were conducted and a decision was reached by the Assessing Officer, it cannot be said that it was a case of no inquiry. In such cases, the Commissioner must reach a finding that the finding of the Assessing Officer was erroneous, not because no inquiries were conducted, but because the final finding was wrong and untenable.

4. The third issue relates to sale of agricultural land. The assessee had claimed exemption under Section 54B of the Act, which the assessee was not entitled to as a company. During the course of assessment proceedings, the assessee had accepted that Section 54B was not applicable, but pleaded that they had sold the agricultural land, which was exempt under Section 2(14) clause (iii) read with Section 45(1) of the Act. The assessee had submitted that the Assessing Officer had examined whether the land sold was agricultural land and details were filed. The finding of the Commissioner was not that the Assessing Officer had not made any inquiries, but that the Assessing Officer had not properly applied his



mind and deliberated upon the issue. This again does not meet t  
statutory requirement that the order passed by the Assessing Officer  
was erroneous. Once inquiries were held and the Assessing Officer  
formed a belief, the finding/opinion formed can be set aside only when  
it is erroneous and not because no inquires or inadequate inquires were  
conducted.

5. The appeal has no merit and the same is dismissed.

**SANJIV KHANNA, J.**

**V. KAMESWAR RAO, J.**

**JULY 23, 2014**  
**NA/VKR**