



7

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 837/2010

COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal, Advocate

versus

DHANPAT RAI Respondent
Through: Mr. Sanat Kapoor, Advocate

%

Date of Decision: 13th July, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

MANMOHAN, J (Oral)

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity "Act 1961") challenging the order dated 24th April, 2009 passed by the Income Tax Appellate Tribunal (in short



“ITAT”), for the assessment year 2006-2007.

2. Ms. Prem Lata Bansal, learned counsel for revenue stated that ITAT erred in law in setting aside the order passed by the Commissioner of Income Tax (Appeal) under Section 263 of Act, 1961 and restoring the assessment order passed by the Assessing Officer. In this connection, Ms. Prem Lata Bansal, learned counsel for revenue relied upon certain observations made by this Court in *Gee Vee Enterprises vs. Additional Commissioner of Income Tax, Delhi-I 99 ITR 375*.

3. The ITAT in the impugned order has held as under:-

“12. In the present case, since the Ld. CIT has not pointed out any error in the order of the AO but merely directed to re-examine the issue, we hold that the Ld. CIT was incorrect in terming the assessment order as erroneous insofar as it is prejudicial to the interest of Revenue. The AO having examined the matters and having adopted the course which is legally permissible has not committed any error. We, consequently, set aside the impugned order passed by the Ld. CIT and restore that of the AO.”

4. In our opinion, Section 263 of the Act, 1961, does not visualize a case of substitution of judgment by the Commissioner for that of the Assessing Officer who passed the order. The Commissioner on perusal of records may be of the opinion that the estimate made by the Assessing Officer is on the lower side, but that would not vest the



Commissioner with the power to re-assess the accounts and determine the income at a higher figure. This is because the Assessing Officer exercises quasi judicial power vested in him in accordance with law and arrives at a conclusion.

5. It is settled law that two conditions have to be fulfilled before the Commissioner can invoke his power under Section 263 of the Act, 1961 namely, the order should be erroneous and further the assessing officer's order should be prejudicial to the interest of Revenue. (Refer to *Malabar Industrial Co. Ltd. vs. Commissioner of Income Tax, (2000) 243 ITR 83 (SC)*, *CIT vs. Gabriel India Ltd., (1993)203 ITR 108 Bom.*). Even in the case of *Gee Vee Enterprises* (supra), this Court did not say that the aforesaid conditions precedent need not be fulfilled.

6. In the present case, we have perused the order passed by the Commissioner of Income Tax (Appeal) under Section 263 of the Act, 1961 and we find that in the said order the CIT(A) has neither found the order passed by the assessing officer to be erroneous or prejudicial to the interest of the revenue.

7. Consequently, as the two conditions for invoking jurisdiction under Section 263 of the Act, 1961, are not made out, the CIT(A), in our opinion, could not have exercised the said power. Accordingly, the



present petition being devoid of merits is dismissed in limine but v
order as to costs.

MANMOHAN, J

CHIEF JUSTICE

JULY 13, 2010

js