(2011) 202 TAXMAN 134

High Court Of Punjab And Haryana At Chandigarh

Case No: I. T. A. No. 602 of 2009 (O and M)

Commissioner of Income Tax		APPELLANT
	Vs	
Rajiv Agnihotri		RESPONDENT

Date of Decision: Nov. 16, 2009

Acts Referred:

- Income Tax Act, 1961 - Section 143(3), 260A, 263

Citation: (2011) 202 TAXMAN 134

Hon'ble Judges: Gurudev Singh, J; A.K. Goel, J

Bench: Division Bench

Judgement

1. The Revenue has preferred this appeal u/s 260A of income tax Act, 1961 (for short, "the Act") against the order of the income tax Appellate Tribunal, Delhi Bench "H" New Delhi, in I. T. A. No. 1253/Del/2006 dated February 27, 2009 for the assessment year 2001-02, proposing to raise the following substantial questions of law:

(i) Whether on the facts and in the circumstances of the case, the hon"ble income tax Appellate Tribunal is justified in law in quashing the impugned order u/s 263 of the income tax Act, 1961 passed by the Chief Commissioner of income tax (OSD) by holding that neither any specific defect in the assessment order has been pointed out in detail nor any such finding to this effect has been recorded whereas while passing the order u/s 263 of the income tax Act, 1961, the Chief Commissioner of income tax (OSD) has given elaborate finding to the effect that the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interests of the Revenue ?

(ii) Whether, on the facts and in the circumstances of the case, the hon"ble income tax Appellate Tribunal is right in quashing the order u/s 263 of the income tax Act, 1961 by holding that merely subjective difference in opinion of the Assessing Officer and the Commissioner of income tax cannot be termed as erroneous whereas it was evident from the assessment order that the same has been passed by the Assessing Officer without

making any proper inquiry into the investment in construction of a house and into source of addition of Rs. one lakh to the capital account of the Assessee during the year under assessment and as such it was not subjective difference of opinion but a clear case of an erroneous assessment which was also prejudicial to the interests of the Revenue ?

2. The Assessing Officer made assessment u/s 143(3) in respect of the Respondent''s income. The Commissioner of income tax, exercising his power u/s 263, set aside the assessment and directed fresh assessment. On appeal, the Tribunal held that no ground was made for interference u/s 263, as no specific defect had been pointed out by the Commissioner. The Assessee had already furnished details of construction account and had produced the bank statement. The observations of the Tribunal are as under:

The learned Commissioner has not pointed out any specific defect in those details. The Assessee has submitted the construction account in the paper book and has produced from where funds have been procured. The bank statement exhibiting the loans have been produced. The learned Commissioner without pointing out any discrepancy in these facts and circumstances put the Assessee in the second round of litigation. Similar are the facts with regard to the other issue.

3. We have heard learned Counsel for the Appellant.

4. It is well settled that power u/s 263 could be exercised only if the order of the Assessing Officer was erroneous and prejudicial to the interests of the Revenue. From the finding of the Tribunal, it is clear that the order of the Assessing Officer had not been shown to be erroneous by the Commissioner and in such a situation, the Tribunal rightly quashed the order of the Commissioner of income tax.

5. No substantial question of law arises for consideration.

6. The appeal is dismissed.