**(1987) 10 AHC CK 0016**

**Allahabad High Court**

**Case No:** Income-tax Application No"s. 101 and 102 of 1987

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| Commissioner of Income Tax | | APPELLANT |
| | Vs | |
| Goyal Private Family Specific Trust | | RESPONDENT |

**Date of Decision:** Oct. 30, 1987

**Acts Referred:**

- Income Tax Act, 1961 - Section 256(1), 263

**Citation:** (1988) 67 CTR 206 : (1988) 171 ITR 698 : (1987) 35 TAXMAN 522

**Hon'ble Judges:** R.M. Sahai, J; Om Prakash, J

**Bench:** Division Bench

**Advocate:** V.K. Rastogi, for the Appellant; C.S. Agarwal, R.K. Agarwal and Vikram Gulati, for the Respondent

**Judgement**

Om Prakash, J.
These are two applications made u/s 256(2) of the Income Tax Act, 1961, relating to the assessment years 1979-80 and J980-81 by the Commissioner of Income Tax, Agra, by which the Income Tax Appellate Tribunal is directed to state the case on the following questions for the opinion of this court :

" (1) Whether, on the facts and in view of the legal position as mentioned in the statement of facts, the Tribunal could be said to be legally correct in setting aside the order passed u/s 263 by the Commissioner of Income Tax ?

(2) Whether there is any legal basis for the hon"ble Tribunal to come to the conclusion that notice u/s 263 was issued by the Commissioner of Income Tax merely on suspicion and he had no cogent material before him for initiating the proceedings u/s 263 of the Income Tax Act, 1961 ?

(3) Whether, on the facts and circumstances of the case, the decision of the, Allahabad High Court reported in J.P. Srivastava and Sons (Kanpur) Ltd. Vs. Commissioner of Income Tax, has been correctly applied by the Tribunal ?

(4) Whether the Tribunal is legally correct in not accepting the Department''s contention that the order u/s 263 is valid in view of the Supreme Court''s decision in the case of Rampyari Devi Saraogi Vs. Commissioner of Income Tax, West Bengal and Others, and Smt. Tara Devi Aggarwal Vs. Commissioner of Income Tax, West Bengal, Calcutta,

(5) Whether, on the facts and circumstances of the case, failure on the part of the Income Tax Officer to make proper and adequate enquiries is by itself not sufficient to meet the requirement of Section 263 which confers jurisdiction in respect of an order which is erroneous and prejudicial to the interests of the Revenue ?

(6) Whether the Tribunal, on the facts and in the circumstances of the case, is legally correct in not giving a finding as to how the decisions given in the following cases by the High Courts and relied upon by the Commissioner in his order u/s 263 are not applicable to the facts of the assessee''s case ? The cases are :

1 Gee Vee Enterprise Vs. Additional Commissioner of Income Tax,

2. Kanhaiyalal v. CIT [1981] 136 ITR 243; and

3. Thalibai F. Jain and Others Vs. Income Tax Officer, Assessment-4, Hubli and Another,

2. The assessee, Goyal Private Family Specific Trust, Agra, a specific trust, was created on January 24, 1973, under a trust deed by Smt. Sudha Agrawal with a corpus of Rs. 500 for the benefit of the beneficiaries. The assessee filed returns for the first time for the assessment years 1979-80 and 1980-81 on February 20, 1982, showing incomes of Rs. 39,540 and of Rs. 38,420, respectively, in the status of a private specific trust. The Income Tax Officer completed the assessments for both the years on a single day, viz., November 25, 1982. Both the orders are couched in identical language. Therefore, it will suffice if only one order is reproduced for appreciation of the case. The assessment order for the assessment year 1979-80 runs as follows:

"Return filed declaring an income of Rs. 39,540. In response to a notice u/s 143(2), Shri D. K. Agarwal, CA, attended. Case discussed. This is a case of Private Family Specific Trust, in which shares of beneficiaries are specified. Therefore, income in the hands of the trust is exempt and taxable in the hands of beneficiaries. The trust has been created, vide trust deed dated January 24, 1973, a copy of which has been filed and placed on record, for the benefit of beneficiaries, Km. Mira Agarwal, Km. Usha Agarwal, Km. Rekha Agarwal and Master Kapil Agarwal. After discussion and scrutiny, income returned is accepted. Share of each beneficiary comes to Rs. 9,890. Assessed. Issue N. D. "

3. Thereafter, notices u/s 263 were issued to the assessee by the Commissioner of Income Tax for "both the years calling upon the assessee to show cause as to why assessment orders be not cancelled, as being erroneous and prejudicial to the interests of the Revenue. Not being satisfied with the explanation of the assessee, the Commissioner set aside the assessment orders for both the years directing the Income Tax Officer to make the assessments de novo. The Commissioner was of the view that the orders for both the years were erroneous and prejudicial to the interests of the Revenue, inasmuch as they were passed by the Income Tax Officer ".....in haste/hurry without proper and adequate enquiry..... ". The Commissioner also observed that the orders do not show "How and in what manner and with what capital the trust conducted its business relating to handloom daris and it is not at all clear from the papers filed." He also added that the record shows that the books of account of the trust were never produced before the Income Tax Officer for scrutiny, that no tick marks were made on any papers filed by the trust along with the return and that the assessment was made in one hearing, without requiring the presence of the trustees. The Commissioner finally concluded :

" that an assessment made in haste/hurry without proper and adequate enquiry/investigation is erroneous and prejudicial to the interest of the Revenue.... "

4. On appeal, the Appellate Tribunal set aside the order of the Commissioner for both years by a combined order dated April 30, 1986. In paragraph 4 of the said order, the Tribunal observed that the assessee had filed the trading and profit and loss account, balance-sheet and copies of the accounts of the beneficiaries before the Income Tax Officer. Having so observed, the Tribunal found that there was little reason to doubt the contention of the assessee that the books of account had been produced before the Income Tax Officer. The finding that the books of account had been produced before the Income Tax Officer and that he passed the orders after having seen them is a finding of fact and no question of law arises therefrom.

5. In his orders, the Income Tax Officer had clearly stated that he had discussed the case with the representative of the assessee and it was only after the discussion that the Income Tax Officer held that the assessee was a private specific trust and the income thereof was exempt in the hands of the trust but that it was assessable in the hands of the beneficiaries. Having considered all these facts, the Tribunal observed in paragraph 4 : "The reasons given by the Commissioner of Income Tax for coming to the conclusion that the assessments had been made in a hurried way without any checking or scrutiny are superficial. " Such finding of the Tribunal is not without material and hence no question of law arises.

6. There is no finding by the Commissioner that the Income Tax Officer reached an erroneous conclusion and that, on the facts and circumstances of the case, the conclusion would have been different. The orders of the Income Tax Officer may be brief and cryptic, but that by itself is not sufficient reason to brand the assessment orders as

erroneous and prejudicial to the interest of the Revenue. Writing an order in detail may be a legal requirement, but the order not fulfilling this requirement, cannot be said to be erroneous and prejudicial to the interest of the Revenue. It was for the Commissioner to point out as to what error was committed by the Income Tax Officer in having reached the conclusion that the income of the trust was exempt in its hands and was assessable only in the hands of the beneficiaries. The Commissioner having failed to point out any error, no error can be inferred from the orders of the Income Tax Officer for the simple reason that they are bereft of details. If the order is not erroneous, then it cannot be prejudicial to the interest of the Revenue. There is nothing to show in the order of the Commissioner that the Income Tax Officer would have reached a different conclusion had he passed a detailed order. So, the conclusion of the Commissioner that the orders of the Income Tax Officer are erroneous and prejudicial to the interest of the Revenue are based merely on suspicion and surmises in the absence of any enquiry having been made by him.

7. In the Income Tax assessments, all questions boil down to this, whether income has been properly determined and whether the correct rate of tax has been applied. The Commissioner does not say that the income was higher or that it was assessed on a wrong entity or at a low rate or that any exemption was wrongly allowed. In the absence of such a finding, the assessment orders cannot be said to be erroneous and prejudicial to the interest of the Revenue.

8. For the above reasons, we are not inclined to direct the Tribunal to state the case on any question proposed by the Revenue. The applications are, therefore, dismissed, but there will be no order as to costs.