

**(2003) 127 TAXMAN 162**

**Madras High Court**

**Case No:** Tax Case (Reference) No. 34 of 1999 13 November, 2002

Commissioner of  
Income Tax

APPELLANT

Vs

Sri Mahasastha  
Pictures

RESPONDENT

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**Date of Decision:** Nov. 13, 2002

**Citation:** (2003) 127 TAXMAN 162

**Hon'ble Judges:** N.V. Balasubramanian, J; K. Raviraja Pandian, J

**Bench:** Full Bench

**Advocate:** Mrs. Pushya Sitharaman, for the Revenue V.S. Jayakumar, for the Assessee, for the Appellant;

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**Judgement**

@JUDGMENTTAG-ORDER

N.V. Balasubramanian, J.

The only point that arises in the Tax Case is whether the Appellate Tribunal was right in holding that the Commissioner has jurisdiction to invoke the power u/s 263 of the Income Tax Act (hereinafter referred to as the Act). In this case summary assessment order was made u/s 143(1)(a) of the Act. The Commissioner exercised the power u/s 263 of the Act. But the Appellate Tribunal held that in view of the Circular of the Board No. 176, dated 26-8-1987, the Commissioner has no jurisdiction to revise the order passed in summary assessment. We have already taken the view in the order in CIT v. Smt. R.G. Umaranee (T.C. Nos. 61 and 62 of 1998, dated 6-11-2002) that the order passed by the Income Tax Officer in the summary assessment can be revised u/s 263 of the Act, as section 263 is widely worded to encompass any order passed by the assessing officer including the summary assessment order. We also found that there are no limiting words found in section 263 of the Act to exclude the exercise of the power of the Commissioner in the case where the assessing officer has made a summary assessment order. We have already held that the Commissioner was advised not to invoke the powers of revision only

in cases where there is a negligible tax effect. The Tribunal has proceeded only on the basis that the Commissioner has no jurisdiction to invoke the statutory powers u/s 263 of the Act in cases of order of summary assessment made by the Income Tax Officer and we hold that the said view of the Tribunal is not legally sustainable. The question of law referred to us reads as under :

"Whether the Appellate Tribunal was justified in cancelling the order passed by the Commissioner of Income Tax u/s 263 of the Income Tax Act, 1961 in view of the Circular No. 176, dated 26-8-1987 of the CBDT?"

2. Accordingly, we answer the question in the negative in favour of the revenue and against the assessee. The result is the Tribunal has to go into the question of merits of the case and decide the question as regards the merits of the claim of the assessee. The question is answered accordingly. However, in the circumstances, there will be no order as to costs.