IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2025

CORAM

THE HON'BLE MR.MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

TCA No.340 of 2016

M/s.Arul Industries,
3/171, Ideal Nagar,
Vellalankulam Panchayat,
Tenkasi Road,
Tirunelveli 627 012 : Appellant

versus

The Asst. Commissioner of Income Tax,
Central Circle II
Madurai : Respondent

Prayer: Appeal filed against the order of the Income Tax Appellate Tribunal, Madras "D" Bench, Chennai, dated 19.09.2014 in ITA No.1408/Mds/2014.

For Appellant : Mr.I.Dinesh,
for Mr.Philip George

For Respondent : Mr.J.Narayanaswamy,
Senior Standing Counsel

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

Heard Mr.Dinesh, learned counsel for the appellant and Mr.Narayanaswamy, learned Senior Standing Counsel for the respondent.

2. The following substantial questions of law have been framed for being answered by us:

> *"1.Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the Assessment Order was erroneous and prejudicial to the interest of the Revenue for the Commissioner of Income Tax to have jurisdiction under Section 263 of the Income Tax Act, 1961?*
>
> *2. Whether the regular assessment proceedings pending on the date of search and search would abate?*
>
> *3. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the order of the Commissioner of Income Tax*

under Section 263, bringing the capital gains arising out of sale of building used for business purpose without considering the Explanation 5 to Section 32 of Income Tax Act, 1961?"

3. The factual premise leading to the instant appeal, as stated in the appeal, is that the appellant partnership firm claims to be engaged in the manufacture and sale of kitchen utensils. For the assessment year 2007-08, the appellant filed return of income on 20.11.2007, declaring NIL income.

4. A search was carried out under Section 132 of the Income Tax Act, 1961, (for short, 'the Act') in the business premises of another assessee (M/s.Sivamurugan Chit Funds Group concerns and its Director's residence) on 14.10.2009. On the same day, simultaneously, a search was also carried out under Section 133A of the Act in the business premises of the appellant. It appears that at the time when the search was carried out, regular assessment proceedings were also in the process of completion. The return, which was filed by the appellant, was processed under Section 143(1) of the Act, and subsequently, scrutiny assessment was completed under Section

143(3) of the Act on 15.12.2009, on a total business income of Rs.35,01,444/- and long term capital gains of Rs.12,88,355/-, totalling Rs.47,89,800/-.

5. In the course of completion of assessment, the Assessing Officer, amongst other additions and allowances, while considering the claim of depreciation on the building used for business purposes, rejected assessee's claim and held that the sale value of the old building cannot be reduced from the cost of construction of the new building and the depreciation was allowed on the cost of the new building, without reducing the sale consideration of the old building. Further, the Assessing Officer brought to tax the profit of sale of old building under the head, "Capital Gains", which was worked out to Rs.12,88,355/-.

6. As a sequel to and in continuation of search carried out under Section 133A of the Act, on 14.10.2009, proceedings under Section 153C of the Act were eventually initiated, which led to an assessment under Section 143(3) read with Section 153C of the Act and order passed on 12.12.2011. In the course of completion of the new

assessment, while considering the case of depreciation, the Assessing Officer held that though the assessee firm has not claimed depreciation, it is deemed that the depreciation of the value of building, which was used for the purpose of business, should be computed and allowed in the respective previous year itself and accordingly, computation was made. The Assessing officer restricted the allowable depreciation to Rs.3,54,978/-, being 10% of the total WDV, against the claim of Rs.4,50,174/- and disallowed excess claim of Rs.95,196/-.

7. The Commissioner of Income Tax, however, invoked jurisdiction under Section 263 of the Act against the assessment order passed under Section 143(3) read with Section 153C of the Act, dated 12.12.2011, merely on the basis that the difference in the cost of construction of the property between the claim of the assessee and Department valuation was not considered, and further, that long term capital gain on sale of old building was not considered.

8. Aggrieved by the order passed by the Commissioner of Income Tax, the assessee, took his further remedy before the Income

Tax Appellate Tribunal. However, the assessee was unsuccessful before the Appellate Tribunal also, which has led to the filing of this appeal.

9. We have taken into consideration, the first substantial question of law for being answered.

10. Learned counsel for the appellant would submit that invocation of jurisdiction under Section 263 of the Act by the Commissioner of Income Tax was not warranted, as, present is not a case where it could be held that the assessment carried out was erroneous and prejudicial to the interest of the Revenue, inasmuch as the issue as to whether the building was used for business purposes, was clearly discernible from the fact that the appellant had purchased the land from the Tamil Nadu State Industrial Development Corporation. This part was duly appreciated during assessment proceedings drawn under Section 143(3) read with Section 153C of the Act and it was held that the assessee was entitled to depreciation allowance and the property was held to be one used for business purposes.

11. Further submission is that the considerations which prevailed with the Commissioner do not reflect that any opinion was formed by the Commissioner that it was a case of no inquiry or lack of inquiry but at the most, it could be said to be lack of adequate inquiry into the matter. Relying upon decisions in ***Commissioner of Income Tax vs. Sunbeam Auto Ltd., [2010] 189 Taxman 436 (Delhi) and Commissioner of Income Tax vs. Gabriel India Ltd. [1993] 203 ITR 108/71 Taxman 585 (Bombay)***, it is contended that the Commissioner of Income Tax has exceeded its jurisdiction and no case was made out for invoking jurisdiction under Section 263 of the Act. Therefore, it is contended that this legal position, based on the admitted facts on record, was not duly appreciated by the Appellate Tribunal.

12. Per contra, learned counsel for respondent would submit that when the first assessment was framed way back on 15.12.2009, the assessee's claim, even if it was there, was not accepted that the assessee was entitled to depreciation, treating the property to be one used for business purposes. It was only when after search was carried out and assessment was carried out under Section 153C of the Act,

the Assessing Officer on his own, without inquiry whatsoever, assumed that the property was being used for business purposes and recorded various findings, including entitlement to depreciation. Therefore, the Commissioner was fully justified in law in holding that the present was a case where, while carrying out assessment, the Assessing Officer acted in a manner and passed order, which was erroneous and prejudicial to the interest of the Revenue.

13. We have heard learned counsel for the parties and perused the record, and the various decisions cited at the Bar.

14. It is relevant to state, and an admitted position, that the appellant partnership firm claims to be engaged in the manufacture and sale of kitchen utensils. Moreover, it is also borne out from the records of the case that while the assessment was in the process of completion, a search was carried out under Section 132 of the Act in the business premises of another assessee and simultaneously, search was also carried out under Section 133A of the Act in the business premises of the appellant.

15. The appellant had also filed return of income for AY 2007-08 in response to the notice issued under Section 153C of the Act after search has been carried out. In the course of such assessment, the Assessing Officer dealt with excess claim of depreciation. What the Assessing Officer noticed, after discussing with the representative of the assessee, was that the old building which was sold by the assessee was purchased by him on 04.01.1996; but no depreciation was claimed in respect of that building for AY 2005-06 and AY 2006-07, even though it is clearly borne out from the records that the property was purchased by the assessee on 04.01.1996 for Rs.6,10,400/- from the Tamil Nadu State Industrial Development Corporation. This remained the undisputed position throughout. Based on the aforesaid material collected during inquiry, the Assessing Officer drawn an inference that the building was being used for the purpose of business. It was on this basis that the Assessing Officer was of the view that even though no depreciation was claimed, it is deemed that depreciation for that building which was used for the purpose of business should be computed and allowed in respective previous years itself and accordingly, the representative was asked to rework the claim on the depreciation allowable.

16. Therefore, on facts, it cannot be said to be a case where opinion was formed without any inquiry and without any material. Consequently, it could not be classified as a case of "lack of inquiry" but at the most even if the case of the Revenue is accepted on the basis of the order passed by the Commissioner, this was a case of "inadequate inquiry". Once there is an inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass order under Section 263 of the Act merely because he has a different opinion in the matter. It cannot, therefore, be said to be a case of erroneous order and prejudicial to the interest of the Revenue.

17. A Division Bench of Delhi High Court in the case of ***Sunbeam Auto Ltd.*** (cited supra) examined the aforesaid legal position as regards the scope and ambit of power under Section 263 of the Act. It was held to be a settled principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction etc. One has to see from the records as to whether there was any application of mind. Distinction between "lack of inquiry" and "inadequate inquiry" was also

highlighted in the said decision. It was held that if there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass orders under Section 263 of the Act, merely because he has different opinion in the matter and it is only in cases of "lack of inquiry" that such a course of action would be open.

18. Similar view was taken by the Bombay High Court in the case of ***Gabriel India Ltd.*** *[supra].* Based on logical and rational reading of the provisions contained in Sub-section (1) of Section 263 of the Act, it was observed that suo motu revision can be exercised by the Commissioner only if, on examination of the records of any proceedings under the Act, it is found that any order passed therein by the Income Tax Officer is 'erroneous insofar as it is prejudicial to the interests of the Revenue'. It is not an arbitrary or unchartered power, and can be exercised only on fulfilment of the requirements laid down in Sub-section (1) of Section 263 of the Act. The consideration of the Commissioner as to whether an order is erroneous insofar as it is prejudicial to the interests of the Revenue, must be based on the materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the

Commissioner, acting in a reasonable manner, could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in the matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce, repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity.

19. Therefore, an order cannot be termed as erroneous unless it is not in accordance with law. If the Income Tax Officer, acting in accordance with law, makes certain assessment, the same cannot be branded as erroneous by the Commissioner, simply because, according to the Commissioner, the order should have been written more elaborately. The Section does not visualize a case of substitution of the judgment of the Commissioner or that of the Income Tax Officer, who passed the order, unless the decision is held to be erroneous. There must be some prima facie material on record to show that the tax

which was lawfully eligible has not been imposed or that by wrong application of the relevant statute on an incorrect or incomplete interpretation, a lesser tax than what was just has been imposed.

20. On facts of the present case, it cannot be said to be a case of violation of any provision of law but appears to be more a case of alleged inadequate inquiry rather than lack of inquiry or material, warranting inference with the order that was drawn by the Assessing Officer in the assessment proceedings, pursuant to notice under Section 153C of the Act.

21. Accordingly, the first question of law is answered in favour of the assessee and against the Revenue.

22. In view of the above, we do not consider it necessary to answer the other questions of law, as it would only be academic in nature.

23. The appeal, accordingly, stands allowed in the manner that the first question of law is answered in favour of the assessee and against the Revenue. There will be no order as to costs.

(MANINDRA MOHAN SHRIVASTAVA, CJ.) (SUNDER MOHAN, J.)
11.08.2025

Index : Yes/No
Neutral Citation : Yes/No
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