Cit Vs. Ram Kishore Raj Kishore

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SooperKanoon Citation : sooperkanoon.com/492486

Court : Allahabad

Decided On : Jul-31-2003

Reported in : [2004]135TAXMAN511(All)

Appeal No. : I.T. Reference No. 85 of 1983 31 July 2003

Appellant : Cit

Respondent : Ram Kishore Raj Kishore

Judgement :
ORDER

By this Income Tax Reference, we have been asked to give our opinion on the following question :

'Whether on the facts and in the circumstances of the case, the Commissioner could assume jurisdiction under section 263 of the Income Tax Act, 1961?'

There is no dispute at the Bar as Shri Mahajan as well as Shri Gulati, agree to the extent that the Commissioner while exercising his power under section 263 of the Income Tax Act, 1961 could pass the order taking into account the issues not raised in the appeal.

2. In CIT v. Shri Arbuda Mills Ltd. (1998) 231 ITR 501, the Hon'ble Supreme Court considered the scope of Doctrine of Merger and the effect of amendment with retrospective effect from 1-6-1988. For the provisions of section 263(1) along with

clause (c) of its Explanation, the Honble Supreme Court held that the explanation to section 263(1), which was substituted by the Finance Act, 1988 with effect from 1-6-1988 was again amended by the Finance Act, 1989 with retrospective effect from 1-6-1988 to the effect that where any order referred to in the sub section and passed by the assessing officer had been the subject matter of any appeal (filed on or before or after 1-6-1988), the powers of the Commissioner under the sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal. The consequence of the amendment made with retrospective effect is that the powers under section 263 of the Commissioner shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in an appeal.

3. Similar view has been reiterated in CIT v. Jaykumar B. Patil : [1999]236ITR469(SC) .

Thus, in view of the above, we answer the reference in the negative, i.e. in favour of the revenue and against the assessee.