Plastic Concern Vs. Assistant Commissioner of Income Tax.

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Court : Kolkata

Decided On : Jun-10-1997

Reported in : (1998)61TTJ(Cal)87

Appeal No. : ITA No. 2322/Cal/1996; Asst. yr. 1993-94

Appellant : Plastic Concern

Respondent : Assistant Commissioner of Income Tax.

Judgement :
ORDER

--Assessment based on administrative direction of Commissioner

Ratio:

As the assessing officer had merely followed the administrative direction of the revisional authority prior to passing of the assessment order and if there was any error in his order, in the given set of facts, it was the error of judgment on the part of the revisional authority himself and not that of the assessing officer, and also the assessing officer had caused certain enquiries, therefore, the Commissioner ought not to have exercised revisional jurisdiction to set aside the assessment order.

HELD

Admittedly, the assessing officer has discussed the issue with the Deputy Commissioner as well as the Commissioner to passing of the assessment order. The assessing officer has also recorded, in his confidential note, that the Commissioner of consented on the issue of passing the assessment order for the time being, subject to making further enquiry at a later period. In the instant case, the assessing officer has merely followed the administrative direction of the revisional authority and if there is any error in the judgment, in the given set of facts, it is the error of the judgment of the revisional authority himself and not that of the assessing officer, Thus, the Commissioner ought not to have exercised revisional jurisdiction to set asides the assessment order. The information gathered by the assessing officer from the two parties and the explanation of the assessee in support of the `Note' in the balance sheet, do not contain any such material, even remotely, to suspect that the liability shown by the assessee in its books is sham or fictitious. Under such circumstances, it is, in the normal course, not necessary for an assessing officer to cause further enquiry. Hence, the assessment order cannot be considered as erroneous and the action of the Commissioner in that regard is nothing but another opinion on the same issue. It is trite law that revisional authority cannot adopt his opinion to that of the assessing officer by holding that the assessing officer ought to have caused further enquiries especially when the opinion formed by the assessing officer is not prima facie wrong. In the instant case, the Commissioner has also not gathered any further information to show that the apparent is not real in the impugned transactions.It is trite law that the Commissioner, before passing an order under section 263, should give a reasonable opportunity of being heard to the assessee and also inform what is the basis on which the Commissioner seeks the revision of the order . In the instant case, the finding that the assessee had no previous experience in the job work was never put to the assessee and hence the same cannot be the basis for passing an order under section 263 of the Act. Even otherwise, mere lack of previous experience for the job work cannot be the basis for revision in the absence of any material to prove that there was collusion between the aforesaid parties and the assessee and on that basis the assessment cannot be considered as erroneous.

Application:

Also to current assessment years.

Income Tax Act 1961 s.263