

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

ITC No.90 of 1999

Date of Decision: 18.03.2013

The Commissioner of Income Tax, Patiala ...Petitioner

Versus

M/s Roadmaster Industries of India Ltd. ...Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Savita Saxena, Advocate, for the petitioner.

HEMANT GUPTA, J. (ORAL)

The Revenue has invoked the jurisdiction of this Court under Section 256(2) of the Income Tax Act, 1961 (for short 'the Act') raising following substantial questions of law arising out of an order dated 19.08.1998 passed by the Income Tax Appellate Tribunal (for short "the Tribunal") in respect of assessment year 1990-91:

- “(i) Whether on the facts and in the circumstances of the case the Hon'ble ITAT was right in law in quashing the order of the Commissioner of Income Tax passed u/s 263 in respect of the items which do not form the subject matter of the show cause notices issued u/s 263?
- (ii) Whether on the facts and in the circumstances of the case the Hon'ble ITAT was right in law in holding that the matter on which the assessment was set-aside under Section 263 were not put on notice either in writing or verbally before passing order u/s 263?
- (iii) Whether on the facts and in the circumstances of the case, and in view of Hon'ble Supreme Court of India's decision in CIT Vs. Electro House, the ITAT was right in law in holding that a written notice was necessary specially when the assessee

had all the opportunities to argue before the Assessing Officer regarding admissibility of otherwise of its claim u/s 32 AB and 80 HHC?”

An assessment was initially framed under Section 143(3) of the Act on 22.07.1991. The same was rectified under Section 154 of the Act on 31.12.1991. Another order was passed under Section 154 of the Act on 12.03.1992. The order of assessment as rectified was set aside by the Commissioner of Income Tax on 11.01.1993 exercising the jurisdiction under Section 263 of the Act. In terms of the order passed by the Commissioner of Income Tax, the Assessing Officer reframed the assessment on 30.03.1993. Appeal against the said order was partly allowed by the Commissioner of Income Tax on 03.02.1995. In further appeal, the Tribunal found that the Commissioner of Income Tax has only proposed to re-compute the relief under Sections 32 AB and 80 HHC of the Act, but has passed an order in respect of other matters in respect of which, the assessee was not given any opportunity of hearing. Therefore, the order of the Commissioner of Income Tax to re-compute the income of the assessee in respect of other matters was set aside. The operative part of the order dated 19.08.1998 reads as under:

“5.we accept the arguments advanced by Ld. Counsel and quash the order of the Commissioner u/s 263 in respect of items which do not form the subject matter of the show cause notice issued u/s 263 in respect of which there is no material on record and that the assessee was subsequently put on notice, either in writing or verbally, by the Commissioner indicating the intention to pass an order in respect of such new items. The statement of the ld. Counsel before us to the same effect stands unrebutted by the ld. D.R.

6. Before we part with this appeal we must make it clear that the arguments raised before us pertain to grounds Nos.1 to 4 set out in the memorandum of appeal and no arguments were advanced by the ld. counsel in respect of ground No.5.

7. In the result, the appeal is partly allowed.”

Learned counsel for the petitioner has vehemently argued that non-inclusion of certain facts in the show cause notice is a procedural irregularity and that an opportunity should have been given to the Revenue to issue notice in such matters as well, as has been done by the Supreme Court in Commissioner of Income Tax, West Bengal, II Vs. Elector House (1971) 82 ITR 824.

We have heard learned counsel for the petitioner and find no merit in the argument raised. Section 263 of the Act empowers the Commissioner of Income Tax to call for and examine the record of any proceeding, if he finds that any order passed therein by the Income Tax Officer is erroneous in so far as it is prejudicial to the interests of the revenue, but such order can be passed after giving an opportunity of being heard to the assessee. Since the show cause notice was limited to the matters under Sections 32 AB and 80 HHC of the Act, therefore, the assessee has not been given any opportunity of hearing, which alone will permit the Commissioner of Income Tax to exercise the revisional jurisdiction under Section 263 of the Act. Therefore, we do not find any illegality in the order passed by the Tribunal, which may give rise to any substantial question of law.

The argument that matter should have been remanded by the Tribunal is a question of law does not merit our acceptance. In fact, the order of the Tribunal is categorical that the show cause notice was quashed only in respect of matters which were not subject matter of the show cause notice. There was no bar with the Revenue to issue show cause notice in respect of matters not covered by the earlier show cause notice. Having not done so, the petitioner cannot be permitted to reopen the concluded assessment at this stage.

Dismissed.

(HEMANT GUPTA)
JUDGE

18.03.2013

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(RITU BAHRI)
JUDGE