

Court No. - 9

Case :- INCOME TAX APPEAL DEFECTIVE No. - 114 of 2015

Appellant :- Commissioner Of Income Tax Kanpur

Respondent :- M/S Rave Entertainment Pvt. Ltd.

Counsel for Appellant :- S.S.C. I.T.

Counsel for Respondent :- Abhinav Mehrotra, Ashish Kumar Gupta

Hon'ble Pankaj Mithal, J.

Hon'ble Vinod Kumar Misra, J.

The appeal is reported to be defective as the certified copy of the impugned order of the tribunal has not been annexed.

The copy of the order of the tribunal annexed with the appeal is not disputed by either of the parties.

In view of the above, we exempt the filing of the certified copy of the order.

Exemption Application No. 156223 of 2015 is allowed.

Office to allot regular number to the appeal.

Heard Sri Subham Agrawal and Sri Abhinav Mehrotra, learned counsel for the parties.

This appeal is directed against the order of Income Tax Appellate Tribunal dated 10.12.2014 by which it has set aside the order of Commissioner Income Tax (in short CIT) dated 25.3.2014 passed under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act).

The fact appears to be that an order of assessment was passed against the respondent assessee on 9.12.2011 under Section 143 (3) of the Act. This order was set aside by the CIT (Appeals) vide order dated 9.10.2012.

The above assessment order dated 19.12.2011 was set aside by the CIT in exercise of its revisional power under Section 263 of the Act on 25.3.2014 and the matter has been remanded for reassessment.

The tribunal set aside the revisional order on the ground that when the order sought to be revised itself has been set aside by the appellate order and had ceased to exist, there was no occasion for revising the same.

The controversy in this regard has been set at rest by the Division Bench of the Mumbai High Court in the case of

Ranka Jewellers Vs. Additional Commissioner of Income Tax (2011) 238 CTR (Bom) 153.

The aforesaid decision lays down that where an order passed by the Assessing Officer was considered in appeal by the CIT (A), the remedy of revision under Section 263 of the Act is not available and the order of CIT under Section 263 of the Act would be invalid.

In addition to the above, once the order of Assessing Authority is appealed against and the appeal is decided on merits, the order merges in the appellate order leaving no scope for its revision independently.

Thus, as in the present case the validity/correctness of the assessment order 9.12.2011 was adjudicated in all respect and same was set aside on the ground that the assessee was not in existence at the relevant time vide order dated 9.10.2012, there was no occasion for the CIT to revise it under Section 263 of Act by the impugned order dated 10.12.2014.

It is pertinent to point out that the appellate order dated 9.10.2012 has attained finality as the appeal of the revenue against it has been dismissed by a separate order passed today itself.

In view of the above, we find no merit in this appeal as it does not involve any substantial question of law and is accordingly dismissed with costs.

Order Date :- 5.5.2017
SKS