HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH
Court No. 1

Writ Petition No. 4748 (MB) of 2009
RANA ROHIT SINGH
Vs.
Commissioner of Income Tax and another; and

Writ Petition No. 4749 (MB) of 2009
SMT. POONAM SINGH
Vs.
Commissioner of Income Tax and another

Hon'ble Pradeep Kant, J.
Hon'ble S.N.H. Zaidi, J.

Notice on behalf of the respondents has been accepted by Sri D.D. Chopra. With the consent of the parties' counsel, the writ petitions are being disposed of finally at the admission stage.

These are two writ petitions, which challenge the order dated 17.3.09 passed by the Commissioner of Income Tax separately, in respect of assessment year 1999-2000 and 2001-02.

A notice under **Section 148** was issued to the petitioner, against which returns were filed and assessment has been made. In the writ petition for the assessment year 1999-2000, a plea has been taken that the notice under Section 148 was issued by the Assistant Commissioner of Income Tax, who had no jurisdiction to issue the notice as the Income Tax Officer, Ward, was authorised for that matter and when this plea was taken during the course of assessment proceedings, the case was transferred by the Assistant Commissioner to the Income Tax Officer, who was having jurisdiction. The petitioners' plea is that this transfer will not validate the initiation of proceedings. Consequently the order of assessment is also per se without jurisdiction. Apart from the aforesaid plea with respect to assessment year 1999-2000 in both the writ petitions, a common plea has been raised that the Commissioner of Income Tax committed manifest error of law in refusing to entertain the revision on the ground that the revision is not a substitute to appeal and that the petitioner should have availed the remedy of appeal, particularly when for some assessment years appeals were filed. **Section 264** of the Income Tax Act itself says that in the case of any order other than an order to which section 263 applies passed by an authority subordinate to him, the Commissioner may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which any such order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of the Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit. Sub-clause (4) of Section 264 restricts the power of the Commissioner to pass any order, if it falls within any of the categories, as provided therein.
Sub-clause (4) of Section 264 reads as under:

"(4) The Commissioner shall not revise any order under this section in the following cases

(a) where an appeal against the order lies to the Deputy Commissioner (Appeals) or to the Commissioner (Appeals) or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired, or, in the case of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal, the assessee has not waived his right of appeal; or

(b) where the order is pending on an appeal before the Deputy Commissioner (Appeals);

(c) where the order has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal."

The scheme of the aforesaid Section leaves no ambiguity that in a case where though appeal is provided under the provisions of the Act, revision can be filed, without taking recourse to the remedy of appeal.

It need be pointed out that Section 264 is a power vested with the Commissioner in addition to the right of the appellate authority to look into the assessment proceedings and the right of the assessee to file appeal. The discretion vests with the Commissioner to entertain the revision, if the conditions prescribed in Sub-Section (4) do exist. The Commissioner in the instant case was swayed by the fact that the revision under Section 264 is not a substitute of appeal. This is not the correct interpretation of Section 264.

The other ground was that the assessee, namely, the petitioners have chosen to file appeal against assessment in the previous and the subsequent assessment years and, therefore, there is every likelihood for having conflicting judgements. The counsel for the petitioner says that the question of law, which was involved in the matter already stands decided by a Division Bench of this Court, therefore, it is the wrong assumption on the part of the Commissioner.

We are not supposed to interpret the order passed by the assessing authority nor the plea of the parties as to whether the order passed by the Tribunal is binding or not, and whether the matter is covered by any binding precedent. We are of the view that the Commissioner could not have refused to entertain the revision on the ground that it is not a substitute of appeal, though there may be many more reasons, on which exercise of the discretionary jurisdiction can be refused but such reasons have to be germane to the issue and valid. We, therefore, set aside the orders dated 17.3.09 passed by the Commissioner of Income Tax and direct that the Commissioner shall reconsider the revisions under Section 264 and pass fresh orders, as per his own discretion, in accordance with law. The special appeals are disposed of accordingly.

27.5.09