

Ashish Rajpal in relation to Section 263

Held by DHC (further refer enclosed DHC ruling in Contimeters on Section 263 highlighting importance of show cause notice required to issued u/s 263), which has not been considered in instant case to hold that

- A) "As observed by us above, there is no requirement under Section 263 of the Act to issue a notice before embarking upon a revisionary proceedings. To that extent the submission of the learned counsel for the Revenue Mr Sanjeev Sabharwal has to be accepted"

(Whereas Ratio of Contimeters : "Consequently the Tribunal held that as the said issue did not form part of the show cause notice and the assessee was not even confronted with it, even before the CIT, it cannot form the basis for revision of the assessment order under Section 263. On this aspect of the matter also, we are satisfied with the findings.")

- B) "The fact that a query was raised during the course of scrutiny which was satisfactorily answered by the assessee but did not get reflected in the assessment order, would not by itself lead to a conclusion that there was no enquiry with respect to transactions carried out by the assessee. The fact that there was an enquiry can also be demonstrated with the help of the material available on record with the Assessing Officer. The material, to which a reference has been made in the impugned judgment, would show that there was no undue haste in examining the material prior to the passing of the assessment order dated 24.03.2005. At least four letters dated 27.04.2004, 22.02.2005, 28.02.2005 and 18.03.2005 were addressed by the assessee to the Assessing Officer giving details, documents and information pertaining to various queries raised by the Assessing Officer. These have been examined by the Tribunal. We have no reason to believe that examination was less than exacting. Therefore, the conclusion of the Commissioner that there was "lack of proper" verification is unsustainable."

- C) "The provisions of Section 263 mandate that an order for enhancing, or modifying the assessment, or cancelling the assessment and directing a fresh assessment can only be passed after giving the assessee an opportunity of being heard and after making or causing to be made such enquiry as is deemed necessary. The threshold condition for reopening the assessment is that before passing an order an opportunity has to be granted to the assessee and, such an opportunity granted to the assessee is a necessary concomitant of the enquiry the Commissioner is required to conduct to come to a conclusion that an order for either an enhancement or modification of the assessment or, as in the present case, an order for cancellation of the assessment is called for, with a direction to Assessing Officer to make a fresh assessment. This defect cannot be cured by first reopening the assessment and then granting an opportunity to the assessee to respond to the issues raised before Assessing Officer during the course of fresh assessment proceedings"