



2024:KER:78804

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 23RD DAY OF OCTOBER 2024/1ST KARTHIKA, 1946

I.T.A.NO.40 OF 2020

AGAINST THE ORDER DATED 10.12.2019 IN I.T.A.NO.625/COCH/2017 OF
THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN

APPELLANT/RESPONDENT/ASSESSEE:

MANJOO AND COMPANY
'MANJOO', NEAR POONKAVU TEMPLE, KADAMBUR,
EDAKKAD P.O., KANNUR - 670 663, (PAN:AAEFM 7842G),
REPRESENTED BY ITS MANAGING PARTNER
SRI. MURALIDHARAN P.

BY ADV.SRI.ANIL D. NAIR (SR.)
BY ADV.SRI.GOKULRAJ L.
BY ADV.SMT. ARYA ANIL
BY ADV.SRI.R.SREEJITH
BY ADV.SMT.SRI HARINI S.P.

RESPONDENT/APPELLANT/REVENUE:

THE ASSISTANT COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE - 1, KOZHIKODE - 673 001.

BY ADV.SRI.P.K.RAVINDRANATHA MENON (SR.)
BY SRI.JOSE JOSEPH, STANDING COUNSEL FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
23.10.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



J U D G M E N T

Dr. A.K. Jayasankaran Nambiar, J.

This I.T. Appeal is filed impugning the order dated 10.12.2019 of the Income Tax Appellate Tribunal, Cochin Bench in I.T.A.No.625/Coch/2017 pertaining to the assessment year 2006-07. The brief facts necessary for the disposal of the I.T. Appeal are as follows:

2. The appellant before us is a dealer in lottery tickets and an assessee under the Income Tax Act [hereinafter referred to as the "I.T. Act"]. The assessment of the appellant for the assessment year 2006-07 was completed under Section 143(3) of the I.T. Act on 29.12.2008. While the assessee did not prefer any appeal against the said assessment order, the Commissioner of Income Tax initiated proceedings under Section 263 of the I.T. Act by issuing a notice dated 07.12.2010 proposing to revise the assessment order. The revision of the assessment order was proposed in relation to four issues. The appellant/assessee preferred a reply dated 13.12.2010 submitting its comments in relation to the said four issues. The Commissioner of Income Tax thereupon considered the explanations offered by the assessee and passed an order dated 09.03.2011 under Section 263 of the I.T. Act, accepting the explanation offered by the assessee in



respect of two issues but rejecting the explanation offered by the assessee in respect of the other two issues and remanding the said two issues to the assessing authority for a fresh adjudication, by taking note of the observations of the Commissioner in the order passed under Section 263 of the I.T. Act.

3. It would appear that while passing the consequential order based on the order passed by the Commissioner under Section 263 of the I.T. Act, the Assessing Authority considered other issues and expanded the scope of the original assessment order passed by him under Section 143(3) of the I.T. Act. This led to a huge demand being fastened on the appellant/assessee, who then proceeded to challenge the consequential order passed by the Assessing Authority before the First Appellate Authority through an appeal. While considering the appeal, the First Appellate Authority called for a remand report from the Assessing Authority. The then Assessing Authority prepared and submitted Annexure-G remand report before the First Appellate Authority on 08.04.2013. In the said remand report, the then Assessing Authority virtually admitted that the earlier Assessing Authority, who had passed the consequential order pursuant to the revision order of the Commissioner, had strayed beyond the terms of the remand by the Commissioner, and had proceeded to adjudicate on issues other than what was directed by the Commissioner in the order passed under Section 263 of the I.T. Act. The First Appellate Authority, therefore, allowed the appeal of the appellant/assessee by



relying on the remand report and finding that the consequential order passed by the Assessing Authority could not be legally sustained.

4. Aggrieved by the order of the First Appellate Authority, the Revenue preferred an appeal before the Appellate Tribunal. The Appellate Tribunal placed reliance on the provisions of Section 251 of the I.T. Act that deals with the powers of the First Appellate Authority and found that the powers of the First Appellate Authority were wide and co-extensive with the powers of an Assessing Authority, and consequently, the First Appellate Authority had necessarily to consider all the issues that were considered by the Assessing Authority to see whether the order of the Assessing Authority impugned before it was legally sustainable or not. The Appellate Tribunal, however, appears to have completely overlooked the fact that the First Appellate Authority in the instant case, against whose order the Revenue had come in appeal before the Tribunal, was actually considering a consequential order passed pursuant to an order of the Commissioner under Section 263 of the I.T. Act. and not an original assessment order passed under Section 143(3) of the I.T. Act. While it may be a fact that the powers available to the First Appellate Authority under Section 251 of the I.T. Act are co-extensive with that of the Assessing Authority, the position is slightly different when the First Appellate Authority considers a consequential order passed by an Assessing Authority, pursuant to directions given by a Commissioner in the exercise of its powers under Section 263 of the I.T. Act. In the latter



event, the concern of the Assessing Authority, while passing a consequential order, has to be limited to those specific issues that have been remanded to it for consideration by the Commissioner. Consequently, the role of the First Appellate Authority, while considering an appeal preferred against such consequential order passed by the Assessing Authority, must also be with regard to the findings of the assessing authority on those very issues that were remanded for fresh consideration by the Commissioner under Section 263 of the I.T. Act. In the instant case, the Assessing Authority, who passed the consequential order, apparently strayed beyond the terms of the remand by the Commissioner under Section 263 of the I.T. Act. This, in our view, was wholly unacceptable, and for the said reason, the said consequential order passed by the Assessing Authority had necessarily to be set aside, as was done by the first appellate authority. It would follow therefore that the order of the Appellate Tribunal, that sustains the said assessment order, must also be set aside, and we do so. This I.T. Appeal therefore succeeds, and we answer the questions of law raised, namely;

- i. In the facts and circumstances of the case, ought not the Tribunal have held that the consequential orders passed are beyond the scope of Sec. 263 order ?
- ii. In the facts and circumstances of the case, ought not the Tribunal have held that the data gathered by the Officer during the course of remand proceedings is behind back of the appellant and is violative of the principles of natural justice ?
- iii. In the facts and circumstances of the case, ought not the Tribunal have held that the Officer has exceeded the scope of directions given under Sec.263 and dismissed the appeal ?



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- iv. In the facts and circumstances of the case, ought not the Tribunal have justified in law in remanding back the case to the Commissioner of Income (Appeals), when the matter was examined on merits by the Commissioner of Income Tax (Appeals) ?
- v. In the facts and circumstances of the case, ought not the Tribunal have held that the Commissioner of Income (Appeals) was only guided by the remand order and had not exclusively disposed of the appeal on the basis of remand report ?
- vi. Is not the discretion afforded to CIT (Appeals) to call for a fresh remand report legally unsustainable in law in the facts and circumstances of the case?

in favour of the assessee and against the Revenue. We also deem it appropriate to direct the Assessing Authority to pass a fresh consequential order based on the order passed by the Commissioner of Income Tax under Section 263 of the I.T. Act [produced as Annexure-D in this appeal], within a period of three months from the date of receipt of a copy of this judgment, after hearing the appellant/assessee.

The I.T. Appeal is accordingly allowed.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
SYAM KUMAR V.M.
JUDGE

prp/23/10/24



APPENDIX OF I.T.A.NO.40/2020

PETITIONER'S ANNEXURES:

- ANNEXURE A TRUE COPY OF THE ASSESSMENT ORDER DATED 29.12.2008 UNDER SEC.143(3) OF THE INCOME TAX ACT, 1961 ISSUED BY THE 1ST RESPONDENT.
- ANNEXURE B TRUE COPY OF NOTICE UNDER SEC.263 DATED 07.12.2010.
- ANNEXURE C TRUE COPY OF THE REPLY DATED 13.12.2010 SUBMITTED BY THE APPELLANT.
- ANNEXURE D TRUE COPY OF THE ORDER DATED 09.03.2011 ISSUED BY THE RESPONDENT.
- ANNEXURE E TRUE COPY OF THE LETTER DATED 11.11.2011 SUBMITTED BY THE APPELLANT.
- ANNEXURE F TRUE COPY OF ASSESSMENT VIDE ORDER DATED 11.11.2011 UNDER SEC.143(3) READ WITH SEC. 263.
- ANNEXURE G TRUE COPY OF THE REMAND REPORT DATED 08.04.2013.
- ANNEXURE H TRUE COPY OF THE ORDER OF COMMISSIONER OF INCOME TAX (APPEALS) DATED 22.09.2017.
- ANNEXURE I CERTIFIED COPY OF THE ORDER OF INCOME TAX APPELLATE TRIBUNAL DATED 10.12.2019.

RESPONDENT'S ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE