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T.C.A. No.340 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2025

CORAM

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Tax Case Appeal No.340 of 2013

Commissioner of Income Tax,
Coimbatore.

.. Appellant

-vs-

M/s.Ganga Textiles Ltd.,
1547-A, Avinashi Road,
Peelamedu, Coimbatore 641 004
PAN : AABCG1029P.

.. Respondent

Prayer: Appeal filed under Section 260A of the Income Tax Act, 1961,
against the order dated 18.09.2012 passed in ITA No.1305/Mds/2012 on
the file of Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai for
the Assessment Year 2004-05.

For Appellant : Mr.V.Mahalingam
Sr. Stdg. Counsel

For Respondent : Mr.V.S.Jayakumar
Senior Counsel
for Mr.Sandeep Bagmar

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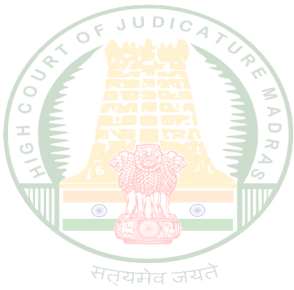
JUDGMENT

(Judgment of the Court was delivered by Sunder Mohan, J.)

On 23.07.2013, the above Tax Case Appeal was admitted on the following substantial questions of law:

1. *Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that the order of the Commissioner of Income Tax under Section 263 is time barred and not in accordance with the provisions of the Income Tax Act?*
2. *Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that 2 years from the end of the relevant financial year as per Section 263(2) of the Income Tax Act is to be considered from the date of original assessment and not from the date of reassessment ?*
3. *Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in narrowing scope of Section 263 and powers of the Commissioner under that Section when the assessment was found to be erroneous and prejudicial to the interests of the Revenue ?*

2. The brief facts leading to the filing of the above appeal are as follows:



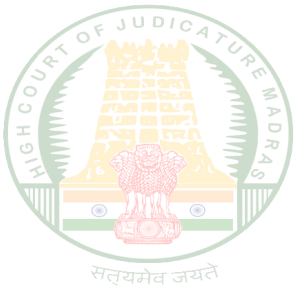
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(a) Respondent/Assessee is a limited company. On 01.11.2004, assessee filed return of income for Assessment Year 2004 – 2005 admitting a loss of Rs.11,81,35,170/-. The case was selected for scrutiny. The Assessing Officer passed an order on 31.08.2006 under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') disallowing certain deductions claimed by the assessee, including a portion of a deduction claimed under Section 43B of the Act. Assessee accepted the said assessment.

(b) The assessment was reopened and was completed under Section 143(3) read with Section 147 of the Act on 30.12.2009 qua computation of capital gains regarding assessee's sale of its land and building.

(c) Aggrieved by the said order, assessee filed an appeal before Commissioner of Income Tax (Appeals) – I, Coimbatore, who allowed the appeal on 09.02.2011. Neither the assessee nor the revenue challenged the said order.



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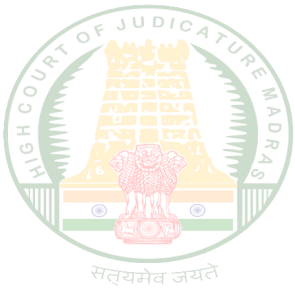
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(d) On 30.03.2012, appellant/Revenue, under Section 263 of the Act, revised the assessment order passed under Section 143(3) read with Section 147 of the Act for the said Assessment Year.

(e) Assessee challenged the said order, *inter alia*, on the ground that the order under Section 263 of the Act was beyond the statutory period of two years prescribed under Section 263(2) of the Act from the date of the original assessment order dated 31.08.2006.

(f) The Tribunal accepted the submissions of the assessee and set aside the order passed under Section 263 of the Act. It is against this order, Revenue is on appeal.

3. Mr.Mahalingam, learned standing counsel for the appellant/Revenue, submitted that the order passed by the appellant is within the statutory period of two years, as the said period has to be reckoned from the date of the reassessment order passed under Section 143(3) read with Section 147 of the Act, i.e. 30.12.2009 and not from the date of the original assessment order, i.e., 31.08.2006.



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4.Mr.Jayakumar, learned senior counsel for the respondent/assessee, per contra, submitted that appellant had sought to revise the assessment order by holding that the deduction under Section 43B of the Act can be allowed only under the head “Business” and since there was no business activity, the same could not have been allowed; and that the said revision in effect is to the original order of assessment dated 31.08.2006. He further submitted that in the reassessment, the deduction under 43B of the Act was not an issue. Therefore, he submitted that since the jurisdiction under Section 263(1) of the Act was exercised with reference to the findings in the original order of the assessment, the date of the original assessment order has to be reckoned for considering the statutory period of two years before which the order under Section 263 (1) of the Act could have been passed. He further submitted that the Tribunal was right in holding that the order under section 263 (1) is barred by limitation.

5. It is not disputed that the original assessment order was passed on 31.08.2006. The original assessment order had considered the issue under Section 43B of the Act. The said assessment order was reopened by the



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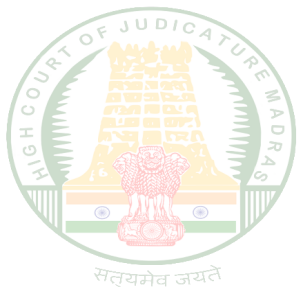
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Assessing Officer only with regard to the computation of long and short term capital gains pertaining to assessee's sale deed executed qua the land and building. The reassessment was not with regard to the deductions claimed under Section 43B of the Act. Therefore, the order passed under Section 143(3) on 31.08.2006 cannot be said to have been merged with the order of reassessment in respect of the deductions under Section 43B of the Act. The order passed under 263(1) of the Act is with reference to an issue which is covered by the original assessment order and not with regard to the issue in the reassessment.

6. Hence, in our considered view, the limitation of two years prescribed under Section 263(2) of the Act has to be reckoned from the date of the original assessment order under Section 143(3) of the Act, which is 31.08.2006. In fact, the Bombay High Court in **CIT vs. ICICI Bank'**, had dealt with an identical issue and held as follows:

"Sub-section (2) of Section 263 stipulates a period of limitation of two years within which an order under sub-section (1) has to be passed. Under sub-section (2) no order under Section 263(1) can be made after the expiry of two years from the end of the financial year in which the order sought to be revised was passed. The order of assessment under Section 143(3) in the present case allowed the deduction which was claimed under Section 36(1)(vii), Section

1(2012) 343 ITR 74



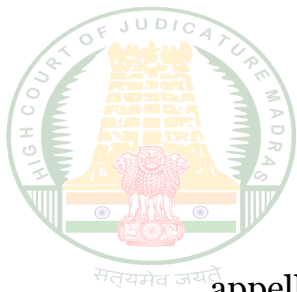
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36(1)(viii) and in respect of foreign exchange rate difference. Neither in the first order of reassessment dated 22 February 2000 nor in the second order of reassessment dated 26 March 2002 were these aspects determined. In other words on the aforesaid three issues, the original order of assessment dated 10 March 1999 passed under Section 143(3) continued to hold the field. Once that is the position, then clearly the doctrine of merger would not apply. The order under Section 143(3) passed on 10 March 1999 cannot stand merged with the orders of reassessment in respect of those issues which did not form the subject matter of the reassessment. Consequently Explanation 3 to Section 147 will not alter that position. Explanation 3 only enables the Assessing Officer, once an assessment is reopened, to assess or reassess the income in respect of any issue, even an issue in respect of which no reasons were indicated in the notice under Section 148(2). This, however, will not obviate the bar of limitation under Section 263(2). Where the jurisdiction under Section 263(1) is sought to be exercised with reference to an issue which is covered by the original order of assessment under Section 143(3) and which does not form the subject matter of the reassessment, as in the present case, limitation must necessarily begin to run from the order under Section 143(3). Before concluding we may also take notice of the fact that the second order of reassessment dated 26 March 2002 has been set aside by the Tribunal on 27 August 2010. An appeal against the order of the Tribunal is pending before this Court for admission. However, we have considered this appeal independently and have come to the conclusion that the invocation of the jurisdiction under Section 263 was barred by limitation."

7. The above observations would squarely apply to the facts of the instant case. A co-ordinate bench of this Court had also taken a similar view in **Indira Industries v. Principal Commissioner of Income Tax**². For the aforesaid reasons, we are of the view that the order of the

² [2018] 305 CTR 314 (MAD)



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appellant/Revenue dated 30.03.2012 under Section 263 of the Act is time-barred and therefore was rightly set aside by the Tribunal. The substantial questions of law are answered in favour of the assessee.

Appeal is, accordingly, dismissed. No costs.

(K.R.SHRIRAM, CJ.)

(SUNDER MOHAN, J.)

01.07.2025

Index : Yes/No

Neutral Citation : Yes/No

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To

1. The Income Tax Appellate
Tribunal Madras 'B' Bench.
2. The Commissioner of Income Tax,
Coimbatore.



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The Hon'ble Chief Justice
and
Sunder Mohan, J.

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