

CIT can't revise order of AO because he loses his jurisdiction due to a circular issued by CBDT subsequently

Summary – The High Court of Rajasthan in a recent case of Kailash Chand Methi, (the Assessee) held that Income tax Officer having valid jurisdiction at time of issuance of notice under section 143(2), subsequent disqualification would not scrap his jurisdiction of making assessment

Facts

- The assessee submitted a return of income for the assessment year 2006-07 on 30-10-2006.
- The Assessing Officer issued notice under section 143(2) on 11-1-2007. After considering assessee's submission and analyzing various claims made by the assessee. The ITO passed details assessment order for assessment year 2006-07 on 30-9-2008 which was partly allowed by the Commissioner (Appeals).
- However, later on the Commissioner initiate proceeding under section 263. But on basis of detailed submission of assessee, said revision proceeding was dropped by him.
- Subsequent to this order, after change of the Commissioner, the subsequent Commissioner (administration) issued another show cause notice under section 263 read with section 154 on ground that predecessor Commissioner had not reviewed all aspects and Assessing Officer had no jurisdiction to complete assessment as income of subsequent year i.e. assessment year 2007-08 was above Rs. 5 lakh and as per internal circular jurisdiction bid with the Dy. Commissioner/Asstt Commissioner.
- On appeal, the Tribunal quashed the order under section 263 and sustained the order passed by the Assessing Officer.
- On appeal by the revenue to the High Court:

Held

- A return was submitted by the respondent assessee before the concerned authority who had jurisdiction over the case on the date of filing of the return and it was not the duty of the respondent-assessee to find out about an internal circular that jurisdiction lied over the case with the Dy. Commissioner/Asstt Commissioner. The respondent-assessee appeared number of times before the Assessing Officer who issued show cause notice under section 143(2) and even after number of hearings, the ITO, made additions and the matter even traveled before the Commissioner (Appeals) who allowed the appeal in part.
- It is also an admitted fact that one Commissioner (Administration) had issued notice under section 263 and he also being satisfied dropped the proceedings under section 263.

- Even the said Commissioner while dropping the proceedings, did not observe as to whether jurisdictional error was there. Therefore, the next Commissioner, in the present order under section 263 was not justified in re-initiating proceedings under section 263 mainly on the premise about jurisdiction. There was no fault of the respondent assessee. The respondent-assessee appeared before the Assessing Officer who issued valid notice and Assessing Officer had the authority to issue notice under section 143(2) as aforesaid and complied with the requirements raised by him. The respondent-assessee may not be aware of such requirements and for this the respondent-assessee cannot be subjected to fresh innings at the hands of another Assessing Officer.
- It would be fruitful to quote section 263(1).
- Admittedly, the assessment order was challenged before the Commissioner(Appeals) who also allowed part relief and even upto the stage of the order of the subsequent Commissioner, who dropped the proceedings under section 263 the respondent-assessee was not made aware of the jurisdictional issue.
- It may also be observed that the notice under section 143(2) was issued on 11-1-2007 by the ITO and at that particular time, the income for the subsequent assessment year i.e. the assessment year 2007-08 was not submitted rather the financial year had not ended by then and the ITO assumed valid jurisdiction. The return for the assessment year 2007-08 was submitted on 31-08-2007 and merely because assessment order was passed after 31-08-2007, the order passed by the ITO on 30-09-2008 cannot be said to be without jurisdiction rather, the assessment order, passed on 30-09-2008, can be said to be with jurisdiction and validly passed.
- The Commissioner in the subsequent order passed under section 263 held that the assessment order was without jurisdiction and is not valid order and original order passed under sections 143(3) and 263 cannot be rectified either under section 154 or under section 263 through the revisional power conferred on the Commissioner under section 263.
- The Assessing Officer had the jurisdiction when the notice under section 143(2) was issued and once the ITO had valid jurisdiction at the time of issuance of notice, then the Assessing Officer ought to have informed the assessee if there was some internal circular. The Commissioner later on was of the view that the ITO had no jurisdiction. It cannot be said to be proper as the assessee appeared on valid notice and after considering all the submissions or representation, the ITO passed an order. It is not a case where the ITO passed order in a cryptic or summary manner accepting the returned income and the assessment order is running into 12 pages and after elaborate discussion on most of the issues, the income was computed/assessed. As pointed out here above, twin conditions have to be satisfied and the order cannot be termed to be erroneous only because the commission does not feel satisfied with the conclusion also issued notice under section 263 for the same assessment year between the same parties and the having been satisfied dropped the proceedings and it is only thereafter that another Commissioner came to the conclusion about jurisdiction while the earlier Commissioner was also aware of this factum but did not arise this issue. If the Commissioner was of the view that the Assessing Officer has passed an order without jurisdiction then he ought to have

initiated departmental enquiry against such officer. No such information has come forward from the appellant-revenue or perused from the order of Commissioner under section 263, thus the order of Commissioner under section 263 can at best be said to be change of opinion and tantamount to abuse of powers granted to the Commissioner. The practice adopted by the Commissioner is dehours and it amounts to unnecessary harassment to the assessee for no fault of his.

- Accordingly, there is no infirmity or perversity in the order of the Tribunal so as to call for any interference.
- Accordingly the appeal, being devoid of merit, it hereby dismissed in limine.