ITAT had rightly set-aside time-barred assessment under sec. 144 after considering facts of the case

Summary – The High Court of Andhra Pradesh in a recent case of Amarchand Sharma And Udani, (the Assessee) held that where Tribunal on appreciation of facts came to conclusion that order passed under section 144 read with section 251 was time-barred and cancelled same; conclusions reached by Tribunal could not be interfered with.

Facts

- The assessee was assessed to income-tax under section 143(3) on 26-3-1983, and thereafter, assessment order came to be set aside by the Commissioner in exercise of the powers conferred under section 263 with a direction to make fresh assessment in accordance with law.
- After a long lapse of time, the assessee filed an appeal before the Tribunal against the order of the Commissioner and during its pendency, the assessee filed a letter dated 30-4-1987 before the Tribunal seeking permission to withdraw the appeal for the reason that the time for making assessment consequent upon the orders under section 263 was 31-3-1987; and inasmuch as no assessment was made on or before 31-3-1987, no assessment could be made and, as such, the same was time-barred. The appellant's appeal was dismissed as withdrawn.
- Thereafter, on 10-9-1987, the assessee received assessment order dated 30-3-1987 said to have been made under section 144, read with section 251 which was dispatched on 8-5-1987.
- The Commissioner (Appeals), after going through the records, had found that the assessment order though dated as 30-3-1987 was obviously not made on or before 31-3-1987 and in that view of the matter, had cancelled the assessment made in pursuance of the order passed under section 263. The Commissioner also verified the record and on appreciation of the facts on record and found that the notice as required under section 143(2) was also not issued.
- On appeal by the revenue to the Tribunal against cancellation of assessment order dated 30-3-1987 made under section 144, read with section 251, the Department failed to produce the demand and collection register for the assessment year 1977-78 and made no effort to dislodge the finding recorded by the Commissioner. The Tribunal having verified the facts on record, came to a categorical opinion that the assessment order is anti-dated as 30-3-1987, but was obviously made after that date, and in that view of the matter, dismissed the appeal filed by the revenue.
- On further appeal:

Held

- The crucial aspect of the matter in the present case is non-issuance of notice under section 143(2) before passing the order under section 144.
- A combined reading of section 143 read with section 144 would go to show that firstly, a notice under section 143(2) is mandatory for making an assessment, and further, on account of the proviso, no notice shall be issued if the assessment is being made after the expiry of the financial

year in which the return is furnished or the expiry of six months from the end of the month in which the return is furnished whichever is later.

- In the present case, proviso to section 144 does not apply as the assessment was made pursuant to the orders made by the revisional Commissioner under section 263. Section 144, at the relevant point of time, further mandates issuance of a notice and an opportunity of hearing to the assessee before making the best judgment assessment. In this case, the finding of the authorities below is to the effect that no notice under section 143(2) was ever issued to the assessee. Issuance of a notice under section 143(2) is mandatory. Even the requirement of notice of hearing before making the best judgment assessment under section 144 has not been complied with. Considering all these aspects, both the appellate Commissioner as well as the Tribunal came to the conclusion that the assessment order dated 30-3-1987 was really not made on that day and obviously the same has been made subsequent to that date.
- One also should not loose sight of the fact that the order dated 30-3-1987 came to be dispatched on 8-5-1987 and received by the assessee on 10-9-1987; after the assessee filed the letter before the Tribunal pointing out the time for passing assessment order expired. On going through the factual matrix available on record, there is no manner of doubt that there is no error apparent on the face of the record and the Tribunal came to the right conclusion that the assessment order was not really made on 30-3-1987 and the same was made subsequent to that date. All this being in the realm of the appreciation of the facts on record, there is no question of law which arises from the order of the Tribunal as conclusions reached by the Tribunal are based on appreciation of pure questions of fact. In that view of the matter, there is no reason to interfere with the order of the Tribunal and the referred questions of law are answered against the revenue and in favour of the assessee.
- Accordingly, the referred case is disposed of.