

CIT(A) can enhance tax liability in an appeal preferred by assessee after issuing show cause notice to assessee

Summary – The High Court of Andhra Pradesh in a recent case of Y Brahmiah, (the Assessee) held that If in assessee's appeal Commissioner (Appeals) wants to fasten additional liability, assessee must be put on notice

Facts

- The assessee was a trader in timber and had got other sources of income also.
- While making assessment the Assessing Officer disallowed the assessee's claim for deduction of loss on saw mill business. Instead, he treated the income from the saw mill business as *Nil*.
- On appeal, the Commissioner (Appeals) not only rejected the contention of the assessee but also directed the Assessing Officer that the profit from sale of timber and cutting charges in the saw mill must be taken at 10 per cent on the turnover.
- On second appeal, the Tribunal upheld the action of the Commissioner (Appeals).
- On appeal to the High Court:

Held

- Under section 251 the Commissioner is conferred with the power not only to confirm the order of assessment or reduce the tax liability but also to enhance such liability or annul the very assessment. It is axiomatic that in case the adjudication by the Commissioner is going to result in reduction of the tax liability, no extra steps need to be taken. However, if the Commissioner intends to enhance the tax liability to the detriment of the assessee, that too in an appeal preferred by the assessee, a notice provided for under sub-section (2) of section 251 must be issued requiring the appellant to show cause as to why such a course of action be not taken. The reason is not difficult to see. The assessee approaches the Commissioner for ventilating his grievance and expecting some relief. If apart from denying the relief, the Commissioner wants to fasten additional liability, the assessee must be put on notice. For all practical purposes, the appeal in such cases tends to assume the character of *suo motu* revision of the order of the Assessing Officer.
- In the instant case, the Commissioner made certain observations, as to why the grievance of the assessee cannot be said to be genuine. Had he stopped at that and dismissed the appeals, there would not have been any other complications. However, he proceeded to issue certain directions, which are certainly detrimental to the interest of the assessee. He could have done that only after issuing a notice under sub-section (2) of section 251. Since no such notice was issued, the order passed by the Commissioner suffered a serious illegality and it is contrary to section 251(2).
- In view of the above, the order of the Commissioner (Appeals) is set aside and the matter is remanded to him for fresh adjudication and disposal.