

An order already revised under sec. 264 couldn't be subsequently revised by invoking sec. 263

Summary – The High Court of Karnataka in a recent case of New Mangalore Port Trust., (the Assessee) held that where original assessment order had been revised under section 264 and, thus, no longer existed, order passed by Commissioner under section 263 revising original assessment was void ab initio

No cross objections are maintainable in an appeal against order of revision in terms of section 253(4)

Facts

- The original assessment order of the assessee under section 143(3) was passed on 27-12-2009. Revision application filed by the assessee under section 264, was allowed and the matter was remanded to the Assessing Officer. The Assessing Officer *vide* order dated 27-5-2011 had given effect to the order passed by the Commissioner under section 264. However, the original order passed under section 143(3) dated 27-12-2009 was revised by the Commissioner under section 263 by order dated 22-3-2012.
- The said order passed under section 263 was challenged by the assessee before the Tribunal and the revenue filed cross objections against that order. The Tribunal set aside order passed by the Commissioner under section 263 as well as the cross objections filed by the revenue.
- On appeal under section 260A:

Held

- Undisputed fact is that the assessment order under section 143(3) was passed by the Assessing Officer on 27-12-2009. The revision filed by the assessee under section 264 was allowed accepting the claim of the assessee and the matter was remanded to the Assessing Officer to compute the income of the assessee in terms of the order of revision under section 264. The said order was given effect to by the Assessing Officer *vide* order dated 27-5-2011. Thus, it is clear that the order dated 27-12-2009 passed by the Assessing Officer is no longer in existence. The Commissioner exercising the powers under section 263 revised the non-existing order dated 27-12-2009. The Tribunal having considered this factual position arrived at a conclusion that the Commissioner had no jurisdiction to revise the order which was not in existence. The order passed by the Commissioner, revising the non-existing order is *void ab initio* and is a nullity in the eye of the law. As such, the Tribunal setting aside the said *void* order passed under section 263, cannot be found fault with.
- The second question of law arises on the points urged in the cross objection filed by the revenue before the Tribunal, which has been rejected.
- Section 253(4) contemplates that the Assessing Officer or the assessee can file the cross objections before the Tribunal only in an appeal against the order of:

- (i) the Deputy Commissioner –Appeals
 - (ii) the Commissioner of Appeals
 - (iii) the Assessing Officer preferring an appeal in pursuance of the directions of the Dispute Resolution Panel.
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- In the instant case, the revenue has filed cross objections under section 253(4) in an appeal preferred by the assessee against the order of the revisional authority exercising the powers under section 263. No such cross objections are maintainable in an appeal filed against the order of revision in terms of section 253(4). Given the circumstances, the Tribunal rejecting the cross objections filed by the revenue as not maintainable is justifiable.