

Where AO erred in determining status of assessee, CIT(A) had jurisdiction to go into such issue: HC

Summary – The High Court of Madras in a recent case of Megatrends Inc., (the Assessee) held that where Assessing Officer had erred in concluding status of assessee as a firm, Commissioner (Appeals) had jurisdiction to go into issue and he could decide status of assessee again in appeal as appeal is continuation of original proceedings

Facts

- The assessee had 13 shareholders in the status of individuals belonging to one Patel family and two other firms as shareholders. These firms had six partners. In all, number of shareholders totalled upto 15 shareholders. The assessee filed return of income claiming it as a partnership firm.
- The Assistant Commissioner disallowed deductions made under section 35(1)(iii) to the tune of Rs. 2.62 crores and assessed the income of the assessee at Rs. 4.36 crores. The Assessing Officer accepted said status of the assessee.
- The Commissioner (Appeals) issued a notice as to why the assessment of the assessee should not be enhanced, pointing out that a partnership firm could not be a partner in a firm and proposed the assessee as an AOP (Associate of Person) not a firm.
- On writ petition before the High Court the assessee contended that the Commissioner (Appeals) exceeded in his jurisdiction by changing the status of the assessee which was not a part of the proceedings particularly when in earlier assessment proceedings the assessee had already disclosed all the material facts.

Held

- In light of the statutory provision of section 251 the Legislature has conferred powers on the first appellate authority to enhance the tax liability, subject to of course, to provide an opportunity to the assessee, by issuing a show-cause notice.
- The issue to be considered is whether the Commissioner (Appeals) has jurisdiction to consider the status of the assessee as an AOP, in the appeal of the assessee and, consequently, to issue the impugned show cause notice, proposing to disallow Rs. 96,60,000 paid, as remuneration, as interest to the partners, as not an allowable expenditure, and therefore, as to why the same should not be added back the taxable income. Reasons for the Commissioner (Appeals) to arrive at a *prima facie* conclusion that the assessee was an AOP.
- It is the submission of the revenue that rightly or wrongly, the Commissioner (Appeals) has proposed to treat the assessee as an AOP, and that the assessee has an opportunity to submit his reply to the opinion, expressed on the change of status, writ petition is not maintainable. The impugned show-cause notice indicates that only on the opinion expressed, treating the assessee as an AOP, the impugned show cause notice has been issued, calling upon the assessee, as to why the

above said sum of Rs. 96,60,000, should not be disallowed and added back to the income of the appellant, for the relevant year, under consideration.

- From the material on record, it could be deduced that there is a *prima facie* opinion on the status of the assessee, as to whether it is a firm or an AOP. Though at one stage, the Commissioner (Appeals) makes a *prima facie* statement, regarding the status of the appellant as an AOP, the appellate authority has stated that there is no predetermination of the issue, and that it has not been concluded yet.
- The question now to be decided is whether the impugned show-cause notice has to be set aside, on the grounds of jurisdiction, or to allow the Commissioner (Appeals) to decide the status of the assessee. The authority, in his affidavit on oath has stated that, the issue is yet to be decided. True that in the earlier years, the issue was not raised. Merely because, it was not raised, it cannot be said that the Commissioner, has no powers to decide, if the Assessing Officer, has failed to advert to the said aspect. On this aspect, that it is only a show-cause notice and it is always open to the assessee to respond.
- While considering the scope and powers of the appellate authority, under the Income-tax Act, 1961, Courts have consistently held that the power of the first appellate authority are coterminous with that of the Assessing Officer and that the appellate authority can do what the Assessing Officer ought to have done and also direct the latter to do what he has failed. Appeal is also continuation of original proceedings and unless some fetters are placed upon the powers of the appellate authority by express words, the appellate authority can exercise all the powers as that of the original authority. If the Assessing Officer, has erred in concluding the status of the assessee as a firm, it cannot be said the Commissioner (Appeals) has no jurisdiction to go into the issue.