

Re-assessment notice to be set-aside if underlying reasons for notice weren't found correct

Summary – The High Court of Gujarat in a recent case of Haryana Paper Distributors (P.) Ltd., (the Assessee) held that where Commissioner issued a notice under section 263 taking a view that when Assessing Officer had found purchases to be bogus, there was no question of limiting addition on basis of GP ratio, in view of fact that Assessing Officer did not hold that relevant purchases were bogus, and, moreover assessment order had been merged with order passed by Commissioner (Appeals), impugned notice was to be set aside

Facts

- The assessee-company was engaged in the business of dealing in paper and board. It had shown purchases worth Rs. 4.33 crores from one 'T' Ltd.
- In course of assessment, the Assessing Officer examined the Director of the 'T' Ltd. who appeared before him and confirmed the sales. The Assessing Officer did not dispute said transaction any further while accepting the factum of the genuineness of the purchases made by the assessee. He noticed that the goods were delivered directly to the assessee's purchaser and the assessee was not billed for such transportation. In his opinion therefore, the assessee should have disclosed higher profit since he was rid of the transportation charges. He put the assessee to notice and made addition at the rate of 4 per cent GP on the gross turnover. In the process, he gave benefit of the profit already disclosed by the assessee.
- In appellate proceedings, the Commissioner (Appeals) deleted addition made by the Assessing Officer.
- Subsequently, the Commissioner issued a show-cause notice under-section 263 taking a view that when the Assessing Officer had found the purchases to be bogus, there was no question of limiting the addition on the basis of GP ratio.
- On writ:

Held

- Two things immediately become clear. First that the Assessing Officer did not hold that assessee purchases from 'T' were bogus. In fact, he held to the contrary accepting the evidence produced by the assessee mainly in the form of the statement of the Director of 'T' Ltd. that the purchases were made. It was only after Assessing Officer had believed that the purchases were made that the question of transportation of the goods by the assessee of someone else would arise. Secondly, he made limited addition on the ground that when the assessee was not required to bear the transportation cost, his profit from such dealings would be higher than normal.
- The Commissioner in the impugned show-cause notice thus committed an error in recording that the Assessing Officer had held that the purchases were bogus. This very foundation for issuance of

the notice was incorrect. His further observations were merely consequential in nature. In his opinion, when the Assessing Officer had found the purchases to be bogus, there was no question of limiting the addition on the basis of GP ratio. When the Commissioner was wrong in its very foundational fact, the consequential observations, which are more in the nature of corollary, cannot survive.

- Equally importantly, the issue itself had travelled before the Appellate Commissioner at the hands of the assessee. To the extent, the Assessing Officer rejected the assessee's request for making no additions, the assessee carried the matter in appeal. Appellate Commissioner deleted even the limited additions made by the Assessing Officer. The limited additions made by the Assessing Officer and the larger additions proposed by the Commissioner in the impugned notice are inextricably interlinked. The Commissioner argues that the entire purchases were bogus. The Assessing Officer accepted the purchases as genuine but added certain amount on the premise that the assessee's profit from such dealings would have been higher than disclosed.
- The entire issue was at large before the Appellate Commissioner. It is well known that the Commissioner (Appeals) while hearing the assessee's appeal has powers to even enhance the assessment. If he was of the opinion that not only limited additions made by the Assessing Officer but much larger additions were justified, he could have certainly exercised such powers, of course after putting the assessee to notice. In this context, one may refer to clause (c) of *Explanation 1* to sub-section (1) of section 263 of the Act. As is well known sub-section (1) of section 263 of the Act empowers the Principal Commissioner or the Commissioner to call for and examine the record of any proceeding and revise the same if he considers that the order passed therein by the Assessing Officer was erroneous insofar as it is prejudicial to the interest of the revenue.
- Clause (c) of *Explanation 1* may be worded in a manner as suggesting the extent of the powers of the Commissioner for taking an order in revision, its effect is of circumscribing such powers in cases where the order passed by the Assessing Officer has been subject matter of any appeal and such subject matter has been considered and decided in such appeal. This provisions thus statutorily recognizes the principle of merger and avoids any conflict of opinion between two quasi-judicial authorities of the same rank.
- When the Commissioner had no jurisdiction to exercise revisional powers, asking the assessee to submit to said impugned notice does not arise. Impugned notice is therefore set aside.
- The petition is disposed of accordingly.