

## **No sec. 263 revision if AO made detailed inquiries regarding foreign remittance made by assessee- NRI**

**Summary – The High Court of Gujarat in a recent case of Kamal Galani, (the Assessee) held that where Assessing Officer accepted assessee's explanation that he was an NRI for over two years and made foreign remittances and his brother having successful business, gave unsecured loan, revision order for making addition deserved to be set aside**

### **Facts**

- The assessee, was subjected to block assessment proceedings. During such assessment proceedings, several issues cropped up. One such issue was introduction of a sum of Rs. 82.16 lacs in the capital account of the assessee and the other issue was of the receipt of Rs. 3.78 crores by an assessee by way of loan from his brother.
- The Assessing Officer called upon the assessee to explain those amounts during the assessment proceedings. The assessee responded by filing multiple replies and producing various documents. The Assessing Officer accepted the explanation of the assessee and did not make any addition in respect of those amounts.
- The Commissioner was of the opinion that the Assessing Officer had not carried out proper inquiries with respect to both the issues. The assessee had not placed before the Assessing Officer or before the Commissioner, the accounts from which such transactions were made. He did not dispute either the identity of the donor or his creditworthiness. He, however, doubted the very genuineness of the transaction. He, therefore, passed a revisional order and remitted the matter back to the Assessing Officer for carrying out further inquiries.
- The Tribunal set aside the order of the Commissioner holding that the case did not warrant exercise of powers under section 263 of the Act and the Commissioner had wrongly invoked such powers. The Tribunal was of the opinion that necessary material was on record. The Assessing Officer had considered the material and a particular view was taken. The Commissioner could not have exercised revisional powers for taking a different view.
- On revenue's appeal:

### **Held**

- During the course of block assessment, the Assessing Officer noticed introduction of capital of Rs. 82.16 lacs and that the assessee had received unsecured loans to the extent of Rs. 3.28 crores from his brother. In response to the notices issued by the Assessing Officer in this respect, the assessee filed as many as five detailed replies.
- Along with such reply, the assessee enclosed several documents showing the status and standing of his brother who was engaged in trading business in Dubai. The assessee also produced his audited financial statement. It was after such inquiries that the Assessing Officer passed the order of assessment in which, as noted above, he made no additions under these two heads.

- In the final order that the Commissioner passed, he held that the Assessing Officer did not make any inquiry to ascertain whether the funds shown to have been remitted from UAE were genuinely remitted from that country or it was a case that foreign currency was purchased by the assessee either from grey market in India or in UAE out of his unaccounted income earned in India and then deposited in NRE account or in the account of his brother. He was also of the opinion that the Assessing Officer did not make any attempt to find out by making proper inquiries whether the funds were remitted by the assessee out of his and his brother's income or it was the case of *hawala* transactions. He noted that the assessee had not filed either before the Assessing Officer or before himself the copies of authenticated bank account of his brother from where the said two funds were transferred or remitted to India which are eventually credited in the assessee's accounts. He therefore directed the Assessing Officer to carry out fresh assessment during which, the Assessing Officer would insist on the assessee filing the authenticated copy of his own bank account and the bank account of his brother.
- In the context of present case, the scope of the Commissioner's power of revision under section 263 of the Act would be, when the Assessing Officer conducts no inquiry or proper inquiries or does not apply his mind to the legal issues arising out of the material on record, the revisional powers would be available. On the other hand, if the Assessing Officer has conducted proper inquiries and come to legal conclusions which are plausible, the Commissioner would not be justified in invoking revisional jurisdiction directing further inquiries or taking a different view.
- In this context, the Assessing Officer had examined two issues. With respect to introduction of the capital, the assessee had pointed out that he was an NRI for over two years and he had made foreign remittances over a period of time. With respect to the unsecured loan of Rs. 3.87 crores received from his brother also, the assessee had provided necessary details which were called upon by the Assessing Officer. With respect to his brother, the assessee pointed out that he was running a successful business of trading, was engaged in various commercial and non-commercial activities and he was man of standing and means. In fact, the Commissioner has gone on record to suggest that he neither disputes the identity nor the creditworthiness of the brother of assessee to loan such amount.
- The Assessing Officer having carried out such detailed inquiries, it was not open for the Commissioner to thereafter reopen the issues on mere apprehension and surmises. His two fundamental objections were that the Assessing Officer did not verify whether the remittances were from the own income or sources of the assessee and his brother or were merely by way of *hawala* transactions. In the process, he was also critical of the Assessing Officer not insisting on collecting the details of the accounts from which the foreign remittances were made to the Indian account of the said two persons.
- Without any material without any basis, the Commissioner could not have remanded the proceedings to the Assessing Officer to carry out further inquiries in order to ascertain whether the remittances were genuine or were in the nature of *hawala* transactions. In the entire order of the

Commissioner, no basis was found for him to carry such apprehension. His principle thrust was to the effect that assessee did not produce the precise bank details of the foreign remittances even before him. There is nothing on the record to suggest that he called upon the assessee to do so and the assessee failed or refused to do so.

- All in all, there is no error in the view of the Tribunal reversing view of the Commissioner. In the result the assessee's appeal is dismissed.