REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5009 OF 2016
[Arising out of S.L.P.(C) No.11621 of 2009]

COMMISSIONER OF INCOME TAX,
MUMBAI ...APPELLANT(S)

VERSUS

AMITABH BACHCHAN ...RESPONDENT(S)

WITH

CIVIL APPEAL NO.5010 OF 2016
[Arising out of S.L.P.(C) No.861 of 2013]

J U D G M E N T

RANJAN GOGOI, J.

SLP(C) NO. 11621 OF 2009

1. Leave granted.

2. The appellant - Revenue seeks to challenge the order of the High Court dated 7th August, 2008 dismissing the appeal filed by it under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "'the Act") and affirming the order of the Income Tax Appellate Tribunal, Mumbai Bench ("Tribunal"

for short) dated 28th August, 2007 whereby the order dated 20th March, 2006 passed by the Commissioner of Income Tax-1, Mumbai ("C.I.T." for short) under Section 263 of the Act was reversed. The assessment year in question is 2001-2002 and the assessment order is dated 30th March, 2004.

3. After the assessment as above was finalized, a show cause notice dated 7th November, 2005 under Section 263 of the Act was issued by the learned C.I.T. detailing as many as eleven (11) issues/grounds on which the assessment order was proposed to be revised under Section 263 of the Act. The respondent - assessee filed his reply to the said show cause notice on consideration of which by order dated 20th March, 2006 the learned C.I.T. set aside the order of assessment dated 30th March, 2004 and directed a fresh assessment to be made. Aggrieved, the respondent – assessee challenged the said order before the learned Tribunal which was allowed by the order dated 28th August, 2007.

4. Aggrieved by the order dated 28th August, 2007 of the learned Tribunal, the Revenue filed an appeal under Section 260A of the Act before the High Court of Bombay. The

aforesaid appeal i.e. ITA No.293 of 2008 was summarily dismissed by the High Court by the impugned order dated 7th August, 2008 holding that as the C.I.T. had gone beyond the scope of the show cause notice dated 7th November, 2005 and had dealt with the issues not covered/mentioned in the said notice the revisional order dated 20th March, 2006 was in violation of the principles of natural justice. So far as the question as to whether the Assessing Officer had made sufficient enquiries about the assessee's claim of expenses made in the re-revised return of income is concerned, which question was formulated as question No.2 for the High Court's consideration, the High Court took the view that the said question raised pure questions of fact and, therefore, ought not to be examined under Section 260A of the Act. The appeal of the Revenue was consequently dismissed. Aggrieved, this appeal has been filed upon grant of leave under Article 136 of the Constitution of India.

5. We have heard Shri Ranjit Kumar, learned Solicitor General appearing for the appellant Revenue and Shri Shyam Divan, learned Senior Counsel appearing for the respondent – assessee.

6. The assessment in question was set aside by the learned C.I.T. by the order dated 20th March, 2006 on the principal ground that requisite and due enquiries were not made by the Assessing Officer prior to finalization of the assessment by order dated 30th March, 2004. In this connection, the learned C.I.T. on consideration of the facts of the case and the record of the proceedings came to the conclusion that in the course of the assessment proceedings despite several opportunities the assessee did not submit the requisite books of account and documents and deliberately dragged the matter leading to one adjournment after the other. Eventually, the Assessing Officer, to avoid the bar of limitation, had no option but to "hurriedly" finalize the assessment proceedings which on due and proper scrutiny disclosed that the necessary enquiries were not made. On the said basis the learned C.I.T. came to the conclusion that the assessment order in question was erroneous and prejudicial to the interests of the Revenue warranting exercise of power under Section 263 of the Act. Consequently, the assessment for the year 2001-2002 was set aside and a fresh assessment was ordered. At this stage, it must be noticed that in the order

dated 20th March, 2006 the learned C.I.T. arrived at findings and conclusions in respect of issues which were not specifically mentioned in the show cause notice dated 7th November, 2005. In fact, on as many as seven/eight (07/08) issues mentioned in the said show cause notice the learned C.I.T. did not record any finding whereas conclusions adverse to the assessee were recorded on issues not specifically mentioned in the said notice before proceeding to hold that the assessment needs to be set aside. However, three (03) of the issues, details of which are noticed herein below, are common to the show cause notice as well as the revisional order of the learned C.I.T.

7. On appeal, the learned Tribunal took the view that the learned C.I.T. exercising powers under Section 263 of the Act could not have gone beyond the issues mentioned in the show cause notice dated 7th November, 2005. The learned Tribunal, therefore, thought it proper to take the view that in respect of the issues not mentioned in the show cause notice the findings as recorded in the revisional order dated 20th March, 2006 have to be understood to be in breach of the principles of natural justice. The learned Tribunal also specifically considered the three (03) common issues

mentioned above and on such consideration arrived at the conclusion that the reasons disclosed by the learned C.I.T. in the order dated 20th March, 2006 for holding the assessment to be liable for cancellation on that basis are not tenable. Accordingly, the learned Tribunal allowed the appeal of the assessee and reversed the order of the suo motu revision dated 20th March, 2006.

8. At this stage, it may be appropriate to reproduce hereunder the provisions of Section 263 of the Act to appreciate the arguments advanced and to understand the contours of the suo motu revisional power vested in the learned C.I.T. by the aforesaid provision of the Act.

> **"263 - Revision of orders prejudicial to revenue.-(1) The Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.**

Explanation.....”

9. Under the Act different shades of power have been conferred on different authorities to deal with orders of assessment passed by the primary authority. While Section 147 confers power on the Assessing Authority itself to proceed against income escaping assessment, Section 154 of the Act empowers such authority to correct a mistake apparent on the face of the record. The power of appeal and revision is contained in Chapter XX of the Act which includes Section 263 that confer *suo motu* power of revision in the learned C.I.T. The different shades of power conferred on different authorities under the Act has to be exercised within the areas specifically delineated by the Act and the exercise of power under one provision cannot trench upon the powers available under another provision of the Act. In this regard, it must be specifically noticed that against an order of assessment, so far as the Revenue is concerned, the power conferred under the Act is to reopen the concluded assessment under Section 147 and/or to revise the assessment order under Section 263 of the Act. The scope of the power/jurisdiction under the different provisions of the Act would naturally be different. The power

and jurisdiction of the Revenue to deal with a concluded assessment, therefore, must be understood in the context of the provisions of the relevant Sections noticed above. While doing so it must also be borne in mind that the legislature had not vested in the Revenue any specific power to question an order of assessment by means of an appeal.

10. Reverting to the specific provisions of Section 263 of the Act what has to be seen is that a satisfaction that an order passed by the Authority under the Act is erroneous and prejudicial to the interest of the Revenue is the basic pre-condition for exercise of jurisdiction under Section 263 of the Act. Both are twin conditions that have to be conjointly present. Once such satisfaction is reached, jurisdiction to exercise the power would be available subject to observance of the principles of natural justice which is implicit in the requirement cast by the Section to give the assessee an opportunity of being heard. It is in the context of the above position that this Court has repeatedly held that unlike the power of reopening an assessment under Section 147 of the Act, the power of revision under Section 263 is not contingent on the giving of a notice to show cause. In fact, Section 263

has been understood not to require any specific show cause notice to be served on the assessee. Rather, what is required under the said provision is an opportunity of hearing to the assessee. The two requirements are different; the first would comprehend a prior notice detailing the specific grounds on which revision of the assessment order is tentatively being proposed. Such a notice is not required. What is contemplated by Section 263, is an opportunity of hearing to be afforded to the assessee. Failure to give such an opportunity would render the revisional order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice. Reference in this regard may be illustratively made to the decisions of this Court in ***Gita Devi Aggarwal*** vs. ***Commissioner of Income Tax, West Bengal and others***[1] and in ***The C.I.T., West Bengal, II, Calcutta*** vs. ***M/s Electro House***[2]. Paragraph 4 of the decision in ***The C.I.T., West Bengal, II, Calcutta*** vs. ***M/s Electro House*** (supra) being illumination of the issue indicated above may be usefully reproduced hereunder:

> "This section unlike Section 34 does not prescribe any notice to be given. It only requires the Commissioner to give an opportunity to the

assessee of being heard. The section does not speak of any notice. It is unfortunate that the High Court failed to notice the difference in language between Sections 33-B and 34. For the assumption of jurisdiction to proceed under Section 34, the notice as prescribed in that section is a condition precedent. But no such notice is contemplated by Section 33-B. The jurisdiction of the Commissioner to proceed under Section 33-B is not dependent on the fulfilment of any condition precedent. All that he is required to do before reaching his decision and not before commencing the enquiry, he must give the assessee an opportunity of being heard and make or cause to make such enquiry as he deems necessary. Those requirements have nothing to do with the jurisdiction of the Commissioner. They pertain to the region of natural justice. Breach of the principles of natural justice may affect the legality of the order made but that does not affect the jurisdiction of the Commissioner. At present we are not called upon to consider whether the order made by the Commissioner is vitiated because of the contravention of any of the principles of natural justice. The scope of these appeals is very narrow. All that we have to see is whether before assuming jurisdiction the Commissioner was required to issue a notice and if he was so required what that notice should have contained? Our answer to that question has already been made clear. In our judgment no notice was required to be issued by the Commissioner before assuming jurisdiction to proceed under Section 33-B. Therefore the question what that notice should contain does not arise for consideration. It is not necessary nor proper for us in this case to consider as to the nature of the enquiry to be held under Section 33-B. Therefore, we refrain from spelling out what principles of natural justice should be observed in an enquiry under Section 33-B. This Court in *Gita Devi Aggarwal* v. *CIT, West*

> *Bengal* ruled that Section 33-B does not in express terms require a notice to be served on the assessee as in the case of Section 34. Section 33-B merely requires that an opportunity of being heard should be given to the assessee and the stringent requirement of service of notice under Section 34 cannot, therefore, be applied to a proceeding under Section 33-B." (Page 827-828).

[Note: Section 33-B and Section 34 of the Income Tax Act, 1922 corresponds to Section 263 and Section 147 of the Income Tax Act, 1961]

11. It may be that in a given case and in most cases it is so done a notice proposing the revisional exercise is given to the assessee indicating therein broadly or even specifically the grounds on which the exercise is felt necessary. But there is nothing in the section (Section 263) to raise the said notice to the status of a mandatory show cause notice affecting the initiation of the exercise in the absence thereof or to require the C.I.T. to confine himself to the terms of the notice and foreclosing consideration of any other issue or question of fact. This is not the purport of Section 263. Of course, there can be no dispute that while the C.I.T. is free to exercise his jurisdiction on consideration of all relevant facts, a full opportunity to controvert the same and to explain the circumstances surrounding such facts, as may be considered

relevant by the assessee, must be afforded to him by the C.I.T. prior to the finalization of the decision.

12. In the present case, there is no dispute that in the order dated 20th March, 2006 passed by the learned C.I.T. under Section 263 of the Act findings have been recorded on issues that are not specifically mentioned in the show cause notice dated 7th November, 2005 though there are three (03) issues mentioned in the show cause notice dated 7th November, 2005 which had specifically been dealt with in the order dated 20th March, 2006. The learned Tribunal in its order dated 28th August, 2007 put the aforesaid two features of the case into two different compartments. Insofar as the first question i.e. findings contained in the order of the learned C.I.T. dated 20th March, 2006 beyond the issues mentioned in the show cause notice is concerned the learned Tribunal taking note of the aforesaid admitted position held as follows:

> "In the case on hand, the CIT has assumed jurisdiction by issuing show cause notice u/s 263 but while passing the final order he relied on various other grounds for coming to the final conclusion. This itself makes the revision order bad in law and also violative of principles of natural justice and thus not maintainable. If, during the course of revision proceedings the CIT was of the opinion that the order of the

> AO was erroneous on some other grounds also or on any additional grounds not mentioned in the show cause notice, he ought to have given another show cause notice to the assessee on those grounds and given him a reasonable opportunity of hearing before coming to the conclusion and passing the final revision order. In the case on hand, the CIT has not done so. Thus, the order u/s 263 is violative of principles of natural justice as far as the reasons, which formed the basis for the revision but were not part of the show cause notice issued u/s 263 are concerned. The order of the CIT passed u/s 263 is therefore liable to be quashed in so far as those grounds are concerned."

13. The above ground which had led the learned Tribunal to interfere with the order of the learned C.I.T. seems to be contrary to the settled position in law, as indicated above and the two decisions of this Court in ***Gita Devi Aggarwal*** (supra) and ***M/s Electro House*** (supra). The learned Tribunal in its order dated 28th August, 2007 had not recorded any finding that in course of the *suo motu* revisional proceedings, hearing of which was spread over many days and attended to by the authorized representative of the assessee, opportunity of hearing was not afforded to the assessee and that the assessee was denied an opportunity to contest the facts on the basis of which the learned C.I.T. had come to his conclusions as recorded in the order dated 20th March, 2006. Despite the

absence of any such finding in the order of the learned Tribunal, before holding the same to be legally unsustainable the Court will have to be satisfied that in the course of the revisional proceeding the assessee, actually and really, did not have the opportunity to contest the facts on the basis of which the learned C.I.T. had concluded that the order of the Assessing Officer is erroneous and prejudicial to the interests of the Revenue. The above is the question to which the Court, therefore, will have to turn to.

14. To determine the above question we have read and considered the order of the Assessing Officer dated 30th March, 2004; as well as the order of the learned C.I.T. dated 20th March, 2006. From the above consideration, it appears that the learned C.I.T. in the course of the revisional proceedings had scrutinized the record of the proceedings before the Assessing Officer and noted the various dates on which opportunities to produce the books of account and other relevant documents were afforded to the assessee which requirement was not complied with by the assessee. In these circumstances, the revisional authority took the view that the Assessing Officer, after being compelled to adjourn the matter

from time to time, had to hurriedly complete the assessment proceedings to avoid the same from becoming time barred. In the course of the revisional exercise relevant facts, documents, and books of account which were overlooked in the assessment proceedings were considered. On such re-scrutiny it was revealed that the original assessment order on several heads was erroneous and had the potential of causing loss of revenue to the State. It is on the aforesaid basis that the necessary satisfaction that the assessment order dated 30th March, 2004 was erroneous and prejudicial to the interests of the revenue was recorded by the learned C.I.T. At each stage of the revisional proceeding the authorized representative of the assessee had appeared and had full opportunity to contest the basis on which the revisional authority was proceeding/had proceeded in the matter. If the revisional authority had come to its conclusions in the matter on the basis of the record of the assessment proceedings which was open for scrutiny by the assessee and available to his authorized representative at all times it is difficult to see as to how the requirement of giving of a reasonable opportunity of being heard as contemplated by Section 263 of the Act had been breached in the present case. The order of the learned Tribunal insofar as the first issue i.e.

the revisional order going beyond the show cause notice is concerned, therefore, cannot have our acceptance. The High Court having failed to fully deal with the matter in its cryptic order dated 7th August, 2008 we are of the view that the said orders are not tenable and are liable to be interfered with.

15. This will bring us to a consideration of the second limb of the case as dealt with by the learned Tribunal, namely, that tenability of the order of the learned C.I.T. on the three (03) issues mentioned in the show cause notice and also dealt with in the revisional order dated 20th March, 2006. The aforesaid three (03) issues are:

> "i) Assessee maintaining 5 bank accounts and AO not examining the 5th bank account, books of account and any other bank account where receipts related to KBC were banked.
>
> ii) Regarding claim of deposits of Rs.52.06 lakhs in Special Bench A/c No.11155 under the head "Receipts on behalf of Mrs. Jaya Bachchan and
>
> iii) Regarding the claim of additional expenses in the re-revised return."

16. On the above issues the learned Tribunal had given

detailed reasons for not accepting the grounds cited in the revisional order for setting aside the assessment under Section 263 of the Act. The reasons cited by the learned Tribunal insofar as the first two issues are concerned may not justify a serious relook and hence need not be gone into. The third question would, however, require some detailed attention. The said question is with regard to the claim of additional expenses made by the assessee in its re-revised return which was subsequently withdrawn.

17. The assessee in the re-revised return dated 31st March, 2003 had made a claim of additional expenses of 30% of the gross professional receipts (Rs.3.17 crores). It appears that the Assessing Officer required the assessee to file requisite details in this regard. The assessee responded by letter dated 13th February, 2004 stating as follows:

> "With regard to the 30% estimated expenses claimed, we have to submit that these are the expenses which are spent for security purposes by employing certain Agencies, guards etc. for the personal safety of Shri Bachchan as he has to protect himself from various threats to his life received by him and to avoid extortion of money from gangsters. The names of such Agencies cannot be disclosed/divulged as there is a possibility of leakage of information of Agencies' names from the office staff, which will

> obviously be detrimental to the interests of Shri Bachchan. The payments have been made out of cash balances available and lot of outstanding expenses are to be paid which could not be paid for want of income."

18. Thereafter by letter dated 13th March, 2004 the assessee informed the learned C.I.T. that the claim was made on a belief that the same is allowable but as it will not be feasible for the assessee to substantiate the same, the re-revised return of income may be taken to the withdrawn. It appears that thereafter the Assessing Officer issued a notice to show cause as to why the provisions of Section 69-C should not be invoked and the expenses claimed should not be treated as unexplained expenditure. In reply, the assessee by letter dated 24th March, 2004 submitted that the claim was made as a standard deduction and that the assessee had been wrongly advised to make the said claim and as the same has been withdrawn, Section 69-C will have no application. The record of the assessment proceedings disclose that the said stand was accepted by the Assessing Officer and the matter was not pursued any further.

19. The learned C.I.T. took the view that

notwithstanding the withdrawal of the claim by the assessee, in view of the earlier stand taken that the said expenses were incurred for security purposes of the assessee, the Assessing Officer ought to have proceeded with the matter as the assessee was following the cash system of accounting and the filing of the re-revised return, *prima facie,* indicated that the additional expenses claimed had been incurred. In this regard, the following findings/reasons recorded by the learned C.I.T. in the order dated 20th March, 2006 would be of particular relevance:

> "Withdrawal of claim by assessee can be for variety of reasons and this does not mean that Assessing Officer should abandon enquiries regarding sources for incurring expenses. Assessee follows cash system of accounting and the claim regarding additional expenses was made through duly verified revised return. The claim was pressed during assessment proceedings carried on by A.O. after filing revised return and it was specially stated in letter dated 13.02.2004 that expenses were for security purposes and that payments have been made out of cash balances available etc. Under the circumstances, the Assessing Officer was expected to examine the matter further to arrive at a definite finding whether assessee incurred expenses or not and in case, actually incurred, then what were sources for incurring these expenses. Assessing Officer was satisfied on withdrawal of the claim and in my view, his failure to decide the matter

> regarding actual incurring of additional expenses and sources thereof resulted into erroneous order which is prejudicial to the interest of revenue."

20. An argument has been made on behalf of the assessee that notice under Section 69-C was issued by the Assessing Officer and thereafter on withdrawal of the claim by the assessee the Assessing Officer thought that the matter ought not to be investigated any further. This, according to the learned counsel for the assessee, is a possible view and when two views are possible on an issue, exercise of revisional power under Section 263 would not be justified. Reliance in this regard has been placed on a judgment of this Court in ***Malabar Industrial Co. Ltd.*** *vs.* ***CIT***[3] which has been approved in ***Commissioner of Income-tax*** vs. ***Max India Ltd.***[4]

21. There can be no doubt that so long as the view taken by the Assessing Officer is a possible view the same ought not to be interfered with by the Commissioner under Section 263 of the Act merely on the ground that there is another possible view of the matter. Permitting exercise of revisional power in a

situation where two views are possible would really amount to conferring some kind of an appellate power in the revisional authority. This is a course of action that must be desisted from. However, the above is not the situation in the present case in view of the reasons stated by the learned C.I.T. on the basis of which the said authority felt that the matter needed further investigation, a view with which we wholly agree. Making a claim which would *prima facie* disclose that the expenses in respect of which deduction has been claimed has been incurred and thereafter abandoning/withdrawing the same gives rise to the necessity of further enquiry in the interest of the Revenue. The notice issued under Section 69-C of the Act could not have been simply dropped on the ground that the claim has been withdrawn. We, therefore, are of the opinion that the learned C.I.T. was perfectly justified in coming to his conclusions insofar as the issue No.(iii) is concerned and in passing the impugned order on that basis. The learned Tribunal as well as the High Court, therefore, ought not to have interfered with the said conclusion.

22. In the light of the discussions that have preceded and for the reasons alluded we are of the opinion that the

present is a fit case for exercise of the suo motu revisional powers of the learned C.I.T. under Section 263 of the Act. The order of the learned C.I.T., therefore, is restored and those of the learned Tribunal dated 28th August, 2007 and the High Court dated 7th August, 2008 are set aside. The appeal of the Revenue is allowed.

SLP(C) No.861 of 2013

23. Leave granted.

24. Pursuant to the revisional order dated 20th March, 2006 under Section 263 of the Income Tax Act setting aside the assessment order for the assessment year 2001-2002 and directing fresh assessment, a fresh assessment had been made by the Assessing Officer by order dated 29th December, 2006. Against the said order the respondent assessee filed an appeal before the learned Commissioner of Income Tax (Appeals). By order dated 18th October, 2007 the learned Commissioner of Income Tax (Appeals) had set aside the assessment order dated 29th December, 2006 as in the meantime, by order dated 28th August, 2007 of the learned Income Tax Appellate Tribunal the revisional order dated 20th March, 2006 under Section 263 of

the Act was set aside. The Revenue's appeal before the learned Tribunal against the order dated 18th October, 2007 was dismissed on 11th January, 2000 and by the High Court on 29th February, 2012. Against the aforesaid order of the High Court this appeal has been filed by the Revenue. As by the order passed today in the Civil Appeal arising out of Special Leave Petition (Civil) No.11621 of 2009 we have restored the *suo motu* revisional order dated 20th March, 2006 passed by the learned C.I.T., we allow this appeal filed by the Revenue and set aside the order dated 11th January, 2010 passed by the learned Tribunal and the order dated 29th February, 2012 passed by the High Court referred to above. However, we have to add that as the re-assessment order dated 29th December, 2006 had not been tested on merits the assessee would be free to do so, if he is so inclined and so advised.

25. The appeals are disposed of in the above terms.

.....,J.
[RANJAN GOGOI]

.....,J.
[PRAFULLA C. PANT]

NEW DELHI
MAY 11, 2016