



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"G" BENCH, MUMBAI**

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT, AND**

**SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA no.4011/Mum./2018  
(Assessment Year : 2010-11)

Saroj Print Arts  
104-B, sumit Samarth Arcade  
1<sup>st</sup> Floor, Aarey Road  
Gurgaon (W), Mumbai 400 062  
PAN - ABLFS2539L

..... Appellant

v/s

Pr. Commissioner of Income Tax  
Circle-21, Mumbai

..... Respondent

Assessee by : Shri Piyush Chhajed  
Revenue by : Shri M. Daya Sagar

Date of Hearing - 09.09.2019

Date of Order - 02.12.2019

**ORDER**

**PER SAKTIJIT DEY, J.M.**

The aforesaid appeal has been filed by the assessee assailing the order dated 27<sup>th</sup> March 2018, passed under section 263 of the Income Tax Act, 1961 (for short "*the Act*") by the learned Principal Commissioner of Income Tax-21, Mumbai, for the assessment year 2010-11.

2. Brief facts are, the assessee is a partnership firm. For the assessment year under dispute, the assessee filed its return of income on 24<sup>th</sup> September 2010, declaring total income of ₹ 1,48,970. On the basis of information received from the DGIT (Inv.), Mumbai, and the Sales Tax Department, Government of Maharashtra that the assessee is a beneficiary of accommodation entries provided by some entities identified as hawala operators by the Sales Tax Department, the Assessing Officer re-opened the assessment under section 147 of the Act. In the course of assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of purchases worth ₹ 2,55,018, claimed to have been made from Mayur Paper. As alleged by the Assessing Officer, in spite of the statutory notice issued under section 143(2) of the Act, the assessee neither appeared nor made any compliance. Finally, the assessee on 5<sup>th</sup> November 2015 furnished tax audit report and audited Balance Sheet and Profit & Loss Account. Thereafter, the Assessing Officer called upon the assessee to furnish some more details and in view of non-compliance by the assessee, the Assessing Officer issued a notice under section 142(1) r/w section 144 of the Act, on 25<sup>th</sup> January 2016, calling upon the assessee to furnish various details as mentioned in the said notice. As observed by the Assessing Officer, on 2<sup>nd</sup> February 2016, the assessee could only furnish copies of invoices and ledger account, whereas, it failed to

furnish other information called for by the Assessing Officer. Due to failure on the part of the assessee in furnishing the required details, the Assessing Officer proceeded to complete the assessment under section 144 r/w section 147 of the Act, to the best of his judgment, vide order dated 12<sup>th</sup> February 2016, determining the income at ₹ 4,03,980. Subsequently, learned Principal Commission, in exercise of power conferred under section 263 of the Act, called for the assessment records for examination. After examining the assessment records, he found that, though, the Assessing Officer completed the assessment under section 144 of the Act to the best of his judgment, however, he has wrongly allowed deduction towards interest and remuneration paid to partners totaling ₹ 6,67,153, completely overlooking the provisions of section 184(5) of the Act. Therefore, he issued a show cause notice to the assessee requiring it to explain as to why the assessment should not be revised under section 263 of the Act. After considering the submissions of the assessee in the context of facts and material on record, learned Principal Commission observed that when the Assessing Officer has completed the assessment under section 144 of the Act, he was required to disallow the interest and remuneration paid to partners as per section 184(5) of the Act. The Assessing Officer having failed to do so, learned Principal Commission held the assessment order to be erroneous in as much as prejudicial to

the interests of Revenue. Accordingly, he set aside the assessment order with a direction to the Assessing Officer to assess the income of the assessee afresh after following due procedure and affording reasonable opportunity of being heard to the assessee.

3. Challenging the validity of the order passed under section 263 of the Act, the learned Authorised Representative submitted, as per section 144(1) of the Act, there should be complete failure on the part of the assessee in complying to the notices issued under section 142(1) and 143(2) of the Act. He submitted, the assessee has not only filed its return of income voluntarily, but has complied with all the statutory notices issued by the Assessing Officer. The learned Authorised Representative submitted, in response to the notices issued under section 148 of the Act, the assessee had filed its objections before the Assessing Officer. Similarly, in response to the notices issued under section 143(2) and 142(1) of the Act, the assessee has also furnished certain details. Therefore, it is not a case of complete non-compliance to the statutory notices issued by the Assessing Officer. He submitted, the provision of section 184(5) of the Act can be brought into play only if there is complete non-compliance by the assessee in terms of section 144(1) of the Act. He submitted, since the assessee had complied to the statutory notices issued by the Assessing Officer, though, it may not be to the satisfaction of the Assessing

Officer, however, the assessee's case does not come within the purview of section 184(5) of the Act. Further, he submitted, the Assessing Officer has completed the assessment erroneously under section 144 r/w section 147 of the Act against which the assessee has preferred appeal before the first appellate authority. Thus, he submitted, exercise of power under section 263 of the Act for applying the provision of section 184(5) of the Act is invalid. In support of such contention, the learned Authorised Representative relied upon the following decisions:-

- i) *Mubarak Trading Co. v/s CIT, [2008] 174 Taxman 339 (Kar.);*
- ii) *Mas Properties & Developers v/s ITO, [2014] 52 taxmann.com 22 (Bang.) (Trib.);*
- iii) *Vijay Vir Singh v/s ITO, [2014] 52 taxmann.com 462 (Agra); and*
- iv) *Bhagwat Prasad Sharma v/s JCIT, [2013] 38 taxmann.com 102 (Agra).*

4. The learned Departmental Representative strongly relying upon the observations of learned Principal Commission submitted, once the Assessing Officer proceeds to invoke the provisions of section 144 of the Act and completes the assessment to the best of his judgment, it is mandatory on his part to give effect to the provision of section 184(5) of the Act. He submitted, section 184(5) of the Act makes it clear that in a case where the assessment is completed under section

144 of the Act, no deduction on account of payment of interest and remuneration to the partners can be allowed. He submitted, while completing the assessment, the Assessing Officer totally ignored to give effect to the provision of section 184(5) of the Act and erroneously allowed deduction on account of interest and salary payment to the partners. Thus, he submitted, due to the aforesaid reason, the assessment order passed being erroneous and prejudicial to the interests of Revenue, learned Principal Commission has correctly revised it under section 263 of the Act.

5. We have considered rival submissions and perused the material on record. We have also applied our mind to the decisions relied upon. Undisputedly, for whatever may be the reason, the Assessing Officer has completed the assessment invoking the provisions of section 144 of the Act, to the best of his judgment. In the present appeal, we are neither required nor called upon to adjudicate the correctness / validity of the assessment order passed by invoking the provisions of section 144 of the Act. The short issue before us is, whether the assessment order passed is erroneous and prejudicial to the interests of Revenue due to non-application of the provision contained under section 184(5) of the Act while allowing interest / remuneration paid to the partners. Before we proceed to deal with the issue, it is necessary to examine the relevant statutory provisions. A reading of section 144 of the Act

makes it clear that the Assessing Officer can proceed to make best judgment assessment in the following situations:-

- i) If the assessee fails to file the return of income as per section 139(1), section 4 and section 5 of the Act;*
- ii) If the assessee fails to comply with all the terms of notices issued under section 142(1) of the Act; and*
- iii) If the assessee fails to comply with all the terms of notices issued under section 143(2) of the Act.*

6. In the facts of the present case, admittedly, the Assessing Officer has completed the assessment under section 144 of the Act to the best of his judgment alleging non-compliance to the statutory notices issued under section 142(1) and 143(2) of the Act. Provisions of section 184 of the Act lay down the procedure for the assessment in case of a partnership firm. Sub-section (5) of section 184 of the Act, which begins with a non-obstante clause, makes it clear that in a case where the assessment is completed under section 144 of the Act for any such failure on the part of the firm as mentioned in the said provision, assessment has to be made without allowing any deduction by way of payment of interest, salary, bonus, commission or remuneration, etc., to any partner. Thus, once the assessment is completed under section 144 of the Act, the provision of section 184(5) of the Act gets triggered automatically and it will override all

other provisions of the Act. In the facts of the present case, by the very reason of the Assessing Officer completing assessment under section 144 of the Act, the provision of section 184(5) would automatically come into play. However, while completing the assessment, the Assessing Officer completely overlooking the provisions of section 184(5) of the Act has allowed deduction on account of interest / remuneration paid to partners. Even, the facts on record make it clear that the Assessing Officer has never examined the aspect of applicability of section 184(5) of the Act. Thus, there is a complete failure on the part of the Assessing Officer in making necessary enquiry with regard to the deduction claimed by the assessee qua the statutory provisions. At the cost of repetition, we must observe, in the present appeal we are not concerned with the validity of the assessment order passed under section 144 of the Act. We are only concerned with the validity of exercise of power under section 263 of the Act to make good the error and prejudice caused to the Revenue by virtue of the assessment order passed under section 144 of the Act. At this stage, we must observe, learned Authorised Representative, except making legal submissions on the validity of invoking provisions of sections 144 as well as 263 of the Act has not brought to our notice any material to even slightly demonstrate that the Assessing Officer had examined the applicability of section 184(5)

of the Act. As regards the judicial precedents cited before us by the learned Authorised Representative, on a careful examination, we find them to be factually distinguishable for the primary reason that none of these decisions were rendered in the context of exercise of power under section 263 of the Act. In all these decisions, the issue in dispute is with regard to exercise of power under section 144 of the Act to make best judgment assessment and consequent disallowance under section 184(5) of the Act. As we have stated elsewhere in this order, in the present appeal we are not concerned with the validity of exercise of power under section 144 of the Act. Therefore, in our considered view, there is no necessity of deliberating in detail on the decisions cited by the learned Authorised Representative. In case of *Malabar Industrial Co. Ltd. V/s CIT [2000] 243 ITR 83(SC)*, the Hon'ble Supreme Court has held that an order can be erroneous due to incorrect assumption of fact or incorrect application of law. In the facts of the present case, the failure on the part of the Assessing Officer to apply or at least even examine the applicability of section 184(5) of the Act, certainly makes the assessment order erroneous and prejudicial to the interests of Revenue. Therefore, in our considered opinion, the exercise of power under section 263 of the Act to revise the assessment order is valid. Accordingly, we uphold the impugned order of learned Principal Commission. Grounds raised are dismissed.

7. In the result, appeal stands dismissed.

Order pronounced in the open Court on 02.12.2019

**Sd/-  
PRAMOD KUMAR  
VICE PRESIDENT**

**Sd/-  
SAKTIJIT DEY  
JUDICIAL MEMBER**

**MUMBAI, DATED: 02.12.2019**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai