

CIT(A) couldn't invoke sec. 251 to reopen cases where appeal was neither pending nor disposed off by him

Summary – The High Court of Jharkhand in a recent case of Central Coalfields Ltd., (the Assessee) held that where appeals were not pending before Commissioner (Appeals) or same did not stand disposed, he could not invoke power under section 251 to reopen assessment of relevant years.

Facts

- The assessee-company was enjoying status of 'company' under Companies Act and IT Act. It had been regularly assessed to income tax as a company since 1956-57. It is stated that the Books of Account is audited by the statutory auditor (appointed by the Comptroller & Auditor General of India under section 619(2) of the Companies Act, 1956) every year and the Balance Sheet and Profit & Loss Account of the petitioner-company are certified every year by the Statutory Auditors of the Company under the provisions of section 227(2) of the Companies Act, 1956.
- The Commissioner (Appeals) issued impugned show-cause notices raising doubts regarding status of the assessee as 'company'. He further expressed views that the assessee was not a company and had been incorrectly and unlawfully assessed in status of a company. He sought to reopen assessment of the assessee company over the years.
- On writ:

Held

- The tenor of the show-cause notice does not appear to be a notice merely for verification of the status of the petitioner-company. The Commissioner (Appeals) issued impugned show-cause notices raising doubts regarding the status of the petitioner as a 'Company'. From the impugned show-cause notices, it is seen that the Commissioner (Appeals) has expressed the view that the petitioner-company, a public sector company, will not be a company either under the Companies Act or under the IT Act, 1961, stating that the petitioner appears to be 'not a company' either under the provisions of the Companies Act or under the IT Act, 1961.
- The Commissioner (Appeals) has not only expressed the doubt regarding the status of the petitioner-company but also expressed the view that the petitioner is not a company and the petitioner has been incorrectly and unlawfully assessed in the status of a company. By expressing the reasoning, indicates that Commissioner (Appeals) has predetermined the matter that the petitioner-CCL is not a company, had committed a serious error and exceeded jurisdiction in upsetting the settled status of the petitioner-company.
- The impugned show-cause notices were issued under section 251(1)(a). Section 251(1)(a) sets out various powers which can be exercised by the appellate authority in appeal against different orders. Under section 251(1)(a), the appellate authority, while deciding an appeal, is clothed with very wide

power so as to do justice to the assessee and also in the interest of the revenue. In an appeal against the order of assessment, the Commissioner (Appeals) may confirm, reduce, enhance or annul the assessment. As per section 251(1)(a), the Commissioner (Appeals), in any other case, may pass such orders in the appeal as it thinks fit. By reading of section 251(1)(a), it is seen that the power under section 251 could be exercised by the Commissioner (Appeals) only in respect of the appeals pending before it or appeals stand disposed. In the impugned show-cause notices, the Commissioner (Appeals) seems to have reopened the assessment of all the years.

- The Commissioner (Appeals) had not only stated to reopen the assessment in which the appeals are pending but also for the assessment in which either no appeal is pending or already stands disposed. The impugned show-cause notices seeking to reopen the assessment in respect of all the years seems to be in excess of the power of the Commissioner (Appeals) under section 251(1)(a).
- Since the Commissioner (Appeals) has expressed doubts that the petitioner is not a company and is seeking to reopen assessment of the petitioner-company over the years. The impugned show-cause notices are in excess of jurisdiction and are liable to be quashed. However, it is open to the Commissioner (Appeals) to issue a fresh show-cause notice in accordance with law.