

## **Reassessment by CIT was justified if AO accepted claim of depreciation without proper examination**

**Summary – The Chennai ITAT in a recent case of Sify Software Ltd., (the Assessee) held that where Assessing Officer accepted claim made by assessee towards depreciation on intangible assets without proper examination or enquiry or verification or objective consideration of such claim, exercise of jurisdiction by Commissioner under section 263(1) was justified**

### **Facts**

- The assessee claimed depreciation on intangible assets.
- The Assessing Officer accepted the assessee's claim of depreciation on intangible assets and made relevant additions.
- The Commissioner observed that the Assessing Officer had completely failed to apply his mind and conduct inquiry into this issue at hand. Therefore, assessment order passed by the Assessing Officer was both erroneous and prejudicial to the interests of revenue. Hence, the Commissioner concluded that the assessment order passed by the Assessing Officer was subjected to revision under section 263.
- In instant appeal, the assessee contended that there was no error found by the Commissioner in the assessment order and the Commissioner could not make roving enquiry. The Assessing Officer after examining the facts of the case, had taken a view. If that view is possible Commissioner could not interfere with the findings of the Assessing Officer. The commissioner had to be satisfied that the order of the Assessing Officer sought to be revised is erroneous and prejudicial to the interests of the Revenue.

### **Held**

- An order passed by the Assessing Officer becomes erroneous and prejudicial to the interests of the revenue under section 263 in the following cases; (i) the order sought to be revised contains error of reasoning or of law or of fact on the face of it; (ii) the order sought to be revised proceeds on incorrect assumption of facts or incorrect application of law. In the same category fall orders passed without applying the principles of natural justice or without application of mind; (iii) the order passed by the Assessing Officer is a stereotype order which simply accepts what the assessee has stated in his return or where he fails to make the requisite enquiries or examine the genuineness of the claim which is called for in the circumstances of the case.
- Perusal of the assessment order passed by the Assessing Officer does not show any application of mind on his part. He has made addition only with regard to depreciation on intangible assets. This is a case where the Assessing Officer mechanically accepted what the assessee wanted him to accept without any application of mind or enquiry. The evidence available on record is not enough to hold that the return of the assessee was objectively examined or considered by the Assessing Officer. It is

because of such non-consideration of the issues on the part of the Assessing Officer that the return filed by the assessee stood accepted on by making addition towards depreciation on intangible assets. The assessment order in instant case is clearly erroneous as it was passed without proper examination or enquiry or verification or objective consideration of the claim made by the assessee. The Assessing Officer has completely omitted to examine the issues in question from consideration and made the assessment in an arbitrary manner. His order is a completely non-speaking order. It was a fit case for the Commissioner to exercise his revisional jurisdiction under section 263 which he rightly exercised by cancelling the assessment order and directing the Assessing Officer to pass a fresh order considering the issues raised by the Commissioner on the impugned order. The assessee should have no grievance in the action of Commissioner in exercising the jurisdiction under section 263.

- The Assessing Officer has been entrusted the role of an investigator, prosecutor as well as adjudicator under the scheme of the Income-tax Act. If he commits an error while discharging the aforesaid roles and, consequently, passes an erroneous order causing prejudice either to the assessee or to the State Exchequer or to both, the order so passed by him is liable to be corrected. The assessee can have the prejudice caused to him corrected by filing an appeal; as also by filing a revision application under section 264. But the State Exchequer has no right of appeal against the orders of the Assessing Officer. Section 263 has therefore been enacted to empower the Commissioner to correct an erroneous order-passed by the Assessing Officer which he considers to be prejudicial to the interest of the revenue. The Commissioner has also been empowered to invoke his revisional jurisdiction under section 264 at the instance of the assessee also. The line of difference between sections 263 and 264 is that while the former can be invoked to remove the prejudice caused to the State the later can be invoked to remove the prejudice caused to the assessee. The provisions of section 263 would lose significance if they were to be interpreted in a manner that prevented the Commissioner from revising the erroneous order passed by the Assessing Officer, which was prejudicial to the interest of the revenue. In fact, such a course would be counter-productive as it would have the effect of promoting arbitrariness in the decisions of the Assessing Officers and thus destroy the very fabric of sound tax discipline. If erroneous orders, which are prejudicial to the interest of the revenue, are allowed to stand, the consequences would be disastrous in that the honest tax payers would be required to pay more than others to compensate for the loss caused by such erroneous orders. For this reason also, the orders passed on an incorrect assumption of facts or incorrect application of law or without applying the principles of natural justice or without application of mind or without making requisite inquiries will satisfy the requirement of the order being erroneous and prejudicial to the interest of the revenue within the meaning of section 263. Accordingly, there is no infirmity in order of the Commissioner.