

‘Lack of Inquiry’ vis-a-vis ‘Inadequate Inquiry’

For section 263 revision how ‘Lack of Inquiry’ is different from ‘Inadequate Inquiry’?



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Introduction

1. Probably next to capital gain issues, disputes pertaining to interpretation of provisions of section 263 of the Income-tax Act (the Act) occupy the pages of law journals and web sites by way of reporting of cases. The latest to join the bandwagon is the judgment rendered by the Delhi High Court in the case of *Pr. CIT v. Braham Dev Gupta* [2018] 408 ITR 291 wherein reversing the order passed by the Tribunal, the Learned Judges have held that the Tribunal cannot re-write Assessing Officer's order and improve upon it. The Delhi High Court was dealing with the invocation of provisions of section 263 of the Act by the Commissioner of Income-tax. In this case the Delhi High Court relied upon its earlier decision in the case of *CIT v. Toyota Motor Corporation* [2008] 174 Taxman 395 (Del.) wherein it was held that when the assessment order passed by the Assessing Officer is cryptic and cannot be sustained, the Tribunal cannot substitute its own reasoning to justify the order passed by the Assessing Officer when the Assessing Officer himself did not give any reason in the order passed by him. The Supreme Court, when taken on appeal by the assessee, in *Toyota Motor Corporation v. CIT* [2008] 173 Taxman 458 refused to interfere with the order passed by the Delhi High Court after making the following observations-

“We do not think it necessary to interfere at this stage. It goes without saying that when the matter be taken up by the Assessing Officer on remand, it shall be his duty to take into account all the relevant aspects including the materials, if any, already placed by the assessee, and pass a reasoned order.”

The decision of the Delhi High Court in the case of *Braham Dev Gupta* (*supra*) has been analysed in the following paragraphs.

Analysis of the decision in the case of Braham Dev Gupta (supra)

2. The assessment years concerned in this case were 2011-12 and 2012-13, During the previous year relevant to the assessment year 2011-12 a survey was conducted under section 133A of the Act at the business premises of the assessee as a result of which the assessee surrendered ₹ 18.25 crores as additional income on account of excess stock found in his premises. The assessee filed the return for the assessment year 2011-12 declaring an income of ₹ 21,58,62,170 which included the aforesaid amount of ₹ 18.25 crores. For the assessment year 2012-13, the assessee disclosed an income of ₹ 25,36,38,801. While completing the scrutiny assessments the Assessing Officer disallowed 10 per cent of non-business expenditure and 10 per cent of the amount claimed towards vehicle expenditure. Thereafter, the Commissioner of Income-tax invoked, the provisions of section 263 of the Act on the grounds that: (i) the Assessing Officer failed to make any inquiry as regards incurring of trading loss reported, (ii) the Directorate of Revenue Intelligence was making inquiries as regards the role of the company of which the assessee was the proprietor on account of fraudulent exports, and (iii) the brother of the assessee who was in the same kind of business as that of the assessee was under the radar of the Directorate of Revenue Intelligence for claiming duty drawback on bogus exports. The Commissioner of Income-tax further observed that the Assessing Officer had failed to make any inquiry regarding the huge duty drawback claimed by the assessee and his *modus operandi*, and, therefore, there was a lack of inquiry on the part of the Assessing Officer to find out bogus purchases or inflation of expenses so as to reduce the profits and that the Assessing Officer did not make any inquiry with regard to utilization of borrowed funds for non-business purposes. The issue of inquiry into the disallowance under section 14A of the Act and the Assessing Officer's failure to investigate into the matter were

also stated in the order of the Commissioner of Income-tax. The Tribunal, on appeal by the assessee in *Braham Dev Gupta v. Pr. CIT* [2017] 88 taxmann.com 831 (Delhi - Trib.) set aside the order of the Commissioner of Income-tax and held that the computation of loss at ₹ 38 crores was incorrect and, that further, when the assessee submitted complete details of unsecured loans along with confirmation of each of the transactions, bank account of each of the persons, and acknowledgement of the returns of lenders, which had been duly examined by the Assessing Officer it could not be the case of lack of inquiry. The Tribunal also noted that the assessee had furnished details of 22 out of 80 sundry creditors for the assessment year 2011-12, and claimed not to have filed the details of the rest because they had been squared out in the subsequent years, or no further transactions took place during assessment proceedings which established a "discreet" inquiry by the Assessing Officer. The Tribunal also observed that on the issue of ownership of factory premises, there was not even an iota of doubt that the property was ancestral property of the assessee and, on disallowance under section 14A of the Act, the Tribunal held that the assessee had claimed that there was no exempt income. With regard to inquiry on his brother by the Directorate of Revenue Intelligence, the Tribunal observed that it did not confer powers upon the Commissioner of Income-tax to exercise jurisdiction under section 263 of the Act and that the Commissioner of Income-tax proceeded on the basis of surmises and, therefore, it was not a case of lack of inquiry.

The Tribunal while passing this detailed order also observed that when the Assessing Officer had accepted the claim of the assessee by applying his mind, though the Commissioner of Income-tax had different opinion on the same it would certainly fall in the category of inadequate inquiry and in the case of inadequate inquiry the Commissioner of Income-tax was not clothed with powers to invoke the revisional jurisdiction bestowed