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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CW 2935 /2004

date of decision : 15.3.2004

M/S Hansch International Pvt Ltd

..... Petitioner

Through Mr.K.R.Manjani

Advocate

versus

Commissioner of Income-tax Delhi IV.

..... Respondent

Through Mr. R.D. Jolly with

Ms Rashmi Chopra Adv

CORAM:

HON'BLE MR. JUSTICE B.C. PATEL, C. J.

HON'BLE MR. JUSTICE BADAR DURREZ AHMED.

- i) Whether Reporters of local papers may be allowed to see the judgment.
- ii) To be referred to the reporter or not?
- iii) Whether the judgment should be reported in the Digest?

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This writ petition is filed against the order made by Commissioner of Income-tax, Delhi on 31.10.2003 in exercise of his revisional jurisdiction.

From the order it transpires that a return was filed by the petitioner declaring loss of Rs.2,65,590/-. The source of income was dividend which amounted to Rs. 4,34,166/-. The assessing officer completed the assessment under Section 143(3) of the Income-tax Act, 1961 (for short 'the Act') on 23.1.2003 and assessed the net loss of Rs.

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1,16,630/- after disallowance of expenses of Rs. 1,48,957/-. Subsequently, the proceedings under Section 148 of the Act came to be initiated. An order under section 154 of the Act also came to be passed. An appeal has also been filed by the assessee. However, there is a dispute whether the appeal has been filed against the order under Section 154 or against the assessment order under section 143(3) of the Act. The stand of the assessee is that appeal is not preferred against an order made under S. 143(3) of the Act. The assessee has requested the Commissioner, inter alia, to direct the assessing officer to revise the assessment order and grant it relief of Rs. 1,48,957/-.

Against the order made under section 143(3) of the Act, an appeal is provided, where the appellate authority is entitled to appreciate evidence and arrive at a decision. Similarly, an order made under Section 147 of the Act is also appealable. In the instant case the assessee instead of preferring an appeal preferred a revision. The jurisdiction of the Commissioner was limited. He was not required to examine the matter on facts as an appellate forum. The assessee did not avail of the remedy of appeal for the reasons best known to him.

Anyhow, the Commissioner found that the assessee claimed the entire gross dividend income amounting to Rs. 4,34,166/- as an item which is exempt. Expenses were debited separately for claiming by way

of loss. Even the Chartered Accountant of the company in the audit report had debited the entire loss and claimed net income of Rs. 1,68,579/-. Counsel states that the order is not in accordance with law and therefore he has approached this Court and there is no other remedy and therefore this court has jurisdiction.

One must remember the distinction between "appeal" and "revision". Both the powers are required to be exercised in a manner indicated in law. Revisional powers are to be exercised very sparingly, more particularly when an appellate forum is provided. Moreover, we are here considering the question of issuance of a writ of certiorari. One of us (Ahmed, J) recently had an occasion to examine the scope and nature of writ of certiorari in *Ishwar Industries Ltd v UOI* CWP 2840/87 decided on 5.3.2004.

In that decision it was observed that in the case of **T.C.Basappa v. T. Nagappa and Another, 1955 (1) SCR 250** a Constitution Bench of the Supreme Court analysed the nature of writ of certiorari. At page 256 of the report, it is stated that one of the fundamental principles in regard to the issuing of a writ of certiorari is, that the writ can be availed of only to remove or adjudicate on the validity of judicial acts. The expression "judicial acts" includes the exercise of the quasi judicial functions by administrative bodies or other authorities or

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persons obliged to exercise such functions and is used in contrast with what are purely ministerial acts. The Supreme Court further held that the second essential feature of a writ of certiorari is that the control which is exercised through it over judicial or quasi-judicial Tribunals or bodies is not in an appellate but supervisory capacity. In granting a writ of certiorari, the Court does not exercise the power of an appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior Tribunal purports to be based. It demolishes the orders which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior Tribunal. The offending order or proceeding so to say is put out of the way as one which should not be used to the detriment of any person.

The Supreme Court further observed as under:

"The supervision of the superior Court exercised through writs of certiorari goes on two points, as has been expressed by *Lord Sumner in King v. Nat Bell Liquors Limited* (1922) 2 AC 128, 156. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. These two heads normally cover all the grounds on which a writ of certiorari could be demanded. In facts, there is little difficulty in the enunciation of the principles, the difficulty really arises in applying the principles to the facts of a particular case."

Thereafter, the court further held that certiorari may lie and is generally granted when a court has acted without or in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the

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subject matter or proceeding or from the absence of some preliminary proceeding or the court itself may not be legally constituted or suffer from certain disability by reason of extraneous circumstances. When the jurisdiction of the court depends upon the existence of some collateral facts, it is well settled that the Court cannot by a wrong decision of the fact give it jurisdiction which it would not otherwise possess. The Court further clarified that it is a patent error which can be corrected by certiorari but not a mere wrong decision. The Supreme Court further observed as under:-

"The essential features of the remedy by way of certiorari have been stated with remarkable brevity and clearness by Morris L. J. in the recent case of Rex v. Northumberland Compensation Appellate Tribunal [1952] 1 KB 338 at 357. The Lord Justice says:

"It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an, order or decision for re-hearing of the issue raised in the proceedings. It exists to correct error of law when revealed on the face of an order or decision or irregularity or absence of or excess of jurisdiction when shown."

The Supreme Court in the case of Seth Chand Ratan v. Pandit Durga Prasad, AIR 2003 SCW 3078 observed as under:

"Where there is complete lack of jurisdiction for the officer of authority or Tribunal to take the action or there has been a contravention of fundamental rights or there has been a violation of rules of natural justice or where the Tribunal acted under a provision of law, which is ultra vires, then notwithstanding the

existence of an alternative remedy, the High Court can exercise its jurisdiction to grant relief"

In our opinion, the impugned order is not without jurisdiction nor is it palpably erroneous. The only point canvassed by the learned counsel for the petitioner is that the Commissioner has committed an error of law in the factual matrix of the case. In a writ of certiorari, even if we were to agree with the petitioner after considering the matter in detail, as cautioned by the Supreme Court, we could not substitute our views for those of the Commissioner. In these circumstances, this Court would not like to exercise its writ jurisdiction and hence the petition is dismissed.

Badar Durrez Ahmed
CHIEF JUSTICE

Badar Durrez Ahmed
BADAR DURREZ AHMED, J.

March 15, 2004

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