

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**I.T.C. No.33 of 1991
Date of Decision:28.02.2007**

The Commissioner of Income-tax, Patiala

.....Petitioner

Vs.

Vinod Kumar Gupta

.....Respondent

**CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL**

Present:- Mr. Sanjiv Bansal, Advocate for the revenue.

RAJESH BINDAL, J.

The revenue has approached this Court by filing the present petition under Section 256(2) of the Income Tax Act, 1961 (for short, 'the Act') seeking direction to the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal') to refer the following question of law, arising out of order dated 19.9.1989 passed in I.T.A. No.1204/Chandi/86, in respect of assessment year 1982-83 to this Court for opinion:-

“Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the Insurance Compensation as capital receipt and holding the action of the CIT to invoke the provisions of section 263 as unlawful?”

Briefly the facts are that the assessee received certain sum of Rs. 34,143/- as compensation from the Insurance Company which was claimed to be not taxable in the return filed treating the same as capital receipt. In the assessment framed under Section 143(3) of the Act, the Assessing Officer did not include the amount in the taxable income. Treating the order passed by the Assessing Officer to be erroneous and prejudicial to the interest of revenue, the Commissioner of Income Tax, exercising powers under Section 263 of the Act, revised the order and directed the Assessing Officer to include the sum in the revenue receipt and

charge tax accordingly. In appeal by the assessee before the Tribunal, the assessee succeeded and the order passed by the Commissioner of Income Tax under Section 263 of the Act was set aside. It was further noticed by the Tribunal in order that before issuance of notice under Section 263 of the Act, even the proceedings under Section 154 of the Act were also initiated but were dropped. It was found by the Tribunal that the ingredients required for exercise of power under Section 263 of the Act were not available in the facts and circumstances of the case.

After hearing learned counsel for the revenue, we find no substance in the present petition. The Assessing Officer at the relevant time, while framing assessment under Section 143(3) of the Act had treated the receipt to be capital receipt. Merely because there was a second opinion possible on the same facts, in those circumstances, the powers under Section 263 could be exercised.

Accordingly, we dismiss the petition.

(RAJESH BINDAL)
JUDGE

February 28, 2007
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(M.M.KUMAR)
JUDGE