IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

ITR NO.6 Of 1994.

Date of decision: April 17,2007.

The Commissioner, Income Tax. ……. Petitioner.

Vs.

M/s Yash Pal Garg & Co. ……. Respondent.

Coram

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No

For the petitioner: Mrs. Vandana Kuthiala, Advocate, vice Mr. Vinay Kuthiala, Advocate.

For the respondent: Mr. Suneet Goel, Advocate.

Deepak Gupta, J.(Oral).

This Income Tax Reference has been made to us to give our opinion on the following question of law:-

> **"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in cancelling the order of the Commissioner of Income-tax passed u/s 263 of the Income-tax Act, 1961 on the ground that the assessment order had merged with the appellate order?".**

The brief facts giving rise to the aforesaid question are that the returns of the assessee for the assessment year 1982-83 were assessed by the by the Assessing Officer. Against the aforesaid assessment order, the assessee filed an appeal before the Commissioner, Income Tax (CIT).

Whether reporters of local Papers may be allowed to see the judgment? Yes.

The CIT allowed the relief to the assessee on certain issued raised before him. Later on the CIT re-examined the case under Section 263 of the Income Tax Act and came to the conclusion that the assessee had been allowed certain benefits by the Assessing Officer which according to the CIT he was not entitled to under Section 80HHA of the Income Tax Act. Exercising powers under Section 263, this CIT directed the Assessing Officer to re-examine the matter.

The question posed was that since the CIT had dealt with the assessment case in the appeal filed by the assessee and the order of the Assessing Officer had merged with the order of CIT, he could not have exercised powers under Section 263 of the Income Tax Act. This question is no long res-integra. The Apex Court in **1998(9) Supreme Court Cases 702 Commissioner of Income Tax, Gujarat-I, Ahmedabad** v. **Shri Arbuda Mills Ltd., Ahmedabad**, dealt with a similar contention which finds mention in para-4 of the judgment and reads thus.

> **"4. The main contention of the assessee which was considered by the Tribunal was whether or not the order of the Income Tax Officer regarding the said three items in respect of which the assessee had no occasion to prefer an appeal had merged in that of the Commissioner on appeal so as to exclude the jurisdiction of the Commissioner of Income Tax under Section 263 of the Act."**
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> Dealing with this contention, the Apex Court held as follows:-
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> **"The consequence of the said amendment made with retrospective effect is that the powers under Section 263 of the Commissioner shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in an appeal. Accordingly, even in respect of the aforesaid three items, the powers of the Commissioner under**

Section 263 shall extend and shall be deemed always to have extended to them because the same had not been considered and decided in the appeal filed by the assessee. This is sufficient to answer the question which has been referred."

In view of the settled law, it is clear that the CIT had the jurisdiction to order re-examination under Section 263 of the Income Tax Act on the matters which had not dealt by him in the appeal filed by the assessee. The reference answered accordingly. In view of the answer to the reference, which has been answered in favour of the revenue, we have no other option but to set-aside and quash the order of the Income Tax Appellate Tribunal dated January 7, 1992, whereby it had cancelled the order of the CIT made under Section 263 of Income Tax Act.

(Deepak Gupta)
Judge.

April 17, 2007.
(Pds)

(Surinder Singh)
Judge.