

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Income Tax Appeal No. 336/2018

Principal Commissioner Of Income Tax-I

----Appellant

Versus

Shri Ram Das Maheshwai

----Respondent

For Appellant(s) : Mr. Anuroop Singhi

For Respondent(s) :

**HON'BLE MR. JUSTICE MOHAMMAD RAFIQ
HON'BLE MR. JUSTICE NARENDRA SINGH DHADDHA**

Order

13/05/2019

Learned counsel for the appellant submits that an exactly identical matter viz. D.B. Income Tax Appeal No.332/2018, Principal Commissioner of Income Tax-1 vs. Shri Ashok Kumar Maheshwari in which brother of the respondent happens to be assessee, based on similar facts, the appeal has been admitted against the judgement of the Tribunal passed on the same day.

Heard learned counsel for the appellant.

The appeal is admitted on the following substantial question of law:

"i) Whether on the facts and circumstances of the case and law the Tribunal was justified in quashing the order passed u/s 263 of the I.T. Act, 1961 by stating that the PCIT has no jurisdiction to invoke provisions of Section 263 of the I.T. Act when an assessee has been granted certificate under the Direct Tax Dispute Resolution Scheme, 2016?

ii) Whether on the facts and circumstances of the case and law the order of the ITAT was not perverse in quashing the order passed u/s 263 of the I.T. Act, 1961 as

it is clearly stated in Sec. 208 of the DTDRS, Scheme-2016 that search cases were not eligible to avail the scheme and still the assessee chose to file application in DTDRS 2016 hiding the fact that search was carried out in his case for the A.Y. under consideration?

iii) Whether on the facts and circumstances of the case and law the order of the ITAT was not pervers in quashing the order passed u/s 263 of the I.T. Act, 1961 which was initiated as he penalty order was found to be erroneous and prejudicial to the interest of revenue?

iv) Whether on the facts and in circumstances of the case and in law the ITAT was justified in quashing the order passed u/s 263 of the I.T. Act, 1961 without appreciating the verdict passed by the Hon'ble Supreme Court in Malabar Industrial Co. Ltd., Vs. CIT (2000) 243 ITR 831 that held that incorrect assumption of fact or an incorrect application of law would satisfy the requirement of the order being erroneous. An order passed in violation of the principles of natural justice or without application of mind, would be an order falling in this category.?"

Issue notices to the respondent.

(NARENDRA SINGH DHADDHA),J

(MOHAMMAD RAFIQ),J

RS/8

