

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'C', BANGALORE**

**BEFORE SHRI S.K.YADAV, JUDICIAL MEMBER
AND
SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

**ITA No.155 (Bang) 2015
(Assessment year : 2010-11)**

M/s P.R.Nayak Associates,
Prakalpa, No.34, Brindavan Layout,
Vidyanagar,
HUBLI-580 021

PAN: AACFP9636K

Appellant

Vs

The Commissioner of Income Tax,
C.R.Building, Navanagar,
HUBLI-590 025

Respondent

**Assessee by : Shri A. Shankar, Advocate
Revenue by : Shri R.K.Jha, CIT**

**Date of hearing : 01-12-2016
Date of pronouncement : 16-12-2016**

ORDER

PER A. K. GARODIA, A. M :

This is an assessee's appeal directed against the order of Id.CIT, Hubli passed by him on 16-12-2014 u/s 263 of the IT Act for assessment year 2010-11.

2. The assessee has raised the following grounds:

"1.The Order of the learned Commissioner of Income-tax, Hubli passed under section 263 of the Act in so far as it is against the Appellant is

opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.

2. The learned Commissioner of Income-tax has grossly erred in revising the order passed by the learned Assessing officer without appreciating that there is no error, much less prejudicial to the interests of the Revenue to warrant a revision and therefore the order passed by the learned CIT is ultra vires to the scope of Section 263 and requires to be cancelled under the facts and circumstances of the Appellant's case. The direction to make fresh assessment amounts to ordering for making fishing and roving enquires without any material in support thereof and consequently the impugned order passed is bad in law is liable to be cancelled.

3. The learned Commissioner of Income-tax failed to appreciate that the Assessing Officer before completing assessment order under section 143(3) of the Act on 27/04/2012 had made detailed enquiries and hence on the very same issue no action can be taken under section 263 of the Act as the action of the Assessing Officer is accordance with law on the facts and circumstances of the case.

4. The learned Commissioner of Income-tax failed to appreciate that the learned Assessing officer had indeed verified the details and after being fully satisfied by the said explanation and after application of mind passed the order under

section 143(3) of the Act on the facts and circumstances of the case.

5. The learned Commissioner of Income-tax was not justified in law in passing the order under section 263 of the Act, without serving the addendum to the appellant and consequently the order passed is in violation of principles of natural justice and the order is liable to be set aside on the facts and circumstances of the case.

6. The learned Commissioner of Income-tax was not justified in law in passing the order on the issues which are not proposed in the notice issued under section 263 of the Act and consequently the order is bad in law and the order passed is in violation of principles of natural justice on the facts and circumstances of the case.

7. The learned Commissioner of Income-tax was not justified in law in directing the learned Assessing Officer to reframe the assessment after collecting all the necessary information, subject them to detailed scrutiny, with reference to books of accounts, keeping in view of the observations made in the order passed under section 263 of the Act in respect of the following on the facts and circumstances of the case.

- a) Verification of creditors and debtors.*
- b) Work in progress.*
- c) Bad debts.*

- d) *Work expenses.*
- e) *Interest payments, other advances, advances to suppliers, advances made to suppliers also for non business purpose, disallowing proportionate interest from total interest payment account.*
- f) *Additions to the assets and sale of assets.*
- g) *Current liability.*
- h) *Motor vehicle expenses, fuel, diesel and oil, machinery repairs and maintenance and travelling expenses.*

8. *The learned Commissioner of Income-tax was not justified in law in setting aside the assessment passed under section 143(3) of the Act on the facts and circumstances of the case.*

9. *The learned Commissioner of Income-tax ought to have appreciated that the aforesaid issue on which the learned Commissioner of Income-tax had sought to revise the assessment order is a conscious view adopted by the learned assessing officer, which is not shown to be erroneous and consequently, the jurisdiction under section 263 of the Act stands outside the purview and accordingly the impugned order passed deserves to be cancelled.*

10. *The learned Commissioner of Income-tax did not provide the appellant with a reasonable*

opportunity of hearing under the facts and circumstances of the case.

11. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

12. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity”.

3. At the very outset, it was submitted by the ld. AR of the assessee that this issue is covered in favour of the assessee by the Tribunal order in the case of M/s R.N.Nyak & Sons in ITA No.1506(Bang)/2014 dated 6-09-2016. He submitted that a copy of this Tribunal order and drawn our attention to para-4 of the Tribunal order in which the Tribunal has re-produced the relevant portion of the judgment of the Hon’ble Karnataka High Court rendered in the case of Canara Housing Development Co. Vs DCIT274 CTR 222(Kar.). He further submitted that after reproducing the relevant portion from the judgment of the Hon’ble Karnataka High Court, it is held by the Tribunal in that case that since the original order itself has been re-opened by virtue of proceedings u/s 153A of the IT Act, 1961, the AO cannot pass an order giving effect to the impugned order passed u/s 263 of the IT Act, 1961. Therefore, the impugned order passed u/s 263 has become infructuous by virtue of proceedings initiated u/s 153A of the Act but to

safeguard the interest of revenue in case the proceedings u/s 153A is quashed in any subsequent proceedings, it was held that the original assessment order itself would get revived and consequently, the revenue will be at liberty to apply for revival of these proceedings if need arise. He also submitted that in the present case also, proceedings u/s 153A were initiated as per the notice dated 30-07-2015 available on page-172 of the paper book and therefore, the impugned order passed by the Id. CIT u/s 263 of the Act should be held as infructuous.

4. The Id. DR of the revenue supported the order of the Id. CIT passed u/s 263 of the IT Act, 1961.

5. We have considered the rival submissions. We find that in the case of M/s R.N.Nayak & Sons(Supra), the Tribunal has considered and followed the judgment of the Hon'ble Karnataka High Court rendered in the case of Canara Housing Development Co.(Supra) and thereafter, it was held by the Tribunal that after initiation of proceedings u/s153A of the Act, the order passed by the Id.CIT u/s 263 of the Act becomes infructuous because, the AO cannot pass order giving effect to that order passed by the Id. CIT u/s 263 of the Act. After holding so, the Tribunal has also held that in case, proceedings u/s 153A of the Act is quashed in any subsequent proceedings, then the original assessment order would get revived and consequently, the revenue is at liberty to apply for revival of proceedings if need arises.

Respectfully following this Tribunal order and in turn following the judgment of the Hon'ble Karnataka High Court rendered in the case of

Canara Housing Development Co. (Supra), we hold that in the present case also, the impugned order passed by the Id. CIT u/s 263 of the IT Act has become infructuous by virtue of proceedings initiated u/s 153A of the Act. However, to safeguard the interest of revenue, we also hold that in case proceedings u/s 153A of the Act are quashed in any subsequent proceedings, then the proceedings of original assessment order would get revived and consequently, the revenue would be at liberty to apply for revival of these proceedings if need arises.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(SUNIL KUMAR YADAV)
JUDICIAL MEMBER

Place: Bangalore:

D a t e d : 16.12.2016

am*

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

Sd/-
(A.K. GARODIA)
ACCOUNTANT MEMBER

By order, AR, ITAT, Bangalore

1. श्रुतलेख की तारीख.....
DATE OF DICTATION.....
2. तारीख, जिस पर टाइप किया हुआ मसौदे, संबंधित सदस्य के सामने रखा गया है
DATE ON WHICH TYPED DRAFT IS PLACED BEFORE THE DICTATING
MEMBER.....
3. तारीख जिस पर अनुमोदित मसौदे व. निजी सचिव/निजी सचिव के पास वापस आए
DATE ON WHICH THE APPROVED DRAFT COMES TO THE PS/Sr.PS.....
4. घोषणा के लिए आदेश संबंधित सदस्य के सामने रखने की तिथि
DATE ON WHICH THE ORDER IS PLACED BEFORE THE DICTATING MEMBER
FOR PRONOUNCEMENT.....
5. आदेश नि.सचिव/व.नि.सचिव के पास वापस आने की तिथि
DATE ON WHICH THE ORDER COMES BACK TO THE PS/Sr.PS.....
6. आदेश अपलोड करने की तिथि
DATE OF UPLOADING THE ORDER ON WEBSITE.....
7. अगर अपलोड नहीं किया तो, उसका कारण
IF NOT UPLOADED, FURNISH THE REASON FOR DOING SO.....
8. बेंच लिपिक के पास फाइल जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE BENCH CLERK.....
9. आदेश ज़ेरोक्स/पृष्ठांकन के लिए भेजने की तिथि
DATE ON WHICH ORDER GOES FOR XEROX & ENDORSEMENT.....
10. फाइल मुख्य लिपिक के पास जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE HEAD CLERK.....
11. आदेश पर हस्ताक्षर के लिए फाइल सहायक रजिस्ट्रार के पास जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO THE ASSISTANT REGISTRAR FOR
SIGNATURE ON THE ORDER.....
12. अधिकरण आदेश के प्रेषण के लिए फाइल प्रेषण विभाग में जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO DESPATCH SECTION FOR DESPATCH
OF THE TRIBUNAL ORDER.....
13. आदेश की प्रेषण की तिथि
DATE OF DESPATCH OF ORDER.....