

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA Nos.967 & 968/PUN/2016
निर्धारण वर्ष / Assessment Years : 2008-09 & 2009-10

Shri Ramamoorthy Vasudevan
Plot No.81, Lane No.4,
North Main Road,
Koregaon Park,
Pune – 411001

.... अपीलार्थी/Appellant

PAN: AANPR6769E

Vs.

The Pr. Commissioner of Income Tax (Central),
Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : S/Shri Dharmesh Shah and
Kulin Mehta
प्रत्यर्थी की ओर से / Respondent by : Shri S.B. Prasad, CIT

सुनवाई की तारीख / Date of Hearing : 22.11.2018	घोषणा की तारीख / Date of Pronouncement: 29.11.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

Both the appeals filed by assessee are against separate orders of Pr.CIT(Central), Pune, both dated 30.03.2016 relating to assessment years 2008-09 and 2009-10 passed under section 263 of the Income-tax Act, 1961 (in short 'the Act').

2. Both the appeals relating to the same assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience. However, in order to adjudicate the issues, reference is being made to the facts and issues in ITA No.967/PUN/2016, relating to assessment year 2008-09.

3. The preliminary issue raised against exercise of jurisdiction by the Commissioner vide grounds of appeal No.1 and 2, read as under:-

1. *The Ld. Pr. Commissioner of Income-Tax has erred in law and facts in passing order u/s 263 of the Act.*
2. *The Id. Pr. Commissioner of Income-Tax has erred in law and in facts in not appreciating that the order passed by the Assessing Officer u/s 143(3) of the Act on 26.03.2015 was neither erroneous nor prejudicial to the interest of the Revenue and that the provisions of s.263 of the Act have been invoked without complying with the conditions stated in the said section.*

4. The assessee is in appeal against order of Commissioner in exercising the jurisdiction under section 263 of the Act. The preliminary issue raised against the said exercise of revisionary jurisdiction is that assessment order was passed under section 143(3) r.w.s. 153A of the Act after taking prior approval of the Addl.CIT, Central Range-2, Pune and hence the Commissioner is not empowered to exercise his jurisdiction. In this regard, the learned Authorized Representative for the assessee has placed reliance on the ratio laid down by the Pune Bench of Tribunal in Dhariwal Industries Limited Vs. CIT in ITA Nos.1108 to 1113/PUN/2014, relating to assessment years 2004-05 to 2006-07 & 2008-09 to 2010-11, order dated 23.12.2016.

5. The learned Departmental Representative for the Revenue placed reliance on the orders of authorities below.

6. We have heard the rival contentions and perused the record. Briefly, in the facts of the case, search and seizure operations were carried out under section 132 of the Act on the Vascon group of cases on 05.06.2012 and the assessee was part of said group. Thereafter, notice under section 153A of the Act was issued. The Assessing Officer made certain enquiries and accepted returned income filed by the assessee. The said order was passed with the prior approval of the Addl.CIT, Central Range-2, Pune vide letter dated 23.03.2015. The Commissioner was of the view that the said assessment order passed under section 143(3) r.w.s. 153A of the Act is erroneous and prejudicial to the interest of Revenue.

7. We find that similar issue of exercise of jurisdiction by the Commissioner under section 263 of the Act against order passed under section 143(3) r.w.s. 153A of the Act has been set aside by the Tribunal with lead order in Dhariwal Industries Limited Vs. CIT (supra). The Tribunal vide order dated 23.12.2016 had held as under:-

“12. We have considered the rival arguments made by both the sides, perused the orders of the AO and the Ld.CIT and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case for all the six assessment years has passed the order u/s.153A r.w.s. 143(3) after obtaining approval of the Addl.CIT u/s.153D of the I.T. Act. We find the Ld.CIT invoked his revisional powers u/s.263 of the I.T. Act on the ground that the order passed by the Assessing Officer for all the years are erroneous and prejudicial to the interest of the revenue since he has failed to disallow the expenditure u/s. 14A for A. Yrs. 2004-05 to 2006-07 and failed to disallow the claim of depreciation on assets of Hyderabad unit which is defunct for A. Y.2008-09 to 2010-11.

13. It is the submission of the Ld. Counsel for the assessee that since the order has been passed by the Assessing Officer after obtaining approval of the Addl.CIT u/s.153D of the I.T. Act, therefore, the Ld.CIT has no power to exercise his jurisdiction u/s.263 of the I.T. Act, 1961. It is also his submission that even on merit the Tribunal has decided both the issues in favour of the assessee.

14. We find merit in the above submission of the Ld. Counsel for the assessee. We find the Lucknow Bench of the Tribunal in the case of Mehtab Alam Vs. ACIT vide ITA Nos.288 to 294/Lkw/2014 order dated 18-11-2014 while deciding an identical issue has observed as under :

“31. Besides other judgments were also referred by the assessee in this regard and we have also carefully examined the same and we find that similar views were expressed by various judicial authorities.

32. We have also examined the judgment of the Hon'ble jurisdictional High Court in the case of CIT vs. Dr. Ashok Kumar (supra) on an issue whether the assessment order was passed with the approval of the Addl. CIT and their Lordships have held that the Assessing Officer was fully alive about the facts of the case and that is why he got necessary approval of the Addl. CIT before completing the assessment orders for all the assessment years and once that is not disputed by the Revenue, then the Id. Commissioner of Income-tax would not be justified in interfering in the approval according by the Addl. CIT for framing the assessment order and thus there was no case for setting aside the assessment order for the assessment years in question.”

14.1 We find the Hyderabad Bench of the Tribunal in the case of CH. Krishna Murthy Vs. ACIT vide ITA No.766/Hyd/2012 order dated 13- 02-2015 following the decision of the Lucknow Bench of the Tribunal in the case of Mehtab Alam (Supra) held that CIT(A) is not justified in assuming jurisdiction u/s.263 when the order has been passed in terms of section 153D of the Act.

14.2 We find the Hyderabad Bench of the Tribunal in the case of M/s. Trinity Infra Ventures Ltd. (Supra) had an occasion to decide an identical issue and it held that the assessment order approved by the Addl.CIT u/s.153D cannot be subject to revision u/s.263 of the I.T. Act. The relevant observation of the Tribunal at Para 5.4 of the order reads as under :

“5.4. The Ld. Counsel for the assessee has further submitted that the assessment under section 143(3) read with section 153C was passed after getting approval of Addl. CIT under section 153D of the I.T. Act and therefore such an assessment cannot be revised without revising the directions of the Addl. CIT under section 153D of the I.T. Act. The Ld. Counsel for the assessee, has relied upon the decisions of this Tribunal in the case of Ch. Krishna Murthy vs. ACIT, C.C.3, Hyderabad in ITA.No.766/Hyd/2012 dated 13.02.2015 and also the decision of Lucknow Bench of ITAT in the case of Mehtab Alam 288/Luck/2014 dated 18.11.2014 in support of this contention. He has also placed reliance upon the decision of Hon'ble Allahabad High Court in the case of CIT vs. Dr. Ashok Kumar in I.T. Appeal No. 192 of 2000 wherein it has been held that the assessment order approved by the Addl. CIT under section 153D, cannot be subjected to revision under section 263 of the I.T. Act. In view of the above decision also, we hold that the revision order under section 263 of the I.T. Act is not sustainable. Accordingly, we allow the grounds of the assessee.”

15. Since in the instant case also the Assessing Officer has passed the order after obtaining necessary approval from Addl.CIT u/s.153D of the I.T. Act, therefore, respectfully following the above-mentioned decisions of the Coordinate Benches of the Tribunal we are of the considered opinion that the CIT has no power to revise the order u/s.263 of the I.T. Act in the instant case since the same has been passed with the approval of the Addl.CIT u/s. 153D of the I.T. Act.”

8. The said ratio has been followed in series of cases. The facts and issues raised in the present appeal are similar to the facts and issues in Dhariwal Industries Limited Vs. CIT (supra) and following the same parity of

reasoning, we hold that exercise of jurisdiction by the Commissioner under section 263 of the Act against order passed under section 143(3) r.w.s. 153A of the Act, which was passed after taking prior approval of the Addl.CIT, Central Range-2, Pune, cannot stand. Hence, the said exercise of jurisdiction is held to be invalid and bad in law and consequent order passed under section 263 of the Act is thus, cancelled. The grounds of appeal raised by the assessee are thus, allowed.

9. The facts and issues in ITA No.968/PUN/2016 are identical to the facts and issues in ITA No.967/PUN/2016 and our decision in ITA No.967/PUN/2016 shall apply *mutatis mutandis* to ITA No.968/PUN/2016.

10. In the result, both the appeals of assessee are allowed.

Order pronounced on this 29th day of November, 2018.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 29th November, 2018.

GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune