

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

सुश्री सुषमा चावला, न्यायिक सदस्य एवं, श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.1081/PUN/2015

निर्धारण वर्ष / Assessment Year : 2012-13

M/s. Achyut Cashew Factory
A/p Tulas, Tal. Vengurla,
Dist. Sindhudurg.

.... अपीलार्थी/Appellant

PAN: AACFA6135E

Vs.

The Commissioner of Income Tax-II,
Kolhapur

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Pramod Shingte

प्रत्यर्थी की ओर से / Respondent by : Ms. Divya Bajpai

सुनवाई की तारीख / Date of Hearing : 28.11.2018	घोषणा की तारीख / Date of Pronouncement: 12.12.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of Pr.CIT-2, Kolhapur, dated 17.06.2015 relating to assessment year 2012-13 passed under section 263(1) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

- 1) *On the facts and in circumstances of the case the Learned Commissioner has erred in law and on merit in passing an order under section 263(1) of the Income Tax Act 1961 and setting aside the order of the A.O. passed under section 143(3) of the Act.*

2) *On the facts and in circumstances of the case the Learned Commissioner has erred in law and on merit in enhancing the value of closing stock of the assessee when such valuation was found to be proper by the A.O. while framing the assessment order under section 143(3) of the Act and there was no apparent error on the face of order. The order passed u/s 263(1) by the Learned Commissioner of Income Tax is nothing but change of opinion as held by the Hon'ble Bombay High Court in Gabriel India in 203 ITR 108.*

3. The present appeal is against exercise of jurisdiction under section 263 by the Commissioner against assessment completed under section 143(3) of the Act.

4. Briefly, in the facts of the case, the Commissioner in para 2 notes that the case was selected for scrutiny as per CASS for the reason to examine large amount not credited to Profit and Loss Account as per Schedule A-01 under section 14A of the Act. The Commissioner was of the view that the assessment order passed by Assessing Officer is both erroneous and prejudicial to the interest of Revenue and hence, the exercise of jurisdiction under section 263 of the Act.

5. The learned Authorized Representative for the assessee at the outset pointed out that the limited issue raised in the present appeal is against assessment made in the hands of assessee, wherein the case of assessee was selected for scrutiny as per CASS, under which only limited issues were addressed by Assessing Officer and once the assessee filed the explanation, the same was held to be correct and the income returned by the assessee was accepted, subject to minor additions on account of decline in the gross profit rate. He thus, pointed out that there is no merit in the aforesaid order passed by the Commissioner.

6. The learned Departmental Representative for the Revenue on the earlier date of hearing was directed to bring to the notice of Tribunal whether any approval from the Principal Commissioner was taken for converting limited scrutiny into full scrutiny. The learned Departmental Representative for the Revenue has failed to furnish any such approval but has stressed that the requirement of taking such approval was vide CBDT Circular in 2014, which is much after the date of assessment in the hands of assessee.

7. The learned Authorized Representative for the assessee in rejoinder pointed out that similar proposition has been accepted by the Tribunal in the case of another assessee relating to assessment year 2009-10 and also by the Kolkata Bench of Tribunal in *Nayek Paper Converters Vs. ACIT (2005) 93 ITD 144 (Kol)* for assessment year 2002-03 and by the Delhi Bench of Tribunal in *Gift Land Handicrafts Vs. CIT (2008) 19 SOT 5 (Del)(URO)* and has stressed that the same situation was there from year to year.

8. We have heard the rival contentions and perused the record. The issue arising in the present appeal is in respect of exercise of jurisdiction by the Commissioner under section 263 of the Act. The assessment of assessee was taken up for scrutiny under CASS for limited purpose, which is also mentioned by the Commissioner in its order passed under section 263 of the Act. It is not disputed that the case of assessee was picked up for scrutiny under CASS and the question which arises is that where the assessment has been picked up for limited scrutiny and the Assessing Officer after verifying the issue has passed the assessment order under section 143(3) of the Act, can the Commissioner exercise the jurisdiction under section 263 of the Act on an issue for which assessment was not picked up for scrutiny in the hands of assessee.

9. We find that similar issue arose before the Tribunal in the case of Shri Shankarsingh C. Thakur Vs. CIT in ITA No.833/PN/2014, relating to assessment year 2009-10, order dated 12.08.2016 and it was held as under:-

“8. We have heard the rival contentions and perused the record. The issue arising in the present appeal is against the exercise of jurisdiction of revision by Commissioner under section 263 of the Act. Where the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue, the Commissioner is empowered to exercise the jurisdiction under section 263 of the Act against such assessment order passed by the Assessing Officer. In the facts of the present case before us, the Assessing Officer had selected the return of income filed by the assessee for scrutiny in CASS i.e. it was picked up for limited purpose of examining the source of cash deposits above the threshold limit in the savings bank account. The scrutiny to be carried out in the case of assessee was limited scrutiny. The CBDT had passed instructions in such cases which were picked up for scrutiny on the basis of data in AIR or cases of CASS. It has been decided that scrutiny of such cases would be limited to the information received or applied and in case where the Assessing Officer was of the view that wider scrutiny had to be taken up, then the same had to be carried out with the approval of Administrative Commissioner, where there was potential escapement of income of more than Rs.10 lakhs. The assessment in the case of assessee was completed under section 143(3) of the Act on account of scrutiny under CASS for limited reasoning. The Assessing Officer had not opted for wider scrutiny in the case of assessee. In such circumstances, where the Assessing Officer had exercised the limited powers of scrutinizing the case of assessee on the points for which it was selected, the order of Assessing Officer cannot be held to be erroneous for not looking at issue which was not part of its selection process.

9. The Commissioner has held the order of Assessing Officer to be erroneous and also prejudicial to the interest of Revenue by not considering the claim of deduction of Rs.3,89,838/- on account of conveyance allowance and additional conveyance allowance from the salary. In view thereof, where the Assessing Officer had limited zone of exercising of his jurisdiction, non-looking into the claim of assessee on account of conveyance and additional conveyance allowance cannot make the assessment order as erroneous. In any case, even if we take up the point that the Assessing Officer needed to widen its scrutiny, then the embargo is placed by the CBDT Circular that the permission is to be sought from the Administrative Commissioner where the escapement of income is more than Rs.10 lakhs. The total expenditure claimed as deduction was Rs.3,89,838/- and it is beyond threshold limit of Rs.10 lakhs and hence, could not be part of wider scrutiny, if any. Even the claim of assessee is justifiable, wherein the conveyance allowance and additional conveyance allowance has been paid by the employer LIC of India to the assessee, who was the Development Officer, on account of reimbursement of expenses. Such reimbursement would only takes place where the assessee establishes its claim that it has incurred expenses. In such circumstances, where the expenses have been reimbursed to the assessee, there is no merit in the order of Commissioner in holding that the assessee has failed to establish the incurring of expenditure. Since the order passed by Assessing Officer is not erroneous, the conditions laid down in section 263 of the Act are not fulfilled. Accordingly, the Commissioner has exceeded his jurisdiction in invoking the provisions of section 263 of the Act, which are set-aside. The grounds of appeal raised by the assessee are thus, allowed.”

10. The issue arising in the present appeal is squarely covered by the order of Tribunal and following the same parity of reasoning, we find no merit in the exercise of jurisdiction by Commissioner under section 263 of the Act in the present facts and circumstances, since no evidence has been filed to show that limited scrutiny was converted to full scrutiny. Accordingly, we hold that order passed by the Commissioner is both invalid and bad in law.

11. In the result, appeal of assessee is allowed.

Order pronounced on this 12th day of December, 2018.

Sd/-
(D.KARUNAKARA RAO)
लेखा सदस्य / **ACCOUNTANT MEMBER**

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

पुणे / Pune; दिनांक Dated : 12th December, 2018.

GCVSR

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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