

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.903/PUN/2018
निर्धारण वर्ष / Assessment Year : 2013-14

Rameshwar Ramgopal Goud,
A-Wing, Umiya Apartment,
Canada Corner, Nashik

Pr.CIT-1,
Nashik
Vs.

PAN : AAUPG2994D

(Appellant)

(Respondent)

Appellant by
Respondent by

Shri Pramod Shingte
Ms. Nandita Kanchan

Date of hearing 05-03-2019
Date of pronouncement 06 -03-2019

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal filed by the assessee is directed against the order dated 19-03-2018 passed by the Principal Commissioner of Income-tax-1, Nashik u/s. 263 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2013-14.

2. Briefly stated, the facts of the case are that the assessee filed his original return declaring total income at Rs.1,95,670/-. During the year under consideration, the assessee sold agricultural land at

Gut No.901, Anjaneri Shivar, Nashik. Sale consideration, as per sale deed, was declared at Rs.80.00 lakh. As against that, the assessee claimed that he actually received a sum of Rs.3.00 crore against the sale of agricultural land, viz., Rs.80.00 lakh through cheque; Rs.1.20 crore was retained by the Builder against booking of two flats by the assessee; and the remaining Rs.1.00 crore was given to his friend Shri Dalvi. The Assessing Officer (AO) finalized the assessment by computing long term capital gain chargeable to tax at Rs.16,78,378/- with reference to the full value of consideration on transfer of land taken at Rs.80.00 lakh. Remaining amount of Rs.2,20,00,000/- was taxed as unexplained cash credit u/s.68 of the Act. This resulted into computation of total income at Rs.2.38 crore. The Id. Pr. CIT invoked his jurisdiction u/s.263 of the Act by holding the assessment order to be erroneous and prejudicial to the interest of the Revenue. It was concluded in the revisionary order that the entire sale consideration was liable to be considered for the purpose of computation of capital gain and further exemption u/s.54F was to be given in respect of investment in one flat. The assessee is aggrieved by the revisionary order passed by the Id Pr. CIT.

3. We have heard both the sides and gone through the relevant material on record. It is seen that the assessment order u/s.143(3) was passed on 23-03-2016 determining total income at Rs.238.74 crore. This was followed by the notice of demand u/s.156 determining total tax payable by the assessee at Rs.95,57,390/-. Pursuant to the revisionary order, the AO completed the assessment on 22-11-2018 determining total income at Rs.2,96,55,130/- followed by notice of demand u/s.156 determining the total amount of tax payable by the assessee at Rs.84,26,510/-. In such a concluded assessment, the AO did not grant any benefit of exemption u/s.54F as against the direction of the CIT for granting such benefit in respect of one flat purchased by the assessee. Notwithstanding that, it is seen that the amount of tax determined pursuant to the revisionary order has been computed at Rs.84.26 lakh, which is lower than the amount of tax computed pursuant to the original assessment u/s.143(3) at Rs.95.57 lakh.

4. Section 263 empowers the Commissioner of Income-tax to revise an assessment order which is erroneous as well as prejudicial to the interest of the Revenue. It is trite law that the revisionary power can be exercised only when the assessment order passed by the AO is both erroneous as well as prejudicial to

the interest of the Revenue. If one of the two conditions is not satisfied, the power to revise is ousted. Here is a case in which the assessment order passed pursuant to the revisionary order has resulted in total tax liability of the assessee at Rs.84.26 lakh, which is less than the amount of tax originally determined as payable at Rs.95.57 lakh, which order became subject matter of revision by the Id. Pr. CIT. In such circumstances, a question arises as to whether the original assessment order can be considered as not prejudicial to the interest of the Revenue?

5. In this regard, the Id. DR has relied on the judgment of Hon'ble Supreme Court in *Malabar Industrial Company Ltd. Vs. CIT* (2000) 243 ITR 83. She emphasized on the meaning of the term "prejudicial to the interest of the Revenue". She accentuated on the observations of the Hon'ble Supreme Court to the effect that "every loss of Revenue as a consequence of an order of AO cannot be treated as prejudicial to the interest of the Revenue". In our considered opinion, reliance on one line of the judgment, taken out of context, cannot bring the case of the Revenue any further. An order can be said to be "prejudicial to the interest of the revenue" when it suffers loss in terms of tax amount. The Hon'ble jurisdictional High Court in *CIT Vs. Hindustan Lever Ltd. (2012) 343 ITR 161 (Bom.)* considered this issue, after taking note of the

judgment in the case of *Malabar Industrial Company Ltd. (supra)*.

Their Lordships in *Hindustan Lever Ltd. (supra)* held as under :-

“As regards the order being prejudicial to the interests of the Revenue, the judgment in *Malabar Industrial Company* adverts to the decisions of the Karnataka and Gujarat High Courts and of the view of the Division Bench in *Gabriel India*, according to which, a loss of tax has been regarded as prejudicial to the interests of the Revenue. The Supreme Court has held that *if due to an erroneous order of the Income Tax Officer, the Revenue is losing tax lawfully payable by a person, it would certainly be prejudicial to the interests of the Revenue*. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue. For instance, where the Assessing Officer adopted one of several courses permissible in law or where two views are possible and the Assessing Officer has adopted one view with which the Commissioner does not agree, it has been held that it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken is unsustainable in law.”

6. In this case, the Hon’ble Bombay High Court has held that if due to erroneous order of the Income-tax Officer, the Revenue is losing tax lawfully payable by a person, *it would be certainly prejudicial to the interest of the Revenue*. A part of the judgment in *Malabar Industrial Company Ltd. (supra)* relied on by the Id. DR has also been considered by the Hon’ble jurisdictional High Court in which it was seen that “every loss of Revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the Revenue”. This was further explained with the help of an example that where the AO adopted one of several courses permissible in law or where two views are possible and the

AO has adopted one with which the CIT does not agree, the order cannot be treated as erroneous as well as prejudicial to the interest of the Revenue unless a view taken is unsustainable in law.

7. Adverting to the facts of the instant case, we find that the Department, by virtue of the revisionary order, is losing tax lawfully payable by the assessee. That being the position, the assessment order cannot be considered as prejudicial to the interests of the Revenue. Since the assessment order does not suffer from the second infirmity namely "*prejudicial to the interest of the Revenue*", we hold that the revisionary power u/s.263 cannot be exercised as both the limbs of an order, being, erroneous and prejudicial to the interest of the Revenue are not cumulatively satisfied. We, therefore, set-aside the impugned order.

8. In the result, the appeal is allowed.

Order pronounced in the Open Court on 06th March, 2019.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 06th March, 2019
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The ACIT, Range-1 Nashik
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे
“बी” / DR ‘B’, ITAT, Pune;
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

| | | Date | |
|-----|--|------------|-------|
| 1. | Draft dictated on | 05-03-2019 | Sr.PS |
| 2. | Draft placed before author | 05-03-2019 | Sr.PS |
| 3. | Draft proposed & placed before the second member | | JM |
| 4. | Draft discussed/approved by Second Member. | | JM |
| 5. | Approved Draft comes to the Sr.PS/PS | | Sr.PS |
| 6. | Kept for pronouncement on | | Sr.PS |
| 7. | Date of uploading order | | Sr.PS |
| 8. | File sent to the Bench Clerk | | Sr.PS |
| 9. | Date on which file goes to the Head Clerk | | |
| 10. | Date on which file goes to the A.R. | | |
| 11. | Date of dispatch of Order. | | |

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