



IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR

BEFORE SHRI A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No.89/JAB/2018
Assessment Year:2012-13

Smt. Asha Yadav Katra Ward, Bina Sagar	v.	Principal C.I.T.-1 Jabalpur
TAN/PAN:ABZPU9749E		
(Appellant)		(Respondent)

Appellant by:	Shri Sanjay Mishra, Advocate		
Respondent by:	Shri P. D. Chougale, D.R.		
Date of hearing:	02	04	2019
Date of pronouncement:	03	04	2019

ORDER

PER A. D. JAIN, V.P.:

This is assessee's appeal against the order dated 26/3/2018 passed by the Id. Pr. C.I.T., Jabalpur u/s. 263 of the Income Tax Act, taking the following grounds:

- 1. That, the order passed by the Pr. CIT-1, Jabalpur u/s 263 dated 26.03.2018 is arbitrary, erroneous and contrary to the facts and records of the assessment, hence liable to be set aside.*
- 2. That, on the facts and circumstances of the case, the conclusion of Pr. CIT-1, Jabalpur regarding contravention of provision U/s 40 A (3) of the Act is erroneous.*
- 3. That, on the facts and circumstance of the case, the conclusion of Pr. CIT-1, Jabalpur regarding applicability of section 194 C of the Act is illegal, arbitrary and erroneous.*
- 4. That, the order passed u/s 263 of the Income Tax Act, 1961 is served to the assessee on 09.04.2018, hence the order is clearly barred by limitation.*
- 5. That, while passing the order u/s 263 no reasonable and proper opportunity of being heard is provided to the assessee.*

6. That, no proper reasons has been mentioned by the Ld. Pr. CIT-1, Jabalpur regarding assessment order being erroneous and prejudicial to the interest of revenue, hence the order passed U/s 263 is liable to be set aside.

2. The assessee has moved an application dated 2/4/2019 for admission of an additional ground, which reads as under:

"That the assessment order passed u/s 147/143(3) dated 11.03.2016 is itself non-est, void, and without jurisdiction hence the order passed u/s 263 by Pr. CTI-I Jabalpur based on such assessment order is also illegal, non-est and ab-initio void and deserved to be quashed."

3. Since the additional ground taken by the assessee is purely a legal ground and goes to the root of the matter, therefore, after hearing both the parties, we admit the additional ground in view of the decision of Hon'ble Supreme Court in the case of 'National Thermal Power Co. Ltd. vs. C.I.T.' [1998] 229 ITR 383 (SC).


4. At the outset, the Id. A.R. of the assessee has drawn our attention to APB-1, which is a copy of the reasons recorded by the A.O. for formation of belief of escapement of income, as follows:-

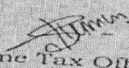
Order Sheet	
Name & Address of the assessee	Smt Asha Yadav w/o Diloo Veer Singh Yadav, H No. 45 Katra Ward, Tehsil Bina Dist Bagar MP
Permanent Account No.	ABZPY9740E
Status	INDIVIDUAL
District/Circle/Ward	Ward-Bina, Range - Sagar
Asst. Year	2012-13
Date	24 Dec 2014

Reasons recorded u/s 148(2) of I. T. Act, 1961.

In this case AIR is received in which cash deposits aggregating to Rs 21,96,000/- in FY 2011-12 in a savings account maintained in bank and purchase of immovable property valued at Rs. 90,00,000/- in FY 2011-12, by the assessee is reported. This transaction is not verifiable from the ITR-4 filed by the assessee for AY 2012-13. Therefore in order to verify the source of purchase of immovable property, cash deposits and to ascertain tax liability, case needs to be scrutinized.

Therefore I have the reason to believe that the income of Rs 1,11,96,000/- has escaped assessment. Issue notice under section 148(1) of the Income-Tax Act.




 Income Tax Officer
 Ward-Bina, Sagar

5. The Id. A.R. of the assessee has contended that no addition has been made on the basis of the reasons recorded and that therefore, the assessment order (APB:15 & 16), dated 11/3/2016, wherein altogether different addition has been made, representing disallowance made out of development charges, amounting to Rs.80,000/-, is void ab-initio, in the light of the following decisions:

1. C.I.T. vs. Jet Airways (I) Ltd. [2011] 311 ITR 236.
2. Ranbaxy Laboratories Ltd. Vs. C.I.T. [2011] 336 ITR 136.

6. It is the further submission on behalf of the assessee that since the assessment order itself is thus void ab-initio, no proceedings with reference thereto could have been initiated and that the resulting impugned order passed u/s. 263 of the Act is also null and void.

7. The Id. D.R., on the other hand, has placed strong reliance on the impugned order. It has been contended that this issue was never raised by the assessee earlier and that therefore, the assessee is now precluded to do so at this belated stage.

8. The objection of the Id. D.R. with regard to the assessee allegedly being debarred from raising this objection before the Tribunal now is, in our considered view, without any merit. The objection taken by the assessee raises a jurisdictional issue going to the root of the matter. Therefore, irrespective of the fact that the assessee did not raise this issue earlier, she is not debarred from doing so now.

9. Apropos the merits of the additional ground also, the grievance of the assessee is found to be correct. A reading of the reasons recorded by the A.O. for forming belief of escapement of income shows that such reasons are with regard to the cash deposits of Rs.21.96 lakhs made by the assessee in her savings bank account and relating to the purchase of the immovable property for Rs.90 lakhs. As per the reasons, this transaction is not verifiable from the return filed by

the assessee. The reasons themselves state that in order to verify the source of purchase of immoveable property, the cash deposits and to ascertain the tax liability, the case needs to be scrutinized.

10. It is seen that as per the assessment order dated 11/3/2016 (supra), no addition based on the reasons recorded has been made. The only addition made is that of Rs.80,000/-, representing disallowance made out of development charges, which is not the subject matter of the reasons.

11. In such a case, the settled legal position is that the AO has to restrict the addition in assessment or reassessment proceedings u/s. 148 only to the issues in respect of which the reasons were recorded for formation of belief of escapement of income.

12. The above settled position is enunciated in, inter alia, 'C.I.T. vs. Jet Airways (I) Ltd.' (supra) and 'Ranbaxy Laboratories Ltd. Vs. C.I.T.' (supra).

13. Therefore, evidently, the assessment order is bad in law. And this being the position, the assessee is correct in contending that the impugned order, passed u/s. 263 of the Act, is also not sustainable, since the same is based on the assessment order, which is a non-est order. Accordingly, the impugned order is hereby reversed and cancelled. Nothing further survives for adjudication, nor was anything else argued.

14. In the result, the appeal is allowed.

Order pronounced in the open Court on 03/04/2019.

Sd/-
[T. S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED:03/04/2019

JJ:0204

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR