

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

BEFORE MS. SUSHMA CHOWLA, JM AND
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं / ITA Nos.798 and 799/PUN/2015
निर्धारण वर्ष / Assessment years : 2006-07 & 2011-12.

Gulab Badgujar (HUF),
204, Pashupatinath, C-02, B Wing,
Mahadev Sankalp Complex,
Gandhare Village,
Near Kahdakpada Chowk,
Kalyan (West), Thane – 421301.

..... अपीलार्थी /
Appellant

PAN : AAEHG6475C.

बनाम v/s

The Commissioner of Income-Tax (Central),
Nagpur.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Pramod Shingte.

Revenue by : Shri Rajeev Kumar, CIT.

सुनवाई की तारीख / Date of Hearing : 21.02.2019	घोषणा की तारीख / Date of Pronouncement: 03.05.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. These two appeals filed by assessee are emanating out of separate orders of Commissioner of Income Tax (Central), Nagpur, both dated 19.03.2015 under section 263 of the Act for the assessment years 2006-07 & 2011-12, respectively.

2. Both the appeals relating to the same assessee against order passed under section 263 of the Act were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The grounds raised by the assessee in A.Y. 798/PUN/2015 for A.Y.

2006-07 reads as under :

“1. On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax (Appeals) – 1, Mumbai erred in invoking provisions u/s 263 of the Act, on the issue which was decided by the Assessing Officer and therefore such addition which is merely based on change of opinion is bad in law and void ab initio.

2. On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax (Appeals) – 1, Mumbai erred in holding that the assessment order passed u/s 143(3) r.w.s. 147 on 14.02.2014 is erroneous and prejudicial to the interest of the revenue.”

3.1 Subsequently, assessee filed the additional ground which reads as under :

“On the facts and in the circumstances of the case and in law, Learned CIT(Central), Nagpur, erred in passing order u/s 263, for considering the revision of order passed u/s 143(3) r.w.s. 147, dt.14.02.2014, for Asst. Year 2006-07, especially in view of the fact that the impugned proceedings were initiated post search enquiries in case of Suyojit Group, and necessary explanations were offered before DDI(Inv), in connection with documents seized during the search action and necessary inquiries are already made.

4. Similar grounds have been raised in ITA No.799/PUN/2015 for A.Y. 2011-12.

5. First, we shall take up appeal relating to A.Y. 2006-07.

6. Before us, Ld.A.R. submitted that the exercise of revisionary powers in both the assessment years lacks jurisdiction and therefore are bad in law. He submitted that the basis on which assessments were reopened were looked into by AO in the re-assessment proceedings and the additions were made. In such a situation, exercise of revisionary proceedings are not permissible as reopening was on specific grounds and for this proposition, he relied on various decisions. He therefore submitted that the orders of Commissioner of Income Tax be set aside.

Ld.D.R. on the other hand, supported the order of Commissioner of Income Tax.

7. We have heard the rival submissions and perused the material on record. Briefly, in the facts of the case, assessee has furnished the original return of income on 16.08.2010. Search under section 132 of the Act was carried out on Suyojit Group of cases on 17.09.2010. During the course of search, certain documents were found and seized. Thereafter, elaborate enquiries were made and the seized documents were confronted and statement of Shri Gulab Maharu Badgujar was recorded on 16.10.2010. Before the DDIT., Investigation, the transaction was explained vide letter dt.09.11.2010. Post the search and the enquiries made, no notice under section 153C of the Act or Sec.148 of the Act were issued to the assessee; but notice under section 153C of the Act was issued to several other parties. Thereafter, notice under section 148 of the Act was issued to the assessee on specific reasons. The AO passed order under section 143(3) r.w.s. 147 of the Act vide order dated 14.02.2014. The assessment was re-opened for specific reasons and addition on account of the said reasons was made in the hands of assessee which is not disputed. Thereafter, the Commissioner of Income Tax exercised his jurisdiction under section 263 of the Act and issued show cause notice to the assessee. The Commissioner of Income Tax refers to part of a transaction between assessee and Shri Anant Keshav Rajegaonkar, whose residential premises was also searched under section 132 of the Act as part of Suyojit Group of cases on 17.09.2010. It may be pointed herein itself, that the basis of the initiation of the 263 proceedings is a document found during the search which reflects a transaction

totaling to Rs.2.98 crore spread over a period of five years. The years to which it relates are as under :

A.Y.	Amount (Lakh)
2006-07	19.00
2007-08	127.00
2008-09	45.00
2009-10	40.00
2011-12	67.00
TOTAL	298.00

8. However, only in two assessment years, assessments were re-opened under section 263 of the Act i.e., for A.Y. 2006-07 and 2011-12. Admittedly, the assessment proceedings for A.Y. 2007-08 wherein there is a transaction of Rs.127 crore has been accepted and no action under section 263 of the Act has been initiated. It may also be clarified herein that the other side transactions in the hands of Anant Keshav Rajegaonkar were also looked into by the Revenue authorities and we are not concerned with the fate of the additions in his hands.

9. The question which arises is the exercise of revisionary jurisdiction by the Commissioner of Income Tax under section 263 of the Act against the order passed under section 143(3) r.w.s. 147 of the Act, wherein the assessment proceedings were re-opened on specific reasons recorded for re-opening. We have already referred to the additions made on the aforesaid reasons in the hands of assessee in the Para above. Once, the re-assessment proceedings are initiated on a specific issue and the addition is made in the hands of the assessee then the Commissioner of

Income Tax is precluded from exercise of jurisdiction under section 263 of the Act on a ground which is not covered by the reasons during the re-opening of the assessment since the time for completing the assessment u/s 143(3) of the Act had expired. Hence, we find no merit in the exercise of revisionary power by the Commissioner of Income Tax under section 263 of the Act in the present facts and circumstances.

10. We find support from the ratio laid down by the Hon'ble Bombay High Court in the case of M/s. Ashoka Buildcon Limited Vs. ACIT reported in (2010) 191 Taxmann 29 wherein also the question was of revisionary proceedings initiated under section 263 of the Act against the assessment made which was re-opened under section 147 of the Act. The Hon'ble Bombay High Court noted that the re-assessment proceedings were in relation to a particular grounds and subsequent thereto of passing of the re-assessment and exercise of jurisdiction under section 263 of the Act with reference to the issues, which did not form subject of re-opening of assessment cannot be exercised.

11. The Hon'ble Bombay High Court in the case of M/s. Ashoka Buildcon Limited (supra) at Para 8 held as under :

“8. Where an assessment has been reopened under Section 147 in relation to a particular ground or in relation to certain specified grounds and, subsequent to the passing of the order of reassessment, the jurisdiction under Section 263 is sought to be exercised with reference to issues which do not form the subject of the reopening of the assessment or the order of reassessment, the period of limitation provided for in sub-section (2) of Section 263 would commence from the date of the order of assessment and not from the date on which the order reopening the reassessment has been passed.

The Hon'ble Bombay High Court at Para 10 further held that

“10.....

Where a reassessment has been made pursuant to a notice under Section 148, the order of reassessment prevails in respect of those items which form part of reassessment. On items which do not form part of the reassessment, the original assessment continues to hold the field. When the Assessing Officer reopens an assessment on a particular issue, it is open to him to make a reassessment on that issue as well as in respect of other issues which subsequently come to his notice during the course of the proceedings under Section 147. The submission of the Revenue is that by not passing an order of reassessment in respect of other independent issues, the order of the Assessing Officer can be construed to be erroneous and to be prejudicial to the interest of the Revenue within the meaning of Section 263. The submission cannot be accepted in the facts of the present case. The substantive part of Section 147 as well as Explanation 3 enables the Assessing Officer to assess or reassess income chargeable to tax which he has reason to believe had escaped assessment and other income which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. There is nothing on the record of the present case to indicate that there was any other income which had come to the notice of the Assessing Officer as having escaped assessment in the course of the proceedings under Section 147 and when he passed the order of reassessment. The Commissioner, when he exercised his jurisdiction under Section 263, in the facts of the present case, was under a bar of limitation since limitation would begin to run from the date on which the original order of assessment was passed. We must however clarify that the bar of limitation in this case arises because the revisional jurisdiction under Section 263 is sought to be exercised in respect of issues which did not form the subject matter of the reassessment proceedings under Section 143(3) read with 147. In respect of those issues, limitation would commence with reference to the original order of assessment. If the exercise of the revisional jurisdiction under Section 263 was to be in respect of issues which formed the subject matter of the reassessment, after the original assessment was reopened, the commencement of limitation would be with reference to the order of reassessment. The present case does not fall in that category.”

Taking strength from the order of Hon'ble Bombay High Court in Ashoka Buildcon Limited (supra), we hold that the order of revision passed in the present case, on issues which did not form subject of re-opening of the assessment or order of reassessment, cannot be upheld. Therefore the revisionary proceedings exercised by the Commissioner of Income Tax is not correct. Hence, the said order of Commissioner of Income Tax is set aside.

12. Before parting we may also mention that the Commissioner of Income Tax had issued the show cause notice for A.Y. 2006-07 against the assessment order passed under section 143(3) r.w.s. 147 of the Act dt.14.02.2014 assessing the taxable income at Rs.60,25,970/-. However, in the final para i.e., Para 6, the Commissioner of Income Tax was of the considered opinion that the order passed under section 143(3) of the Act dt.28.03.2013 is erroneous and prejudicial to the interest of Revenue. The final finding of the Commissioner of Income Tax is contrary to the facts as the assessment order which was in question was passed under section 143(3) r.w.s. 147 of the Act dt.14.02.2014; but the Commissioner of Income Tax in the final analysis held that an order passed under section 143(3) of the Act dt.28.03.2013 to be erroneous and prejudicial to the interest of Revenue where no such order under section 143(3) of the Act has been passed by any of the authorities for A.Y. 2006-07, hence, the finding of the Commissioner of Income Tax suffers from infirmity and on this account also the exercise of jurisdiction by the Commissioner of Income Tax cannot stand.

13. Now coming to the appeal in A.Y. 2011-12, which is also against the exercise of revisionary jurisdiction by the Commissioner of Income Tax under section 263 of the Act, the reason for exercise of the said jurisdiction by the Commissioner of Income Tax is again at the same document which was found from the residential premises of Shri Anant Keshav Rajegaonkar wherein the transaction totaling to Rs.2.98 crore is mentioned. It may be pointed out that the said transaction relates to number of years and we have already referred to the details in the paras above. The first year was A.Y. 2006-07 wherein the amount mentioned on the document was Rs.19 lakh. We have already held the exercise of

jurisdiction by the Commissioner of Income Tax under section 263 of the Act to be not in accordance with the law in the paras above.

14. Now coming to appeal in A.Y. 2007-08, wherein the transaction noted is Rs.127 lakh, the assessment for this year was completed under section 143(3) of the Act but no proceedings u/s 263 of the Act have been initiated against the assessee. Similarly, for A.Ys. 2008-09 and 2009-10 wherein the transactions noted were Rs.45 lakh and Rs.40 lakh, respectively, though the assessment has been completed in the hands of the assessee but no proceedings u/s 263 of the Act have been completed. In the captioned assessment year i.e., A.Y. 2011-12, the amount noted in the seized document is Rs.67 lakh and is the basis for exercise of revisionary power by the Commissioner of Income Tax against the assessee. Once the transaction has been accepted in the earlier years and the transaction emanate from the same seized document, then the Revenue authorities cannot take different stand in different years. We therefore find no merit in the exercise of jurisdiction under section 263 of the Act against the assessee by the Commissioner of Income Tax under section 263 of the Act in A.Y. 2011-12. Hence, the said order passed under section 263 of the Act is set aside.

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

Order pronounced on 3rd day of May, 2019.

Sd/-

(SUSHMA CHOWLA)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 3rd May, 2019.

Yamini

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(Central), Nagpur.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" / DR,
ITAT, "A" Pune;
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

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