



IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no. 787/Mum./2019
(Assessment Year : 2014-15)

Shri Pukhraj Singh Rajpurohit
B-2, 605, Kamala Park CHS Ltd.
BhindNavrang Hotel, Bhayandar (W)
Thane 410 101 PAN – AAEP3514E

..... Appellant

v/s

Income Tax Officer
Ward-10(2)(3), Mumbai

..... Respondent

Assessee by : Shri Mihir A. Tanna
Revenue by : Shri Neil Phillip

Date of Hearing – 13.05.2019

Date of Order – 24.05.2019

ORDER

PER SAKTIJIT DEY. J.M.

The aforesaid appeal has been filed by the assessee challenging the order dated 10th December 2018, passed by the learned Principal Commissioner of Income Tax-10 (PCIT), Mumbai, pertaining to the assessment year 2014-15.

2. Grounds raised by the assessee are as under:-

"1. Erred in assuming the jurisdiction by the Pr. Commissioner.

Wherein as per facts and circumstances of the case, Pr. Commissioner has erred in law in assuming jurisdiction while passing the order under section 263, more so when the

assessment order passed under section 143(3) is neither erroneous nor prejudicial to the interests of Revenue.

2. *Erred in not considering the submissions and genuineness of the transaction.*

Wherein as per facts and circumstances of the case, transaction was genuine and order passed under section 143(3) should not be cancel by the Pr. Commissioner of Income Tax and it is without prejudicing the ground of appeal mentioned in 1.

3. Brief facts are, the assessee is an individual. He derives income from remuneration received from Maruti Air Couriers and Cargo Pvt. Ltd. and interest received. For the assessment year under dispute, the assessee filed his return of income on 31st March 2015 declaring total income of ₹ 12,74,910. The assessment in case of the assessee was completed under section 143(3) of the Income Tax Act, 1961 (for short "*the Act*") vide order dated 29th December 2016, accepting the income declared by the assessee. Subsequently, the Principal CIT, in exercise of power under section 263 of the Act, called for and examined the assessment record of the assessee pertaining to the impugned assessment year. After examining the record, he found that in the year under consideration the assessee had purchased two shops from Chamunda Builders and Developers under two separate registered deeds for a declared sale consideration of ₹ 1,21,00,000 and ₹ 79,00,000 respectively. Whereas, at the time of registration of the sale deeds, the stamp valuation authority has determined the value of the properties for stamp duty purpose at ₹ 1,35,00,000 and ₹

89,31,000 respectively. Thus, there was a difference in value between the stamp duty valuation and declared sale consideration. Learned PCIT observed, as per the provisions of section 56(2)(vii)(b)(ii) inserted to the Act w.e.f. 1st April 2014, the difference between the sale consideration and stamp duty valuation would be taxable at the hands of the person buying the property. He observed, while completing the assessment, the Assessing Officer has failed to examine the applicability of the aforesaid provision as a result of which the assessment order is not only erroneous but also prejudicial to the interests of the Revenue. Accordingly, he issued a show cause notice to the assessee to explain why the assessment order should not be set aside. In response to the show cause notice, though, the assessee filed his reply stating that the assessment order passed is neither erroneous nor prejudicial to the interests of Revenue, since, the Assessing Officer, while completing the assessment, had enquired into the purchase of shops by the assessee, however, learned Principal CIT, rejecting the submissions of the assessee, held the assessment order to be erroneous and prejudicial to the interests of Revenue, as the Assessing Officer had failed to examine the applicability of provisions of section 56(2)(vii)(b)(ii) of the Act. Accordingly, he set aside the assessment order with a direction to the Assessing Officer to make a fresh assessment after making requisite enquiries keeping in view of

the provisions of section 56(2)(vii)(b)(ii) of the Act and after providing reasonable opportunity of being heard to the assessee.

4. The learned Authorised Representative submitted, in the course of assessment proceedings, the Assessing Officer had enquired into the transactions relating to purchase of shops by the assessee. He submitted, in response to the queries raised by the Assessing Officer, the assessee had furnished all the details including sale deeds, confirmation letters, bank statement, etc., in support of the purchase of shops. He submitted, after due enquiry and proper application of mind, the Assessing Officer had completed the assessment accepting the claim of the assessee. Therefore, the assessment order passed cannot be held to be erroneous and prejudicial to the interests of Revenue to enable the Principal CIT to revise the order under section 263 of the Act.

5. The learned Departmental Representative submitted, in the course of assessment proceedings, the Assessing Officer has not examined the applicability of section 56(2)(vii)(b)(ii) of the Act. Therefore, the assessment order passed is not only erroneous but prejudicial to the interests of Revenue. That being the case, learned Commissioner has rightly exercised his power under section 263 of the Act to revise the assessment order.

6. We have considered rival submissions and perused the material on record. From the facts and materials available on record it is evident that the value of the two shops purchased by the assessee as determined by the stamp duty valuation authority for stamp duty purpose is in excess of the declared sale consideration mentioned in the registered sale deed. The aforesaid factual position remains uncontroverted as the learned Authorised Representative accepted the aforesaid fact. As per section 56(2)(vii)(b)(ii) of the Act, brought to the statute by Finance Act, 2013, w.e.f. 1st April 2013, if the stamp duty value exceeds the declared sale consideration, such excess amount has to be treated as income of the assessee who purchased property. No doubt, the aforesaid provision is applicable to the impugned assessment year. Therefore, it remains to be examined whether the Assessing Officer in the course of assessment proceedings has examined the applicability of the aforesaid provision to the transactions relating to the purchase of shops by the assessee. On a perusal of the material available on record, including the impugned assessment order, we find not even a hint of any enquiry conducted by the Assessing Officer for examining the applicability of the aforesaid provision to the purchase of shops by the assessee. In fact, in the grounds raised in the present appeal, the assessee has not raised any ground with regard to the applicability of section 56(2)(vii)(b)(ii) of the Act. The only submission made by the learned Authorised

Representative is, the Assessing Officer having completed the assessment after conducting necessary enquiry with regard to the purchase of shops, the assessment order cannot be held to erroneous and prejudicial to the interests of Revenue. However, the facts on record clearly reveal that the Assessing Officer has completely failed to examine the applicability of section 56(2)(vii)(b)(ii) of the Act to the subject transactions. Thus, non-examination / non consideration of applicability of the aforesaid provision makes the assessment order not only erroneous but prejudicial to the interests of Revenue. Therefore, in our considered opinion, learned Principal CIT has correctly exercised his power under section 263 of the Act to revise the assessment order. Further, we may observe that while setting aside the assessment order, learned Principal CIT has not expressed any opinion with regard to applicability of section 56(2)(vii)(b)(ii) of the Act. Rather he has directed the Assessing Officer to make necessary enquiry keeping in view the provision of section 56(2)(vii)(b)(ii) of the Act. Therefore, it is open for the assessee to make all submissions available to it to demonstrate that the provisions of section 56(2)(vii)(b)(ii) of the Act is not applicable to the subject transactions. We further direct the Assessing Officer to consider the submissions made by the assessee on its own merits and decide the issue after dealing with all the submissions made by the assessee by a well-reasoned and speaking order. With the aforesaid observations, we dismiss the grounds raised.

7. In the result, appeal is dismissed.

Order pronounced in the open Court on 24.05.2019

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 24.05.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai