

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

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

आयकर अपील स० / ITA No.1180/PUN/2017
निर्धारण वर्ष / Assessment year : 2012-13

Shri Deepak Lakhmichand Ahuja,
Udyan Road, Paithan,
Aurangabad – 431 107.

..... अपीलार्थी /
Appellant

PAN : AAPPA5497A.

बनाम v/s

The Pr.Commissioner of Income-Tax – 1,
Aurangabad.

..... प्रत्यर्थी /
Respondent

Assessee by : Ms. Pooja Indani.

Revenue by : Smt. Nandita Kanchan.

सुनवाई की तारीख / Date of Hearing : 07.06.2019	घोषणा की तारीख / Date of Pronouncement: 11.06.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee is emanating out of the order of Principal Commissioner of Income Tax – 1, Aurangabad dated 14.03.2017 for the assessment year 2012-13.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual who electronically filed his return of income for A.Y. 2012-13 declaring total income at Rs.13,15,284/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.20.03.2015 and the total income was determined at Rs.14,41,217/-. Subsequently, Ld. PCIT on examining

the assessment records noted that during the scrutiny proceedings, the AO has failed to call for the details noted in the order passed u/s 263 of the Act and accordingly, the assessment order passed by the AO was erroneous and prejudicial to the interest of Revenue. He accordingly set aside the order of AO and gave the directions to call for the requisite details, examine it afresh and pass orders. Aggrieved by the order of Ld. PCIT vide order dated 14.03.2017, assessee is now in appeal before us and has raised the following grounds :

“1. Appellant has given para wise reply to the notice U/s 263.

2. Principal Commissioner erred to give the findings that how the assessment order is erroneous & prejudicial to the interest of the revenue?

3. In the appellant's case the AO has passed the order by making all the inquiries & verification which a reasonable & prudent officer shall have carried out in such cases.

4. The Notice U/s 263 was issued on 02.03.2017, received on 03.03.2017 & called the reply on 07.03.2017 & order passed on 14.03.2017. 04.03.2017 & 05.03.2017 was weekly off. Practically commissioner has not given sufficient time to the appellant. Is it treated as a judicial order? Having been aggrieved with order appeal is filed before honourable ITAT seeing relief to quash the order U/S 263.

5. In Narayan Tatu Rane V. Income Tax Officer, Ward 27(1)(1), Mumbai ITAT, tribunal has noticed that the Ld. Pro CIT can revise the order only if it is shown by findings with reasons that the assessment order is erroneous in so far as prejudicial to the interest of revenue.

6. For that in the facts & Circumstances of the case, the order U/s 263 is merely change in opinion. The order U/s 143(3) passed by the Ld. Assessing Officer does not in any way represent erroneous order. The action of Ld. CIT was wholly unreasonable, uncalled for & bad in Law.

7. You are requested to quash the Principal Commissioner's Order under 263 and grant the relief.

8. Appellant would like to be heard in person.”

3. All the grounds being inter-connected are considered together.

4. Before us, Ld.A.R. submitted that consequent to the order passed u/s 263 of the Act by Ld. PCIT, AO passed consequential order u/s

143(3) r.w.s. 263 of the Act by vide order dt.29.12.2017 and made addition of Rs.2 lakhs. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT who vide order dated 09.07.2018 (in appeal No.ABD/CIT(A)-1/262/2017-18 dt.20.01.2019) deleted the addition of Rs. 2 lakhs made by the AO. Against the order of Ld. CIT(A), Revenue has not preferred any appeal before ITAT. Ld.A.R. therefore submitted that the addition made in the consequential order passed under Sec.143(3) r.w.s 263 of the Act has been deleted by Ld.CIT(A) and has attained finality. He submitted that there remains no grievance of the assessee and therefore the present appeal filed by the assessee can be considered to be academic and thus it can be decided accordingly. Ld. D.R. did not controvert the submissions made by Ld.A.R.

5. We have heard the rival submissions and perused the material on record. In the present case, we find that originally assessment order was framed u/s 143(3) of the Act. Thereafter, the Ld. PCIT passed order u/s 263 of the Act wherein Ld. PCIT directed the AO to call for the details mentioned in the order, examine it afresh and pass orders. Consequently, assessment was framed u/s 143(3) r.w.s. 263 of the Act wherein addition of Rs.2 lakhs was made by the AO. When the matter was carried by the assessee before Ld.CIT(A), Ld.CIT(A) vide order dt.09.07.2018 has deleted the addition and against the order of Ld.CIT(A), no appeal has been filed by the Revenue meaning thereby that the issue for which revisionary proceedings were initiated had been decided in assessee's favour. In such circumstances, there is no grievance of the assessee and therefore we find that the present appeal of the assessee against the order passed u/s 263 of the Act has been rendered academic **and thus the appeal of assessee is dismissed.**

6. **In the result, the appeal of the assessee is dismissed.**

Order pronounced on 11th day of June, 2019.

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

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 11th June, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The PCT-1, Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR,
ITAT, "B" Pune;
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

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