

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 3615/DEL/2019 (A.Y. 2009-10)

Ashok Kumar Sinha, C-258, Govindpuram, Ghaziabad PAN : AWKPS6166R (APPELLANT)	Vs.	Pr. CIT 1 st Floor, CGO Complex -I, Hapur Road, Kamla Nehru Nagar Ghaziabad (RESPONDENT)
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Appellant by	Sh. Vinod Kumar Bindal, CA & Ms. Rinki Sharma, ITP
Respondent by	Sh. Sanjay Goyal, CIT-DR

Date of Hearing	30.07.2019
Date of Pronouncement	20.08.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed against the order dated 30.03.2019 passed by Pr.CIT, Ghaziabad U/s. 263 of the Income Tax Act, 1961.

2. The grounds of appeal are as under :

“1. The learned CIT erred in law and on facts in directing enhancement of assessed income by Rs.46.50 lakhs which was earlier assessed by the Assessing Officer u/ss 147/143(3) of the Act ignoring that the twin conditions laid down in the Act to take action u/s. 263 of the Act were not fulfilled. Thus, the order passed u/s. 263 of the Act should be cancelled.

2. The learned CIT erred in law and on facts in holding the assessment order passed u/ss 147/143(3) of the Act as erroneous ignoring that -

(a). the assessing officer raised enquiries about the sources of cash deposits I his bank account by the appellant who filed complete details of the same which confirmations from the buyers of the property;

(b). it is not necessary that Assessing Officer should discuss in the assessment order each and every query raised by him during the assessment proceedings or every verification made from the books of account in the assessment folder or the order sheet,

(c). the Pr. CIT cannot direct the assessing officer as to what and in which manner the assessing Officer should have conducted the assessment proceedings as it was the sole prerogative of the assessing officer as how the verification of the claims in the return of income should be made,

(d). none of the conditions mentioned in the Explanation 2 u/s. 263 of the Act are applicable in this case,

(e) none of the reasons mentioned in the impugned order by the Pr. CIT are applicable as all those stood verified otherwise by the assessing officer from the examination of the information paced on record,

(f) further independent verification is necessary when there is a doubt on the claim after considering the evidence submitted by the assessee which in this case was not considered necessary by the assessing officer after examination of the material placed including the sale deed and replies u/s. 133(6) of the Act by the buyers of the property, on record for the relevant issue,

(g). without prejudice, the Assessing Officer has taken one of the two possible views after verification which is sustainable in law.

Thus, the assessment order was not erroneous at all and the condition laid down for taking action u/s. 263 of the Act was not fulfilled. Thus the order passed by the CIT should be cancelled.

3. the impugned order s time barred, though dated 30/03/2019 but since was served on the appellant by hand on 16.04.2019 and therefore, it

cannot be ascertained without doubt that the same was passed before 31.03.2019. Had it been sent by post by 31/-3/219, it could be so settled but there is no evidence of any such service within the said time.

4. The PCIT ignored that the assessment was earlier reopened u/s. 147 on the same issue on which the appellant satisfactorily replied and the assessment was then completed accepting the submissions and independent evidence gathered. The said assessment was reopened on the basis of a query of the audit party. The impugned show cause notice u/s. 263 of the Act was on the same issues which were raised by the audit party. Thus, the impugned order has been passed merely to cover up the audit query and, therefore, should be quashed.

5. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.”

Additional Grounds of appeal are as under:

“On the basis of a RTI reply dated 23/05/2019 received after filing this appeal on 25/04/2019, it has been learnt that the impugned order of the PCIT is based on borrowed satisfaction and direction of the revenue audit party. Therefore, the same is bad in law as has been held in the following cases:

- (a) Pr CIT vs. S Chand & Co Ltd [2018] 100 taxmann.com 353 (SC) date of judgment 16/11/2018 (Supreme Court confirming Delhi High Court)
- (b) FIS Global Business Solutions India Pvt. Ltd vs PCIT (Delhi HC)in WP(C) 1277/2018 date of judgement 16/11/2018
- (c) CIT vs Maharashtra Hybrid Seeds Co. Ltd (Mumbai HC) in ITA no. 47 of 2002 date of judgment 04/09/2018
- (d) Jaswinder Singh vs CIT (2013) 31 taxmann.com 80 (Chd. ITAT)
- (e) Arabinda Roy vs CIT 2016-TIOL-1764-ITAT-KOL
- (f) Vinay Pratap Thacker vs CIT 2013-LL-0227-67-MUM-ITAT
- (g) ACIT vs Dharamvir Singh Rao 2017-TIOL-431 -SC-IT
- (h) PCIT vs Meenakshi Overseas Pvt Ltd 2017-TIOL-1060-HC-DEL-IT

Thus, the impugned order must be quashed.”

3. Income Tax Return was filed by the assessee on 11.05.2009 showing total income at Rs. 1,74,310. Original assessment was completed u/s 147 of the Act where the return of income was accepted as the assessee explained the source of the entire cash deposited in his bank account as advance receipt from sale of his residential property. Some discrepancies/errors were noticed in the order of the Assessing Officer by the Pr. CIT. Accordingly, the PCIT on issued notice u/s 263 of the Act on 06.02.2019. In response to the said notice, the Advocate of the assessee appeared and filed written reply dated 15.02.2019. The Pr. CIT u/s 263 of the Act vide order dated 30.03.2019 held the assessment order to be erroneous and prejudicial to the interest of the Revenue and directed the Assessing Officer to enhance the income of the assessee to the extend of Rs. 46.5 lacs.

4. Being aggrieved by the order passed u/s 263, the assessee filed present appeal.

5. The Ld. AR submitted that Original assessment was completed u/s 147 of the Act where the returned income was accepted as the assessee explained the source of the entire cash deposited in his bank account as advance receipt from sale of his residential property. As per the information received under the RTI Act, 2005 after the impugned order, the PCIT on the basis of an audit objection only issued notice u/s 263 of the Act. In the said reply in point no. 2 it has been categorically mentioned by the Assessing Officer that the audit objection was not accepted by him and a detailed reply to drop the audit objection was sent to the audit party. It is also stated therein that on the basis of the report of audit, the JCIT (Audit) Kanpur directed the JCIT, Range -1, Ghaziabad to take remedial action u/s 263 of the Act and on the basis of which JCIT, Range-1, Ghaziabad recommended to take remedial action u/s 263 of the Act and then the said action was taken by the PCIT. This reply is at Pg 114 of the PB in response to the RTI application placed on Pg 103 of the PB. Thus, the impugned order is solely on the

basis of audit objection and not suo moto examination of the assessment record by the PCIT. Therefore, the additional ground taken by the assessee on the basis of the RTI information received after the impugned order of the PCIT is allowable, following the judgments mentioned therein including of the Apex Court. Further, it is on record that the Assessing Officer made complete enquiry of the source of money received and deposited in the bank account which was duly acknowledged by the purchaser of the property during the assessment proceedings. However, he could not make the full payment / sale consideration of the property, the advance given by him in cash for purchase of the property was refunded to him in the next year from the sale consideration of the property to two other purchasers (brothers) and the sale deed was duly witnessed by the said earlier purchaser Mr Ram Murti Yadav, the earlier purchaser who assisted the new purchasers to purchase the said property. Thus, it could not be presumed that the said earlier purchaser did not receive refund of his amount of advance given earlier for the same property but witnessed the subsequent sale deed of the said property. This fact was understood by the Assessing officer in the assessment proceedings. Therefore, the presumption of the PCIT that the Assessing officer did not make any enquiry of cash deposit and that the advance received by the assessee from the earlier purchaser was forfeited by the assessee and not returned to the old purchaser from the sale consideration to new purchasers is totally incorrect and beyond appreciation. The impugned order u/s 263 of the Act must be quashed.

6. The Ld. DR submitted that Explanation 2 has been inserted in Section 263 of Income Tax Act by Finance Act, 2015 w.e.f. 01.06.2015 and therefore, when the order is passed without making inquiries or verification which should have been made by the Assessing Officer, then the Pr. CIT has power to invoke Section 263 of the Act. In the above case, the Ld. DR submitted that the following decision be considered with regard to validity of proceedings u/s 263 of Income Tax Act.

1. Deniel Merchants Pvt. Ltd. vs. ITO (Appeal No. 2396/2017) dated

29.11.2017 (SC).

2. BSES Rajdhani Power Ltd. Vs PCIT [2017] 88 taxmann.com 25 (Delhi)/(2017) 399 ITR 228 (Delhi)

3. Surya Jyoti Software Pvt. Ltd. Vs PCIT (I.T.A. No.2158/DEL/2017) ITAT Delhi

4. Malabar Industrial Co. Ltd. Vs CIT [2000] 109 Taxman 66 (SC)/[2000] 243 ITR 83 (SC)/ [2000] 159 CTR 1 (SC)

6. Rajmandir Estates (P.) Ltd. Vs PCIT [70 taxmann.com 124 (Calcutta)/[2016] 240 Taxman 306 (Calcutta)/[2016] 386 ITR 162 (Calcutta)/[2016] 287 CTR 512]

7. Rajmandir Estates (P.) Ltd. Vs PCIT [2017] 77 taxmann.com 285 SC)/[2017] 245 Taxman 127 (SC)

8. Swarup Vegetable Products Vs CIT [1991] 54 Taxman 175 (Allahabad)/[1991] 187 ITR 412 (Allahabad)/[1990] 90 CTR 113 (Allahabad)

9. Lakshmi Vilas Bank Vs JCIT (2018-TIOL-2284-HC-MAD-IT)

10. CIT Vs Amitabh Bachhan (69 taxmann.com 170, 240 Taxman 221, 384 ITR 200, 286 CTR 113)

11. Shree Manjunathesware Packing Products & Camphor Works Vs CIT [1998] 96 Taxman 1 (SC)/(1998) 231 ITR 53 (SC)/[1997] 143 CTR 406 (SC)

12. EIMCO K.C.P. Ltd. Vs CIT (109 Taxman 151, 242 ITR 659, 159 CTR 137) (SC)

13. CIT Vs Jaykumar B. Patil (236 ITR 469, 156 CTR 476) (SC)

14. Shoreline Hotel (P.) Ltd. Vs CIT [2018] 98 taxmann.com 234 (Bombay)

15. CIT Vs Ballarpur Industries Ltd. [2017] 85 taxmann.com 10 (Bombay)

16. CIT Vs Ashok Logani (11 taxmann.com 208. 202 Taxman 201, 347 ITR 22)

6. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessment was completed u/s 147 of the Act where the return of income was accepted as the assessee explained the source of entire cash deposited in his bank account as advanced receipt from time to sale of his residential property. Thus, the assessee had filed all the details before the original assessment proceedings itself. From the records

it can be seen that the Pr. Commissioner of Income Tax issued notice on the basis of audit objection. The Revenue's contentions that the Assessing Officer has not conducted the inquiry while accepting the return of income filed by the Assessee, is not correct propositions as per the records. Thus, the decision of the Hon'ble Apex Court in case of Daniel Merchant (supra) will not be applicable in the present case. From the records, the Assessing Officer has specifically raised query regarding sale deed during the original assessment proceedings and all the details were given by the assessee during the assessment proceedings. These facts were present before the Pr. Commissioner of Income Tax while giving show cause notice u/s 263 of the Act. The order passed by the Pr. CIT in capacity of Section 263 is merely a second opinion and does not fall in the category of prejudicial to the interest of Revenue. Merely taking a second opinion on the issue which is already concluded by the Revenue Authorities cannot be a ground for invoking Section 263 of the Act. The Assessing Officer should have done this or that is not a prerogative while invoking Section 263 of the Act by the Commissioner of Income Tax. In the present case, the Assessing Officer has taken cognizance of all the material provided by the Assessee during the Assessment Proceedings and after verifying the same has passed just and proper order. Therefore, in light of the above findings, the order of the Commissioner u/s 263 of the Act is set aside. Thus, the appeal of the assessee is allowed.

7. In result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 20th August, 2019.

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 20/08/2019

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