

IN THE INCOME TAX APPELLATE TRIBUNAL "DB", BENCH AMRITSAR

BEFORE SHRI N.K. CHOUDHRY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.300/ASR/2019

(निर्धारणवर्ष / Assessment Year: 2014-15)

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| Shri Mandeep Singh Dhillon #16310, Street No. 13/5 Dhillon Colony, Barnala Bye Pass, Bathinda. | Vs. | Pr. Commissioner of Income Tax Bathinda (Punjab). |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ADMPD 8422 A | | |
| (Appellant) | .. | (Respondent) |

Appellant by : Sh. Deepak Anand, Adv. &
Sh. Sandeep Bansal, Adv.
Respondent by : Smt. Prabhjot Kaur, CIT(DR)

सुनवाईकीतारीख/ Date of Hearing : 25/11/2019

घोषणाकीतारीख/Date of Pronouncement : 25/11/2019

आदेश / O R D E R

Per Dr. A.L. Saini:

The captioned appeal filed by the assessee, pertaining to assessment year 2014-15, is directed against the order passed by the Pr. Commissioner of Income Tax, Bathinda (Punjab) u/s 263 of the Income Tax Act, 1961 (in short the Act) dated 26.03.2019.

2. By way of this appeal, the assessee appellant has challenged correctness of the order dated 26.03.2019 passed by the Pr. CIT.

3. The brief facts qua the assessee are that the assessee filed its return of income for AY 2014-15 on 29.09.2014 declaring the total income at Rs. 14,35,496/-. Later

on, the assessee's case was selected for scrutiny u/s 143(2) of the Act and the Assessing Officer framed the assessment u/s 143(3) of the Act dated 26.04.2016 by making addition of Rs. 1,50,000/- on account of interest free advance given to M/s. Sarup Chand Company.

4. Later on, the Id. Pr. CIT exercised his jurisdiction u/s 263 of the Act. The Id. Pr. CIT was of the view that there were some deficiencies and irregularities crept in the assessment order passed by the Assessing Officer u/s 143(3) of the Act dated 26.04.2016. Therefore, a notice u/s 263 of the Act was issued to the assessee, the relevant portion of which is reproduced as under:

“During the examination of assessment record of the assessee for the assessment year 2014-15, it has been observed that:-

(i) During the year under consideration i.e. A.Y. 2014-15, the assessee has shown the income credited in his profit and loss account in M/s Deep Agro Export, Bhucho Mandi as under :-

| | | |
|-------------|---------------------------|------------------------|
| <i>i)</i> | <i>Commodities profit</i> | <i>Rs. 85,18,553/-</i> |
| <i>ii)</i> | <i>Kanda Income</i> | <i>Rs. 1,81,030/-</i> |
| <i>iii)</i> | <i>Plinth rent</i> | <i>Rs. 8,20,260/-</i> |

Perusal of the above shows that there is no business income at all. However, as per the trading account the opening stock of bardana has been shown at Rs.10,85,233/- and sales thereof at Rs. 2,48,700/- and claimed loss of Rs. 8,36,533/-. The detail of sales or opening stock and also explanation about loss of Rs. 8,36,533/- have not been examined.

(ii) In the case of husk account, the opening stock has been disclosed at Rs. 14,50,000/- and sales of Rs. 13,77,429/- and loss of Rs. 72,571/-. The detail of sales and opening stock, name and address of the parties to whom the husk was sold and justification of loss shown have not been examined.

(iii) In the case of phuck account, the opening stock has been disclosed at Rs. 5,10,027/- and sales of Rs. 4,69,557/- and loss of Rs. 40,470/-. The detail of sales and opening stock, name and address of the parties to whom the phuck was sold and justification of loss shown have not been examined.

(iv) In the case of rice account, the opening stock has been disclosed at Rs. 27,20,000/- and sales of Rs. 10,87,520/- and loss of Rs. 16,32,480/-. The detail of sales and opening stock, name and address of the parties to whom the rice was sold and justification of loss shown have not been examined.

(v) From the facts noted above, it is clear that no purchase and no trading activities have been established. No plant and machinery has been used, even then the

AO allowed depreciation of Rs. 11,08,113/- making the order erroneous and prejudicial to the interest of revenue.

(vi) The assessee has disclosed commodity profit in Deep Agro at Rs. 85,18,553/- and in individual account at Rs.19,80,410/-, no details/supporting documents whatsoever regarding such profit have been brought on record.

(vii) As per computation of income statement, the assessee has disclosed rent from plinth at Rs. 19,93,563/- and thereafter claimed at Rs. 25,11,387/- as b/floss. Since, the assessee has no business, the loss from business cannot be set-off against rental income. Even the details of b/f losses are not available. It shows that this loss is on account of deduction u/s 35AD. The loss is not allowable to be set off. The loss and as to how the same is allowable as deduction have not been examined.

(viii) From the facts noted above, it is clear that assessee is not doing business activity but the cash balance on 31.03.2014 has been shown at Rs. 65,65,625/- which is more than the double of the so called sales disclosed during the year. The assessee has taken limits from banks in crores and deposit in bank account at the end of the year is Rs. 3,144/- and Rs. 11,978/- only. How the assessee was having such a huge cash at the end of the year have not been examined.

(ix) There is also a loan of Rs. 8,00,000/- in the name of Sh. Angrej Singh, The identity, genuineness and creditworthiness of deposit have not been examined.

(x) It has been noticed that the assessee is also a proprietor of Deep Agro Exports. Further, as per AIR details, there is cash deposit of Rs. 42,12,600/- in the bank account in ICICI Bank. The availability of cash for depositing in bank have not been examined.

(xi) In other bank account in SBBJ there is cash deposit of Rs. 9,00,000/- on 01.02.2014 and Rs. 6,00,000/- on 03.02.2014. No explanation and bank statement have been called for or available on record.

(xii) The perusal of individual capital account reveals that in this account flat of Rs. 10,48,322/- has been shown as written off which means this flat has been sold by the assessee. The actual status of flat and as to how the same is appearing as written off has not been examined.

(xiii) Similarly plot at BCL Ind & Infra of Rs. 80,531/- has been shown as written off. No detail or explanation whatsoever regarding this flat has been called for.

(xiv) The assessee is having investment in 15 properties for Rs. 1,24,57,081/-. It has not been examined how so many properties has been acquired during the year and also source of investment. Most of the properties are plots or land which means the net wealth of the assessee is also taxable during the year under reference and earlier years. The issue of taxability and also initiate proceedings under the Wealth Tax Act have not been examined."

5. In response, the assessee submitted reply before the Id. Pr. CIT stating that the trading activities took place during the period in consideration, the losses claimed in

Bardana account, Husk account, Phuck account, Rice account were due to poor quality of the items, depreciation was rightly claimed on building and machinery as trading was done during the relevant period. Cash Balance of Rs. 65,65,625/- was the opening cash and sales/business receipts during the year, cash deposits were out of sale proceeds during the year. A copy of account of commodity profit has also been furnished. It has further been stated that most of the assets do not fall under the ambit of Wealth Tax Act and that all assets were old and not acquired during the year under consideration.

6. However, the Pr. CIT rejected the submissions of the assessee and held that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the revenue.

7. Aggrieved by the order of the Id. Pr. CIT the assessee is in appeal before us.

8. The Id. Counsel for the assessee submitted before us that in case of assessee the scope of assessment was a limited scrutiny through CASS. The subject matter of the limited scrutiny has already examined by the Assessing Officer. The Id. Counsel for the assessee submitted that the scope of the limited scrutiny was restricted to the following items which is given in the assessment order u/s 143(3) of the Act dated 26.04.2016, which is reproduced below:

“The case of the assessee for the assessment year 2014-15 was selected for limited scrutiny through CASS with the reasons ‘large interest expenses relatable to exempt investments u/s 14A, large deduction u/s 57 and mismatch in turnover reported in Audit Report and ITR’. The issue has been examined and keeping in view the past history i.e. assessment for the assessment year 2013-14, disallowance of interest has been made.”

9. Ld. Counsel for the assessee therefore submitted that Assessing Officer has examined all the items covered by limited scrutiny, hence order passed by the Assessing Officer is not erroneous; therefore jurisdiction exercised by the Id. Pr. CIT u/s 263 of the Act is not valid and bad in law.

10. However, on the other hand the Id. DR for the Revenue submitted before us that the Id. Pr. CIT has wide powers u/s 263 of the Act and hence he has exercised his jurisdiction, within the parameters of Section 263 of the Act. Though the case of the assessee was selected for limited scrutiny, the Assessing Officer may examine the further items and for that purpose he may convert the 'limited scrutiny' case into a 'complete scrutiny' case after taking permission from the Commissioner of Income Tax. Since the Assessing Officer has not taken the permission from the Commissioner of Income Tax to convert the 'limited scrutiny' case into a 'complete scrutiny' case, therefore order passed by the Assessing Officer is erroneous and prejudicial to the interest of the revenue. Apart from this, the Id. DR also submitted that the Assessing Officer has not examined the items which were highlighted by the Id. Pr. CIT in his order. Since the Assessing Officer has failed to do so, therefore the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the revenue.

11. We have heard both the parties and perused the material available on record. We note that CBDT has issued Circular no. 5 dated 14.07.2016 wherein direction has been given for limited scrutiny to the Assessing Officers. First para of the said CBDT circular is reproduced below for ready reference:

“Vide Instruction No.20/2015 dated 29.12.2015 in File of even number, Board has laid down Standard Operating Procedure for handling of cases under 'limited Scrutiny' which were selected through Computer Aided Scrutiny Selection in 'CASS Cycle 2015'. In these cases, it was stated that the general scope of enquiry in scrutiny proceedings should be restricted to the relevant parameters which formed the basis for selecting the case for scrutiny. However, in revenue potential cases, it was further provided that 'Complete Scrutiny' could be conducted, if there was potential escapement of income above a prescribed monetary limit, subject to the approval of administrative Pr. CIT/CIT/Pr. DIT/DIT.”

12. We note that the assessee's case was re-opened for limited scrutiny by the Assessing Officer for the following purposes:

“The case of the assessee for the assessment year 2014-15 was selected for limited scrutiny through CASS with the reasons 'large interest expenses relatable to exempt investments u/s 14A, large deduction u/s 57 and mismatch in turnover reported in Audit Report and ITR'. The issue has been examined and keeping in view the past history i.e. assessment for the assessment year 2013-14, disallowance of interest has been made.”

13. We note that items and document required for limited scrutiny have been submitted by the assessee which is reproduced below:

“With reference to above said case, I submit as under:

1. *That the Books of Accounts are produced before your kind perusal.*
2. *(a) That the deduction u/s 57 is on account of interest expenses of Rs. 2511387/- which is claimed on the income earned of Rs. 3973973/-. The photocopy of the bank statements, Accounts and computation of income is attached herewith in which it is duly reflected these accounts.
(b) That the assessee has not any such kind of investment or earned income on section 14A of the Income Tax Act, 1961. As income earned is shown in the ITR for which expenses is incurred in the form Interest etc. further the photocopy of the accounts and the ITR are enclosed.
(c) That there is no mismatch in the figures of sale turnover in the Audit Report and the ITR. Further the photocopy of the Audit Report and the ITR are enclosed for your ready reference.”*

14. We note that during the scrutiny proceedings the assessee has submitted all the required documents and details asked by the Assessing Officer. Therefore, since the Assessing Officer has not mentioned these documents and details in the assessment order does not mean that the order passed by the Assessing Officer is erroneous. An order passed by the Assessing Officer cannot be said to be erroneous only because the Assessing Officer has written a brief order without bringing all the documents submitted by the assessee on record. For that we rely on the judgment of *“Commissioner of Income-Tax vs Goyal Private Family Specific reported in 1988 171 ITR 698.”* We note that there is a difference between lack of enquiry and adequate enquiry. An order cannot be said to be erroneous on the basis of the ground that a deeper enquiry should have been made, these principles were upheld by the Hon’ble Delhi High Court in the case of *“COMMISSIONER OF INCOME TAX vs. SUNBEAM AUTO LTD. 332 ITR 167 (Del.)”*. Therefore we note that where the Assessing Officer has examined and enquired about assessee’s accounts and details filed by the assessee and applied his mind to the facts of the case and after being satisfied with all the details and documents, the Assessing Officer had framed the assessment merely for reason that Commissioner was not satisfied with manner of verification and investigation carried out by the Assessing Officer, assessment order could not be held as to be erroneous. Therefore it is abundantly clear that Assessing Officer has initiated a limited scrutiny and asked the assessee to file the specific

details and documents. In response, the assessee submitted the specific and required documents and details as mentioned in the reply of the assessee noted above. After doing detailed scrutiny of the documents/evidences, the Assessing Officer framed assessment order. Therefore we note that order passed by the Assessing Officer is not erroneous. Hence, we quash the order of the Id. Pr. CIT u/s 263 of the Act.

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

Order pronounced in the Court on 25.11.2019

Sd/-
(N.K. CHOUDHRY)

न्यायिकसदस्य / JUDICIAL MEMBER

Amritsar Amritsar

दिनांक/ Date: 25/11/2019

(BCG, PS)

Sd/-
(A.L.SAINI)

लेखासदस्य / ACCOUNTANT MEMBER

Copy of the order forwarded to:

1. Shri Mandeep Singh Dhillon, #16310, Street No. 13/5 Dhillon Colony, Barnala Bye Pass, Bathinda.
2. Pr. Commissioner of Income Tax, Bathinda (Punjab).
3. C.I.T.
4. C.I.T.- concerned.
5. The Sr. DR, I.T.A.T., Amritsar.

True copy

By Order

Assistant Registrar
ITAT, Amritsar Bench