



ITA No.3385/Mum/2019
Mr. Anand Lilaram Raisinghani
Assessment Year-2014-15

आयकर अपीलीय अधिकरण “ऐ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI

माननीय श्री विकास अवस्थी, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI VIKAS AWASTHY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ I.T.A. No.3385/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

Mr. Anand Lilaram Raisinghani A-3205/3206 Oberoi Springs, Co-op. Hsg. Soc. Ltd. Off Link Road, Andheri (W) Mumbai-400 053.	बनाम/ Vs.	Pr. CIT-16 R.No.442, Aaykar Bhawan M.K.Road Mumbai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AACPR-4002-P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri Deepak Sukhija- Ld.AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Anadi Varma - Ld. CIT-DR
सुनवाई की तारीख/ Date of Hearing	:	19/12/2019
घोषणा की तारीख / Date of Pronouncement	:	02/01/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member): -

1.1 Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2014-15 contest correctness of revisional jurisdiction u/s 263 as



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invoked by Ld. Pr. Commissioner of Income-Tax-16, Mumbai [in short referred to as 'Pr. CIT'] vide order dated 27/03/2019. The grounds raised by the assessee read as under: -

1. The Principal Commissioner of Income Tax- 16, Mumbai [PCIT] erred in passing the order u/s.263 of the Income Tax Act, 1961.
2. The PCIT erred in coming to the conclusion that the unsecured loans taken from the following parties have remained unverified.

Sr.No.	Name of the Party	Amount of Loan Accepted
1	Anuj Gems	25,00,000
2	Dharam Oberoi	9,00,000
3	Diyas Productions Private Limited	1,59,25,000
4	Reiva Sarees	7,50,000

3. The PCIT erred in concluding that the loan of Rs.4,25,556/- taken from Suchitra Home Entertainment (I) Private Limited in the earlier year remained unverified.
4. The PCIT erred in concluding that the Assessing Officer has allowed the relief for TDS of Rs. 92,000/- without enquiring into the claim.

1.2 The learned Authorized Representative for Assessee (AR), at the outset, submitted written submissions in support of the appeal. On the other hand, Ld. CIT-DR drawing our attention to the orders of lower authorities, placed reliance on various judicial pronouncements to support the submissions that revisional jurisdiction u/s 263 were validly invoked since it was a case of lack of inquiry. We have carefully heard the rival arguments, duly considered the submissions made before us and deliberated on judicial pronouncements as relied upon by respective representatives.



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2.1 Facts on record would reveal that the assessee being resident individual was assessed for year under consideration u/s 143(3) on 26/12/2016 wherein the assessee was saddled with sole addition of unsecured loans of Rs.7.50 Lacs stated to be received from an entity i.e. *Reiva Sarees* since it could not file any confirmation from the said party. The perusal of record would, prima-facie, reveal that the assessee has accepted the quantum assessment order and did not prefer any further appeal against the same.

2.2 Subsequently, upon perusal of case records, Ld. Pr.CIT, noticing lapses in assessment order, issued show cause notice u/s 263 on 13/03/2019 directing assessee to clarify certain issues viz. (i) Unsecured loans from rest of the party remained unverified; (ii) applicability of provisions of Sec. 2(22)(e) in case of loans received from M/s Suchitra Homes Entertainment (I) Pvt. Ltd.; (iii) Grant of excess TDS credit and applicability of Sec.43B on professional tax in the absence of evidence of actual payment.

2.3 The assessee, vide submissions dated 20/03/2019, submitted that loan confirmations were filed with respect to *Anuj Gems, Dharam Oberoi, Diyas Productions Pvt. Ltd. & Reiva Sarees* during the course of assessment proceedings and the same were duly verified. Regarding applicability of Sec.2(22)(e), it was submitted that the amounts were not received during the year under consideration and confirmation was placed on record and therefore, the aforesaid provisions were not applicable. Regarding TDS credit, the attention was drawn to the fact that credit was



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allowed only to the extent of Rs.28,49,043/- as against TDS credit of Rs.30,07,043/- as claimed by the assessee. Regarding payment of professional tax, it was submitted that the payment was made in subsequent period. In nutshell, the assessee defended its stand *qua* issues raised in the show-cause notice.

2.4 However, finding the explanation to be non-satisfactory, the quantum assessment order was termed as erroneous and prejudicial to the interest of the revenue since it was a case of *lack of inquiry* and Explanation-2 to Section 263 was found clearly applicable to the factual matrix. After referring to certain case laws as enumerated in the impugned order, Ld. Pr.CIT, set-aside the quantum assessment order and directed Ld.AO to pass fresh assessment order. The directions given by Ld. Pr. CIT could be extracted in the following manner: -

5. In view of the provisions of Section 263 of the Income Tax Act and also the ratio of the decisions as above, it is my considered view that the impugned order is erroneous and prejudicial to the interests of the revenue. The assessment order, is therefore, set-aside and the Assessing officer is directed to pass fresh assessment order after giving assessee the opportunity of being heard as per act and law in terms.

Aggrieved by aforesaid directions, the assessee is under further appeal before us challenging revisional jurisdiction u/s 263.

3. The Ld. Authorized Representative for Assessee (AR), in its written submissions, as placed on page nos. 1-5 of the paper book, has submitted that requisite details were already placed before Ld. AO during the course of regular assessment proceedings, which were duly verified before passing the quantum assessment order. The Ld. AR has also submitted that it was



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erroneous conclusion that unsecured loans taken from 4 parties remained unverified. Regarding applicability of Sec. 2(22)(e), it has been submitted that the loan was not taken during the year under consideration and therefore the said provisions were not applicable. In similar manner, the Ld. AR has asserted that there is no question of grant of excess TDS credit. On the contrary, Ld. CIT-DR, drawing our attention to the queries raised during assessment proceedings and assessee's replies thereto, submitted that there was no application of mind on the stated issues which was evident from the fact that annexure to notice u/s 142(1) was never issued to the assessee. In the above background, Ld. CIT-DR vehemently supported the invocation of revisional jurisdiction since it was a case of no inquiry by Ld. AO.

4.1 Upon perusal of documents on record, we concur with the submissions of Ld. CIT-DR that requisite details were not even called for by Ld. AO during assessment proceedings. Upon perusal of notice u/s 142(1) dated 10/10/2016 as placed on record, we find that certain details were called for from the assessee in the following manner: -

As per Annexure enclosed to notice u/s 142(1) issued earlier.

In response thereto, the assessee vide submissions dated 17/10/2016 filed certain basic details and denied having received any annexure as stated in the said notice. It does not emanate from record that the copy of the said annexure was ever supplied to the assessee. Vide another reply dated 15/11/2016, the assessee has filed some more details which do not address the issues raised by Ld. Pr. CIT. In third reply dated 26/11/2016,



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the assessee has filed confirmation of unsecured loans taken from 5 parties besides some other details. In final reply dated 13/12/2016, the assessee has filed confirmation of unsecured loans taken from *Dharam Oberoi, Diyas Productions Pvt. Ltd. & Paramhans Creations*. We find nothing on record which would address the issues raised by Ld. Pr.CIT in the revisional order. The perusal of these details would support the arguments of Ld. CIT-DR that there was lack of inquiry on the part of Ld. AO on the issues raised by Ld. Pr.CIT in the show-cause notice. This being the case, the Ld. Pr.CIT, in our considered opinion, had valid reason to assume revisional jurisdiction u/s 263 since it was the only recourse available to revenue under law to seek revision of erroneous orders.

4.2 We find that as per the provisions of Section 263 of Income Tax Act, 1961, specified revenue authorities may call for and examine the record of any proceedings under the Act and may proceed to revise the same provided two conditions are satisfied-(i) the order of the assessing officer sought to be revised is erroneous; and (ii) it is prejudicial to the interest of the revenue. If one of the condition is absent i.e. if the order of the Income-tax Officer is erroneous but is not prejudicial to the revenue or if it is not erroneous but it is prejudicial to the revenue - recourse cannot be had to Section 263 of the Act as held by Hon'ble Supreme Court in **Malabar Industrial Co. Ltd. V/s CIT [243 ITR 83 10/02/2000]** & noted by Hon'ble Delhi High Court in **CIT V/s Vikas Polymers [194 Taxman 57 16/08/2010]**. The Hon'ble Supreme Court in **Malabar Industrial Co. Ltd. V/s CIT (supra)** has held that the phrase 'prejudicial to the interests of the revenue'



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has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue. For example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue, unless the view taken by the Income-tax Officer is unsustainable in law. The said principal has been reiterated by Hon'ble Court in its subsequent judgement titled as **CIT V/s Max India Ltd. (295 ITR 282)**. Similar principal has been followed by jurisdictional High Court in **Grasim Industries Ltd. V/s CIT (321 ITR 92)**.

4.3 The Hon'ble Delhi High Court, **CIT V/s Vikas Polymers (supra)**, further observed that as regards the scope and ambit of the expression "erroneous", Hon'ble Bombay High Court in **CIT vs. Gabriel India Ltd. [1993 203 ITR 108 (Bombay)]**, held with reference to Black's Law Dictionary that an "erroneous judgment" means "one rendered according to course and practice of Court, but contrary to law, upon mistaken view of law; or upon erroneous application of legal principles" and thus it is clear that an order cannot be termed as "erroneous" unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as "erroneous" by the Commissioner simply because, according to him, the order should



have been written differently or more elaborately. The Section does not visualize the substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is not in accordance with law. It was further observed that there is a fine though subtle distinction between "lack of inquiry" and "inadequate inquiry". It is only in cases of "lack of inquiry" that the Commissioner is empowered to exercise his revisional powers by calling for and examining the records of any proceedings under the Act and passing orders thereon. In *Gabriel India Ltd. (supra)*, it was expressly observed: -

"The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity [Parashuram Pottery Works Co. Ltd. vs. ITO, (1977) 106 ITR 1 (SC)].

It was further observed as under: -

"From the aforesaid definitions as it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualize a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualized where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in



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him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion.

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There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed.

4.4 The Hon'ble Bombay High Court in **CIT V/s Ballarpur Industries Ltd. (85 Taxmann.com 10]** has held that merely taking a view by the Assessing Officer without having subjected the claim to an examination would not make it a view of the Assessing officer. A view has necessarily to be preceded by examination of the claim and opting to choose of the possible results. In the absence of view being taken, merely because the issue itself is debatable, would not absolve the Assessing officer of applying his mind to the claim made by the assessee and allowing the claim only on satisfaction after verification / inquiry on his part. A view in the absence of examination is no view but only a chance result. Similar analogous view has been taken by Hon'ble Bombay High Court in **Jeevan Investment & Finance P.Ltd. V/s CIT (291 CTR 241) & Shoreline Hotel P. Ltd. V/s CIT (98 Taxmann.com 234)**. The other case laws as placed on record by Ld. CIT-DR also support the same view.

4.5 An Explanation-2 has been inserted by Finance Act 2015 in Section 263 with effect from 01/06/2015 to declare that order shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, if in the opinion of appropriate authority-(1) the order was passed without making inquiries or verifications which should have been made; (ii) the



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order is passed allowing any relief without inquiring into the claim; (iii) the order is not in accordance with any direction or instructions etc. issued by the Board u/s 119; or (iv) the order was not in accordance with binding judicial precedent.

4.6 Applying the stated principles to the factual matrix and after going through the replies submitted by the assessee during the course of regular assessment proceedings, we concur with the submissions of Ld. CIT-DR that it was a case of lack of inquiry and there was no application of mind by Ld. AO on the issues which formed subject matter of revisional jurisdiction u/s 263. Therefore, we do not find any illegality in the action of Ld. Pr.CIT in exercising the said jurisdiction.

4.7 So far as the case laws being relied upon by Ld. AR is concerned, we find that the case law of Hon'ble Bombay High Court in **CIT V/s Fine Jewellery (I) Ltd. (ITA No.296 of 2013 dated 03/02/2015)** deal with a situation wherein the assessment order was passed by Ld.AO with due application of mind. Similar are the facts in the decision of Mumbai Tribunal in **Small Wonder Industries Ltd. V/s CIT (ITA No. 2464/Mum/2013 dated 24/02/2017)**. The case law of Hon'ble Bombay High Court in **Idea Cellular Ltd. V/s DCIT (301 ITR 407)** is concerned with reassessment u/s 147 and do not deal with revisional jurisdiction u/s 263. Therefore, the case laws being cited by Ld. AR are clearly not applicable to the factual matrix.

5.1 Having said so, we find the final directions of Ld. Pr.CIT to be erroneous to some extent. It is noted that there was blanket set-aside of the quantum assessment order overlooking the fact that the addition of Rs.7.50



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Lacs as made by Ld.AO in the quantum assessment order had already attained finality and there would be no occasion to revisit the same in revisional jurisdiction since the quantum assessment order could not be said to be prejudicial to the interest of the revenue, to that extent. Therefore, Ld. AO is directed not to delve into the verification of loan of Rs.7.50 Lacs stated to be obtained from *M/s Reiva Sarees*.

5.2 Proceeding further, we are of the considered opinion that it was incumbent on the part of Ld. Pr.CIT to appreciate the assessee's submissions in the correct perspective. The Ld. Pr. CIT, in the show-cause notice, has observed that unsecured loans obtained from certain entities remained to be verified. However, the loan obtained from Anuj Gems (wrongly referred to as Anju Gems) was only a brought forward loan which was repaid by the assessee during the year. Therefore, there could be no occasion to consider the same from the point of view of addition u/s 68. Therefore, Ld.AO directed to restrict the verification with respect to remaining two entities viz. *Dharam Oberoi & Diyas Productions Private Limited*. We direct so.

5.3 Similarly, the provisions of Sec.2(22)(e) would not be applicable against loans obtained from M/s Suchitra Homes Entertainment (I) Pvt. Ltd. since the confirmation on record would show that the said loans were merely brought forward loans and there were no fresh receipts of loans during the year. Therefore, the order could not be termed as erroneous or prejudicial to revenue to that extent. Accordingly, this issue would not form part of revisional assessment proceedings.



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5.4 So far as excess of grant of TDS is concerned, it would suffice to direct Ld. AO to grant due TDS credit as per law in revisional assessment proceedings since as per assessee's submissions, the assessee, in fact, has been granted short TDS credit.

5.5 The last issue viz. applicability of Sec.43B on professional tax is factual one. The Ld. AO is directed to verify the same during revisional assessment proceedings.

5.6 The directions issued by Ld. Pr.CIT stand modified to that extent.

6. In the result, the appeal stands partly allowed to the extent specified in the order.

Order pronounced in the open court on 02nd Janury, 2020.

Sd/-

Sd/-

(Vikas Awasthy)

(Manoj Kumar Aggarwal)

न्यायिक सदस्य / **Judicial Member**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 02/01/2020

Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि ञ ग्रेषित/Copy of the Order forwarded to :

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2. प्रत्यर्थी/ The Respondent
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