आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.1081/PUN/2018
निर्धारण वर्ष / Assessment Year : 2014-15

M/s. Ladkat Brothers Service Station,
267, Bhavani Peth,
Pune – 411042.

..... अपीलार्थी / Appellant

PAN : AABFL7356F.

बनाम v/s

The Pr.Commissioner of Income Tax – 3,
Pune.

..... प्रत्यर्थी / Respondent

Assessee by : Shri B.C. Malakar.

Revenue by : Shri B. Kishore.

सुनवाई की तारीख / Date of Hearing : 08.01.2020		घोषणा की तारीख / Date of Pronouncement: 14.01.2020

आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee is emanating out of the order of Prl. Commissioner of Income Tax – 3, Pune dated 15.03.2018 for the assessment year 2014-15 passed u/s 263 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

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

Assessee is a partnership firm stated to be Authorized Dealer of Hindustan Petroleum Corporation Limited (HPCL). Assessee filed its return of income for A.Y. 2014-15 on 21.12.2014 declaring total income of Rs.4,44,719/-. The case was selected for scrutiny as per CASS and thereafter assessment was framed u/s 143(3) of the Act vide order dated 29.11.2016 and the total income as returned by the assessee was accepted by the AO. Thereafter on perusing the assessment records, Ld.PCIT noted that the partners of the firm had withdrawn the capital from the firm which had resulted into negative capital of the partners to the extent of Rs.1.35 crores (rounded off) meaning thereby that there was over withdrawal of amount out of interest bearing funds of the business. He also noted that the firm was paying interest to the partners on their capital at 12% and assessee's interest on the excess withdrawal was not quantified by the AO. He also noted that there were loans and advances amounting to Rs.16,26,269/- and the AO had failed to enquire as to whether the interest was charged or whether it was for the purpose of business. He was therefore of the view that the order passed by the Assessing Officer u/s 143(3) of the Act was erroneous and prejudicial to the interest of Revenue. He accordingly issued a show-cause notice on 22.12.2017 to the assessee and asked it to explain as to why the provisions of Sec.263 of the Act should not be invoked. Assessee made the submissions which were not found acceptable to Ld.PCIT. Ld.PCIT thereafter vide order dated 15.03.2018 passed u/s 263 of the Act held the order of the AO to be erroneous and prejudicial to the interest of Revenue. He thereafter set aside the assessment order

passed u/s 143(3) of the Act and directed the AO to examine the issues noted in his order and pass a fresh assessment order in accordance with the provisions of the Act. Aggrieved by the order of Ld.PCIT, assessee is now before us and has raised the following grounds :

> *"1. On the facts and in the circumstances of the case and in law the Learned Pro Commissioner of Income Tax-3, Pune erred in passing order u/s. 263 of the IT act, 1961 by disregarding appellant's contention.*
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> *2. On the facts and in the circumstances of the case and in law. the Pr. Commissioner of Income Tax-3, Pune erred in passing order u/s. 263, especially when the original assessment proceedings were selected under CASS for limited scrutiny for specific issue and learned AO being satisfied on the replies given by assessee had passed order u/s. 143(3) and therefore such case order can not be termed as erroneous.*
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> *3. On the facts and In the circumstances of the case and in law the Learned Assessing Officer erred in passing order u/s. 263, by rejecting the fact that learned AO has made all necessary enquires and formed an opinion and passed the order u/s. 143(3), reviewing such order with version more beneficial to revenue is not permitted u/s.263."*

3. The case file reveals that there is delay of 26 days in filing the present appeal. One of the partners of the assessee firm has filed an affidavit wherein it was submitted that the delay in filing the present appeal occurred for the reasons explained therein and it is purely unintentional and therefore prayed that the delay of 29 days be condoned. Ld.D.R. did not seriously object to the prayer of condonation.

4. On the issue of condonation of delay of appeal, we have gone through the petition filed by the assessee and heard both the parties. After considering the reasons stated in the affidavit, we are of the view that the delay in filing the appeal has been satisfactorily explained. In

view of these facts, we condone the delay and admit the appeal for hearing.

5. Before us, Ld.A.R. reiterated the submissions made before Ld.PCIT and further pointing to the assessment order passed u/s 143(3) of the Act submitted that the case was selected for scrutiny to verify the "Low net profit or loss shown from large gross receipts". He further pointed to Para 4 of the order wherein the AO has again stated the reason for selection of case was to verify "Low net profit or loss shown from large gross receipts". He submitted that during the course of assessment proceedings, the necessary enquiries were made to the reasons for which the case was selected for scrutiny by the AO and on being satisfied with the replies made by the assessee, no addition was made. He further submitted that even on the other matters which according to CIT, no enquiries were made, he submitted that on such issues also the queries were raised during the course of assessment proceedings and the necessary replies were furnished by the assessee. In support of his aforesaid contentions, he pointed to the assessee's contention as submitted before Ld.PCIT in the order wherein the Ld.PCIT has reproduced these submissions made by the assessee before him. He therefore submitted that when the enquiries were made by the AO during the course of assessment proceedings and after being satisfied assessment order was framed by the Assessing Officer, then CIT cannot assume jurisdiction u/s 263 of the Act. He therefore submitted that the order of Ld.PCIT be set aside.

6. Ld. D.R. on the other hand, supported the order of Ld.PCIT and further submitted that nowhere in the assessment order the assessing officer has pointed out that the case was selected for "limited scrutiny" and has not even used the word "limited scrutiny". He further submitted that as per the Explanation 2 inserted to Sec.263 by the Finance Act 2015 the order passed by the AO can be considered to be erroneous if the order has been passed by the Assessing Officer without making enquiries, which should have been made by the AO. In the present case, he pointing to the order of Ld.PCIT submitted that the necessary enquiries were not made by the AO and therefore the order of AO was erroneous and prejudicial to the interest of Revenue. He thus supported the order of Ld.PCIT.

7. We have heard the rival submissions and perused the material on record. The issue in the present case is about the invoking of provisions of Section 263 by Commissioner of Income Tax. Sec.263(1) of the Act, the powers under which Ld.PCIT has assumed power for revision reads as under:

> *"The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the ITO is erroneous in so far as it is prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."*

8. The reading of the above provisions makes it very clear that the power of suo motu revision u/s 263(1) is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances

specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision u/s 263, namely (i) the order is erroneous (ii) by virtue of being erroneous prejudice has been caused to the interests of the Revenue. Hon'ble Apex Court in the case of Malabar Industrial Co Ltd (supra) has held that CIT has to be satisfied of twin conditions, namely, (i) the order of the AO sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent—if the order of the ITO is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue—recourse cannot be had to Sec. 263(1). It was further held that the provision cannot be invoked to correct each and every type of mistake or error committed by the AO; when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the ITO is unsustainable in law.

9. We find that in the present case, the Assessing Officer in the assessment order passed u/s 143(3) of the Act has noted that case of the assessee was selected through CASS to verify the issue of "Low net profit or loss shown from large gross receipts". The aforesaid fact is not in dispute. We find that CBDT vide instruction No.5/2016, dated 14th July, 2016 has given directions regarding the scope of enquiry in cases under "Limited Scrutiny" selected through CASS. The instruction *inter-alia,* states that the general scope of enquiry in

scrutiny proceedings should be restricted to the relevant parameters which formed the basis for selecting case for scrutiny. It however, states that in revenue potential cases, that "Complete Scrutiny" could be conducted if there was potential escapement of income above a prescribed monetary limit subject to the approval of administrative PCIT/CIT/PDIT/DIT.

10. In the present case that can be seen that the Assessing Officer after considering the queries raised, the reply of the assessee made, no additions on the issue on which the case was selected for scrutiny. Before us, ld. AR from his submissions before CIT has also pointed that on other issues also, the Assessing Officer had raised the queries and on being satisfied with the reply of the assessee, no addition was made. In such a situation, it can be concluded that the assessment framed by the Assessing Officer u/s 143(3) of the Act fell within the realm of the limited purpose for which the case of the assessee was selected for scrutiny. In such a situation, we are of the view that CIT was not justified in invoking the provisions of section 263 of the Act. As far as Ld. DR's reliance on insertion of Explanation 2 to section 263 is concerned, we are of the view that the Explanation 2 to section 263 is inserted by Finance Act 2015 w.e.f 01.06.2015 meaning thereby that is applicable for A.Y. 2016-17 and therefore, not applicable to the year under consideration.

11. We further find that similar issue arose before the Tribunal in the case of Shri Shankarsingh C. Thakur Vs. CIT in ITA

No.833/PN/2014, relating to assessment year 2009-10, order dated 12.08.2016 and it was held as under:-

> *"8. We have heard the rival contentions and perused the record. The issue arising in the present appeal is against the exercise of jurisdiction of revision by Commissioner under section 263 of the Act. Where the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue, the Commissioner is empowered to exercise the jurisdiction under section 263 of the Act against such assessment order passed by the Assessing Officer. In the facts of the present case before us, the Assessing Officer had selected the return of income filed by the assessee for scrutiny in CASS i.e. it was picked up for limited purpose of examining the source of cash deposits above the threshold limit in the savings bank account. The scrutiny to be carried out in the case of assessee was limited scrutiny. The CBDT had passed instructions in such cases which were picked up for scrutiny on the basis of data in AIR or cases of CASS. It has been decided that scrutiny of such cases would be limited to the information received or applied and in case where the Assessing Officer was of the view that wider scrutiny had to be taken up, then the same had to be carried out with the approval of Administrative Commissioner, where there was potential escapement of income of more than Rs.10 lakhs. The assessment in the case of assessee was completed under section 143(3) of the Act on account of scrutiny under CASS for limited reasoning. The Assessing Officer had not opted for wider scrutiny in the case of assessee. In such circumstances, where the Assessing Officer had exercised the limited powers of scrutinizing the case of assessee on the points for which it was selected, the order of Assessing Officer cannot be held to be erroneous for not looking at issue which was not part of its selection process.*
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> *9. The Commissioner has held the order of Assessing Officer to be erroneous and also prejudicial to the interest of Revenue by not considering the claim of deduction of Rs.3,89,838/- on account of conveyance allowance and additional conveyance allowance from the salary. In view thereof, where the Assessing Officer had limited zone of exercising of his jurisdiction, non-looking into the claim of assessee on account of conveyance and additional conveyance allowance cannot make the assessment order as erroneous. In any case, even if we take up the point that the Assessing Officer needed to widen its scrutiny, then the embargo is placed by the CBDT Circular that the permission is to be sought from the Administrative Commissioner where the escapement of income is more than Rs.10 lakhs. The total expenditure claimed as deduction was Rs.3,89,838/- and it is beyond threshold limit of Rs.10 lakhs and hence, could not be part of wider scrutiny, if any. Even the claim of assessee is justifiable, wherein the conveyance allowance and additional conveyance allowance has been paid by the employer LIC of India to the assessee, who was the Development Officer, on account of reimbursement of expenses. Such reimbursement would only takes place where the assessee establishes its claim that it has incurred expenses. In such circumstances, where the expenses have been reimbursed to the assessee, there is no merit in the order of Commissioner in holding that the assessee has failed to establish the incurring of expenditure. Since the order passed by Assessing Officer is*

not erroneous, the conditions laid down in section 263 of the Act are not fulfilled. Accordingly, the Commissioner has exceeded his jurisdiction in invoking the provisions of section 263 of the Act, which are set-aside. The grounds of appeal raised by the assessee are thus, allowed."

12. In view of the aforesaid facts, we find no merit in the exercise of jurisdiction by Ld. PCIT under section 263 of the Act in the present facts and circumstances. As such, we are of the view that PCIT was not justified in resorting to the revisionary powers u/s 263 of the Act. We therefore set aside the orders of Ld. PCIT. **Thus, the grounds of the assessee are allowed.**

13. **In the result, the appeal of assessee is allowed.**

Sd/-	**Sd/-**
(**PARTHA SARATHI CHAUDHURY**)	(**ANIL CHATURVEDI**)
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 14th January, 2020.

Yamini / GCVSR

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

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

आदेशानुसार/ BY ORDER,

/ / TRUE COPY / /

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