

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No.1290/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Kailash Ravindrappa Sakhare, Plot No.461, Shivaji Road, Marwadi Galli Ingale, Vaijapur, Aurangabad – 423 701 PAN : ADNPS2792M	Vs.	Pr. CIT-1, Aurangabad
Appellant		Respondent

Assessee by None  
Revenue by Shri Deepak Garg

Date of hearing 16-03-2020

Date of pronouncement 16-03-2020

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order dated 22-03-2017 passed by the Pr. CIT-1, Aurangabad u/s. 263 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2012-13.

2. Briefly stated, the factual matrix of the case is that the assessee filed return declaring total income at Rs.3,60,520/-. The assessment was completed u/s.143(3) of the Act at the returned

income. Thereafter, the Id. Pr. CIT, on verification of record, observed that the assessee credited a sum of Rs.2.00 lakh in the account of M/s. Nitin Sales Corporation and debited a sum of Rs.7.00 lakh in the same account, which the AO failed to examine. On being called upon to explain the entries, the assessee submitted that Shri Nitin Bhusare, proprietor of M/s. Nitin Sales Corporation, is a close relative of the assessee who was also having business relations. The assessee furnished detail of Rs.2.00 lakh taken from him by cheque and Rs.7.00 lakh given back to him again by cheque. Not only that, the assessee further explained the source of Rs.7.00 lakh as having been received from M/s N.K. Developers, in which both the assessee as well as Sh. Nitin Bhusare were partners. The assessee furnished a copy of income-tax return of M/s N.K. Developers for the year under consideration highlighting the figure of capital account balance along with the balance sheet of the firm. The assessee also furnished the Permanent Account Number of M/s. Nitin Sales Corporation and submitted that he was regularly assessed to tax at Ahmednagar District. The Id. Pr. CIT held the assessment order to be erroneous and prejudicial to the interest of Revenue on the ground that AO did not carry out

inquiry of the issue. Aggrieved thereby, the assessee is in appeal before the Tribunal.

3. We have heard the ld. DR and gone through the relevant material on record. There is no appearance from the side of the assessee despite notice. As such, we are proceeding to dispose of the appeal *ex parte qua* the assessee.

4. It is seen from the impugned order that the ld. Pr. CIT initiated proceedings u/s.263 primarily on the ground that the assessee received Rs.2.00 lakh from and paid Rs.7.00 lakh to M/s. Nitin Sales Corporation, which aspect was not gone into by the AO. The assessee furnished all the relevant details to the ld. Pr. CIT by giving elaborate response which has been referred to hereinabove and also reproduced in the impugned order. Not only did the assessee explain the source of payment of Rs.7.00 lakh given to Shri Nitin Bhusare but also gave the Permanent Account Number and other relevant income-tax details of M/s N.K. Developers and also Shri Nitin Bhusare. No infirmity whatsoever was found by the ld. Pr.CIT in such details. Despite that, he proceeded with setting aside the assessment order. In our considered opinion, if there is an aspect of the assessment which does not find mention in

the assessment order, the Pr. CIT can rightly invoke his power u/s.263. Having invoked such a power, if the assessee furnishes details proving the veracity of that aspect of the assessment, which *prima facie* appear to be correct and are further not faulted with, then the Pr. CIT cannot treat the assessment order erroneous and prejudicial to the interest of Revenue on that score and direct the AO to examine it *de novo*. Extantly, we are confronted with a situation in which the assessee did furnish all the relevant details of the receipt from and payment to M/s. Nitin Sales Corporation. The Id. Pr. CIT did not find anything amiss in such details. In that case, he could not have set aside the assessment order and directed the AO to re-examine the same. The impugned order, being contrary to law, cannot be sustained. We, therefore, quash it.

5. In the result, the appeal is allowed.

Order pronounced in the Open Court on 16<sup>th</sup> March, 2020.

Sd/-  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.S.SYAL)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 16<sup>th</sup> March, 2020  
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The Pr.CIT-1, Aurangabad
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे  
“बी” / DR ‘B’, ITAT, Pune
5. गार्ड फाईल / Guard file

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	16-03-2020	Sr.PS
2.	Draft placed before author	16-03-2020	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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