



ITA No.1056/Mum/2020
Versova Shanti Co-op. Housing Soc. Ltd.
Assessment Year : 2015-16

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

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.1056/Mum/2020
(निर्धारण वर्ष / Assessment Year: 2015-16)

Versova Shanti Co.op. Housing Soc. Ltd. Plot No.22, Versova Shanti CHS Ltd. RSCI MHADA Layout Versova, Andheri (W) Mumbai-400 053.	बनाम/ Vs.	Pr. CIT-25 Room No.241,2 nd Floor, G-Block, Kautilya Bhavan Bandra Kurla Complex Mumbai-400 051.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAABV-0199-D		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Deepak Tikekar-Ld. AR
Revenue by	:	Shri Lalit Dehiya -Ld.CIT-DR

सुनवाई की तारीख/ Date of Hearing	:	10/12/2020
घोषणा की तारीख / Date of Pronouncement	:	10/12/2020

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal the assessee challenges the validity of revisional Jurisdiction u/s 263 as exercised by learned Pr. Commissioner of Income Tax -25 [Pr.CIT] for Assessment Year (AY) 2015-16 [in short AY] vide order dated 13/11/2019. The effective ground read as under: -



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1. On facts, in circumstances of the case and in law, the learned Pr. Commissioner of Income Tax -25, erred in setting aside order by ACIT -25(1) u/s. 143(3) dated 23.12.2017 by invoking provisions of section 263 of I.T. Act, 1961.”

2. The registry has noted a minor delay of 18 days in the appeal, the condonation of which has been sought by learned AR on the strength of affidavit of society officials. After going through the condonation petition and in view of the fact that there was a small delay, we are inclined to condone the delay and proceed with disposal of the appeal, on merits.

3. We have carefully heard the rival submissions and perused relevant material on record including submissions made by the assessee during assessment proceedings as well as during appellate proceedings. The judicial precedents as cited during the course of hearing have duly been deliberated upon. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

4.1 The material facts are that the assessee was assessed for the year under consideration u/s 143(3) on 23/12/2017 accepting revised return of income filed at Rs.28.30 Lacs. In the assessment order, while computing assessee's income, Ld. AO has allowed deduction u/s 80-P for Rs.14.52 Lacs.

4.2 Subsequently, Ld. Pr. CIT, upon perusal of case records, opined that the order would require revision u/s 263 since the deduction u/s 80P(2)(d) granted by Ld. AO on account of interest received by assessee from Saraswat Co-op Bank Ltd. as well as from Maharashtra State Co-operative Bank was required to be denied. The failure to do so has resulted into under assessment of income. Accordingly, a show cause notice was issued to the assessee proposing revision of the order.



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The assessee defended the assessment order, *inter-alia*, by submitting that the stated co-operative banks from which the assessee earned interest income were also cooperative societies and therefore the deduction was rightly allowed. For the same, the attention was drawn to the various provisions of Maharashtra Co-op Societies Act, 1961. Reliance was placed on various judicial decisions wherein similar deduction was allowed after considering the decision of Hon'ble Supreme Court in M/s Totgars Cooperative Society Ltd.

4.3 However, not convinced with assessee's submissions as well as explanations, Id. Pr.CIT opined that deduction could not be extended to income earned from any co-operative bank. Therefore, the assessment order was held to be erroneous and prejudicial to the interest of the revenue. Accordingly, Ld. AO was directed to redo the assessment in the light of observation made in the revision order.

Aggrieved as aforesaid, the assessee is in further appeal before us assailing invocation of revisional jurisdiction u/s 263.

5. Upon careful consideration of material on record, we find that the assessee was subjected to limited scrutiny assessment vide notice dated 27/07/2016. One of the reasons for selection of scrutiny was *deduction under Chapter-VI-A*. Accordingly, during the course of assessment proceedings, the assessee was directed to explain the deduction claimed under Chapter-VI-A. The assessee, in its submissions dated 09/08/2016 as well as 22/12/2017 filed complete details of interest so earned along with note on deduction claimed u/s 80P. Finally, after considering the same, Ld. AO chose to accept the same and therefore,



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allowed the same specifically while framing the assessment. These facts would show that Ld. AO was clinched with the issue and had taken a possible view in the matter. The view was in line with the various judicial decisions prevailing at the time of making the assessment and the same could not be said to be perverse or against the law, in any manner. There was due application of mind to the issue by Ld. AO.

The Hon'ble Supreme Court in **Malabar Industrial Co. Ltd. V/s CIT (243 ITR 83 10/02/2000)** has held that the phrase 'prejudicial to the interests of the revenue' 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 judgment 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)**.

The Hon'ble Delhi High Court, **CIT V/s Vikas Polymers (194 Taxman 57 16/08/2010)** 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



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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.

6. In view of the foregoing, the revisional jurisdiction could not be held to be valid under law. By quashing the order dated 13/11/2019, we allow assessee's appeal.

7. The appeal stands allowed in terms of our above order.

Order pronounced on 10th December, 2020.

Sd/-

(Amarjit Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 10/12/2020
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent



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3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.