

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "G", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
(THROUGH VIDEO CONFERENCE)

I.T.A. No. 3395/DEL/2013		
A.Y. : 2008-09		
SETH BROTHERS SHANTI NIKETAN, CIVIL LINES, MEERUT (PAN: AAJFS0123M)	VS.	COMMISSIONER OF INCOME TAX, AAYAKAR BHAWAN, BHAINALI GROUND, MEERUT
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. C.S. Anand, Advocate
Department by : Sh. H.K. Choudhary, CIT(DR)

ORDER

PER H.S. SIDHU : JM

The background of the case is that the assessment order in this case was passed on 30.11.2010 by the ACIT, Circle-2, Meerut, and the revision order dated 21.3.2013 was passed by the Ld. CIT, Meerut, whereby the Ld. CIT set aside the assessment order with the direction to the AO to pass a fresh order, after examining the issues properly and all evidences as well as opportunity of hearing to the assessee. The assessee filed appeal vide ITA No. 3395/Del/2013 against the aforesaid order dated 21.3.2013 of the Ld. CIT, Meerut. The appeal of the assessee was disposed off by the Tribunal vide order dated 28.04.2017 whereby the aforesaid order dated 21.3.2013 of the Ld. CIT u/s. 263 of the Act was set aside in respect of certain issues with the direction to the Ld. CIT to pass *denovo order* in accordance with law,

after providing an opportunity of being heard to the assessee and after considering submissions filed by the assessee. Against the aforesaid Tribunal order dated 28.4.2017, the assessee filed the Misc. Application for recalling the order, which later the Tribunal vide order dated 03.07.2019 in MA No. 541/Del/2017 (AY 2008-09) has recalled the order of the Tribunal dated 28.4.2017 and directed the Registry to fix the ITA No. 3395/Del/2013 to fix the said appeal for fresh hearing. Accordingly, the case was heard on 02.12.2020.

1.1 This appeal has been filed by the assessee against the order dated 21.3.2013 passed u/s. 263 of the Act by the Ld. CIT, Meerut on the following grounds:-

1. "That the order passed u/s 263 of the I.T. Act 1961 by the Ld. CIT Meerut, is barred by limitation.
2. That the Ld. CIT Meerut has wrongly assumed jurisdiction to initiate proceedings u/s 263 and to pass an order u/s 263.
3. That the order passed u/s 263 of the I. T. Act 1961 by the Id. CIT Meerut, is bad on various factual & legal grounds.
4. That the Id. CIT Meerut, is incorrect in stating that the order passed by the AO is erroneous as well as prejudicial to the interests of revenue.

The observations of the Id. CIT Meerut are either factually incorrect or legally untenable.

5. That on the facts / circumstances of the case and under the law, the Id. CIT Meerut has erred in setting aside the issue relating to Sundry Creditors (as appearing in the assessee's balance sheet as on 31.03.2008 at Rs.1,94,77,814/-, while

issuing directions to the Id. A.O. to once again look into this issue.

The observations of the Id. CIT Meerut are either factually incorrect or legally untenable.

6. That on the facts / circumstances of the case and under the law, the Ld. CIT Meerut has erred in setting aside the issue relating to Capital Gains [arose on transfer of rights in the two office /shops in "Arunachal Building", Barakhamba Road, Connaught Place, Delhi], while issuing directions to the Id. A.O. to examine the actual market prices thereof.

The observations of the Id. CIT Meerut are either factually incorrect or legally untenable."

2. The brief facts relating to the issues are that Assessee filed its return of income on 30.9.2008 declaring NIL income. AO completed the assessment u/s. 143(3) of the I.T. Act, 1961 (in short "Act") on 30.11.2010 assessing the loss of Rs. 96,15,173/-. The revision order dated 21.3.2013 was passed u/s 263 of I.T. Act by Commissioner of Income Tax, Meerut. Prior to passing the aforesaid impugned order dated 21.3.2013 the Ld. CIT had issued a notice u/s 263 of I.T. Act, relevant portion of which is reproduced as under:-

"Assessing Officer has not made proper enquires before accepting huge credits shown at Rs. 1,94,77,814/- Assessing Officer has not even called for the confirmations from the following creditors which are above Rs. 1 Lac:

(a) Chandigarh Distilleris & Bottlers Rs. 21,55,609

(b) Manohar Lal Surinder Kumar Rs. 4,87,646

(c) Balaji Traders Rs. 1,93,029

(d) Jai Shree Oil Mills Rs. 6,75,792

(e) Sukhi Agro Industries Rs. 8,87,179

(f) H.R. Trading Rs. 12,77,205

(g) Sultan Enterprises Rs. 6,71,671

(h) Shri Gurukirpa Trading Co. Rs. 16,88,805

(i) S.K. Traders, Raj Peera Rs. 3,43,330

(j) Jagdamba Trading Co. Rs. 1,98,829

(k) Saraswati Traders Rs. 30,06,757

(l) Garg Rice Mill Rs. 1,12,899

(m) Goel Feed Corporation Rs. 4,87,421

(n) Guru Nank Trading Co. Rs. 47,94,986

(o) Aarti International Rs. 13,53,403

(p) Shree Bagwati Paddy Rs. 2,41,105

Products

Assessing Officer has not obtained the purchase deed & sale deed of the property sold for Rs. 17 lacs situated at Arunachal Building, Delhi for examining the applicability of section 50C of the I.T. Act."

2.1 The Ld. CIT in her aforesaid order dated 21.3.2013 u/s 263 of I.T. Act observed that the Assessing Officer had not conducted proper inquiries in respect of sundry creditors totaling Rs. 19477814/- and the same were accepted as such without even confirmation or without any inquiry made by the Assessing Officer. Further, the Ld. CIT observed that

the Assessing Officer had not examined the actual sale price based on circle rate or any other factors so as to ascertain the actual sale price received by the assessee; in respect of two shops in 'Arunachal Building' in Delhi, which were sold by the assessee. The Ld. CIT further observed that the Assessing Officer may also take into consideration prevailing circle rate of the area and based upon the same he can proceed to ascertain the market rate of said properties. The assessment order passed by Assessing Officer was set aside by Ld. CIT in her aforesaid order dated 21.3.2013 u/ 263 of I.T. Act with the direction to the Assessing Officer to pass a fresh order. Ld. CIT relied on various case laws for exercising the jurisdiction u/s 263 of I.T. Act as mentioned in her impugned order. Ld. CIT has also commented upon the sundry creditors totaling to Rs. 19477814/- and decided the same on the basis of various case laws as mentioned in the impugned order and passed the impugned order dated 21.3.2013 u/s. 263 of the Act. Aggrieved by the same, assessee filed the appeal before the tribunal.

2.2 In the course of appellate proceedings before the Tribunal, Ld. Counsel for the assessee has not pressed the ground no. 1 & 2, hence, the same are dismissed as not pressed.

2.3 The remaining grounds were argued by the Ld. Counsel for the assessee and he also filed written submissions alongwith paper book supporting the claim of the assessee. For the sake of convenience, the remaining grounds of appeal i.e. ground no. 3, 4, 5, & 6 are taken together. At the time of hearing, Ld. Counsel for the assessee contended

that the assessment order passed by the AO was passed after adopting enquiry regarding sundry creditors and it was not the case that the assessment order was passed by the AO without any inquiry as far as sundry creditors is concerned. The Ld. AR of the assessee placed reliance on order dated 13.4.2017 of Co-ordinate Bench of ITAT Delhi in the case of Braham Dev Gupta vs. Pr. CIT in ITA No. 2102/Del/2016 for assessment year 2011-12; dated 24.02.2017 and order of ITAT, Mumbai in the case of Small Wonder Industries vs. CIT in ITA No. 2464/Mum/2013 for Assessment Year 2009-10 for the proposition that in case of inadequate inquiry Commissioner is not empowered to invoke the provisions contained u/s 263 of I.T. Act. Copies of these orders were filed by Ld. AR of the assessee. Further, the Ld. AR of the assessee submitted that section 50C of I.T. Act was not applicable in respect of two shops at 'Arunachal Building', Delhi sold by the assessee. To support this, the Ld. AR of the assessee contended that the state government / stamp valuation authority had not adopted or assessed any value for the property under consideration. He further highlighted that the words "or assessable" were inserted in S.50 C of I.T. Act after the terms "the value adopted or assessed" w.e.f 01.10.2009 and had no application for this assessment year. The Ld. AR also drew our attention to paper book containing 48 pages filed by the assessee during appellate proceedings in ITAT, which included assessee's letter dated 7.3.2013 submitted to the Ld. CIT during the course of proceedings u/s 263 of I.T. Act wherein

detailed submissions were made and reliance was placed by the assessee on the following decisions:-

1. Hon'ble Bombay High Court in the case of CIT vs. Gaabriel India Ltd. (203 ITR 1082)
2. Hon'ble Supreme Court of India in the case of Malabar Industrial Company Limited vs. CIT (243 ITR 083)
3. Hon'ble Delhi High Court in the case of CIT vs. Anil Kumar Sharma (335 ITR 083)
4. Hon'ble Delhi High Court in the case of Income-tax Officer v. DG Housing Projects Ltd. 343 ITR 0329
5. Hon'ble ITAT, Chandigarh in the case Baljees v ACIT (127 Taxman0150)
6. Hon'ble Bombay High Court in the case of CIT vs. Development Credit Bank Limited 323 ITR 0206
7. Hon'ble Allahabad High Court in the case of CIT vs. Kashi Nath & Co. (Allahabad High Court 170 ITR 0028)
8. Hon'ble Delhi High Court in the case of CIT vs. Sunbeam Auto Ltd, 189 Taxmann 436
9. Hon'ble ITAT, Chandigarh Bench in the case Amrik Singh v. Income-Tax Officer 127 Taxman 0087
10. Hon'ble Delhi High Court in the case of CIT vs. Vikas Polymers 194 taxman 0057

3. On the contrary, Ld. DR relied upon the order passed by the Ld. CIT, Merrut and stated that inquiries conducted by the Assessing Officer in respect of sundry creditors were inadequate having regard to facts and

circumstances of the case. Regarding applicability of S. 50C on capital gains from sale of shops in 'Arunachal Building' the Ld. CIT DR submitted that the Assessing Officer had failed to conduct inquiries in that regard. The Ld. CIT(DR) also filed submitted written submissions wherein reliance was placed on Malabar Ind. Co. Ltd. v/s CIT 243 ITR 83 (Supreme Court); Rajmandir Estates (P.) Ltd. vs. Or. CIT 386 ITR 162 (Calcutta) and Rajmandir Estates (P) Ltd. vs. PCIT 77 taxmann.com 285 (Supreme Court).

4. We have heard both the parties and perused the orders of the revenue authorities especially the impugned order alongwith written submissions filed by both the parties as well as documentary evidences in the shape of paper book. We find that notice u/s 263 of I.T. Act, dated 21.3.2013 issued by the Ld. CIT under section 263(1) of I.T. Act had identified two issues for exercising revisional jurisdiction u/s 263 of I.T. Act the first issue was regarding sundry creditors totaling Rs. 1,94,77,814/-. The second issue was regarding applicability of section 50C of I.T. Act in respect of two shops of "Arunachal Building" at Delhi. We take up these issues one by one. As far as the issue regarding sundry creditors of Rs. 1,94,77,814/- is concerned, the Ld. CIT observed vide the aforesaid notice dated 12.2.2003 that the AO had not made proper inquiries before accepting sundry creditors shown at Rs. 1,94,77,814/-; and that the AO had not even called for confirmations from the sundry creditors which were above Rs. 1 lac. The Ld. CIT listed total of 16 such sundry creditors in the notice. In her order dated 21.3.2013 passed u/s

263 of I.T. Act the Ld. CIT proceeded to set aside the order of the AO on this issue. We have perused all the documentary evidences filed by the assessee in the shape of paper book and we find that the confirmations received from aforesaid 16 sundry creditors obtained by the assessee and submitted to the AO. This fact was discovered in joint inspection of assessment record by Ld. AR of the assessee and Ld. CIT(DR). Since these confirmations of sundry creditors were not noticed by Ld. CIT during proceedings u/s 263 of I.T. Act, hence, we are of the view that Ld. CIT has not applied his mind and passed the impugned order in a routine manner. Keeping in view the facts and circumstances as explained above, the issue regarding sundry creditors, in our view, Ld. CIT has wrongly applied the provisions of section 263 which is liable to be cancelled and hence, we cancel the same.

4.1 As regards issue relating to applicability of section 50C of the I.T. Act is concerned, Ld. Counsel for the assessee has filed the detailed submissions before the AO as well as Ld. CIT and the AO has examined the same with the support of documentary evidences filed by the assessee on the applicability of section 50C of the Act and has not made any additions because Section 50C is not applicable in the case of the assessee and no material on record is available establishing that the assessee has received money over and above the total consideration amounting to Rs. 17,00,000/-. Assessee has filed its reply in response to notice u/s. 263 of the Act and explained that the facts relating to the rights in units bearing nos. LB-3 & LB-4 (lower basement) in Arunachal

Building, New Delhi and secondly claimed that provision of section 50C were not attracted because no value had been adopted and assessed by the State Government authorities/ Stamp Valuation Authority, while clearly mentioning that the term "or assessable" was inserted after the term "the value adopted or assessed "w.e.f. 01.10.2009 (the transfer was effected on 03.1.2008 i.e. much prior to 01.10.2009)." In support of his contention, Ld. Counsel for the assessee has also cited the decision of the Hon'ble Madras High Court in the case of CIT vs. R. Samantha Ravindran 352 ITR 488 wherein, it has been held that the value of property transferred prior to 01.10.2009 cannot be computed under amended provisions, which came into effect on 01.10.2009 (the word "or assessable" was inserted w.e.f. 01.10.2009). Keeping in view of the facts and circumstances as explained above and in view of the decision of the Hon'ble Madras High Court in the case of CIT vs. R. Samantha Ravindran (Supra), we are of the considered view that section 50C is not applicable in the case of the assessee. But the Ld. CIT has wrongly applied the same by ignoring the well reasoned order passed by the AO in the case of the assessee. Therefore, the second issue relating to applicability of Section 50C in the case of assessee is also decided in favour of the assessee and the order of the Ld. CIT on this issue is also cancelled.

5. Keeping in view the facts and circumstances of the case as explained above as well as the written submissions filed by both the parties along with the various documentary evidences, we are of the considered view that Ld. CIT has wrongly passed

the impugned order without contrary to the documentary evidences filed by the assessee before the AO. Therefore, in our considered view, the impugned order is not sustainable in the eyes of law and hence, the same is hereby cancelled.

6. In the result, the Appeal filed by the Assessee stands partly allowed.

Order pronounced in the Open Court on 16/12/2020.

Sd/-

**(O.P. KANT)
ACCOUNTANT MEMBER**

Sd/-

**(H.S. SIDHU)
JUDICIAL MEMBER**

SRB

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order,

ASSISTANT REGISTRAR