

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI S. S. VISWANETHRA RAVI, JM

आयकर अपील सं. / ITA No.459/PUN/2020
निर्धारण वर्ष / Assessment Year : 2015-16

M/s. Rohan Developers,
1, Modibaug Commercial Building,
Ganeshkhind Road, Shivajinagar,
Pune-411016.

PAN : AAFFR5298C

.....अपीलार्थी / Appellant

बनाम / V/s.

Pr. CIT-2,
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Deepak Garg

सुनवाई की तारीख / Date of Hearing : 14.12.2020
घोषणा की तारीख / Date of Pronouncement : 14.12.2020

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of the Id. Pr. Commissioner of Income Tax-2, Pune dated 30.03.2020 passed u/s 263 of the Income Tax Act, 1961 (for short "the Act") for the assessment year 2015-16.

2. Briefly, the facts of the case are that the appellant is a partnership firm and is engaged in the business of builders and land developers. The return of income for the assessment year 2015-16 was filed on 27.09.2015 through electronic mode disclosing a total income of Rs.3,32,39,320/-. Against the said return of income, the assessment was completed by the Income Tax

Officer, Ward-3(5), Pune (for short “the Assessing Officer”) vide order dated 19.12.2017 passed u/s 143(3) of the Act accepting the returned income. It is a matter of record that the case was picked up for assessment under limited scrutiny for the purpose of verifying the two items, namely, (i) Stock Valuation and (ii) Income from Real Estate Business. Subsequently, the Id. Pr. Commissioner of Income Tax-2, Pune issued a show-cause notice dated 11.03.2020 u/s 263 of the Act to explain as to why the provision for expenses of Rs.50,00,000/- should not be disallowed, as it is a contingent liability. However, the appellant had not responded to the said show-cause notice despite affording two opportunities.

3. Consequently, the Id. Pr. Commissioner of Income Tax-2, Pune had proceeded to pass an *ex-parte* order wherein he directed the Assessing Officer to examine the claim for allowance of provision for expenses of Rs.50,00,000/- as the same was not allowable expenditure and pass a fresh assessment order after affording due opportunity of being heard to the appellant.

4. Being aggrieved by the above decision of the Id. Pr. Commissioner of Income Tax-2, Pune, the appellant is before us in the present appeal.

5. Before us, when the matter was called on, none appeared on behalf of the appellant despite due service of notices.

6. On the other hand, Id. CIT-DR placed heavily reliance on the order of the Id. Pr. Commissioner of Income Tax-2, Pune.

7. We heard the ld. CIT-DR and perused the material on record. The solitary issue involved in the present appeal relates to the validity of exercise of jurisdiction u/s 263 of the Act. It is settled proposition of law that in order to exercise the power of revision vested with the Commissioner of Income Tax under the provisions of section 263 of the Act, the twin conditions should exist i.e. (i) the assessment order passed by the Assessing Officer is erroneous and (ii) it is prejudicial to the interests of the Revenue. It is settled proposition of law that the above two conditions must simultaneously co-exist as held by the Hon'ble Apex Court in the case of Malabar Industrial Co. Ltd. vs. CIT, 243 ITR 83. The Commissioner of Income Tax on examination of material on record should come to the conclusion as to the satisfaction or otherwise of the above two conditions before exercising of jurisdiction u/s 263 of the Act. The satisfaction of the Commissioner of Income Tax should not be subjective satisfaction and it must be based on the material on record in order to hold that an assessment order is erroneous and prejudicial to the interests of the Revenue. The reliance in this regard can be placed on the following decisions :-

- (i) CIT vs. George Williamson (Assam) Ltd. [2001] 250 ITR 747 (Gauhati);
- (ii) CIT vs. Sakthi Charities, 244 ITR 226; and,
- (iii) Rayon Silk Mills vs. CIT, 221 ITR 155.

8. In the present case on mere perusal of the impugned order, we find that there is no material or reference to any material on record suggesting that the provision for expenses of Rs.50,00,000/- is disallowable or it is provision for contingent liability. In other words, the finding of the ld. Pr. Commissioner of Income Tax-2, Pune that the provision for expenses is contingent liability is not based on any material, it is mere *ipse dixit*. Further, the impugned order does not contain an allegation by the ld. Pr. Commissioner of Income Tax-2,

Pune that the Assessing Officer had not enquired into this issue during the course of assessment proceedings. Thus, it is clear that it is not even case of learned CIT that Assessing Officer had not enquired into this case. Therefore, the case even does not fall within ambit of Explanation 2 to sub-section (1) of section 263 of the Act inserted by Finance Act, 2015 w.e.f. 1.6.15. Considering all the above facts, it cannot be said that the assessment order is erroneous causing consequence prejudice to the interests of the revenue. Therefore, the order of the revision passed by the Id. Pr. Commissioner of Income Tax-2, Pune cannot be sustained in the eyes of law and, accordingly, we quash the impugned order.

9. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 14th day of December, 2020.

Sd/-

(S. S. VISWANETHRA RAVI)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(INTURI RAMA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 14th December, 2020.
Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-2, Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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