

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

(Through Virtual Court)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.698/PUN/2019

निर्धारण वर्ष / Assessment Year : 2014-15

The Jalgaon People's Co-OP Bank Ltd.  
152, Polan Peth Dana Bazar,  
Jalgaon-425 001  
PAN : AACAT1603M

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Pr. Commissioner of Income Tax-2,  
Nashik.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kapil Hirani

Revenue by : Shri Deepak Garg

सुनवाई की तारीख / Date of Hearing : 29.01.2021

घोषणा की तारीख / Date of Pronouncement : 22.02.2021

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM:**

This appeal preferred by the assessee emanates from the order of the Ld. Pr. Commissioner of Income Tax-2, Nashik dated 27.02.2019 for the assessment year 2014-15 as per the grounds of appeal on record.

2. Though the assessee has raised multiple grounds of appeal in the appeal memo, however, the crux of the grievance of the assessee in this appeal before us is with regard to assumption of revisionary jurisdiction u/s.263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act) by the Ld. Pr. Commissioner of Income Tax and thereby, passing order dated 27.02.2019.

3. The brief facts of the case are that the assessee is an Association of Person (AOP) which is a Co-operative Bank mostly functioning in the district of Jalgaon. For the year under consideration, the assessee filed return of income for the year under consideration declaring loss of (-) Rs.17,54,54,175/-. The case was selected for scrutiny under CASS and the assessment proceedings have been finalized vide order u/s.143(3) of the Act dated 13.12.2016 accepting the returned loss.

4. That thereafter, vide notice u/s.263 of the Act, it was observed that from BDDR account for the FY 2013-14, the assessee bank has an opening credit balance of BDDR reserve at Rs.21,08,91,914/- as on 01.04.2013. The closing credit balance as on 31.03.2014 is Rs.11,98,80,028/-. Further it was noticed that the assessee has also debited an amount of Rs.12,80,68,490/- separately to the profit & loss account as bad debts written off, but the same have not been added back to the computation of income. However, in view of the proviso to Section 36(1)(vii) of the Act, it is established position in law that in case of an assessee to whom provisions of Section 36(1)(vii) of the Act apply, only such amount of any bad debts written off can be allowed as deduction as in excess of credit balance outstanding in the bad and doubtful

debts reserve. Thus, as BDDR reserve in case of the bank carried a credit balance of substantial amount, the assessee is not entitled to claim any deduction on account of actual write off of bad debts unless it has exhausted the amount outstanding the reserve account. Further, vide Explanation 2 to Section 36(1)(vii) of the Act, inserted w.e.f.01.04.2014, has clarified that the provisions of section 36(1)(vii) of the Act does not distinguished between rural and urban advances and accordingly, proviso to Section 36(1)(vii) and Section 36(2)(v) of the Act applied to both rural and urban advances and accordingly, the nature of advances being written off is no more a excuse for not exhausting the credit balance in the BDDR account before claiming the deduction u/s.36(1)(vii) of the Act. Further, the Hon'ble Gujarat High Court in the case of CIT Vs. UTI Bank, 256 CTR 76 has held that claim of bad debts is not allowable when the amount of bad debts is not over and above the opening balance of BDDR reserve.

5. That therefore, it was observed by the Ld. Pr. Commissioner of Income Tax as per Para 2.1 of its order that from the assessment records, it is clear that the assessee has claimed deduction on account of bad debts in spite of having credit balance in BDDR account. The Ld. Pr. Commissioner of Income Tax further opined that the order of assessment passed u/s.143(3) dated 13.12.2016 was erroneous in so far as it was prejudicial to the interest of the revenue because assessment has been made without verification of the claim of written off bad debts as deduction.

6. The legislative intent for incorporating Section 263 of the Act is to provide power to the Commissioner of Income Tax for assuming revisionary

jurisdiction when he finds that the order of assessment is passed erroneously so far as it is prejudicial to the interest of the revenue. The guiding force in determining whether the assessment order was erroneous and prejudicial to the interest of the revenue, has to be determined from facts on record where on a particular area as mentioned by the Commissioner of Income Tax in the order u/s.263 of the Act, required verification and examination were conducted by the Assessing Officer or not. It is settle domain of law that while exercising revisionary jurisdiction and passing order u/s.263 of the Act whenever it is found by the Commissioner of Income Tax that the Assessing Officer has not conducted necessary verification and has passed the assessment order accepting the documents furnished by the assessee without analyzing or examining them and when no verification has been conducted by the Assessing Officer in that area as highlighted in the order passed u/s.263 of the Act, in such scenario, the assessment order is bound to be erroneous and prejudicial to the interest of the revenue. In this case, it is a claim of written off bad debts as deduction. Whether this was examined and verified categorically by the Assessing Officer or not?

7. The Ld. DR bringing our notice at Page 54 of the paper book, Point No.16 wherein questionnaire is annexed along with notice u/s.142(1) of the Act. Point No.16 reads as under:

*“16. On perusal of the Schedule BP, it is noticed that you have claimed large other deduction without any income in the profit and loss account. Please furnish the details of the large deduction claimed by you. You are also requested to substantiate the claim of this large deduction.”*

Therefore, it can be seen, when the Assessing Officer had asked for furnishing all the details of the large deduction as claimed by the assessee, he has not asked specifically regarding details of bad debts written off.

7.1 That further, it is brought on record vide Para 5 of the order of the Ld. Pr. Commissioner of Income Tax wherein he has observed that the Assessing Officer has allowed the claim of the assessee without any verification. The assessment was completed without calling for basic requisite information like list of bad debts proves that the order was completed by the Assessing Officer without application of mind and without analysis of the facts of legal implications of the transactions. No query was raised by the Assessing Officer.

8. We must mention that at the time of hearing, the Ld. AR for the assessee submitted bona-fide that the Assessing Officer while framing the assessment u/s.143(3) of the Act has not specifically asked for details of bad debts specifically mentioning bad debts. That however, the Assessing Officer has analyzed the provision of Section 36(1)(vii) and 36(1)(viia) of the Act and impliedly has taken a view which is, therefore, plausible view and against that plausible view, the Ld. Pr. Commissioner of Income Tax could not have assumed revisionary jurisdiction u/s.263 of the Act.

9. We find the Hon'ble Bombay High Court in the case of **Commissioner of Income Tax Vs. Ballarpur Industries Ltd. (2017) 85 taxmann.com 10 ( Bom.)** has held and observed that *"mere taking a view by the Assessing Officer without having subjected the claim to examination would not make it a view of the Assessing Officer. A view has necessarily to be preceded by*

*examination of the claim and opting to choose one of the possible results. In the absence of view being taken, merely because the issue itself was debatable, would not absolve the Assessing Officer of applying his mind to the claim made by the assessee and allowing the claim only on satisfaction after verification/enquiry on his part. A view in the absence of examination is no view but only a chance result.”*

10. Similarly the Pune Bench of the Tribunal had an occasion to deal with identical issue in deciding the validity of the order passed u/s.263 of the Act in **ITA No.562/PUN/2019 for the assessment year 2014-15 dated 03.08.2020**. The Tribunal on this issue has held and observed as follows:

*“8. We also find that the Assessing Officer while accepting the documents submitted by the Ld. AR, has not conducted any specific enquiry as to the facts of the case. There is no iota of evidence brought on record by the Assessing Officer justifying that there was mistake committed by the assessee vis-à-vis his filing of original as well as revised return of income. The Ld. AR of the assessee also argued that the view taken by the Assessing Officer may not be a proper one as per the Ld. Pr. Commissioner of Income Tax is concerned nonetheless, it is definitely an appropriate view. We do not agree with the contention of the Ld. AR since taking a view should be backed by reasons and that reasons should be demonstrated in the order itself with evidences brought on record and independent enquiry conducted. In this case, the Assessing Officer has only done the work of extraction of submissions of the Ld. AR and nothing else and therefore, in fact the Assessing Officer has not formed any view. When no view has been taken, no enquiry has been conducted, when no reasons on facts has been placed on record, the order of assessment is bound to be erroneous in so far as prejudicial to the interest of the revenue.*

*Taking the totality of facts and circumstances into consideration and aforesaid case laws, we uphold the order passed u/s.263 of the Act by the Ld. Pr. Commissioner of Income Tax.”*

11. The Ld. DR referring Pages 149 to 151 of the paper book brought to our notice the Board Circular and Instruction No.17/2008 dated 26.11.2008 wherein Point No.(i) and (ii) are relevant which reads as follows:

*“(i) Under section 36(1)(vii) of the Act, deduction on account of bad debts which are written off as irrecoverable in the accounts of the assessee is admissible. However, this should be allowed only if the assessee had debited the amount of such debts to the provision for bad and doubtful debts account under section 36(1)(viii) of the Act as required by section 36(2)(v) of the Act.*

*“(ii) While considering the claim for bad debts under section 36(1)(vii), the Assessing Officer should allow only such amount of bad debts written off as exceeds the credit balance available in the provision for bad and doubtful debt account created under section 36(1)(viii) of the Act. The credit balance for this purpose will be the opening credit balance i.e. the balance brought forward as on 1<sup>st</sup> April of the relevant accounting year.”*

12. The Assessing Officer who is bound by the Board Circular & Instruction (supra.) has not even bothered to distinguish the aforesaid Circular vis-à-vis the facts on record pertaining to the assessee and distinguishing the case based on this Board Circular and Instruction (supra.) and the case laws relied upon by the assessee. The Assessing Officer has simply accepted the explanation of the assessee and had asked for various other details without asking for specific details of bad debts written off by the assessee. That when the Assessing Officer has not done this exercise, placing reliance on the decision of the Hon'ble Bombay High Court (supra.) it can be stated that the Assessing Officer has not taken any view at all since in order to take a plausible view specific verification and examination of facts on record is essential which in this case, the Assessing Officer has not done. The legal parameters permits us while determining validity of order passed u/s.263 of the Act, it has to be seen whether the order of assessment passed u/s.143(3) of the Act was erroneous so far as it is prejudicial to the interest of the revenue which necessarily has arisen for non verification of facts by the Assessing Officer and therefore, whether the Commissioner of Income Tax was correct in assuming revisionary jurisdiction u/s.263 of the Act?

13. We are not to travel beyond this point and decide whether the Assessing Officer was correct in his view which he has implied in his order. That only the express verification and examination of facts whether the Assessing Officer has done or not is to be seen, as in this case it is in issue of bad debts written off. The Hon'ble Delhi High Court in the case of **CIT Vs. Toyota Motor Corporation (Delhi) (174 Taxmann 395)** wherein in this case, the Assessing Officer passed an order whereby he dropped the penalty proceedings initiated in the assessee's case u/s.271C r.w.s.274 of the Act. The Commissioner exercised power conferred u/s.263 of the Act and concluded that the Assessing Officer did not verify several issues and facts as mentioned in the order passed by him nor did he carry out necessary investigations to come to a conclusion that penalty was not leviable. The Commissioner then set aside the order passed by the Assessing Officer u/s.271C of the Act to be reframed afresh. On appeal, the Tribunal however, held that the Assessing Officer had carried out due verification of relevant facts and the assessee had also shown its bona fides and its reasonable belief in not deducting tax at the appropriate stage. The Hon'ble High Court reversed the findings of the Tribunal by observing that *"it was found that the order passed by the Assessing Officer was cryptic, to say the least, and it could not be sustained. The Tribunal could not substitute its own reasoning to justify the order passed by the Assessing Officer when the Assessing Officer himself did not give any reason in the order passed by him."* This order of the Hon'ble Delhi High Court was upheld by the Hon'ble Supreme Court as reported in *Toyota Motor Corporation, 173 Taxman 458(SC)*.

14. The same principle was upheld by the Hon'ble Delhi High Court in the case of **PCIT Vs. Shri Braham Dev Gupta, ITA No.907/2017 and ITA**

**1162/2017** (Delhi HC). While discussing the applicability of provisions of section 263 of the Act, the Hon'ble Court held that the ITAT's findings should not amount to supplying reasons in respect of the AO's order, on aspects which are not expressly reflected in the assessment order. It is no doubt the duty of the CIT to record why revision is warranted; however, the ITAT's jurisdiction is not to re-write the AO's order and improve upon it, in a manner of speaking.

15. Reverting to the facts of the present case as contented by the Ld. AR for the assessee that the findings of the Assessing Officer impliedly is correct in law, where, while determining the validity of order u/s.263 of the Act we could not therefore supply reasons in respect of the assessment order, on aspects, which are not expressly reflected in the assessment order.

The Hon'ble Delhi High Court in the case of **CIT Vs. Ashok Logani (11 taxmann.com 208), 347 ITR 22** has observed and opined that "*once it was found that there was no proper consideration of the issue by the Assessing Officer, the very foundation of the order of the Tribunal was knocked off. Thereafter, the Tribunal has ventured to undertake the exercise by itself satisfying about the explanation tendered by the assessee which it could not do. When the Commissioner passed the orders u/s.263 of the Act at that stage he was only required to find out as to whether the income had escaped assessment and the order was prejudicial to the interest of the revenue.*"

16. The Ld. AR for the assessee has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Catholic Syrian Bank Ltd. (2012) 248 CTR 1 (SC)** but the Assessing Officer has not distinguished the application of this case vis-à-vis the facts of the assessee's case in pursuance to the Board

Circular and Instruction No.17/2008 (supra.). The Ld. AR for the assessee also relied on the decision of the Mumbai Bench of the Tribunal in the case of **Dena Bank Vs. PCIT-2 (2020) 181 ITD 322**. Controverting the decisions on which the Ld. AR has placed reliance, the Ld. DR pointed out that in the case of Dena Bank Vs. PCIT-2 (supra.), the Assessing Officer has examined the issue and made assessment whereas in the case of the assessee before us on the issue of bad debts, there is no examination or verification done by the Assessing Officer. These facts were not refuted by the Ld. AR.

17. Reverting to the facts of the present case, the question arises whether any verification or examination was done by the Assessing Officer or not with respect to the bad debts? We have already examined that such verification and examination on bad debts was not done by the Assessing Officer. The Assessing Officer has not called for any specific details regarding bad debts. He has also not called for or verified list of bad debts. The Assessing Officer has also not analyzed the Board Circular & Instruction (supra.) vis-à-vis facts of the assessee' case and therefore, the assessment order is erroneous and prejudicial to the interest of the revenue.

That therefore, taking the totality of facts and circumstances and the judicial pronouncements as afore stated, we are of the considered view that the Ld. Pr. Commissioner of Income Tax was correct in assuming revisionary jurisdiction and passing order u/s.263 of the Act since the order of the Assessing Officer dated 13.12.2016 was erroneous so far as it is prejudicial to the interest of the Revenue. We order accordingly.

18. That before parting, we would like to mention that at the time of passing of consequential order by the Assessing Officer, the assessee will

have opportunity to justify its stand and demonstrate through relevant evidences and details as may be called for by the Assessing Officer.

19. In the result, **appeal of the assessee is dismissed.**

Order pronounced on 22<sup>nd</sup> day of February, 2021.

Sd/-  
**WASEEM AHMED**  
**ACCOUNTANT MEMBER**

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

पुणे / Pune; दिनांक / Dated : 22<sup>nd</sup> February, 2021.  
SB

**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 //

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

		Date	
1	Draft dictated on	29.01.2021	Sr.PS/PS
2	Draft placed before author	29.01.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		