

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

(Convened through Virtual Court)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 1076/Ahd/2018

(निर्धारण वर्ष / Assessment Year : 2013-14)

Bipin Chimanlal Patel 240, Kadva Patidar Vas, Chandkheda, Ahmedabad	बनाम/ Vs.	Pr.CIT-2 1 st Floor, Navjeevan Trust Building, Ashram Road, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AMNPP4464E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri S. N. Divatia, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Virendra Ojha, CIT.DR

सुनवाई की तारीख / Date of Hearing	10/02/2021
घोषणा की तारीख /Date of Pronouncement	22/03/2021

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Assessee against the order of the Principal Commissioner of Income Tax-2, Ahmedabad ('Pr.CIT' in short), dated 26.03.2018 passed under s.263 of the Income Tax Act, 1961 (the Act) whereby the assessment order passed by the Assessing Officer (AO) dated 31.12.2015 under s. 143(3) of the Act concerning AY 2013-14 was

sought to be set aside for *de novo* assessment in terms of supervisory directions.

2. As per the grounds of appeal, the assessee has sought to challenge the jurisdiction assumed by the Pr.CIT under s.263 of the Act and as a corollary, sought to impugn the revisional order passed by the Pr.CIT under s.263 of the Act as expropriatory.

3. Briefly stated, an assessment under s.143(3) of the Act for AY 2013-14 was completed by the AO accepting the income as returned by the assessee. The assessment order dated 31.12.2015 was passed to this effect. Thereafter, the Pr.CIT in exercise of its revisionary powers, issued show cause notice dated 16.02.2018 under s. 263 of the Act requiring the assessee to show cause as to why the assessment so framed under s.143(3) of the Act should not be modified/set aside on the ground that such order is erroneous and prejudicial to the interest of the Revenue. The show cause notice issued in this regard is extracted hereunder for ready reference:

"You had filed your return of income on 23.9.2013 declaring income of Rs 15,71,830/- It is observed that during the year under consideration, you had shown an income of Rs 16,81,827/- from 'Income from Other Sources' and share in profit from firm 'Suyog Infrastructure' amounting to Rs 2,52,57,038/- (which has been claimed exempt u/s 10(2A) of the IT Act). Income was assessed u/s 143(3) of the IT Act on 31.12.2015 accepting the income as per the return of income. On verification of the records, it is seen that:-

(I) The firm 'Suyog Infrastructure' in which you were a partner had undergone changes in its constitution during the year. The details are as follows :-

(i) As per the partnership deed dated 1.4.2009, yourself and Shri Pratik Bipinchandra Patel were partners with 50% share each. It is also observed that your firm had bought land at Rs. 4,85,00,000/- on 12.8.2009.

(ii) Thereafter, vide the registered deed dated 3.9.2012, 5 new partners were introduced in the firm and the two original partners Shri Bipinchandra Chimanlal Patel (i.e you) and Shri Pratik Bipinchandra Patel relinquished their 5% share each in the firm in favour of 4 new partners. In the said partnership deed, the value of land has been recorded at Rs 10,19,19,000/- and the five new partners bought 10% stake in the firm on the basis of the said land value.

(iii) Again vide the notarized partnership deed dated 14.12.2012, there was further change in partnership deed wherein you and Shri Pratik Bipinchandra Patel have relinquished your complete share holding retrospectively from 30.9.2012 in favour of newly introduced 5 parties.

(II) It is perused that during the A, Y. 2013-14, the firm 'Suyog Infrastructure' has declared income of Rs 24,63,089/- only whereas you have claimed to have received share of profit of Rs 2,52,52,038/- from the Firm which you have claimed as exempt income u/s 10(2A) of the IT Act. While passing the assessment order the AO has not considered the Explanation attached to Section 10(2A) of the IT Act according to which quantum of exemption u/s 10(2A) is the amount which bears to the total income of the firm the same proportion as the amount of share in the profits of the firm in accordance with partnership deed bears to such profits. The said income of Rs 2,52,57,038/- has not been a part of the income from the firm 'Suyoj Infrastructure ' and thus it cannot be a part of your income which can be claimed as exempt income u/s 10(2A) of the IT Act. Moreover, you were not a partner in the firm as on 31.3.2013. Hence the apportion of profit in your case does not arise.

(III) All these point out that the amount received by you during the year from the partnership firm is not of the nature of profit from the firm which can be claimed exempt u/s 10(2A) of the IT Act.

3. Looking at the facts and circumstances of the case, I am of the considered view that the impugned order has been passed without application of mind and without making proper inquiries which should have been made by the AO. In this view of the matter and also in view of Explanation 2(a) of Section 263, the order passed by the AO is erroneous and prejudicial to the interest of revenue and thereby I intend to revise the same u/s 263 of IT Act "

4. The Pr.CIT, in essence, alleged that the order of the AO suffers from non-application of mind and rendered without proper enquiries and verification of crucial facts required in discharge of its statutory function. On a broader reckoning, it was alleged that (i) the assessee as a partner of the partnership asset was liable for taxation on his share of income on transfer of interest in land in the partnership firm and not entitled to excessive exemption wrongly claimed in view of Explanation attached to Section 10(2A) of the Act; (ii) the AO has failed to apply his mind to the fact that the said transaction of transfer of interest of existing partners in the land held by the partnership firm to a new set of partner, from the angle of a colourable device adopted to transfer the capital asset from one set of partners to another set of partners without payment of taxes due thereon; (iii) the AO has failed to apply his mind to

the fact that provisions of Section 47(ii) of the Act has been deleted from the Act and consequently, the amount distributed by partnership firm to the assessee over the book value of land on transfer of interest to new partners would now be taxed in the hands of the assessee as his income for which aspect, the AO has not applied his mind and wrongly accepted the income returned by the assessee.

5. The Pr.CIT accordingly concluded that the assessment order has been passed mechanically accepting the returned income without carrying any worthwhile enquiries to ascertain the true chargeable income in the hands of the assessee. It was thus concluded that the assessment order passed under s.143(3) of the Act is erroneous in so far as prejudicial to the interest of the Revenue. Consequently, Pr.CIT invoked the revisional powers vested under s.263 of the Act read with Explanation (2) appended thereto and set aside the assessment order and directed the AO to frame afresh assessment order after conducting requisite enquiries on the pertinent issues involved.

5. Aggrieved, the assessee in appeal before the Tribunal.

6. The learned counsel for the assessee Mr. S. N. Divatia submitted at the outset that the necessary background for exercise of revisional power of Pr.CIT does not exist. The learned counsel submitted that the return was filed declaring income correctly as incumbent upon assessee, which was properly assessed by the AO in sync with the provisions of the Act. The learned counsel for the assessee next submitted that pointed question was asked vide notice issued under s.142(1) of the Act dated 14.10.2015 which is extracted as;

“Details of exempt income earned by you in the year under consideration. Please furnish the source of fund utilized for earning these incomes.”

6.1 It was asserted that in response to query raised, complete facts in relation to the income derived from the partnership firm and claimed as exemption under s.10(2A) of the Act was brought to the notice of the AO in the course of the assessment proceedings and therefore the Revisional Commissioner mis-directed himself in law and on facts in holding lack of application of mind on the part of the AO towards eligibility of exemption claimed under s.10(2A) of the Act.

6.2 It was next observed that the sum paid by the assessee firm to the retiring partner on change of constitution of firm does not constitute capital gains in the hands of the partnership firm under s.45(4) of the Act. It was further contended that amount distributed by the partnership firm on account of revaluation of the land at fair market value to the outgoing partners for the purposes of assigning share of interest to the incoming partners is nevertheless a capital receipt out of ambit of taxation. It was submitted that sum received from partnership firm towards share of profit is eligible for exemption under s.10(2A) of the Act.

6.3 The learned counsel next submitted that AO has taken plausible view in accordance with law in so far as taxation of partner assessee is concerned and thus the assessment order passed cannot be made susceptible to revisional proceedings under s.263 of the Act by capricious exercise of jurisdiction. It was thus urged that the revisional order passed on wrongful assumption of jurisdiction under s.263 of the Act requires to be quashed.

7. The learned D.R. for Revenue, on the other hand, relied on the revisional order and submitted that when all the allegations made in the revisional order are integrated with underlying facts, the conclusion of erroneous assessment order would be unescapable. Ld. DR submitted that Pr.CIT has merely set aside the assessment order for fresh assessment after taking note of legal issue and factual aspects. The action of Pr.CIT is thus justified in terms of Explanation 2 to Section 263 of the Act.

8. We have examined the controversy in hand on alleged wrongful assumption of revisional jurisdiction and perused the revisional order consequently passed by the Pr.CIT under s.263 of the Act as well as the case laws cited.

8.1 To begin with, we take note of various allegations broadly made by the Pr.CIT for invoking Section 263 of the Act which is summarized as follows:

(i) Having regard to change in the constitution of the partnership firm M/s. Suyog Infrastructure whereby both original partners (including the assessee partner) relinquished their shares in partnership in favour of five new partners after valuing the land at Rs.10,19,19,000/- in F.Y. 2012-13 relevant to AY 2013-14 in place of book value of land acquired in August 2009 at Rs.4,85,00,000/-, the AO failed to examine the quantum of income eligible for exemption under s.10(2A) of the Act as the exemption claimed is disproportionate to share of profit claimed to be exempt by the partnership firm. It is also alleged that the AO failed to consider Explanation annexed to Section 10(2A) of the Act, especially when the assessee was not a partner in the firm at the end of the financial year as on 31.03.2013.

(ii) The sum of Rs.2,52,52,038/- so received by the assessee from the partnership firm (Suyog Infrastructure) as against the income declared by the partnership firm Rs.24,63,089/- is not in congruence with exempt income from the partnership firm envisaged under s.10(2A) of the Act.

(iii) The AO has also failed to apply his mind from the perspective that profits on relinquishment of interest in partnership firm along with other existing partner to another set of partners (incoming partners) whereby the land (book value of Rs.4.85 Crore; market value 10,19,19,000/-) which stood distributed to outgoing partners was a ruse and a device adopted to transfer the capital asset from one set of partners and to another set of partners through the medium of partnership firm resulting in loss of revenue.

8.2 As noticed earlier, the assessee in its computation of income has claimed exemption of Rs.2,52,57,038/- under s.10(2A) of the Act towards share of income from partnership firm, namely, Suyog Infrastructure. On review of assessment records, the Pr.CIT found that the income declared by the partnership firm for the F.Y. 2012-13 relevant to A.Y. 2013-14 in question stands at Rs.24,63,089/- only. When tested on the touchstone of Explanation to Section 10(2A) of the Act, the Revisional Commissioner observed that for the purposes of exemption under s.10(2A) of the Act, the share of a partner in the total income of the firm shall be in proportion to his interest in the partnership firm. No document had been placed before us on behalf of the assessee to show that the AO, at any point of time, applied his mind to the apparent mis-match in the amount of exemption income claimed under s.10(2A) of the Act *qua* the corresponding income declared by the partnership firm. The issue

apparently did not weigh in the mind of the AO, which has resulted in serious prejudice to the Revenue. The plea of all pervasive scrutiny conducted by AO thus does not resonate with apparent gaffes shown.

8.3 It is also the case of the Revisional Commissioner that the AO has not tested the applicability of Section 10(2A) of the Act where the assessee was not a subsisting partner of the firm as end of the financial year and therefore apportionment of profit would not arise.

8.4 As per para 4.3 of the revisional order, the Pr.CIT has also alleged non-application of mind to the pattern of transaction which smacks of a device to transfer the land in favour of new partners without paying due taxes. The impact of omission of s.47(ii) has also not found to be weighed.

9. We find that the AO has passed a very cryptic and nondescript order without any discussion on any of the point raised in the revisional order. Alongside, it also could not be shown that the AO was alive to such pertinent concerns and reason thereof at the time of assessment. A plain reading of Explanation to Section 10(2A) of the Act does not summarily rule out an embedded plausibility in the concern of excess deduction claimed as expressed by the Revisional Commissioner. Non-examination of such crucial aspects which has direct bearing on the correct assessment of income has ostensibly rendered the assessment order to be erroneous as well as prejudicial to the interest of the Revenue. We thus hold that the assessment order passed in such gross lack of application of mind causing prejudice is thus amenable to jurisdiction under s.263 of the Act.

10. At this juncture, we may however hasten to add that we are on the limited point of application of mind to the correctness of exemption eligible to assessee under s.10(2A) of the Act read with other provisions of Act and consequent exercise of jurisdiction vested under s.263 of the Act. Having regard to the peculiar facts of the case, we consciously refrain ourselves from testing the correctness of the allegation of the Pr.CIT on its intrinsic merits in the absence of nuanced discussion on merits at this stage. Presently, our remit is limited to test the scope of jurisdiction under s.263 of the Act alone. Therefore, while upholding the action of the Pr.CIT, our observations should not be inferred as expression on merits in any manner.

11. Resultantly, the appeal of the assessee is dismissed.

This Order pronounced on 22/03/2021

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Ahmedabad: Dated 22/03/2021

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।