

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'B' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 05/JP/2021  
निर्धारण वर्ष/Assessment Year :2016-17

Bhagwan Das Harwani, Prop. M/s Parwati Oil Mill, Ajay Nagar, Ajmer	बनाम Vs.	Pr. CIT, Udaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABHPPH1392L		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Sunil Porwal (CA) &  
Sh. Subhash Porwal (CA)  
राजस्व की ओर से/ Revenue by : Shri B. K. Gupta (Pr.CIT)

सुनवाई की तारीख/ Date of Hearing : 16/06/2021  
उदघोषणा की तारीख/Date of Pronouncement: 22/06/2021

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. Pr. CIT, Udaipur dated 29.01.2021 wherein the assessee has taken the following grounds of appeal:-

- "1. That the notice as issued u/s 263 of Income Tax Act, 1961 by PCIT, Udaipur is bad in law and requested to be quashed.*
- 2. That the Id. AO has passed the order after considering all material facts and balance confirmation of unsecured loans being opening balances etc."*

2. During the course of hearing, the Id. AR submitted that for the Id Pr CIT to exercise jurisdiction u/s 263, firstly, the order passed by the ITO must be

erroneous and secondly, the error must be such that it is prejudicial to the interests of the Revenue. If the order is erroneous but it is not prejudicial to the interests of the Revenue, the Commissioner cannot exercise the revisional jurisdiction under section 263(1) and reliance was placed on the decision in case of H.H. Maharaja Raja Power Dewas V. CIT(1982) 138 ITR 518 (M.P.).

3. It was further submitted that in response to PCIT'S show cause notice, the assessee submitted as under:-

(a) Bharat Harwani: As per confirmation filed as per e-submission dated 17.09.2018, there was no opening balance shown for the F.Y. 01.04.2015 to 31.03.2016. It is on 17.04.2015 that a SBBJ Cheque for Rs. 10,00,000.00 was received during the year & same was closing balance as on 31.03.2016. Kindly find enclosed the copy of same document e-filed on 17.09.2018 for verification of the facts to avoid any further oversight/mistake as made while recording observation by the Id Pr CIT to claim the order of A.O. as erroneous & prejudicial u/sec. 263 of Act.

(b) Rahul Harwani: It was submitted that in this case, the opening balance as on 01.04.2015 was Rs. 3,95,000 as credit appearing in assessee's books and the closing balance as on 31.03.2016 was Rs. 10,44,730 where complete confirmation cum account copy of ledger of said party has been enclosed. Thus the observation for "NON FILING OF CONFIRMATION" is again an oversight/mistake. Rs. 3,50,000.00 was received from party on 03.06.2015 through SBBJ Bank; rest of the credits are journal entries for purchase expenses allowances. It shows that complete ledger copy cum confirmation is there on record.

(c) Sunil Israni: Kindly find re-enclosed the copy of ledger cum confirmation of said depositor's account statements; where there is no opening balance

shown outstanding, Rs. 5,00,000 was received vide SBBJ Cheque on 03.04.2015 which probably wrongly understood by your office as opening balance as on 01.04.2015. Further interest paid to him for Rs. 60,000.00 for the year quarterwise & thus same amount of Rs. 5,00,000 as received on 03.04.2015 remained closing balance as on 31.03.2016.

4. It was submitted that after going through the e-filed documents & paper book, the A.O. has correctly & judiciously examined & decided the issue. It is further to inform that A.O. is suppose to take all such documents, evidences to his satisfaction & A.O. has only after examining the evidences, as e-filed & necessarily required for assessment proceedings have sought the details, examined, verified. Even all of the confirmation as filed were examined & re-verified u/sec. 133(6) of Act. Thus, from above e-filed documents during assessment proceedings & submissions to LD PCIT, the LD PCIT has only claimed for wrong inference. This wrong inference has even not been looked properly with the documents e-filed during the proceedings u/s 263. The PCIT has never denied that these confirmations as e-filed have not been examined by A.O. u/s 133(6) of the Act nor the LD PCIT could deny the facts as per submissions are wrong. In case of Rahul Harwani the journal of entries for Purchases/Expenses clearly states that it is not a "CASH RECIEPT" but credit transactions. Thus, the wrong inference as made by LD PCIT is the only reason for considering the case as erroneous & prejudicial to revenue. The credits in account for purchases/expenses are not in nature of "LOANS & ADVANCES" in terms of Section 269SS; as considered by PCIT. Thus, all inference as made by PCIT are wrong on facts & cannot be tantamount to prejudicial to revenue or erroneous for any reason. The PCIT has to prove both ingredients of "ERRONEOUS" & "PREJUDICIAL TO REVENUE" as per facts. Merely A.O. has not mentioned the detailed procedure adopted in depth in assessment order does not mean that A.O has not examined the facts or proper verification has

not been made. The PCIT vide issuing notice u/s 263 and by recording the reasons for such notice u/s 263 has not mentioned anything on the lapses if any.

5. It was submitted that the A.O. has taken complete confirmations, verifications conducted to his satisfaction and only after complete examination of facts, evidences, cross-verifications have accepted the genuineness of such cash, creditors/depositors and thus, the wrong inference as made by PCIT out of same record does not justify the parameters as laid down for invoking the provisions of section 263 as held in case of CIT v/s NIRAV MODI (2017) 390 ITR 292 (BOM) (HC) wherein it was held that "It has been held that enquiries were made by the A.O. and such enquiries need not reflect in order of assessment especially if the A.O. accepted the claim, for if the issues which have attained finality are discussed in order of assessment, it would become an epitome and not a judicial order and that the order of assessment simply records the dissatisfaction of the A.O. with respect to amounts claimed or where tax has escaped assessment. The commissioner had to be specific and must arrive at findings as to how the order in question is erroneous. The duty cannot cast on A.O. by directing him to examine if his own order is erroneous. Lastly, that the view taken by A.O. was certainly, a possible view."

6. Per contra, the Id. Pr CIT/DR relied on the findings of the Id. Pr. CIT and our reference was drawn to Paras 6 and 7 of the impugned order content thereof reads as under:-

*"6. The assessment order u/s 143(3) of the I.T. Act for the A.Y 2016-17 dated 12.12.2018 was passed by the Assessing Officer in this case, without making proper enquiries and there is lack of verification on the issue of unsecured loans, despite the fact that this was one of the key reasons for scrutiny selection.*

*Further, the undersigned has issued the notice u/s 263 of the I.T. Act after being satisfied that the case of the assessee is a fit case for issue of notice u/s 263 of the I.T. Act as it is erroneous and prejudicial to the interest of Revenue.*

*Now coming to the merits of the case, it is pertinent to mention here that the assessee has not only failed to furnish the requisite documentary evidences at the time of assessment proceedings but also at the time of revision proceedings u/s 263 of the I.T. Act as discussed hereunder :-*

*a) As regards unsecured loan of Rs. 10 Lacs from Sh. Bharat Harwani, the assessee has furnished a photocopy of ledger confirmation, which does not have any signature from Sh. Bharat Harwani. Further no ITR and bank statement has been furnished of Sh. Bharat Harwani so as to establish / prove the genuineness and creditworthiness in respect of this unsecured loan.*

*b) As regard unsecured loan from Sh. Rahul Harwani having closing balance of Rs. 10,44,730/-, the assessee has furnished a photocopy of ledger confirmation from Sh. Rahul Harwani. However, on examination of the same it is seen that out of total credits of Rs. 13,19,548/- during the year, only Rs. 5,64,548/- have been shown to be received through cheque and remaining entries are general entries pertaining to purchase expense etc., i.e. they are not through account payee cheque or account payee draft or use of electronic clearing system through a bank account. Hence, there seems to be violation of provision of section 269SS of the I.T. Act.*

*c) As regards unsecured loan of Rs. 5 Lakh received from Sh. Sunil Israni, the assessee has furnished a photocopy of ledger confirmation.*

*Further, no ITR and bank statement has been furnished of Sh. Sunil Israni so as to establish / prove the genuineness and creditworthiness in respect of this unsecured loan.*

*7. The assessment order u/s 143(3) of the I.T. Act for the A.Y. 2016-17 dated 12.12.2018, therefore, was passed by the Assessing Officer in this case, without making necessary enquiries and proper verification of the issue whether the loans and advances received are genuine and from disclosed sources as discussed in preceding paras. Hence, assessment order u/s 143(3) of the I.T. Act for the A.Y. 2016-17 dated 12.12.2018 has thus been rendered erroneous and prejudicial to interest of revenue on the above issue. The same is therefore set-aside/cancelled and restored back to the file of AO on this issue with the direction to pass fresh assessment order, after conducting proper verification and enquiry and also examine the applicability of provisions of section 269SS / 269T of the I.T. Act and as a result of such enquiry/verification make necessary addition to the total income of the assessee as per provisions of Income Tax Act., 1961 wherever required. However, the AO is directed to ensure that opportunity of being heard is given to the assessee before passing the order."*

7. Further, Id. Pr CIT/DR relied on the following decisions in support of his contentions as under:-

- Virbhadra Singh (HUF) Vs PCIT [2017] 86 taxmann.com 113 (Himachal Pradesh)
- CIT vs Ballarpur Industries Ltd. [2017] 85 taxmann.com 10 (Bombay)
- Jeevan Investment & Finance (P.) Ltd vs. CIT [2017] 88 taxmann.com 552 (Bombay)
- Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 (SC)

- Daniel Merchants P Ltd and others (SLP No. 23976/2017 dated 29.11.2017)
- Goa Sesa Sterlite Limited (erstwhile Sesa Goa Ltd) vs. CIT (Tax Appeals No. 27/2015 and 28/2015 dated 2<sup>nd</sup> November, 2020).

8. We have heard the rival submissions and perused the material available on record. We find that one of the key reasons for scrutiny selection was verification of unsecured loans and therefore, it was incumbent on the part of the Assessing officer to carry out necessary examination by calling for information/documentation from the assessee and verifying such information/documentation so submitted before taking any view in the matter.

9. In respect of unsecured loan of Rs. 10 Lacs from Sh. Bharat Harwani, the Id Pr CIT has recorded a finding that the assessee has furnished a photocopy of ledger confirmation, which does not have any signature from Sh. Bharat Harwani and further no ITR and bank statement has been furnished of Sh. Bharat Harwani so as to establish/prove the genuineness and creditworthiness in respect of this unsecured loan. To our mind, what the Id Pr CIT has stated are basic documentation which is reasonably expected to be called for and examined by the AO as part of standard operating procedure for verifying the genuineness of loan transaction and creditworthiness of the lender. There is nothing on record that the AO on receipt of so called confirmation has called for any further information/documentation from the assessee or carried out any independent examination u/s 133(6) of the Act. Given that the AO basis a mere confirmation so filed by the assessee which in reality is not a confirmation in absence of signature and authentication has accepted the loan transaction is clearly not just a case of lack of enquiry but a case of no enquiry rendering the order so passed as clearly erroneous and prejudicial to

the interest of Revenue. Similar fact pattern exist in respect of other two transactions with Sh. Rahul Harwani and Sh. Sunil Israni and we agree with the findings of the Id Pr CIT that the order so passed by the AO is erroneous and prejudicial to the interest of the Revenue. However, the credits by way of journal entries in account of Sh Rahul Harwani for purchases/expenses cannot be termed in the nature of "loans and advances" in terms of Section 269SS and to this extent, the findings of the Id Pr CIT are set-aside.

In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on 22/06/2021.

Sd/-  
( संदीप गोसाई )  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 22/06/2021

\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Bhagwan Das Harwani, Ajmer
2. प्रत्यर्थी / The Respondent- Pr. CIT, Udaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 05/JP/2021}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

