

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 51/JP/2021
निर्धारण वर्ष / Assessment Year : 2016-17

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| Sh. Laxmi Narayan Agarwal, 1/513, New Vidhyadhar Nagar, Jaipur | बनाम Vs. | The Principal Commissioner of Income Tax, Jaipur-2 |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABSPA1338G | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Sh. Manish Agarwal (CA)
राजस्व की ओर से / Revenue by : Shri B. K. Gupta (Pr.CIT)

सुनवाई की तारीख / Date of Hearing : 28/10/2021
उदघोषणा की तारीख / Date of Pronouncement: 28/10/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. PCIT, Jaipur-2, dated 31.03.2021 for A.Y. 2016-17 wherein the assessee has taken following grounds of appeal.

"1. On the facts and in the circumstances of the case and in law, Id. PCIT has grossly erred in exceeding jurisdiction in passing order u/s 263 of the Income Tax Act, in respect of Assessment order passed u/s 143(3) for A.Y. 2016-17, [appeal against which was pending before CIT(A)] for which assessee had already filed application under Vivad Se Vishwas Scheme on 30.01.2021, which was accepted by the department (as Form 3 was also issued on). Appellant prays that revision of assessment order already settled

under Vivad Se Vishwas Scheme (the scheme) is not in accordance with legislative intention of the scheme and thus order u/s 263 giving such direction deserves to be quashed.

Without prejudice to above, and in the alternative:

2. On the facts and in the circumstances of the case the Ld. PCIT has grossly erred in passing order u/s 263 of the Income Tax Act, without providing adequate opportunity of being heard as first notice u/s 263 was issued only on 26.03.2021 fixing the date of hearing on next working day i.e. 29.03.2021 (27.3.21 and 28.3.21 being Saturday and Sunday) and proceedings were concluded on 31.03.2021. Appellant prays order so passed is against the principles of natural justice and deserves to be quashed.

3. On the facts and in the circumstances of the case and in law, Id. PCIT has grossly erred in passing revisionary order u/s 263 and issuing directions to verify unsecured loans arbitrarily. Appellant prays that all the necessary inquiries required for completing assessment, were made by Id. AO during assessment proceedings. Thus the order is neither erroneous nor prejudicial to the interest of Revenue and therefore, no revision is called for on this account.

3.1 That the Id. Pr. CIT has further erred in setting aside the order u/s 263 when he himself held the same as erroneous and failed to establish as to how the order is prejudicial to the interest of Revenue, more particularly when the twin conditions needs to be satisfied cumulatively for invoking the provisions of section

263, thus the order so passed deserves to be held bad in law and be quashed."

2. At the outset, it is noted that there has been a delay in filing the present appeal by 30 days. It was submitted that the impugned order was passed by the Id. PCIT on 31.03.2021 and the same was received by the assessee on 31.03.2021 and ordinarily, the appeal should have been filed before the Tribunal on or before 30.05.2021. However, the same was filed on 30.06.2021. It was submitted that the delay so happened in filing the present appeal was on account of the 2nd outburst of COVID-19 Pandemic and consequent lockdown announced by the State Government. It was accordingly submitted that due to lockdown, the assessee was prevented from filing the present appeal and the delay so happened was not deliberate. In support, the reliance was also placed on the decision of Hon'ble Supreme Court dated 27.04.2021 wherein the period of limitation in filing of appeal, irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended with effect from 14th March, 2021 till further orders. It was accordingly submitted that the delay so happened in filing the present appeal was beyond the control of the assessee and the same may be condoned and appeal of the assessee be heard on merits.

3. Per contra, Id. Pr.CIT/DR did not raise any specific objection and fairly accepted that the explanation so furnished by the Id. AR regarding delay in filing the present appeal on account of COVID-19 pandemic may be considered by the Bench as it deems fit and appropriate.

4. After hearing both the parties and considering the material on record, we find that there was a reasonable cause for delay in filing the present appeal due to COVID-19 pandemic and lockdown imposed in the state of Rajasthan which was beyond the control of the assessee. Therefore, the delay so happened is hereby condoned and the appeal so filed by the assessee is hereby admitted for adjudication on merits.

5. Briefly stated, facts of the case are that the assessee filed his return of income on 14.10.2016 declaring total income of Rs. 9,11,36,210/- which was selected for scrutiny under compulsory manual selection. Thereafter, notice u/s 143(2) was issued calling for the information and explanation from the assessee and after considering the same, assessment was completed at an assessed income of Rs. 9,65,86,210/- by disallowing labour expenses, vehicles repair & maintenance expenses, staff welfare expenses, conveyance expenses, computer expenses, office expenses and site expenses and the assessment order was passed u/s 143(3) dated 31.12.2018.

6. Thereafter, the assessment records were called for and examined by the Id. Pr. CIT and he observed that the assessee has taken unsecured loans from 34 lenders and during the assessment proceedings, the assessee has not fulfilled the requirements namely, identity of the person, genuineness of the transaction and credit-worthiness of the payer and only PANs of 10 persons were filed during the course of assessment proceedings. The Id. Pr. CIT accordingly observed that the AO has not verified the issue of unsecured loans taken by the assessee during the year and has thus not deliberated on the issue of unsecured loans while completing the assessment and therefore, the assessment order passed u/s 143(3) dated 31.12.2018 is

erroneous in so far as it is prejudicial to the interest of Revenue and a show cause notice u/s 263 was issued to the assessee. Thereafter, in absence of any submission filed by the assessee in response to the show-cause, the assessment order was set aside and to be redone de-novo in the light of the observation made in the impugned order passed u/s 263 after affording reasonable to the opportunity to the assessee. Against the said order, the assessee is in appeal before us.

7. In Ground No. 1, the assessee has challenged the exercise of jurisdiction by the Id. Pr. CIT u/s 263 of the Act. In this regard, it has been submitted by the Id A/R that the assessee has already filed an application under Vivad Se Vishwas Scheme on 30.01.2021 which was accepted by the Department and Form 3 was issued on 23.02.2021 by the Id. Pr. CIT, Jaipur-2. Thereafter, Form 4 dated 13.03.2021 was filed by the assessee and finally Form 5 dated 15.04.2021 was issued by the Id. Pr. CIT, Jaipur-2. It was accordingly submitted that prior to the issue of the show cause notice u/s 263 dated 26.03.2021, Form 3 has already been issued by the Id. Pr. PCIT dated 23.02.2021 and accordingly where the assessment order has already been made subject matter of the Vivad Se Vishwas Scheme where the declaration filed by the assessee has been accepted by the Id PCIT, the revision of the said assessment order by virtue of exercise of jurisdiction u/s 263 is not in accordance with the legislative intention of the scheme and therefore, consequent order passed u/s 263 deserves to be quashed.

8. Per contra, the Id. PCIT/DR taken us through the direct taxes Vivad Se Vishwas Scheme Act of 2020 and submitted that this Act seek to provide for resolution of disputed tax and for matters connected therewith or incidental thereto and our reference was drawn to the

definition of the "appellant", "disputed income", "disputed tax", "tax arrears" as provided in section 2 of the said Act. Further, our reference was drawn to sub-section (3) of Section 5 which talks about the determination of an amount payable under the Act which shall be conclusive as to the matters stated therein and no matter covered by such orders shall be reopened in any other provisions under the Act. Further, our reference was drawn to section 8 which provides that "save as otherwise expressly provided in sub-section 3 of Section 5 or Section 6, nothing contained in this Act shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to which the declaration has been made. It was accordingly submitted by the Id PCIT that the whole scheme of the Act i.e. direct taxes Vivad Se Vishwas Scheme Act, 2020 is in relation to specific matters which are under dispute and only in respect of those matters, necessary provisions for settlement of tax dispute has been provided. It was accordingly submitted that merely because the assessee has moved an application under the said Act and that said application has been accepted by the Revenue, it doesn't preclude the Revenue from exercise of jurisdiction either u/s 263 or 147 of the Act and where such an interpretation is accepted, firstly, the same is clearly not flowing from any specific provisions of the said Act rather it has been provided that such a benefit or concession is not intended or can be construed by virtue of said Act and secondly, it will make the powers of the PCIT u/s 263 or that of the Assessing officer u/s 147 and related provisions in the Income Tax Act as defunct and non-functional as soon as any assessee moves an application under the direct taxes Vivad Se Vishwas Scheme Act, 2020. It was accordingly submitted that the grounds so taken by the assessee deserves to be dismissed.

9. In his rejoinder, the Id. A/R reiterated his earlier contentions that once the assessment order has been made subject matter of Vivad Se Vishwas Scheme, the Id. Pr.CIT cannot exercise jurisdiction u/s 263 of the Act and at most, where the law permits, the AO could have exercised jurisdiction u/s 147 of the Act and which has not happened in the present case.

10. In Ground No. 2, the assessee has challenged the passing of the impugned order u/s 263 by the Pr. PCIT without providing adequate opportunity of being heard. It was submitted by the Id A/R that the first notice u/s 263 was issued only on 26.03.2021 fixing the date of hearing for 29th of March, 2021 and thereafter, proceedings were concluded on 31.03.2021 and the order was passed on the same date. It was submitted that 27th March and 28th March, being Saturday and Sunday, the assessee effectively got just one day to response which is not sufficient by any standards to respond to the show cause notice and therefore there is denial of adequate opportunity of being heard to the assessee and the principle of natural justice has been clearly violated in the instant case and on this ground as well, the impugned order passed by the Id PCIT be set-aside.

11. Per contra, the Id. PCIT/DR has relied on the order of the Id. Pr. CIT and our reference was drawn to para 6 of his order wherein it has been stated that "in compliance to the show cause notice dated 26.03.2021, no submission has been filed by the assessee and therefore, the order has been passed on the basis of material available on record." It was submitted that it is clearly a case non-compliance on the part of the assessee rather than lack of opportunity on the part of

ld. Pr. CIT and therefore, the grounds of appeal so taken by the assessee be dismissed.

12. We have heard the rival contentions and perused the material available on record. We find that this is clearly a case of lack of adequate opportunity being provided by the ld PCIT. We find that the show-cause notice has been issued on 26.03.2021 at the fag end of the limitation period, which was expiring on 31.03.2021, wherein the assessee has been provided effectively one working day to respond by 29.03.2021, and the order was thereafter pronounced on 31.03.2021. We understand that being a limitation period, the ld PCIT could not have granted more time but the question is what stopped the ld PCIT to atleast initiate the proceedings earlier and why the proceedings were initiated at the fag end of the limitation period. One possible reason could be the ongoing covid pandemic by virtue of which all activities were at standstill and offices were closed including that of the Revenue authorities. At the same time, the Revenue authorities cannot be oblivious of the orders pronounced by the Hon'ble Supreme Court extending the limitation period and also the fact that the CBDT has also come out with directions extending the limitation period. Considering the entirety of facts and circumstances of the case, we believe that the assessee deserve a reasonable and sufficient opportunity to put forth his submissions and supporting documentation in response to the show-cause notice raised by the ld PCIT. We therefore deem it fit and appropriate that the matter be set-aside to the file of the ld PCIT to decide the matter a fresh as per law after providing reasonable opportunity to the assessee.

13. The Id PCIT is also directed to examine the contentions so raised on behalf of the assessee in terms of exercise of jurisdiction u/s 263 in context of declaration of the assessee having been accepted under the direct taxes Vivad Se Vishwas Scheme Act, 2020 prior to the issuance of the show-cause notice u/s 263 of the Act. We find that since the Id PCIT himself is the appropriate authority who has issued Form 3 dated 23.02.2021 in the instant case and the fact that the said contentions have been advanced for the first time before us, it is relevant to afford an equal opportunity to the Id PCIT to examine such contentions raised on behalf of the assessee challenging his exercise of jurisdiction u/s 263 of the Act. Therefore, the contentions so advanced by both the parties are left open to be examined by the Id PCIT as per law and have not been adjudicated upon by us.

In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 28/10/2021.

Sd/-

(विजय पाल राव)

(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 28/10/2021

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Sh. Laxmi Narayan Agarwal, Jaipur
2. प्रत्यर्थी / The Respondent- The Pr. CIT, Jaipur-2
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. 51/JP/2021)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar