

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'B' BENCH, HYDERABAD.**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND
SHRI L. P. SAHU, ACCOUNTANT MEMBER
(Through Virtual Hearing)**

**ITA No.367 & 368/Hyd/2017
(Assessment Year : 2012-13)**

- i) Shri C. M. Ramesh,
Hyderabad. PAN ACYPC 8722B
ii) Shri C. M. Rajesh,
Hyderabad. PAN ABTPC 8391G
-Appellants.

Vs.

Dy. Commissioner of Income Tax,
Circle 3(1), Hyderabad.

.....Respondent.

Appellant By : Shri P. Murali Mohana Rao. (A.R.)

Respondent By : Shri Balakrishna. (CIT-D.R.)

Date of Hearing : 10.06.2021.

Date of Pronouncement : 23.11.2021.

O R D E R

Per Shri S.S. Godara, J.M. :

These two assessee's appeals for Asst. Year 2012-13 arise from the separate orders of Principal Commissioner of Income Tax-3, Hyderabad dt.24.01.2017 & 7.2.2017 passed in case F.No.10/Pr.CIT-

3/263/16-17 and 10/Pr.CIT-3/263/16-17 in proceedings under Section 263 of Income Tax Act, 1961 ('the Act'); respectively.

Heard both the parties. Case files perused.

3. It emerges during the course of hearing that the PCIT herein has termed both the regular assessments framed in these twin assessee's cases on 26.03.2015 as erroneous one so far as causing prejudice to the interest of Revenue thereby assuming 263 revision jurisdiction for directing the Assessing Officer to frame fresh assessments for the purpose of examining the common issue of capital gains.

4. We note with the able assistance coming from both the learned representatives that the PCIT's detailed discussion has raised twin issues of **non-invocation** of 50C and interest expenditure disallowance for the purpose of computing assessee's Long Term Capital Gains (LTCG). His identical detailed discussion from paras 6 onwards holds that neither the Assessing Officer had examined or enquired the applicability of section 50C of the Act as well as the second aspect of allowability interest expenditure for computing LTCG.

5. Learned counsel strongly argued that the Assessing Officer had rightly not invoked 50C addition going by the SRO price since there were many distressing factors; mainly including location of the lands in issue for not making any addition after carrying out detailed enquiries only in scrutiny.

6. His next argument for the second issue of interest cost is that these assessee's had utilized corporate loan(s) for acquiring the capital asset in issue which in turn were satisfied by obtaining yet another loans in personal name(s) from M/s. Indiabulls Financial Services Limited after acquisition of the asset in issue. Mr. Murali Mohana Rao vehemently contended therefore that since the assessee had proved very much a live nexus between the earlier corporate loans being utilized for acquiring the capital asset and repayment thereof by similar credits coming from M/s. Indiabulls Financial Services Limited's loan, the Assessing Officer had taken a conscious decision not to disallow the said interest for the purpose of computing capital gains.

7. The Revenue has strongly supported the PCIT's revision direction herein.

8. We have heard rival contentions and find no merit from the assessee's stand. This is for the reason that we have ourselves summoned and perused the corresponding assessment files made available by the department wherein there is not even a slight indication of the Assessing Officer having carried out any enquiry; much less a detailed one at all, regarding applicability of section 50C as well as allowability of interest amount on loans obtained after acquisition of the capital asset in issue so as to come to the conclusion that the learned PCIT has wrongly invoked his 263 revision jurisdiction. Hon'ble apex court landmark decision in Malabar Industrial Co. Vs. CIT 243 ITR 83 (SC) has settled the law long back that an assessment has to be both erroneous as well as causing prejudice to the interest of revenue; simultaneously before CIT or the PCIT; as the case may be, decides to assume the impugned revision jurisdiction. Their lordships further clarified that merely because the Assessing Officer has taken one of the two possible views would not render an assessment as erroneous one causing prejudice to the interest of revenue. Hon'ble apex court lastly concluded that such a non-enquiry itself by the Assessing Officer during the course of assessment indeed attract exercise of revision jurisdiction.

We thus hold in this factual backdrop that the PCIT herein has rightly concluded the Assessing Officer not to have carried out any enquiry(ies) regarding the foregoing twin issues thereby rendering 143(2) assessment(s) dt.26.03.2015 as erroneous ones causing prejudice to the interest of revenue. His revision jurisdiction exercised in both these cases is upheld therefore.

9. It is lastly noticed that these cases were heard on 10.06.2021 and are being pronounced beyond the period of 90 days. We next note that hon'ble apex court's recent directions in Misc. Application No.665 of 2021 in SMW(c) of 2020 "IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION" has excluded the time period from 15.3.2020 to 2.10.2020 in all respects.

10. Both these assessee's appeals are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 23rd Nov., 2021.

Sd/-

(L.P. SAHU)

Accountant Member

Hyderabad, Dt. 23.11.2021.

Sd/-

(S.S. GODARA)

Judicial Member

* Reddy gp

Copy to :

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2.	DCIT, Circle 3(1), Hyderabad.
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4.	Addl. CIT, Range-3, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.