

IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH 'E' NEW DELHI

BEFORE : SHRI I.C. SUDHIR, JUDICIAL MEMBER &
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No. 2184/Del./2016
Asstt. Year : 2012-13

Sh. Jatinder Singh,
203, Kamla Market, Delhi.
(PAN: AAXPS 7392A)
(Appellant)

vs.

Income-tax Officer,
Ward 46(4), New Delhi.
(Respondent)

Appellant by : Sh. Ashwani Kumar, Advocate
Respondent by : Ms. Anupama Anand, CIT/DR
Date of hearing : 07.12.2016
Date of pronouncement : 13.01.2017

ORDER

Per L.P. Sahu, Accountant Member:

This is an appeal filed by the assessee against the order of Principal Commissioner of Income-tax dated 04.03.2016 passed u/s. 263 of the Income-tax Act, 1961 (in short "the Act") for the assessment year 2012-13 on the following grounds :

- "1. That order passed u/s 263 of the Income Tax Act, 1961 by the Ld. Principal Commissioner of Income Tax, Delhi-16 is against law and facts on the file in as much as the Ld. Principal Commissioner of Income Tax was not justified to hold that the assessment order passed by the Ld. Assessing Officer dated 02.02.2015 was erroneous in so far as prejudicial to the interest of the Revenue.*
- 2. That the Ld. Principal Commissioner of Income Tax was not justified to hold that the Ld. Assessing Officer did not apply his mind on the issue of profit earned on the sale of property at 22,*

Chowkhandi, New Delhi, whereas the same was discussed in detail during assessment proceedings.

3. *That the Ld. Principal Commissioner of Income Tax was further not justified to direct the Ld. Assessing Officer to examine the issue of non-declaration of rental income from residential premises.*
4. *That the Ld. Principal Commissioner of Income Tax was further not justified to hold that the Ld. Assessing Officer did not apply his mind on the issue of payments made to transporters without deduction of TDS as per Section 194C(6), whereas the same was discussed during assessment proceedings.”*

2. The brief facts of the case are that the assessment of assessee was completed u/s. 143(3) of the Act on 02.02.2015 at an income of Rs.24,52,449/- as against returned income of Rs.19,77,810/- after making disallowance of Rs.2,09,493/- on account of expenses incurred for non-business purpose, Rs.2,65,240/- on account of unverifiable freight charges and Rs.29,656/- on account of MCD Tax. Subsequently, the ld. CIT called for the assessment records and examined the same. On examination, the ld. CIT observed that the order passed by AO u/s. 143(3) dated 02.02.2015 is erroneous in so far as it is prejudicial to the interest of revenue, as the Assessing Officer failed to apply his mind on the following issues which emerged from the assessment records :

- (i). Investment made in the purchase of property at DLF City, Gurgaon.
- (ii). Profit on sale of property at 22 Chowkhandi, New Delhi.
- (iii). Non declaration of rental income from the residential properties.
- (iv). Non-examination of the issue relating to payments made to transporters without deduction of TDS as per section 194C(6) of the Act.

On the premise of above issues, the ld. CIT issued show cause notice to the assessee u/s. 263 of the Act dated 16.03.2015, as reproduced in the impugned order and being satisfied with the reply of assessee on issue No. (i) above, dropped the said issue for revision of the assessment order. However, on the remaining three issues, the ld. CIT revised the order of the AO holding that there is complete lack of examination and application of mind by the AO. Aggrieved, the assessee has brought the matter before the Tribunal by means of this appeal.

3. We have heard the submissions of both the parties and have gone through the entire record available before us.

4. The first issue involved in this appeal is with respect to estimation of profit earned on the sale of property at 22 Chowkhandi, New Delhi. It revealed from the record that the assessee purchased this property for a consideration of Rs.40 lacs vide sale deed dated 13.03.2008 and was sold for a consideration of Rs.84,56,000/- vide sale deed dated 18.11.2011. The ld. CIT mentioned that as per purchase deed, the purchase cost has been computed by taking the cost of land at Rs.16100/- per Sqm. and the total cost of 200 Sq meters of land works out to Rs. 32,20,000/-. The cost of construction has been taken @ 5600/- per sqm and the cost of 130 sqm works out to Rs. 7,28,000/-. The total cost of the property at Circle Rate comes to Rs. 39,48,000/- and the property

was registered at Rs. 40 lacs. Similarly as per the sale deed the cost of the land has been taken at Rs. 38,640/- per sqm and the cost of 200 sqm of land works out to Rs. 77,28,000/-. The cost of construction has been taken at Rs. 7,28,000/- at the same rate of Rs. 5600/- per sqm. The total cost at Circle Rate has been computed at Rs. 84,56,000/- and the sale of property has been registered at Rs. 84,56,000/- only. The Id. CIT further observed that on comparison of both the sale deeds, the construction cost has been taken to be the same and the increase in the property was only due to increase in the cost of land from 16100/- to 38,640/-. However, from the ledger account of this property submitted before the Assessing Officer, it reveals that the assessee has shown construction expenses of Rs.42,62,300/- during the period April 2011 to July 2001 showing profit on sale of property amounting to Rs.1,93,700/-. It was also observed that the construction expenses of Rs.42,62,300/- claimed to have been made by assessee would have also certainly increased the cost of the property at circle rate and the Id. Assessing Officer has not examined and applied his mind to this aspect while accepting the declared profit from this property of the assessee. The contention of the assessee has been that the investment in the property, expenses on construction/renovation were duly recorded in the books of accounts and the profit earned on the sale of this property of Rs.1,93,700/- forms the part of computation of taxable income returned by the assessee. All these

transactions were examined by the AO and hence, the ld. CIT is not justified to take a diverse view on the issue.

5. We, however, do not find any substance in the contention of assessee, as the assessee has failed to rebut the specific point emerged from the show cause notice that the cost of property at circle rate was shown to have increased due to increase in cost of land only and the construction expenses amounting to Rs.42,62,300/- would have also increased the cost of property at circle rate and this aspect of the issue has not been examined by the AO and there was complete non-application of mind on its part with regard to correct profit earned on the sale of this property. We, therefore, conclude that the ld. CIT has rightly directed the AO to examine the issue relating to sale cost of the property at circle rate by taking into account the construction expenses of Rs.42,62,300/- claimed by assessee and also to examine the sources of these expenses and then to compute the correct profit earned by the assessee on the sale of this property. Accordingly, this issue is decided in favour of the Revenue and against the assessee.

6. The next issue is with regard to non-declaration of rental income from the residential properties owned by the assessee. The ld. CIT observed that the Assessing Officer has neither examined nor applied his mind to the facts on record that the assessee owned three residential properties and was required to declare income from house property from at least two residential

properties by considering one property to be self occupied. The contention of the assessee in response to the notice u/s 263 of the I.T. Act, 1961 has been that one property at DLF was purchased in December 2011 and assessee did not get any benefit out of the same. One property at Vikas Puri is self occupied by the assessee and the third property which is flat at Vikas Puri is used by the employees and the drivers for night stay and for taking rest. The Id. CIT was not satisfied with this reply observing that even if the first property was purchased in December, 2011 the assessee was required to declare the rental income from December 2011 onwards. As regards the 3rd property being flat at Vikas Puri the property being used by the employees for night stay or for taking rest does not absolve the assessee for declaring his rental income. He, therefore, directed the AO to examine the issue regarding non-declaration of income from house properties and to pass the assessment order afresh after giving reasonable opportunity of being heard to the assessee. We find no rebuttal of the finding of Id. CIT that purchase of first property in December, 2011 and third property being used by employees and drivers does not absolve the assessee from declaring his rental income from these properties, as no evidence is there on record to establish that the employees/drivers were using the property free of cost. We find that the issue relating to income from house property has not at all been dealt with by the Assessing Officer in the assessment order and there being complete lack of examination and

application of mind on this issue, the Id. CIT, in our opinion, has rightly restored the issue to the AO for adjudication. Accordingly, this issue is also decided against the assessee.

7. The last issue relates to non-deduction of TDS on payment of freight made by assessee to various vehicle owners for want of furnishing their PAN. The Id. CIT found that in the profit and loss account, the assessee claimed freight expenses of Rs.20,72,15,885/-. It was also found that no TDS was deducted on the payment of freight made by assessee to vehicle owners and since the assessee did not furnish the PAN of the persons receiving the freight, the AO was required to disallow these expenses. The contention of the assessee has been that the details of PAN numbers of the vehicle owners are available with the assessee and can be produced. It was also stated that almost all the individual transactions are below Rs.30,000/- and are covered u/s. 194C(5) of the Act and the provisions of section 40(ia) are not applicable to these transactions. The Id. CIT rejected the contentions of the assessee, as the AO neither examined this issue at all nor applied his mind thereto. He also did not ask for the PAN details of the persons to whom the impugned freight was paid by the assessee. We do not find any substance in the contentions of the assessee, as the Id. Counsel for the assessee has failed to rebut the findings of the Id. CIT that the AO was required to address on this issue and examine the

same in view of the relevant provisions of the Act, which is completely lacking in the instant case. The AO even has not required to the assessee to furnish the PAN details of the recipients of freight. The contentions made by the assessee need examination and verification at the assessment stage. We, therefore, endorse the view taken by the Id. CIT and support the direction to the AO to decide the issue in accordance with law after giving reasonable opportunity of being heard to the assessee. Therefore, this issue also goes against the assessee.

8. By means of ground No. 1, the assessee has also challenged the impugned order u/s. 263 of the Act, being legally invalid. In support, he has relied on the following decisions :

- (i). CIT vs. Gabreil India Ltd., 203 ITR 108 (Bom)
- (ii). CIT vs. Arvind Jeweller, 259 ITR 502 (Guj)
- (iii). CIT vs. Sunbeam Auto Ltd., 332 ITR 167(Del.)
- (iv). CIT vs. Mc Dermott International Inc., 302 ITR 268 (Uttarakhand)
- (v). CIT vs. DLF Ltd. 350 ITR 555 (Del.)

9. It was submitted that only because the Revising authority disagrees with the conclusions reached by primary authority in the assessment order, this will not constitute that the order of the primary authority was erroneous in so far as prejudicial to the interest of Revenue as held in several decisions cited above. We do not find substance in the contention of the assessee. In the instant case, we find that there was complete lack of examination/enquiry and application of mind on the part of Assessing Officer while framing the

assessment order on the issues pointed out by the Revising Authority. Such failure on the part of the AO makes the assessment as erroneous in so far as prejudicial to the interest of Revenue. As already noted, some of the issues have even not been addressed in the assessment order. No such situation arose in the decisions relied by the assessee, hence, the same do not render in support to the assessee in the instant case. Even otherwise, incorrect assumption of facts and incorrect application of law go to satisfy the requirement of the order being erroneous. We, therefore, find that the order passed by the Id. CIT is legally valid.

10. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 13.01.2017.

Sd/-

(I.C. SUDHIR)

Judicial Member

Sd/-

(L.P. SAHU)

Accountant Member

Dated : 13.01.2017

*aks/-

Copy of order forwarded to:

(1) *The appellant*

(3) *Commissioner*

(5) *Departmental Representative*

(2) *The respondent*

(4) *CIT(A)*

(6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi*