

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 208/Bang/2021
Assessment Year : 2016-17

Shri Rajesh Nagaraja Rao Jagdale, 39/23, Sumeru, 29 th Cross, 7 th Block, Jayanagar, Bangalore – 560070. PAN: AEJPJ9235K	Vs.	The Principal Commissioner of Income-tax, (Central), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri L. Bharath, CA
Revenue by	:	Shri Sumer Singh Meena, CIT DR (OSD)

Date of Hearing	:	23-12-2021
Date of Pronouncement	:	31-01-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against order dated 30.03.2021 passed by Pr.CIT (Central), Bangalore u/s. 263 of the Act for Assessment Year 2016-17 on following grounds of appeal:

“1. That on the facts and circumstances of the case, the order passed by the PCIT is bad in law and not in accordance with the provisions of the Act to the extent they are prejudicial to the Appellant.

2. A. The PCIT erred in invoking his revisionary jurisdiction under section 263 of the Income-tax Act, 1961 ('the Act') by holding that the order of the LAO is 'erroneous and prejudicial' to the interests of the Revenue.

B. The PCIT erred in invoking the revisionary jurisdiction under section 263 without considering that the powers under Explanation 2(a) can be invoked only if it is possible to show that the enquiries or verification conducted by the

Assessing Officer was not in accordance with the enquiries or verification that would have been carried out by a prudent officer.

C. The PCIT erred in invoking the revisionary jurisdiction under section 263 without considering that no prudent officer would have made any enquiry or verification in writing given that the impugned transactions involved capital receipts that are exempt from tax, both prima facie and on any additional enquiry.

3. Without prejudice to the preceding ground, the Hon'ble PCIT erred in invoking the revisionary powers under section 263 without demonstrating as to how the order passed by the LAO is prejudicial to the interests of the Revenue. In specific,

a) The PCIT erred in not carrying out an independent verification or investigation of the Appellant's submission and without basis and application of mind stated that the submissions made are not acceptable at this stage.

b) The PCIT erred in invoking the provisions of section 41(1) and section 56 of the Act without providing any basis or definite finding to support his conclusion.

c) The PCIT erred in invoking the provisions of section 41(1) and section 56 of the Act without demonstrating as to how the said provisions were applicable in the Appellant's instant case.

4. Without prejudice the preceding grounds, the PCIT erred in invoking the provisions of section 41(1) and section 56 of the Act on the facts of the Appellant.

The Appellant craves leave to add or alter, by deletion, substitution or otherwise, any or all the above grounds of appeal, at any time before or during the hearing of the appeal.”

2. Brief facts of the case are as under:

2.1 There was a search action under section 132 of the act in case of M/s.Devraj URS educational trust for backward classes on 06/08/2015. At the premises of the trust notebooks and documents containing information relating to assess the world also found and seized. The case was the stake taken for scrutiny under section 143(2) of the Act and assessment order was passed

on 30/12/2017 under section 143 (3) read with 153D of the Act determining taxable income at Rs.6,11,36,630/-.

2.2 The Ld.Pr.CIT called for assessment records and found that unsecured loans availed from Nagaraj Rao HUF and late Nagraj Rao was written off to the extent of Rs.31,99,321/- and Rs.2,95,81,800/- respectively. It was observed by the Ld.Pr.CIT that these amounts were not credited to the account but were directly rooted to the capital account and during the assessment proceedings no enquiries were conducted with regard to the nature of the loans being a trading liability or a non-trading liability and the applicability of section 41(1) or section 56 of the Act. The Ld.Pr.CIT accordingly issued notice to assessee under section 263 of the Act on 06/03/2020, seeking to revise the assessment order dated 30/12/2017, as it was erroneous and pre-judicial to the interest of the revenue.

3. In response to said notice assessee filed its reply dated 24/03/2020. The Ld.Pr.CIT after considering the reply observed and held as under:

“9. It is further directed that the Assessing Officer will provide sufficient opportunity of being heard to the assessee during the course of the set-aside proceedings.”

Aggrieved by the order of the Ld.Pr.CIT, assessee is in appeal before us now.

4. The Ld.AR submitted that the assessment order passed under section 143(2) read with section 153 D was after examining the materials. It was a bitter that a concluded assessment under section 153C cannot be interfered with unless it pertains to an incriminating material belonging to assessing has been seized in the course of the search of any other person. The Ld.AR

submitted that, the Ld.Pr.CIT does not have the jurisdiction to invoke the visionary powers under section 263 on any new matter other than those emerging from the incriminating materials arising from the search. The Ld.AR relied on following decisions in support of its contention:

- a. *Ruling of the Supreme Court ('SC') in CIT v. Sinhgad Technical Education Society (84 taxmann.com 290)*
- b. *Ruling of the Delhi High Court in CIT v. RRJ Securities Ltd. (62 taxmann.com 391)*
- c. *Ruling of the Karnataka HC in CIT v. IBC Knowledge Park (69 taxmann.com 108)*
- d. *Ruling of the Calcutta HC in CIT v. Veerprabhu Marketing Ltd. (73 taxmann.com 149)*
- e. *Ruling of the Delhi HC in Pr. CIT v. Allied Perfumers P. Ltd. (124 taxmann.com 358)*
- f. *Delhi ITAT in Green Range Farms (P.) Ltd. v. DCIT (96 taxmann.com 249)*

5. The Ld.AR also submitted under:

“17. Section 263 of the Act requires that the PCIT to make enquiries as necessary before passing an order. On perusal of the order under section 263 of the Act, it may be noted that the PCIT has only stated that the LAO has failed to make enquiries and verification as per the provisions of section 41(1) and 56 of the Act before passing the assessment order. Even in the show cause notice under section 263 of the Act, the PCIT has only stated that the cessation of liability has remained unverified and no enquiry has been conducted or caused to be conducted thereupon.

18. Therefore, the PCIT has not carried out any enquiry on his own and provided his finding as to how and in what manner the order of the LAO was erroneous and prejudicial to the interest of the Revenue to trigger section 263 of the Act. The PCIT has also partly set-aside the matter to the file of the Assessing officer for conducting

indepth enquiry and investigation & for passing a fresh as regards matters identified by him, without conducting an independent and detailed enquiry. This approach is not in accordance with the provisions of the law. Some important judicial precedents on such an approach are as under:

a. The SC in Shree Manjunatheswara Packing & Products Camphor Works (231 ITR 53) noted that nothing bars/prohibits the CIT from collecting and relying upon new/additional material/evidence to show and state that the order of the Assessing Officer is erroneous.

b. The Delhi HC in the case of Delhi Airport Metro Express (P.) Ltd. [2018] 398 ITR 8 has categorically held that for the purpose of exercising jurisdiction u/s 263 of the Act and reaching a conclusion that the order is erroneous and prejudicial to the interest of revenue, the Id PCIT has to undertake some minimal inquiry and in fact where the Id PCIT is of the view that AO had not undertaken any inquiry, it becomes incumbent on the Ld PCIT to conduct such enquiry.

c. Further in the case of Modicare Ltd. [IT Appeal No. 759 of 2017], the Hon'ble Delhi High Court has held that the exercise of jurisdiction under section 263 of the Act cannot be outsourced by the PCIT to the AO.

d. In the case of Nagesh Knitwears (P.) Ltd. [2012] 345 ITR 135 (Delhi) the Hon'ble Delhi High Court has elucidated and explained the scope of provision of Section 263 of the Act. In cases of wrong opinion or finding on merits, the Commissioner of Income-tax has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under section 263 is passed. In such cases, the order of the Assessing Officer will be erroneous because the order is not sustainable in law and the said finding must be recorded. The Commissioner of Income-tax cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous.

Reliance may also placed on the rulings of DG Housing Projects Ltd. [2013] 343 ITR 329 and Vinod Bhandari [2020] 116 taxmann.com 264, Ashok Arora [2017] 88 taxmann.com 678.

Considering the above submissions, the Appellant submits that the order passed by the PCIT under section 263 of the

Act setting aside the assessment to the file of the LAO needs to be quashed.”

6. On the contrary, the Ld.Sr.AR submitted that the assessment had abated at the time of search, and therefore the assessing officer was open to make addition beyond the seized materials. It is submitted that the issue raised by the Ld.Pr.CIT in the impugned order has not been verified by the Ld.AO, and to this extent, the assessment order passed by the Ld.AO is prejudicial and erroneous to the interest of the revenue, since no enquiry was conducted in respect of the loans taken by assessee that is written off during the year under consideration. He thus submitted that, the decisions relied on by the Ld.AR or distinguishable on facts.

7. The Ld.Sr.DR Submitted that the decision of *Hon'ble Supreme Court* in the case of *CIT vs Sinhgad Technical Education Society (supra)* submitted that the assessment years considered by *Hon'ble Supreme Court* were unabated and therefore *Hon'ble Supreme Court* held that unless there are seized materials for assessment years 153 C proceedings cannot be initiated against the other person. Similarly the other decisions relied by the Ld.AR passed by *Hon'ble Karnataka High Court, Hon'ble Calcutta High Court Hon'ble Delhi High Court* are distinguishable on facts.

The Ld.Sr.DR submitted that merely because in order under section 143 (3) read with 153D has been passed with the approval of additional CIT does not preclude the Pr.CIT from exercising its revision repower is under section 263 of the act if the thin conditions stand satisfied. Placing reliance on facts of the present case before us, the Ld.Sr.DR submitted that lack of

enquiry on the issues pertaining to the loans written off by assessee leads to the conclusion that assessment order passed is erroneous insofar as prejudicial to the interests of the revenue to that extent. Either submitted the orders passed by the Ld.Pr.CIT. We have perused submissions advanced by both sides in light of records placed before us.

8. We note that, admittedly, the Ld.AO passed the assessment order considering the seized material alone. It is also apparent from the assessment order that assessee filed its return of income for the year under consideration on 25/07/2016, after the search, and the entire assessment was open before the Ld.AO, since the limitation for issue of statutory notice under section 143 (2) had not expired.

We agree with the submissions of the Ld.Sr.DR that the decisions relied by the Ld.AR in para 7 of his written submission are distinguishable on facts.

9. Now coming to various decisions relied in respect of no independent enquiry conducted by the Ld.Pr.CIT, we note that the Ld.Pr.CIT after verifying and examining the records, came to the conclusion that the amount written off by assessee needs to be verified in detail. The statements of accounts revealed the loan being written off by the assessee for which the Ld.AO did not carried out any enquiry during the assessment proceedings. Explanation 2(a) to section 263 states that assessment order will be erroneous and prejudicial to the interest of revenue if such order was passed without making any inquiry or verification, which should have been made.

The powers of the Pr.CIT under section 263 is limited to only to verify whether the assessment order passed is erroneous or prejudicial to the interest of revenue. Once by way of the analysis it is concluded that the assessment order passed is erroneous and prejudicial to the interest of the revenue, the assessment order deserves to be revised to that extent. The statute directs the Ld.Pr.CIT, remand the issue to the Ld.AO, who shall verify from the records or call for details from the assessee.

In the present facts of the case, the Ld.AO during the assessment proceedings did not discuss/verify/examine the write off of loan by the assessee. We place reliance on the decision of *Hon'ble Cochin Bench of Tribunal* in case of *M/s. Crossings International Distribution vs. ITO* in *ITA No. 122/Coch/2019* for A.Y. 2014-15 by order dated 24.10.2019 in support. In our opinion, the issues raised by the Ld.Pr.CIT was not subject matter of the assessment order passed.

On merits, we refrain from interfering as the Ld.AO has to analyse the issues in accordance with law by granting proper opportunity of being heard.

We therefore do not find any infirmity in the order passed by the Ld.Pr.CIT and the same is upheld.

Accordingly, the grounds raised by assessee stands dismissed.

In the result appeal filed by the assessee stands dismissed.

Order pronounced in the open court on 31st January, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 31st January, 2022.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore