

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad**

**Before Shri Laxmi Prasad Sahu, Accountant Member
AND
Shri K. Narasimha Chary, Judicial Member**

**ITA No 446/Hyd/2020
Assessment Year: 2015-16**

Sri Sepuri Krishna Mohan, Kurnool PAN: ANGPS2165M (Appellant)	Vs.	Asstt.C.I.T. Circle-1, Kurnool (Respondent)
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Assessee by:	Sri K.A. Sai Prasad
Revenue by:	Sri Y.V.S.T. Sai, CIT(DR)

Date of hearing:	10/03/2022
Date of pronouncement:	11/03/2022

ORDER

Per K. Narsimha Chary, J.M

Aggrieved by the order dated 13.3.2020 passed by the Pr.CIT, Tirupati ("learned PCIT) in the case of Shri Sepuri Krishna Mohan, ("the assessee") for the A.Y 2015-16, u/s 263 of the Income Tax Act, 1961 ("the Act"), the assessee preferred this appeal.

2. Brief facts of the case are that the assessee is deriving income from medical profession and running a hospital in the name of Sepuri Diagnostic Centre, Kurnool. There was a survey u/s 133A of the Act on 19.2.2015 in the business premises of the

assessee and during the course, the assessee offered an income of Rs.1.5 crores for the A.Y 2015-16 on 13.8.2015 admitting an income of Rs.1,60,95,000/- by way of return of income filed for the A.Y 2015-16. Learned Assessing Officer having considered the impugned material, books impounded in relation to survey and all other relevant material made available by the assessee accepted the return of income and completed the assessment by order dated 12.09.2017 passed u/s 143(3) of the Act.

3. Learned PCIT, however, on examination of the assessment record found that the assessment order was erroneous and prejudicial to the interest of the Revenue inasmuch as the Assessing Officer failed to consider the valuation report of the DVO and also not dealing with the cash of Rs.12,33,500/- found in the premises of the assessee at the time of survey. Learned PCIT noted in the notice issued u/s 263 of the Act that on 23.10.2017, the evaluation of the building in which the assessee invested the amount was referred to the valuation cell, and by way of report dated 17.4.2018, the construction cost of the building was found at Rs.83,20,000/- as against the value admitted by the assessee at Rs.40,06,850/-. For these reasons, the learned PCIT concluded that the assessment order was erroneous insofar as it is prejudicial to the interest of the Revenue and therefore, while setting it aside directed the Assessing Officer to conduct assessment denovo.

4. Aggrieved by such an action of the learned PCIT, the assessee is before us in this appeal before us stating that learned PCIT referred to the DVO's report which was called for subsequent to the assessment and therefore, such report of the DVO cannot be a basis to reach a conclusion that the assessment order is erroneous. Nextly, it is contended that during the survey, a sworn statement of the assessee was recorded and the assessee clearly stated that out of the cash of Rs.12,33,500/- found during the survey, a sum of Rs.4,00,000/- belong to his mother, a sum of Rs.7,00,000/- belong to his brother and it is only a sum of Rs.1,33,500/- was his professional receipt; and that since the accounts of the assessee are not properly maintained, to make good the deficiencies, the assessee surrendered a sum of Rs.1.5 crores in his hands and such surrender covers those amounts also.

5. learned DR produced a copy of the letter dated 8.8.2017 through which the learned Assessing Officer referred the valuation of the building to the District Valuation Officer to demonstrate that the reference to the DVO was not on 23.10.2017 but it was on 8.8.2017 which is much earlier to the passing of the assessment order dated 12.09.2017. He further submitted that the surrender of Rs.1.5 crores in the hands of the assessee does not specifically cover Rs.12.00 lakhs of cash.

6. We have gone through the record in the light of the submissions made on either side. We have gone through the letter dated 8.8.2017 produced by the learned DR and also the copy of

the valuation report dated 10.04.2018. There is no evidence to show that the letter dated 8.8.2017 was the basis for the DVO to proceed with the valuation and to submit the report. As a matter of fact, the report dated 10.04.2018 submitted by the DVO refers only to the letter dated 23.10.2017. It could be seen that both these letters bear the same file number but what is pronouncing is that the basis for the DVO to proceed with the valuation proceedings is the letter dated 23.10.2017.

7. If we take the letter dated 8.8.2017 as the basis for the DVO to proceed with the valuation report dated 10.04.2018 is clearly beyond six months as stipulated by section 142A(6) of the Act, which states that the Valuation officer shall send the report to the Assessing Officer within a period of six months from the end of the month in which reference was made. So, the letter dated 8.8.2017 clearly bars the DVO report by limitation and such a report cannot be considered, as the basis for the learned PCIT to say that the assessment order is erroneous.

8. If we go by the letter dated 23.10.2017 as referred by the DVO in his report, clearly this letter is after the assessment dated 12.09.2017 and the learned PCIT cannot say that the assessment order is bad for not considering the DVO report which was not even conceived by the date of passing of the assessment order. Viewing from any angle, invoking the jurisdiction by the learned PCIT u/s 263 of the Act basing reference of the valuation of the building to the DVO does not seem to be proper.

9. Now coming to the cash of Rs.12,33,500/- it could be seen from the sworn statement of the assessee recorded during the survey proceedings that the assessee explained at that time that out of this Rs.12,33,500/-, a sum of Rs.4.00 lakhs belongs to his mother and Rs.7.00 lakhs belongs to his brother and it is only Rs.1,33,500/- was his professional receipt. Further, the assessee made surrender of Rs.1.5 crores stating that to make good deficiencies in their account, such an amount was surrendered and this Rs.12.00 lakh is also covered by such an amount. Nothing contrary is brought on record. Merely because the Assessing Officer did not write so many words in the assessment order, it cannot be inferred that the learned Assessing Officer did not consider this aspect at all, because the orders speaks that the learned Assessing Officer considered the impounded material, books impounded in relation to the survey and all other relevant documents made available by the assessee. In these circumstances, we are of the considered opinion that the exercise of jurisdiction u/s 263 of the Act by the learned PCIT is not based on any sound material and the same cannot be sustained. Consequently, we quash the same.

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

Order pronounced in the Open Court on 11th March,2022.

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad, dated 11th March, 2022.
Vinodan/sps

Copy to:

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2	ACIT, Circle-1, Aayakar Bhavan, N.RPET, Kurnool
3	Jt.CIT Kurnool
4	Pr. CIT - , Tirupati
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order