



आयकर अपीलीय न्यायाधिकरण, रायपुर न्यायपीठ, रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

(Through Virtual Court)

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI JAMLAPPA D. BATTULL, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 60/RPR/2021
निर्धारण वर्ष / Assessment Year : 2016-2017

Akhilesh Jain
113, Rishabh Chambers 113,
Rishabh Chambers, MG Road,
Jawahar Nagar Chhattisgarh
PAN : AENPJ 5122 M

..... अपीलार्थी / Appellant

बनाम / V/s.

Pr. Commissioner of Income Tax
Raipur. (C.G.)

..... प्रत्यर्थी / Respondent

Appearances

Assessee by : Shri S. R. Rao
Revenue by : Shri P. K. Mishra

सुनवाई की तारीख / Date of conclusive Hearing : 10/02/2022
घोषणा की तारीख / Date of Pronouncement : 01/04/2022

आदेश / ORDER

PER JAMLAPPA D. BATTULL, AM:

Against the revisionary order of Principal of Commissioner of Income Tax, Raipur-1 [for short "PCIT"] passed u/s 263 of the Income-tax Act, 1961 [for short "the Act"] vide order dt 28/03/2021 for the assessment year [for short "AY"] 2016-2017, the appellant assessee filed the present appeal before Income Tax Appellate Tribunal [for short "the Tribunal"] u/s 253 of the Act.



2. This appeal of the appellant challenged the revisionary jurisdiction directing the AO for fresh adjudication after conducting necessary enquiries.

3. The appellant raised a solitary legal ground in the present appeals, however before proceeding to adjudication, it is essential to reproduce effective **ground/grounds** challenged by the appellant assessee, as under;

“1. In the facts and circumstances of the case and in law, the Id. Principal Commissioner of Income-tax has erred in setting aside the assessment order passed on 10/12/2018 u/s 143(3) of the Income-tax Act, 1961”

“2. In the facts and circumstances of the case and in law, the Id. Commissioner of Income-tax (Appeals) has erred in not advertent upon the written submissions and evidences enclosed therewith filed during proceedings u/s 263 of the Act and in cancelling the assessment solely on the basis of suspicion without any cogent material”

“3. In the facts and circumstances of the case, the impugned order is arbitrary and bad in law”

“4. The appellant craves leave to add, alter or omit all or any grounds of appeal in the interest of justice”

(Emphasis Supplied)

4. Before getting the ball rolling, we shall make a mention that, the instant appeal was filed after the expiry of statutory period with a delay of 74 days (approx.), however in the light of direction of Hon'ble Apex Court vide MA 21 & 29 of 2022, MA 665 of 2021 and Suo-motu WP 3 of 2020, the said delay falls within the permitted relaxation period of limitation i.e. between 15/03/2020 to 28/02/2022, consequently the appeal is allowed and proceeded.



5. The facts as accentuated from the records of the case pithily are;

5.1 The appellant assessee is resident individual and a proprietor of M/s Karuna Steels, for the AY 2016-2017, filed his income tax return [for the “ITR’ROI”] on 13/02/2017 declaring total income at ₹5,11,130/- and agricultural income of ₹50,000/- accompanying audited financial statement. The return of the appellant was picked for limited scrutiny under CASS to **verify the correctness of substantial closing cash in hand** and finally the assessment was completed u/s 143(3) accepting the declared income in toto.

5.2 Ld PCIT invoked the revisionary powers vested in him by virtue of section 263(1) and betokening the assessment order as erroneous in the absence of enquires as regards to **cash position as at the closure of financial year** and thus directed the Ld AO to redo the assessment after conducting proper enquiry.

5.3 Pending such direction before the Ld. AO, the appellant assessee opposed the revisionary action of Ld PCIT before this Tribunal for justice on a solitary legal ground alleging that, order of the Ld AO is **neither erroneous nor prejudicial** to the interest of the revenue.

6. After hearing to the rival contentions of both the parties; perused material placed on records and duly considered the facts of the case in the light of settled legal position and the case laws relied upon by the appellant assessee as well the respondent revenue.

7. It is evidently discernible from the records are that;

7.1 The primary issue in the present controversy is, as to whether or not the order passed by the assessing officer u/s 143(3) can be said to be **erroneous and prejudicial to the interest** of the revenue within the preview of section 263 of the Act.



7.2 It is necessary to make a note that, during the course of limited scrutiny assessment proceedings, a notice u/s 143(2) was issued and served and subsequently explicit queries on closing cash position ₹51,97,449/- of were raised and through the notice dt 09/10/2018 & 23/11/2018 u/s 142(1) of the Act evidential documents vis-à-vis explanations were called. In reply thereof the assessee made extensive online submission which were duly considered and verified by the Ld AO and after satisfying himself about the cash position, the assessment was completed accepting declared income without making any addition.

7.3 Counsel of the assessee [for short “Ld AR”] advanced arguments supporting the grounds of appeal and assailed the revisional jurisdiction and adverting the copy of notice issued u/s 142(1) drawn our attention to the contents of Annexure attached therewith, the reproduction of which makes it necessary for adjudication of matter;

- a. To file computation of income
- b. To explain the nature of business
- c. To file personal balance sheet and capital account
- d. To give bifurcations with **evidence of the assets and liabilities** shown in the balance-sheet and
- e. **To furnish justification for high value of cash in hand of shown during the year.**

7.4 Ld AR methodically taken us through paper book filed before the bench, to showcase the submission made consisting of audited financial statement, copy of cash book for the year under consideration, bank statements, ledger account of both the debtors from the considerable cash claimed to have received, copy of capital account and written submission substantiating with reasoning the cash position as at the closure of the financial year.

7.5 Appreciating the submission of the assessee ostensibly, the Ld on being satisfied with assessee's claim of closing cash balances, the assessment u/s 143(3) was framed accepting the returned income without alternation or modification.

7.6 Whereas, Ld PCIT, after perusal of case records noted that, the **very reasons for selection of case under limited scrutiny was to verify the correctness of closing cash in hand** as shown in return of income filed by the assessee. However going through the comparative cash position for three years, Ld PCIT noted that, during the year under consideration, at the flag end of the year the assessee has accounted substantial cash receipts from two of his debtors as under;

Sr	M/s Maa Durga Iron Store		M/s Jay Steels	
	Date	Amount	Date	Amount
1	27-03-2016	4,50,000	27-03-2016	3,50,000
2	28-03-2016	4,50,000	28-03-2016	3,50,000
3	29-03-2016	3,50,000	29-03-2016	3,50,000
4	30-03-2016	4,50,000	30-03-2016	0
5	31-03-2016	6,93,570	31-03-2016	3,27,095

7.7 The Ld PCIT did not appreciate the aforesaid receipts as genuine citing various reasons as born out of the revisionary order viz; receipt in the last week of the financial year, exclusively from two parties, multiple & consecutive daily receipts, abrupt receipts from long outstanding and absence of information u/s 133(6).

7.8 In response to show cause notice [for short "SCN"] dt 26/02/2021 issued u/s 263 of the Act, the assessee relying on relevant case law/s, reiterated his written submission vide letter dt 23/03/2021 as placed in the paper book at page no 5 to 10. However not convinced with the assessee's submission, the assessment order passed u/s 143(3) of the Act, au contraire held as erroneous and prejudicial to the interest of



the revenue by the Ld PCIT and finally set aside the order with a direction to redo the assessment after giving the opportunity to the assessee of hearing.

8. Aggrieved assessee is under appeal before us. During this appellate hearing, the Ld AR to buttress his written submission, relied upon catena of judicial pronouncement in support of solitary legal ground raised in this appeals, per contra the Ld departmental representative [for short “DR”] supported the 263 revisionary order and prayed for confirming the order under dispute.

9. At this juncture, without going into the merits of the case, we first deal with the solitary legal ground raised by the appellant company and to hit the ball on the head, it will be apt to reproduce the provision of section 263(1) in verbatim as it stood and applicable to the AY under consideration;

9.1 “263. Revision of orders prejudicial to revenue –

(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous insofar as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.”

(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

(Emphasis Supplied)



9.2 A plain reading of this provision makes it clear that, the precondition to exercise revisionary jurisdiction by the PCIT/CIT suo moto under it, is that the order of AO is **erroneous insofar as it is prejudicial to the interests of the revenue is concern**. Consequently, the provision mandates the satisfaction of existence of **twofold conditions** before invocation and these explicitly are; (i) the order of the assessing officer sought to be revised is **erroneous**; and (ii) it is **prejudicial** to the interests of the revenue. If any one of two is absent or unsatisfied, that is where the order of the assessing officer is erroneous but is not prejudicial to the revenue or where order is not erroneous but is prejudicial to the revenue, then the recourse to Section 263(1) of the Act fails.

9.3 Albeit the foresaid twin satisfaction drawn from the assessment records may trigger the revisionary jurisdiction, yet such shall not automatically empower the revisionary tax authorities to conclude the revision proceedings without obeying additional **dual riders** such as; (i) making or causing to be made such **inquiry** as necessary **and** (ii) according an opportunity of being heard to the assessee following the principle of **natural justice**.

9.4 In the light of aforesaid provisions of law, it is of paramount importance to note that, an **incorrect assumption of facts** or an **incorrect application of law** or passing an order **without application of mind** or without applying the **principle of natural justice**, shall discretely be sufficient to hold the order being erroneous. Albeit the term prejudicial to the interests of the revenue is not at all defined in the Act, but is needs to be understood in its ordinary meaning and it is of wide import and is not confined to mere loss to an ex-chequer.



9.5 In the light of ration laid down by Hon'ble Supreme Court of India on the subject matter, we have the audacity to summarise the inferential but harmonious analysis of revisionary provision laid in section 263 of the Act, into a five steps "**Queen Principle**", falling the case into shall **embark** the tax authorities from assuming revisionary jurisdiction u/s 263, and these steps are;

- a. There must be an explicit **query** from the adjudicating tax authority as regards to any claim made including information supplied in the return of income filed or to be filed, and
- b. There must be direct, clear and an **unreserved submission** from the assessee in reply to aforesaid query, and
- c. The submission must be followed by detailed **inquiry** (and not enquiry) by the tax authorities into assessee's eligibility of claim, basis of claim and compliance of pre as well post conditions as may be attached to the claim under scrutiny, and
- d. There should be **even-handed application of mind** by the adjudicating authority in reaching out the allowability or dis-allowability of claim under consideration,
- e. And finally, the adjudication must ensure the correct application of law as regards to aforesaid upholding the principle of **natural justice**.

10. In the instant appeal, considering the facts of the case extenso, we find that, pursuant to **explicit queries raised** by the Ld AO, the **unreserved submissions** were made by the appellant and a **consequential due inquiry** into the substantial closing cash balance were carried out without finding any cavilling evidence with respect thereto and flag end receipt from aforementioned debtors. In the absence of adverse finding on the subject of limited scrutiny, the Ld AO completed the assessment accepting the returned income without any addition.

11. However the Ld PCIT doubting the action of lower tax authority **merely redid the exercise and formed adverse opinion on the same facts & circumstances**, without any refuting material on record to demonstrate fulfilment of twin conditions.

12. The Hon'ble Bombay High Court while adjudicating the similar issue in the case of **CIT Vs Gabriel India Ltd** reported at **203 ITR 108**, referring to the ration laid down by Hon'ble Justice Raghuvver in "**Sirpur Paper Mills Ltd Vs ITO**", tumbledown the revisionary action in para 10 thereof as;

10. As observed in Sirpur Paper Mills Ltd. v. ITO by Raghuvver J. (as his Lordship then was), the Department cannot be permitted to begin fresh litigation because of new views they entertain on facts or new versions which they present as to what should be the inference or proper inference either of the facts disclosed or the weight of the circumstances. If this is permitted, litigation would have no end, "except when legal ingenuity is exhausted". To do so, is ". . . to divide one argument into two and to multiply the litigation".

(Emphasis supplied)

13. We find that, the Ld AO in this case had made inquiries in regard to the source of cash receipts and reasons of substantial closing cash balance held by the assessee and after considering the written submission duly supported by bank statements, audit reports, ledger accounts of debtors and explanation offered, the same was accepted by the Ld AO on being satisfied with the submission vis-à-vis explanation of the assessee. Such decision of the assessing Officer cannot be held to be "erroneous" simply because in his order he did not make an elaborate discussion in that regard. Moreover, in the instant case, the Ld PCIT himself, even after initiating proceedings for revision and hearing the assessee, sub silentio on cash position as erroneous but suspected the occurrences of cash receipts merely on surmise and conjecture and without any refuting material, which is in our opinion is not permissible. Further



inquiry and/or fresh determination can be directed by the Ld PCIT only after coming to the conclusion that the earlier finding of the Ld AO was erroneous and prejudicial to the interests of the Revenue on the basis of evidential material and without doing so, he does not get the power to set aside the assessment, hence in our considered opinion, the conclusion drawn by the Ld PCIT is untenable in law. We de integro and applying the dictum form **CIT Vs Gabriel India Ltd (Supra)** are of the strong view that, the action of Ld PCIT could not be sustainable in eyes of law, ergo we find no infirmity with the 143(3) order of assessment and consequently quash the revisionary order, **thus the solitary legal ground of the appellant is allowed.**

14. **Resultantly, the appeal of the appellant assessee is allowed, with no order as to cost.**

Order pronounced on this Friday 01st day of April, 2022.

Sd/-
RAVISH SOOD
JUDICIAL MEMBER

Sd/-
JAMLAPPA D. BATTULL
ACCOUNTANT MEMBER

रायपुर / RAIPUR ; दिनांक / Dated : 01st April, 2022

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals), Raipur (C.G)
4. The Pr. CIT, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय न्यायाधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

निजीसचिव / Private Secretary
आयकर अपीलीय न्यायाधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur