



आयकर अपीलिय 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. : 56/RPR/2021

कर निर्धारण वर्ष / Assessment Year : 2015-2016

Jitendra Gupta

Prop. : M/s Maa Vaishnav Goods Carrier,

Salka, Aghina, Surajpur, (C.G.)

PAN : ARBPG 1102 H

..... अपीलार्थी / Appellant

बनाम / V/s

Pr. Commissioner of Income-Tax,

Raipur-1 (C.G.)

..... प्रत्यर्थी / Respondent

द्वारा / 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 : 21/04/2022

आदेश / ORDER

PER JAMLAPPA D BATTULL, AM;

The present appeal of the assessee assailed against the revisionary order of Principal Commissioner of Income Tax-Raipur-1 [for short "PCIT"] passed u/s 263 of the Income Tax Act, [for short "the Act"] vide order dt 09/03/2021 for the assessment year [for short "AY"] 2015-2016, which in turn emanated out of the assessment order dt 28/11/2018 passed by the Assessing Officer [for short "AO"] u/s 143(3) r.w.s. 147 of the Act.

2. The primary grievance twirl round the validity of assumption of revisionary jurisdiction alleging on twofold grounds namely; non satisfaction of necessary twin conditions and non-applicability of provisions in case of presumptive taxation.

3. Before advancing the matter on facts for adjudication, it is essential to reproduce grounds assailed by the appellant assessee as;

“1. In the facts and circumstances of the case and in law, the ld. Principal Commissioner of Income-tax has erred in setting aside the assessment order passed on 28-11-2018 u/s 143(3) r.w.s 147 of the Income-tax Act, 1961.

2. The ld. PCIT has erred in overlooking the return submissions filed online on 09/03/2021 and in concluding that appellant did not make compliance to the Show Cause Notice issued u/s 263 Income-tax Act, 1961.

3. In the facts and circumstances of the case and in overlooking mandatory provisions of sub-section(5) of section 44AE of the Income-tax Act, 1961 and in no following the settled legal position.

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

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

(Emphasis supplied)

4. Now its turn to state the facts of the case succinctly as;

4.1 The assessee is an individual engaged in the business of playing trucks (goods transport) in the name of style of M/s Maa Vaishnav Goods Carrier. In the absence of return of income [for short “ROI/ITR”] file by the assessee u/s 139 of the Act, on the basis of deposit exceeding ceiling the



case of the assessee was re-opened for assessment u/s 148 and by an order dt 28/11/2018 an assessment u/s 143(3) r.w.s. 147 of the Act, completed assessing total income at ₹4,12,280/-.

4.2 Subsequently, Ld. PCIT after perusal of case records, noted that the reasons for re-opening of the case u/s 148 was with reference to abnormal credit and deposits in the bank account in the absence of return of income, however the assessment found culminated without reference to aggregate deposit of ₹1,78,62,672/-, consequently invoking the provisions of section 263(1) of the Act, prefiguring the absence of proper inquiries and verification held the order as erroneous and prejudicial to the interest of revenue and set-aside the same with a direction to make adequate inquiries for framing fresh assessment after affording reasonable opportunities to the assessee.

4.3 Pending such direction before the Ld. AO, the appellant assessee opposed the revisionary action of Ld. PCIT before this Tribunal for even-handedness on the grounds assailed at foregoing para 3.

5. After hearing to the rival contention of both the parties to the appeal; perused material placed on record and duly considered the facts of the case in the light of settled legal position and the case law relied upon by the appellant assessee as well the respondent revenue.

6. It is evidently discernible from the records that;



6.1 There are two issue in the present controversy, one as to whether the order passed by the Ld. AO u/s 143(3) r.w.s. 147 can be said to be erroneous and prejudicial to the interest of the revenue within the preview of section 263 of the Act and second whether the assumption of revisionary jurisdiction is permissible where the order relates to presumptive taxation.

6.2 Nota bene, the appellant assessee during the year under consideration was engaged in the transport business with five number of truck and was in receipt of business income, however failed to file his return of income for the AY 2015-2016. On the receipt of information AIMS (ITBA system) and after a necessary approval dt 05/02/2018 from Ld. JCIT-Korba, by issue of notice dt 20/02/2018 case of the assessee re-opened u/s 148 of the Act. In the absence of any reply, a show cause notice [for short "SCN"] dt 16/10/2017, followed by further notice u/s 142(1) dt 28/09/2017 with questionnaire was issued to the assessee. The assessee failed to make any replies to aforesaid notices, in the circumstances, the Ld. AO sought written submission and documents by issue of further notice dt 02/11/2018, in reply thereto the appellant filed his return of income u/s 148 dt 27/11/2018 declaring total income of ₹4,12,280/- under presumptive taxation of section 44AE of the Act. A statutory notice u/s 143(2) dt 28/11/2018 issued to scrutinise the said return and in response thereto the appellant assessee though its representative filed written submission including copy of return, statement of income, bank account details, balance sheet and form no 26AS etc. The Ld. AO inquired into the bank deposits vis-à-vis credits to the tune

of ₹21,68,707/- and completed the assessment accepting returned income without variation by an order u/s 143(2) r.w.s. 147 of the Act.

6.3 Within a period of two years from the end of assessment year in which the assessment was framed, the assessment records were perused and prefiguring the total bank credits vis-à-vis deposit of ₹1,78,62,672/-, for the year under consideration, the Ld. PCIT by issue of SCN dt 25/02/2021 invoked the revisionary jurisdiction u/s 263(1) of the Act, proposed to set-aside and revise the order of assessment of the appellant alleging non-application of mind on the part of the Ld. AO to correctly tax the income in the absence of inquire into source of and verification of aforesaid credits and deposit in the bank accounts. In response to SCN, the appellant made written submission before the Ld. PCIT prima-facie contended that, the order passed by the Ld. AO in his case is neither erroneous nor prejudicial to the interest of the revenue and in support of his contention relied upon the plethora judicial precedents stating his engagement into a single business activity which is subject matter of presumptive taxation u/s 44AE of the Act. However the appellant submission flogged a dead horse and did not convinced the Ld. PCIT, resultantly, the assessment order was termed as erroneous and prejudicial to the interest of revenue in terms of explanation 2 to section 263 of the Act, and by an order set-aside the assessment order passed u/s 143(3) r.w.s. 147 of the Act with a direction to make adequate inquiries with regard to genuineness of the business, sources of cash deposit and all credit entries in the light of section 68/69A of the Act after according reasonable opportunity of being heard to the

assessee. Aggrieved by such revisionary order the appellant assessee further in appeal before us with grounds of appeal set at foregoing para 3.

7. During the course of the hearing, the learned counsel for the assessee [for short "AR"] reiterated his contention as put forth before lower authorities and advertng to the un-dated, unsigned and un-acknowledged submission (claimed to have made before Ld. PCIT) contended that, the Ld. PCIT passed the 263 order without considering the submission and placing reliance on the decision of co-ordinate bench in the case of "Smt Bhavan B Kothari Vs ITO" [3740/Mum/2019] and the decision of Hon'ble Jurisdictional High Court in the case of "CIT Vs Harish Chandra Singhania" [TC No 28/2006 dt 15/06/2008] rest his case. Au contraire, the learned representative of revenue [for short "DR"], supported the order of Ld. PCIT indicating the differential quantum of credit vis-à-vis deposit inquired into and failure on the part of Ld. AO in conducting the necessary inquiries and application of mind.

8. Upon careful consideration of factual matrix as enumerated in the proceeding paragraphs, the adjudication calls to examine the two issues, as to whether the order of assessment passed u/s 143(3) r.w.s. 147 of the Act can be termed as erroneous and prejudicial to the interest of revenue and secondly whether provision of section 44AE(5) extinct the revisionary power envisaged u/s 263 of the Act.

8.1 We would first address the ground number 3 of the appeal memo and it is apt to quote the relevant portion of the applicable provision of law to reach to adjudication.

8.2 “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.”

[Explanation 1]

[Explanation 2] —For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.]

(2).

(3). ”

(Emphasis supplied)

8.3 It is trite law that, the section 263 of the Act, empowers the revisionary authority to revise any order passed under the provisions of Act, and so long as the order sought to be revised is valid & legal in the eyes of law, it shall be well within the realm of the revisionary authority to revise it, subject to fulfilment of twofold condition laid therein. Per contra, where an order passed under the provision of the Act, is unsustainable in the eyes of law, then the said invalid or illegal order cannot be subject matter of revision u/s 263 of the Act in terms of ration laid down by the Hon'ble Jurisdictional High Court of Bombay in "CIT Vs Jet Airways India Ltd" reported at 331 ITR 236 (Bom). Thus, the contention of the Ld AR that, since the assessee is claiming presumptive taxation u/s 44AE of the Act, whereby all income or receipt are protected by virtue of provision of section 5 of the section 44AE of the Act and hence cannot be subjected to revision u/s 263, is blatantly perverse under the settled law. Per se, the nature, amount and type of claim in the return vis-à-vis order passed does not decide the revisionary jurisdiction, but the validity of order does, consequently in the present case, the orders of assessment were passed u/s 143(3) r.w.s. irrespective of claims made in the return filed and allowed thereby are undisputedly valid and legal orders and thus are always subject matter of revision u/s 263 subject to satisfaction of necessary conditions laid therein, consequently this answers the question against the assessee and in favour of revenue, **thus the ground number 3 stands dismissed.**

8.4 Other grounds of appeal in sum and substance challenges the revisionary jurisdiction on non-satisfaction of twin condition laid in section 263 of the Act, and in relation hereto 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 must be 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. 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 enquiry as necessary and (ii) according an opportunity of being heard to the assessee following the principle of natural justice. In the light of provision 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 it needs to be understood in its ordinary meaning and it is of wide import and is not confined to mere loss to exchequer.

8.5 In the light of aforesaid discussion of law and considering the judicial precedents, we find that during the course of proceedings u/s 147 of the Act, the Ld. AO queries were attributed solely towards the credit vis-à-vis deposit of sum of ₹21,68,707/- and considering the submission with respect thereto the assessment was carried out, per contra the observation of the Ld. PCIT revealed that, the total deposit or credits into the bank account/s of the appellant were to the tune of ₹1,78,62,672/-, which were mainly in the form of cash deposit made from outside the state of the appellant, which remained unattended and inquired by the Ld. AO about its genuineness and source having regards to number of trucks engaged in the business of by the assessee. On careful consideration of factual matrix as enumerated herein before, it is quite evident that there was lack of enquiries with respect to the total deposit appearing in the bank account/s and complete absence of adequate inquiries with their respect in the light of form no 26AS and number of trucks deployed in the transportation business. Therefore it could be concluded that, there was non-application of mind by the Ld, AO on the stated facts and issues and brought by the Ld. PCIT and the claim made by the appellant in the return filed by the assessee pursuant to notice u/s 148 of the Act.

9. Before we depart, it is necessary to quote, the facts and the circumstance of the cases relied by the appellant are distinguishable or dissimilar to the facts of present case. Per contra We see that, the appellant neither during the assessment nor during revisionary proceeding substantiated with evidential records as to how deployment of five trucks in the transport business generated the quantum in question and genuineness thereof. Even before bench, the Ld. AR except challenging the jurisdiction by adverting the provision of sub-section 5 of section 44AE could not place any evidential material showcasing nexus of cash deposit with that of transport business, genuineness vis-à-vis sources to substantiate as business receipts, for the reason we hold the conclusion drawn by the Ld. PCIT is irresistible and we are not unmindful in holding as such that remand back would cause no prejudice to the appellant if he establishes the genuineness of credits / deposit as emanating from single business of playing five trucks. In these circumstances, we find force in the action of Ld. PCIT in the ration laid by the Hon'ble lordship in "**Malabar Industrial Co Ltd. Vs CIT**" reported in 243 ITR 83, the para 9 of which read as;

"There must be some grievous error in the Order passed by the Income-tax Officer, which might set a bad trend or pattern for similar assessments, which on a broad reckoning, the Commissioner might think to be prejudicial to the interests of Revenue Administration. In our view this interpretation is too narrow to merit acceptance. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income-tax Officer, the revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the revenue"

(Emphasis supplied)



10. We are, therefore applying the ration drawn by Hon'ble Apex Court in Malabar Industries Co (Supra) are of the considered view that, the action of Ld. PCIT is perfectly sustainable in law, to the effect holding the order of assessment as erroneous & prejudicial to the interest of revenue, ergo we find no infirmity with the direction of 263 revisionary order, thus the legal grounds of the appellant are dismissed.

11. Resultantly, the appeal of the assessee is dismissed, in terms of aforestated observation.

Order pronounced in open court on this Thursday 21st day of April, 2022.

-S/d-

RAVISH SOOD
JUDICIAL MEMBER

रायपुर / RAIPUR ; दिनांक / Dated : 21st April, 2022

-S/d-

JAMLAPPA D BATTULL
ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, 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. गार्डफाइल / Guard File.

आदेशानुसार / BY ORDER,

निजीसचिव / Private Secretary

आयकर अपीलीय न्यायाधिकरण, रायपुर / ITAT, Raipur.