

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1	257/NAG/2015	Smt. Meena Dellip Kotecha, 1, Pradhan Apartment, Pratap Nagar, Jalgaon- 425001. PAN : AATPK1231C	CIT (Central), Nagpur	2011-12
2	258/NAG/2015	Smt. Jyoti Ashok Kotecha, 4, Teachers Colony, Ring Road, Jalgaon- 425001. PAN : ALIPK3264H	CIT (Central), Nagpur	2011-12

Assessee by : Shri Bhupendra Shah
Revenue by : Shri J. P. Chadraker

Date of hearing : 17.03.2022
Date of pronouncement : 22.04.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are the appeals filed by the two different assessees directed against the different orders of Id. Commissioner of Income Tax (Central), Nagpur ['CIT (Central)' for short] commonly dated 25.06.2015 passed u/s 263 of the Income Tax Act, 1961 ('the Act') for the assessment year 2011-12 respectively.

2. Since the identical facts and issues are involved in both the above captioned appeals, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal in ITA No.257/NAG/2015 for the assessment year 2011-12 are stated herein.

ITA No.257/NAG/2015, A.Y. 2011-12 :

4. The appellant raised the following grounds of appeal :-

- “1. The order passed on 25.06.2015 u/s 263 of the Income Tax Act, 1961 by the Hon’ble CIT(C), Nagpur is illegal, invalid and bad-in-law.
2. The Hon’ble CIT(C), Nagpur erred in invoking the provision of section 263 of the Income Tax Act, 1961 on the ground that the assessment order was deficient in certain respect and thereby setting aside the order passed by the Assessing Officer and directing him to pass a fresh order.
3. The Hon’ble CIT(C), Nagpur erred in passing order u/s 263 of the Income Tax Act, 1961 on the ground that the Assessing Officer failed to make necessary inquiries to find genuineness of the transactions with M/s Religare Securities Ltd. entered by the assessee.
4. The Hon’ble CIT(C), Nagpur erred in stating that the assessee failed to reconcile share transaction vis a vis information received from the investigation wing.
5. The Appellant prays that order passed under section 263 of the Act to be struck down as null and void-ab-initio.
6. The above grounds of appeal are without prejudice and notwithstanding each other.
7. Any consequential relief, to which the Appellant may be entitled under the law in pursuance of the aforesaid grounds of appeal, or otherwise, may be thus granted.
8. The Appellant craves leave to add to or alter, by deletion, substitution or otherwise, any or all of the above grounds of appeal and the factual and legal arguments against the addition by the Ld. CIT(A) / Ld. AO at the time or before the course of appellate proceedings in interest of natural justice.”

5. Briefly, the facts of the case are that the appellant is an individual engaged in the business of trading in shares and also investments. There was a search and seizure operations were conducted on the Kotecha Group of cases of Jalgaon on 09.08.2011 by the DDIT (Inv.), Jalgaon. As a part of such search action, certain incriminating material is stated to have been impounded. Subsequently, a notice u/s 153A of the Act dated 18.05.2012 was issued calling upon the appellant to file the return of income. The appellant vide letter dated 03.06.2013 submitted stating that the return of income filed u/s 139 be treated as return in response to notice u/s 153A of the Act. The return of income u/s 139 was filed on 03.06.2013 disclosing total income of Rs. 19,84,000/- i.e. Rs.6,00,000/- under the head of 'salary', Rs.1,47,518/- under the head 'business profits', Rs.11,63,095/- under the head 'capital gain from investment in shares, Rs.2,01,925/- under the head 'income from other sources' after claiming deduction of Rs.1,28,542/-. Against the said return of income, the assessment was completed by the Assistant Commissioner of Income Tax, Central Circle-1, Nashik ('the Assessing Officer') vide order dated 28.03.2014 passed u/s 143(3) r.w.s. 153A of the Act accepting the returned income. During the course of assessment proceedings, the assessee took an objection against transfer of jurisdiction by an order u/s 127 dated

02.12.2011 passed by the Commissioner of Income Tax-II, Nashik from Jalgaon to Nashik. The said objection was overruled by the Assessing Officer placing reliance on the provisions of section 292BB of the Act.

6. Subsequently, the Id. CIT (Central), Nagpur, on examination of the assessment record, had come to know that during the course of assessment proceedings, the Assessing Officer had received information from the Investigation Wing of the Department that the assessee, during the previous year 2010-11 relevant to the assessment year 2011-12, had received a sum of Rs.1.35 crores and Rs.2.88 crores from M/s. Religare Securities Ltd.. The assessee had also claimed exemption of income of Rs.1,36,84,703/- u/s 10(38) of the Act. According to the Id. CIT (Central), the Assessing Officer had failed to verify the genuineness of these transactions in the light of information received from the DDIT (Inv.), Jalgaon. Accordingly, the Id. CIT (Central) formed an opinion that the assessment order dated 28.03.2014 passed u/s 143(3) r.w.s. 153A is erroneous and prejudicial to the interests of the Revenue. Therefore, the Id. CIT (Central) issued a show-cause notice. In response to said show-cause notice, the appellant on 18.06.2015 contended that during the course of assessment proceedings, the Assessing Officer had called for the details pertaining to the

transactions. The appellant had filed the requisite details to the satisfaction of the Assessing Officer. The Assessing Officer, on being satisfied himself with the explanation offered by the appellant, had chosen not to make any addition. Therefore, it was pleaded by the assessee that since the Assessing Officer had enquired into the genuineness of the transactions, the revision proceedings u/s 263 were not maintainable.

7. However, the Id. CIT (Central) observed that the Assessing Officer had failed to verify the transactions with M/s. Religare Securities Ltd., in the light of the incriminating material received from the Investigation Wing of the Department placing reliance on the decision of the Hon'ble Supreme Court in the case of Rampyari Devi Saraogi vs. CIT, 67 ITR 84 (SC), the Id. CIT (Central) held that when the assessment was completed by the Assessing Officer without holding necessary enquiry rendered the assessment is "erroneous". Accordingly, the Id. CIT (Central) set-aside the assessment to the file of the Assessing Officer for *de-novo* assessment after making proper enquiry and after affording reasonable opportunity of being heard to the assessee vide order dated 25.06.2015.

8. Being aggrieved by the above decision of the Id. CIT (Central), the appellant is in appeal before us.

9. The Id. Counsel appearing on behalf of the appellant herein objected the order of revision passed by the Id. CIT (Central) on the grounds that :-

- (i) The Assessing Officer had no jurisdiction to pass the assessment order, inasmuch as, the order u/s 127 in respect of transfer the jurisdiction of the Assessing Officer from Jalgaon to Nashik was passed without giving proper opportunity to the assessee.
- (ii) During the course of assessment proceedings, the Assessing Officer had called for the details of transactions with M/s. Religare Securities Ltd. and in this connection, the assessee had filed the details/copies of the information which are placed at page no.62 to 66 of the Paper Book.
- (iii) The Assessing Officer, on being satisfied himself about the correctness of the claim, had chosen not to make any addition.

Thus, it is contended that it cannot be said that the Assessing Officer had not made any enquiry into the transactions of the appellant with M/s. Religare Securities Ltd. The information received from the Investigation Wing of the Department does not form part of incriminating material and, therefore, no addition can be made in the assessment completed pursuant to notice u/s 153A.

Thus, he prayed that the order of revision passed u/s 263 be quashed.

10. On the other hand, ld. CIT-DR submitted on the submission made on behalf of the appellant that that the Assessing Officer had no jurisdiction to pass the assessment order as the order u/s 127 was made without giving opportunity to the assessee. The order u/s 127 of the Act is not an appealable and if the assessee is aggrieved by an order of transfer of jurisdiction, the remedy of the assessee is to challenge such an order in independent proceedings either before the higher administrative authorities as per the Act or in any independent proceedings by way of writ petition placing reliance on the decision of the Hon'ble Punjab & Haryana High Court in the case of Jaswinder Kaur Koover vs. CIT, 295 ITR 80 (P&H).

On merits of maintainability of order of revision u/s 263, the ld. CIT-DR submitted that the appellant had received payment of Rs.1.35 crores and Rs.2.88 crores from M/s. Religare Securities Ltd. and the Assessing Officer had not called for the details of said transactions nor examined the genuineness of the transactions in the light of the incriminating information received from Investigation Wing of the Department. There is an abatement of regular assessment proceedings pursuant to the assessment proceedings u/s 153A of the Act. Therefore, ld. CIT-DR submitted that if any

information or material which is received during the course of assessment proceedings, the same should be considered by the Assessing Officer, in the assessment proceedings, non-consideration of such material/information and not making proper enquiry into such information would render the assessment order erroneous and prejudicial to the interests of the Revenue. Thus, ld. CIT-DR submitted that the ld. CIT (Central) was justified in exercise of jurisdiction u/s 263 of the Act. In this connection, the ld. CIT-DR placed reliance on the following decisions :-

- (i) Malabar Industrial Co. Ltd. vs. CIT, 243 ITR 83 (SC).
- (ii) Rajmandir Estates (P.) Ltd. vs. PCIT, 386 ITR 162 (Cal.).
- (iii) Rajmandir Estates (P.) Ltd. vs. PCIT, 77 taxmann.com 285 (SC).
- (iv) Swarup Vegetable Products vs. CIT, 187 ITR 412 (All.).
- (v) CIT vs. Ballarpur Industries Ltd., 85 taxmann.com 10 (Bom.).

Thus, the ld. CIT-DR pleaded that no interference is called for in the impugned order passed by the ld. CIT (Central) u/s 263 of the Act.

11. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the validity of the power of revision exercised by the ld. CIT (Central) u/s 263 of the Act. The Parliament had conferred the power of revision on the Commissioner of Income Tax u/s 263 of the Act in case the assessment order passed is erroneous and prejudicial to the interests of revenue. In order to invoke the power of revision, the above two

conditions are required to be satisfied cumulatively. References in this regard can be made to the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT, 243 ITR 83 (SC) and in the case of CIT vs. Max India Ltd., 295 ITR 282 (SC). The error in the assessment order should be one that it is not debatable or plausible view. In a case where the Assessing Officer examined the claim took one of the possible views, the assessment order cannot be termed as an "erroneous".

12. Now, we may examine the facts of the present case. During the course of assessment proceedings u/s 153A, in response to query raised in notice u/s 142(1), the appellant had filed the details of transactions with M/s. Religare Securities Ltd. But, there is nothing which is apparent from the record that the Assessing Officer had subjected the claim of the assessee to examination, on such examination took a plausible view. In the absence of view being taken by the Assessing Officer, it cannot be said that the Assessing Officer, after examining the claim, if any, taken plausible view. The ratio of the decision of the Hon'ble Bombay High Court in the case of CIT vs. Ballarpur Industries Ltd., 85 taxmann.com 10 (Bom.) is squarely applicable to the facts of the present case wherein the Hon'ble Bombay High Court held as follows :-

"13. The above issue which comes for our consideration is, did the Assessing Officer consider and examine the claim of the respondent

before allowing a claim for deduction under Section 80 HHC of the Act. The respondent- assessee seeks to draw inference from the statement of case that there was an inquiry made before allowing the claim of deduction under Section 80 HHC of the Act at Rs.92.81 lakhs. This inference is not justified. Mere using the word "allowed" does not mean examination and enquiry before allowing deduction under Section 90 HHC of the Act. The words "due verification" would include within its ambit not only inadequate inquiry/verification but also no enquiry/verification. However, in case the respondent-assessee was of the view that the claim has been examined by the Assessing Officer before allowing it, then respondent-assessee ought to have the statement of case modified/amended so as to bring the aforesaid facts on record, as held by the Apex Court in the case of Calcutta Agency Ltd. (supra). This not being done and now to draw far fetched inference cannot be accepted. It is now settled in view of Malabar Industries (supra) that non- enquiry before allowing the claim would make the order of the Assessing Officer amenable to jurisdiction under Section 263 of the Act. The non-enquiry by the Assessing Officer gives jurisdiction under Section 263 of the Act. Merely because the issue is debatable, it does not absolve the Assessing Officer from examining the issue and taking a view on the claim after examination. Similarly because the two views are possible and or that there are contrary view of higher forums, does not permit non-examination of the claim and taking one of the possible view by giving reasons. In this case no examination of the claim under Section 80 HHC of the Act has been done by the Assessing Officer. Therefore, the exercise of jurisdiction by the Commissioner of Income Tax under Section 263 of the Act was valid.

14. The decision of the Apex Court in Max India Ltd. (supra) relied upon by the respondent-assessee to our mind would not come to its rescue for the reason that in the present facts the statement of the case does not indicate that the view taken to allow the claim under Section 80 HHC of the Act was after examination/inquiry. Mere taking of a view by the Assessing Officer without having subjected the claim to examination would not make it a view of the Assessing Officer. A view has necessarily to be preceded by examination of the claim and opting to choose one of the possible results. In the absence of view being taken, merely because the issue itself is debatable, would not absolve the Assessing Officer of applying his mind to the claim made by the assessee and allowing the claim only on satisfaction after verification/enquiry on his part. A view in the absence of examination is no view but only a chance result. Therefore, even the decision of the Andhra Pradesh High Court in Gogineni Tobacco Ltd. (supra) will also have no application.

15. It appears from the decision of the Apex Court in Max India Ltd. (supra) that the Assessing Officer had taken one of the two views of the word "profit" as occurring in Section 80 HHC of the Act. Therefore, it was in that context that the Apex Court held that Section 263 of the Act would not be attracted particularly when the view of the Assessing Officer was found to be a view taken by various authorities under the

Act. In passing we may point out that as recorded in the statement of case, the Tribunal held the exercise of powers under Section 263 of the Act by the Commissioner of Income Tax to be bad in law as the view of the Assessing Officer was in line with the decision of the Tribunal in Mysore Exports Ltd. (supra). It is relevant to note that on the date when the Commissioner of Income Tax exercised his powers under Section 263 of the Act on 31.03.1995, the decision of the Tribunal in Mysore Exports Ltd. (supra) was not available before him as it was rendered on 19.05.1995.”

13. In the present case, we are unable to discern from the record that the Assessing Officer had subjected to the claim of the appellant for exemption u/s 10(38) and took a plausible view nor could the appellant demonstrate with evidence before us. Therefore, in the present case non-examination of the claim by the Assessing Officer renders the assessment order erroneous and prejudicial to the interests of the Revenue. Accordingly, we uphold the order of revision passed by the Id. CIT (Central) u/s 263 of the Act. Thus, we do not find any merit in the grounds of appeal no.1 to 8 raised by the assessee herein.

14. As regard to the other contention of the appellant that the Assessing Officer had no jurisdiction to pass the assessment order, as no opportunity was offered by the Commissioner of Income Tax-II, Nashik while passing the order u/s 127 of the Act, we are of the considered opinion that this issue cannot be agitated in the revision proceedings, as revision proceedings are only prejudicial to an assessee and the issues concluded in the assessment proceedings cannot be re-agitated by an assessee in the revision proceedings.

Further, the proceedings u/s 127 are independent of the assessment proceedings, in the event an assessee is aggrieved by an order u/s 127, necessary remedy lies elsewhere as held by the Hon'ble Punjab & Haryana High Court in the case of Jaswinder Kaur Koover vs. CIT, 295 ITR 80.

15. It is trite law that an assessee is barred from raising contention that no opportunity was given to the assessee while transferring the jurisdiction of the case u/s 127 from Jalgaon to Nashik as the order of the transfer of case u/s 127 was within the knowledge of the assessee during the course of assessment proceedings and still the assessee had chosen not to participate in the matter of jurisdiction of the Assessing Officer to whom the case has been transferred. The assessee cannot be allowed later to challenge the jurisdiction of the Assessing Officer as held by the Hon'ble Supreme Court in the case of Pannalal Binjraj vs. Union of India, 31 ITR 565 (SC) and the Hon'ble Gujarat High Court in the case of Shivabhai Khodabhai Patel vs. CIT, 244 ITR 457 (Guj.-HC). The Hon'ble Patna High Court in the case of Steel Engg. & Processing Works vs. Union of India, 243 ITR 721 (Pat.-HC) after referring to the judgement of the Hon'ble Supreme Court in the case of Pannalal Binjraj (supra) held to the same effect by holding as under :-

“19. *But this is not all. The facts as are emerging from the records of this case cannot be lost sight of, which have been elaborately pleaded and described by the respondent-revenue in its counter-affidavit and also in the reply affidavit to the rejoinder affidavit stating that the proceeding for transfer of the case from Patna to Ranchi was initiated at the instance of the petitioner-assessee himself and it was he, who suggested that the entire records and books of account are at Ranchi and so it will be convenient for him to co-operate with the assessment at Ranchi. Besides laches in approaching the Writ Court, the assessee-petitioner also submitted to the jurisdiction of the transferee authority at Ranchi.*

20. *This being so, the party once acquiesced to the jurisdiction of the transferee Court, all statutory rights which the assessee gets by virtue of section 127 vanish and, therefore, the assessee cannot assert that without affording opportunity as required under section 127, the case has been transferred. In this regard see Halsbury’s Laws of England, Vol. II, 3rd Ed., page 140, Pr. 265 and also the case in O.A.O.K. Lakshmanan Chettiar v. Commissioner, Corporation of Madras AIR 1927 Mad. 130, which are referred to in the decision in the case of Pannalal Binraj v. Union of India [1957] 31 ITR 565 (SC).*

21. *In the case of Pannalal Binraj (supra), which is a Constitution Bench decision, the Supreme Court lays down the law to the effect that, "if an assessee has acquiesced in the jurisdiction of the Income-tax Officer to whom a case has been transferred, he cannot subsequently object to the jurisdiction of the officer and seek to get the order of transfer quashed by invoking the jurisdiction of the Court under article 226 of the Constitution".*

22. *This being the law in respect of cases where the assessee has acquiesced to the jurisdiction of the transferee Court, the submissions made by Shri Bajla have no application in this case. The writ petition is, therefore, dismissed.”*

16. In the light of above legal position, the objection raised by the assessee challenging the transfer of jurisdiction of the case does not stand the test of the law. Thus, this contention is devoid of any merit and, accordingly, we dismiss the same.

17. As regards to the another contention raised by the appellant that the information received from the Investigation Wing of the Department does not form part of the incriminating material,

therefore, non-consideration of such incriminating material at the time of framing the assessment u/s 143(3) does not give jurisdiction to the Commissioner to exercise the power of revision, this contention has also no legs to stand for the reason that undisputedly the assessment was made pursuant to notice u/s 153A are abated with regular assessment proceedings and any information which had come to knowledge and possession of the Assessing Officer should be considered at the time of framing of assessment. The case laws relied upon have no application to the facts of the present case or those cases are in relation to unabated regular assessment proceedings. Thus, we do not find any merit in this contention raised during the course of hearing before us. Thus, the grounds of appeal raised by the assessee stand dismissed.

18. In the result, the appeal of the assessee in ITA No.257/NAG/2015 stands dismissed.

ITA No.258/NAG/2015, A.Y. 2011-12 :

19. Since the facts and issues involved in appeal of the assessee in ITA No.258/NAG/2015 for 2011-12 are identical, therefore, our decision in ITA No.257/NAG/2015 for A.Y. 2011-12 shall apply *mutatis mutandis* to the appeal of the assessee in ITA No.258/NAG/2015 for A.Y. 2011-12. Accordingly, the appeal of

the assessee in ITA No.258/NAG/2015 for A.Y. 2011-12 stands dismissed.

20. Resultantly, both the appeals of the assessee stands dismissed.

Order pronounced on this 22nd day of April, 2022.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 22nd April, 2022.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Central), Nagpur.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल/ Guard File.

आदेशानुसार / BY ORDER,

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Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.