

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

**SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI PARTHA SARATHI CHAUDHURY, JM**

Sr. No.	ITA No.	Asstt. Year	Appellant	Respondent
1.	176/PUN/2021	2016-17	Shobha Ramchandra Chaudhari 01, At Post Damburni Tal. Yawal, Dist. Jalgaon – 425 302 PAN: AFZPC2205D	Pr. C.I.T. Nasik-1,
2.	177/PUN/2021	2016-17	Ramchandra Vishnu Chaudhari, Address as above PAN: AFNPC3080J	-do-

Appellants by : Shri Vinay Kawdia (through virtual)
Respondent by : Shri Sardar Singh Meena (through physical)

Date of Hearing : 02-05-2022
Date of Pronouncement : 06-05-2022

ORDER

PER PARTHA SARATHI CHAUDHURY, JM

These appeals preferred by different assesseees emanates from separate orders of the Pr. Commissioner of Income Tax, Nashik-1, both dated 12-03-2021 for A.Y. 2016-17 as per the grounds of appeal on record.

2. At the time of hearing, the parties herein agreed that facts and circumstances and the issues involved are similar and identical in both these appeals. Having heard the parties these cases were heard together and are being disposed of vide this consolidated order.

3. The only grievance of the assesseees involved in both these appeals is that the Id. Pr. CIT was not correct in law in assuming his revisionary jurisdiction u/s 263 of the Income-tax Act, 1961 (hereinafter referred to as "the Act" for short). It is the contention of the assessee that the order u/s 263 of the Act was passed by the Id. Pr. CIT in relation to the issue of agricultural income. In this regard, the assessee submitted that the A.O has made all necessary

inquiries and before the A.O the assessee had filed copies of 7/12 extracts, bank account details and pages of diary, where the assessee had noted the details of transactions regarding agricultural income.

4. Taking ITA No. 177/PUN/2021 for A.Y. 2016-17 in the case of Ramchandra Vishnu Chaudhari, as the lead case, the Id. Pr.CIT in his order dated 12-03-2021 observed the following notable points:

(i) On going through the assessment record, it is noticed that you have own agricultural income in the ROI at Rs. 28,12,637/- in the ROI which has been derived from joint landholding admeasuring 58 acres. During assessment proceedings, in the written submission dt. 03.11.2018 you have stated that the said agricultural income is your own proportionate share (25/58) from the common gross agricultural receipts of Rs. 93, 45, 502/- which is supported by a Common Agricultural Ale. you have justified gross agricultural receipts amounting to Rs. 93, 45, 502/- as per sale of following agricultural produces:

<i>S.No.</i>	<i>Particulars of crops</i>	<i>Amount INR</i>
01	Watermelon	2966410
02	Cotton	468782
03	Onion	510350
04	Banana	2185790
05	Vegetable	2500560
06	Urid & Mung	403910
07	Chana	309700
	<i>Total</i>	<i>93,45,502</i>

In support of the above crop-wise break-up of receipts, you have furnished copy of 7/12 extracts & same are available on record. On perusal of the same, it is found that during the year under consideration there is no record of cultivation of watermelon, vegetable and chana (gram) at 'pikperauttara' of the 7/12 extract of the land held by you. Thus, the alleged aggregate receipts amounting to Rs. 57,76,670/- on account of sale of watermelon, vegetable and chana ram is not genuine as the source thereof is not disclosed which leads towards the facts that the aforesaid receipts in- proportion amounting to Rs.24,89,944/-(5776670 X 25/58) is nothing but your own Income earned from unexplained sources.

From the assessment record it is noticed that the then AO, while framing the assessment order, had made addition on this account to the extent of Rs.7, 03, 160/- only. However the A.O was supposed to assess income at Rs. 24,89, 944/- as unexplained sources.

03. Therefore a show cause notice NO.ITBA/REV/F /REV1 /2020-21 /1 030495066(1) dated 09.02.2021 communicating the above reasons and calling for submission on 16.02.2021 was issued to the assessee through e-proceedings. This notice was duly served to assessee.

4. In response to the opportunity notice assessee furnished through e-proceedings. In the submission assessee has stated all the details were submitted during assessment proceedings before the then AO. The assessee relying on various decisions requested to drop the proceedings. The submission of the assessee is placed on record.

5. In view of the above and submission/clarification on the part of the assessee on the issues cropped-up during the course of present proceedings which are duly discussed in the above paras and which were duly confronted to the assessee, I proceed to pass the order on the basis of material available on record.

5.1 On going through the assessment record, it is noticed that you have shown agricultural income in the ROI at Rs.28, 12, 637/-in the ROI which has been derived from joint landholding admeasuring 58 acres. During assessment proceedings, in the written submission dt. 03.11.2018 you have stated that the said agricultural income is your own proportionate share (25/58) from the common gross; agricultural receipts of RS.93,45,502/- which is supported by a Common Agricultural Alc. you have justified gross agricultural receipts amounting to Rs.93,45,502/- as per sale of following agricultural produces:

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	Total	93,45,502

In support of the above crop-wise break up of receipts, you have furnished copy of 7/12 extracts and same are available on record. On perusal of the same, it is found that during the year under consideration there is no record of cultivation of watermelon, vegetable and chana (gram) at 'pikperauttara' of the 7/12 extract of the land held by you. Thus, the alleged aggregate receipts amounting to Rs. 57,76,670/- on account of sale of watermelon, vegetable and chana (gram) is not genuine as the source thereof is not disclosed which leads towards the facts that the aforesaid receipts incorporation amounting to Rs. 24,89,944/- (5776670 x 25/38) is nothing but your own income earned from unexplained sources.

However from the assessment record it is noticed that the then AO, while framing the assessment order, had made addition on this account to the extent of Rs. 7,03, 160/- only. However the A O was supposed to assess income at Rs.24,89,944/- as unexplained sources. Failure on AOs part to do so there is under assessment and Rs. 17,86,784/- remained to be brought to tax.

6. In view of the above, it is admitted fact that the assessment proceedings in this case have been completed without verifying the main issues for which the case selected

under CASS. Therefore, the provisions of Explanation 2(a) to Section 263 of the Act are squarely applicable in this case.”

5. The most important observation raised by the Id. P.CIT holding the assessment to be erroneous and prejudicial to the interest of revenue is that as per 7/12 extracts submitted by the assessee, there were no record of cultivation of watermelon, vegetables and chana at ‘pikperauttara’ of the 7/12 extract of the land held by the assessee. Therefore, the alleged aggregate receipt amounting to Rs. 57,76,670/- on account of sale of watermelon, vegetables and chana was not justified as the source thereof was not disclosed which leads towards the fact that the sale receipts in proportionate amounting to Rs. 24,89,944/- ($57,76,670 \times 25/38$) is nothing but the assessee’s own income earned from undisclosed sources. It was also held by the Id. Pr. CIT that inspite of the 7/12 extracts was at the disposal of the A.O he has not bothered to enquire about the very fact that though there was no mention of watermelon, vegetable and chana in the said 7/12 extract then in that circumstances from where the assessee had earned the aggregate receipt amounting to Rs. 57,76,670/-. The Pr. CIT has invoked Explanation 2(a) to sec. 263 of the Act which is reproduced as follows:

"263. (1) The Principal Commissioner or Commissioner

Explanation 2 - For the purpose 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....."

6. We find that on going through the assessment order, the A.O has not inquired into this fact which is pertinent from 7/12 extracts that during the year there was no record of cultivation of watermelon, vegetables and chana at the ‘pikperauttara’ of the 7/12 extracts. In such circumstances, the A.O should have inquired into details regarding receipts of Rs. 57,76,670/- on account of sale of

such watermelon, vegetables and chana. That even before us also, at the time of hearing, the Id. A.R submitted that they have not submitted any details regarding this fact before the A.O., which the Id. P. CIT has brought out in his order passed u/s 263 of the Act. That on perusal of the assessment order, we do not find any reference to this fact of 7/12 extracts as brought out by the Id. Pr. CIT in his order u/s 263 of the Act. Therefore, the A.O has failed to conduct proper inquiry regarding the issue of agricultural income of the assessee. That inspite of 7/12 extracts being in his possession, it is pertinent fact that when certain crops and fruits were not present in the record of cultivation then the sales receipts in respect of those said crops and fruits cannot be held to be from such source.

7. In *Gee Vee Enterprises Vs. Addl. CIT 1975 CTR (Del) 61*, it was held that it is not necessary for the CIT to make further inquiries before cancelling the assessment order of the ITO. The CIT can regard the order as erroneous on the ground that in the circumstances of the case the ITO should have made further inquiries before accepting the statements made by the assessee in his return.

8. In *CIT Vs. South India shipping Corporation Ltd. (1998) 147 CTR(Mad) 433*, it was held that if the CIT on the basis of materials formed an opinion that the grant of allowance made by the Officer was erroneous and not warranted by law, the jurisdiction of the CIT u/s 263 of the Act was not ousted. It has been further held that the CIT in exercise of his power of revision can pass such order as the circumstances of the case would justify including an order directing a fresh assessment.

9. In CIT Vs. M.M. Khambhatwala (1992) 198 ITR 144 (Guj) it was held that the CIT would be entitled to revise the order of the ITO, if he is of the view that the order of the ITO is erroneous and prejudicial to the interests of the Revenue. The CIT can exercise his power u/s 263 of the Act even in a case where the issue is debatable. Revisionary powers u/s 263 are not comparable with powers of rectification of mistake u/s 154 of the Act.

10. In CIT vs. Bhagwan Das (2004) 191 CTR (All) 531, it was held that an order which has been passed without application of mind, will also fall under the expression "erroneous and prejudicial to the interest of the Revenue". In the assessment order, there was no discussion regarding the question as to whether the amount of income shown by the assessee which was being claimed to be exempt had actually been earned by him or not and further, whether the entire amount of income from agriculture and poultry farming was exempt from tax. The CIT had rightly initiated proceedings u/s 263 of the Act as exemption had been granted without application of mind.

11. It is pertinent to mention here that in the case of CIT Vs. Shree Manjunathesware Packing Products & Camphor Works, 231 ITR 53, in the context of Sec.263, Hon'ble Supreme Court held as under:

"The revisionary power conferred on the CIT u/s. 263 is of wide amplitude. It enables the CIT to call for and examine the record of any proceeding under the Act. It empowers the CIT to make or cause to be made such enquiry as he deems necessary in order to find out if any order passed by the AO is erroneous insofar as it is prejudicial to the interests of the Revenue. After examining the record and after making or causing to be made an inquiry if he considers the order to be erroneous, then he can pass the order thereon as the circumstances of the case justify. Obviously, as a result of the inquiry, he may come in possession of new material and he would be entitled to take the new material into account. If the material, which was not available to the ITO at the time he made the assessment, could thus be taken into consideration by the CIT after holding an enquiry, there is no reason why the material which has already come on record, though subsequent to the making of the assessment, cannot be taken into consideration by him. Moreover, in view of the clear words used in clause (b) of the explanation to Sec. 263(1), it has to be held that while calling for and examining the record of any proceeding u/s.263(1), it is and it was open to the CIT, not only to consider the record of that proceeding but also the record relating to that proceeding available to him at the time of examination"

12. That it is a clear cut rationale which has been upheld by various judicial pronouncements that the Id. CIT can resort to revisionary jurisdiction u/s 263 of the Act if he considers that any order passed by the A.O is erroneous so far as it is prejudicial to the interest of the revenue. An order can be said to be prejudicial to the interests of revenue when the income has been under-assessed, loss has been over-assessed, income has been assessed at a lower rate, excess deduction/allowances and reliefs have been allowed to the assessee. The Hon'ble Allahabad High Court in the case of CIT Vs. Bhagwandas (2004) 272 ITR 367, has held that non-application of mind by the A.O is also prejudicial to the interests of revenue. Similarly, the order of the A.O shall be deemed to be erroneous if such order is passed without making inquiry or verification which should have been made. The order is passed allowing any relief without inquiring into the scheme, the order has not been made in accordance with an order, direction or instruction issued by the Board u/s 119 of the Act.

13. In the present facts and circumstances of the case, we find that though 7/12 extracts was before the A.O where the assessee has shown having received income from sale of watermelon, vegetables, chana but the reality was there was no cultivation of these crops in the said 7/12 extracts submitted by the assessee. This fact was only brought out by the Id. Pr. CIT in his inquiry. The non-inquiry in this case by the A.O has resulted the order to be erroneous so as to be prejudicial to the interests of revenue since the source of the money showed as receipt from the sale of such fruits and vegetables has clearly turned out to be incorrect and the source of such money is still to be ascertained in the given facts and circumstances of this case, meaning thereby the tax which was lawfully excisable has not been imposed or that by application of the relevant statutes on an incorrect and incomplete interpretation a lesser tax than what was just has been imposed. We find that

Hon'ble Calcutta High Court in the case of **Dawjee Dadabhoy & Co. Vs. S.P. Jain and Anor (1957) 31 ITR 872 (Cal)** upholding the revisionary jurisdiction u/s 263 of the Act held that the CIT is correct in resorting to passing of an order u/s 263 of the Act when he finds from the records of the assessment orders that such are not in accordance with law, in consequence whereof lawful revenue due to the State has not been realized or cannot be realized. The Hon'ble Delhi High Court in the case of *Gee Vee Enterprises (supra)* has observed and held that the position and function of the ITO is very different from that of the Civil Court. The Civil Court is neutral. It simply gives decision on the basis of pleadings and evidences which comes before it. The I.T.O is not only an adjudicator but also an investigator. It is his duty to ascertain the truth of the facts stated in the return where the circumstances of the case are such as to provoke an inquiry. It is incumbent on the part of the ITO to further investigate the facts stated in the return which if not done then with the words "erroneous" in sec. 263 shall include the failure to make such an inquiry. The order becomes erroneous simply because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct. In the said judgment, Hon'ble Delhi High Court has referred to earlier decisions of the Hon'ble Supreme Court in the case of **Rampyari Devi Saraogi Vs. CIT (1968) 67 ITR 84 (SC)** and **Tara Devi Aggrawal Vs. CITY (1973) 88 ITR 323 (SC)** wherein it has been held that where the A.O has accepted a particular contention/issue without any inquiry or evidence whatsoever, the order is erroneous and prejudicial to the interests of the Revenue. The aforesaid observation has to be understood in the light of the present case, where the A.O has not conducted any inquiry or examined the said 7/12 extracts which were in front of him. Therefore, this case has to be seen differently from the case where the A.O has conducted inquiry but the findings were erroneous. In the present facts it's a case of lack of inquiry by

the A.O and not inadequate inquiry.

14. In view of the aforesaid examination of facts and circumstances and judicial pronouncements we are of the considered view that the Id. Pr. CIT was justified in assuming revisionary jurisdiction and passing an order u/s 263 of the Act which is hereby upheld.

15. In the result, the **appeal of the assessee stands dismissed.**

16 Since parties had agreed that the facts and circumstances and the issues in ITA No. 176/PUN/2021 for A.Y. 2016-17 in the case of Shobha Ramchandra Chaudhary are absolutely identical with the case of the assessee (Ramchandra Vishnu Chaudhary) in ITA No. 177/PUN/2021 for A.Y. 2016-17. Therefore, our decision in ITA No. 177/PUN/2021 for A.Y. 2016-17 shall apply *mutatis mutandis* to ITA No. 176/PUN/2021 for A.Y. 2016-17.

17. In the combined result, both the appeals of the assessee are dismissed.

Order pronounced in the open Court on this 06th day of May 2022.

Sd/-
(R.S. SYAL)
VICE PRESIDENT

sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated, this 6th day of May 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT (A)-12 Pune
4. The Pr. CIT Central, Nagpur
5. The D.R. ITAT 'B' Bench, Pune.
5. Guard File

BY ORDER,

/// TRUE COPY ///

Sr. Private Secretary
ITAT, Pune.

		Date	
1	Draft dictated on	02-05-2022	Sr.PS
2	Draft placed before author	05-05-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS		Sr.PS
6	Kept for pronouncement on	09-05-2022	Sr.PS
7	Date of uploading of order	09-05-2022	Sr.PS
8	File sent to Bench Clerk	09-05-2022	Sr.PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		