

आयकर अपीलिय अधिकरण
मुंबई पीठ "सी"
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एम. बालगणेश, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

आअसं. 700/मुं/2021 (नि. व. 2015-16)
ITA NO.700/MUM/2021(A.Y.2015-16)

Piramal Investment Opportunities Fund,
Piramal Tower, Ganpatrao Kadam Marg,
Lower Parel(West),
Mumbai 400 013
PAN: AACTP-3767-H

..... अपीलार्थी /Appellant

बनाम Vs.

Pr.Commissioner of Income Tax, Range -20,
Room No.418, 4th Floor, Piramal Chamber,
Lal Baug, Parel,
Mumbai 400 012.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Ronak Doshi

प्रतिवादी द्वारा/Respondent by : S/Shri R.K.Sahu and Milind Chavan

सुनवाई की तिथि/ Date of hearing : 14/01/2022

घोषणा की तिथि/ Date of pronouncement : 11/04/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Principal Commissioner of Income Tax, Mumbai -20 (in short 'the PCIT') dated 12/03/2021 for assessment year 2015-16, passed u/s. 263 of the Income Tax Act, 1961 (in short ' the Act')

2. Shri RonakDoshi appearing on behalf of the assessee narrating the facts of the case submitted, that the assessee is a SEBI registered Category -II Alternate Investment Fund. During the period relevant to assessment year under appeal, the assessee received interest income. The assessee filed its original return of income on 08/10/2015 declaring total income of Rs.65,65,84,800/- . Subsequently, the assessee filed revised return of income on 31/03/2017 declaring total income as Nil. Along with the revised return of income the assessee filed computation stating that the assessee is a contributory trust and it is revocable. The assessee enjoys pass through status u/s. 61 to 63 of the Act. The Id. Authorized Representative of the assessee referred to the revised return of income along with computation of income at page 401 to 433 of the paper book. The Id. Authorized Representative of the assessee submitted that in the original return of income, the assessee had offered interest income to tax only because of CBDT Circular No.13/2014. The assessee revised return of income in the light of judgment rendered by Hon'ble Karnataka High Court in the case of CIT vs. India Advantage Fund-VII 392 ITR 209. The return of income of assessee for the impugned assessment year was selected for limited scrutiny on the following issues:

- (i) Contract receipts /Fees mismatch.
- (ii) Sundry Creditors
- (iii) Sales turnover mismatch.

The Assessing Officer issued notice dated 28/07/2016 u/s. 143(2) of the Act, the same is at page 444 of the paper books. The assessee furnished detailed reply along with documentary evidence to the said notice. The same is at

pages 475 to 579 of the paper book. The Assessing Officer after examining the documents furnished by the assessee accepted the revised return and passed the assessment order u/s. 143(3) of the Act dated 30/12/2017.

2.1 The Id. Authorized Representative of the assessee submitted that the PCIT issued show cause notice dated 21/01/2020 u/s. 263 of the Act. In response to the said notice the assessee furnished detailed reply on various dates i.e. 12/02/2020 (at page 3 to 14 of the paper book), dated 02/03/2020 (at page 15 to 52), dated 01/03/2021(at pages 54 to 356 of paper book) and final submissions were made before the PCIT vide letter dated 01/3/2021 along annexures the same is at page 357 to 366 of the paper book. The PCIT without appreciating the facts and the legal position passed the impugned order. The PCIT has held the assessment order erroneous and prejudicial to the interest of Revenue primarily on two grounds:

(i) The Assessing Officer has not made enquiries with regard to the issue for which the case was selected for scrutiny under CASS.

(ii) The Assessing Officer accepted the revised return of income filed by the assessee without verifying the facts.

2.3 The Id. Authorized Representative of the assessee assailed the order of PCIT by raising multiple arguments. The first submission made by the Id. Authorized Representative of the assessee is that the Assessing Officer had issued show cause u/s. 143(2) of the Act specifically mentioning the issues for which the assessment was selected for limited scrutiny and had asked the assessee to produce evidence in respect of the issues marked for scrutiny. The Assessing Officer in the said notice had categorically mentioned that

specific questionnaire / show cause notice shall be sent in case any adverse view is contemplated. Since, the assessee had furnished detailed submission on the issues raised in limited scrutiny, the Assessing Officer after being satisfied with the submissions of the assessee accepted the same and passed the assessment order accepting the revised return. The documents on record clearly indicate that the Assessing Officer had made enquiry with regard to the issues for which the assessment was selected for scrutiny. It is not the case of no enquiry by the Assessing Officer. The Assessing Officer accepted assessee's revised return as the claim made in the revised computation was in accordance with the law expounded by Hon'ble Karnataka High Court in the case of CIT vs. India Advantage Fund (supra).

2.4 The second argument by the Id. Authorized Representative of the assessee is that the issues on which the case of assessee was selected for limited scrutiny mentioned by the PCIT in the show cause notice are different from the issues of limited scrutiny identified under CASS and conveyed to the assessee by the Assessing Officer vide notice u/s. 143(2) of the Act dated 28/07/2016. The Id. Authorized Representative for the assessee submitted that the provisions of section 263 cannot be invoked in respect of issues that could not have been dealt with by the Assessing Officer in assessment under limited scrutiny. In support of his submission the Id. Authorized Representative for the assessee placed reliance on the following decisions:

(i) Sonali Hemant Bhavsar Vs. PCIT in ITA No.742/Mum/2019 decided on 17/05/2019,

(ii) R & H Property Developers Pvt. Ltd. vs. PCIT in ITA No.1906/Mum/2019

(iii) Gift Land Handicrafts vs. CIT , 19 SOT 5 (Del-Trib)

2.5 On merits, the Id. Authorized Representative for the assessee submitted that one of the objections in holding the assessment order to be erroneous is that there is no decision by Hon'ble Jurisdictional High Court and the Assessing Officer has erred in following the decision of a Non Jurisdictional High Court. The Id. Authorized Representative of the assessee submitted that the objection raised by the PCIT is unsustainable as on the date of issuance of show cause notice u/s. 263 of the Act, the Hon'ble Jurisdictional High Court in the case of PCIT vs. M/s. Milestone Army Navy Trust in Income Tax Appeal No.1826 of 2016 decided on 27/02/2019 had followed the decision in the case of CIT vs. India Advantage Fund (supra) and dismissed the appeal of Revenue. In other words, the claim made by the assessee in revised return of income had legal backing of decision from the Hon'ble Jurisdictional High Court as well. The Id. Authorized Representative of the assessee asserted that if any issue raised in the assessment proceedings is supported by the decision of Hon'ble High Court, the PCIT cannot invoke provisions of section 263 of the Act to unsettle that issue. In support of his submission the Id. Authorized Representative of the assessee placed reliance on the decision in the case of PCIT vs. Costal Gujarat Power Ltd., 264 Taxaman 244 (Bom).

2.6 The Id. Authorized Representative of the assessee further submitted that admittedly the Trust Deeds were not available before the Assessing Officer, however, all relevant material was furnished to the PCIT. In fact, specific query was raised by the PCIT on reconciliation of beneficiaries. The assessee vide reply dated 01/03/2021 had furnished all the relevant material

before the PCIT. The PCIT in para -8 of the impugned order has mentioned that she has verified the entire material and there was no adverse finding by PCIT on documents and Trust Deeds. The Id. Authorized Representative of the assessee contended that the assessee in its reply before the Assessing Officer as well as the PCIT has given the list of beneficiaries. The substantial beneficiary is Piramal Enterprises Ltd. who is having holding of 99.21%. The other beneficiaries and their percentage of holdings is as under:

(i) Piramal Investment Advisory Services Pvt. Ltd.	0.49%
(ii) Lucky Vyapar & Holdings Pvt. Ltd.	0.10%
(iii) Gautam Agarwal	0.10%
(iv) Seven Star Realtech Pvt. Ltd.	0.10%

All the above beneficiaries have offered interest income received through the assessee in their respective return of income. The assessee had furnished confirmations and copy of return of income of the beneficiaries before the PCIT. The PCIT has found no fault with the same. Once the interest income has been offered to tax by the respective beneficiaries, there is no loss to the Revenue.

2.7 The Id. Authorized Representative of the assessee finally submitted that since twin conditions for invoking provisions of section 263 of the Act i.e. the assessment order should be erroneous and prejudicial to the interest of Revenue are not satisfied in the present case, the PCIT has exceeded his jurisdiction in exercising revisional powers. The Id. Authorized Representative of the assessee in support of his argument placed reliance on the judgment in the case of CIT vs. Gabriel India Ltd. 203 ITR 108 (Bom).

3. Per contra, Shri R.K.Sahu representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id.Departmental Representative submitted that during assessment proceedings the Assessing Officer has not verified the Trust deed. The Assessing Officer merely accepted the documents filed by assessee without verifying the facts. The Assessing Officer did not issue any show cause notice to examine relevant documents to examine the issues raised in scrutiny assessment. The Id.Departmental Representative further pointed that one of the beneficiary has filed negative return of income. Therefore, the conditions necessary for section 64 of the Act has not been examined by the Assessing Officer. In support of his arguments he placed reliance on the following decisions:

- (i) Kerala State Electricity Board Ltd. vs. DCIT, 111 taxmann.com 353(Cochin-Trib)
- (ii) Ballarpur Industries Ltd., 85 taxmann.com 10(Bom)
- (iii) CIT vs.MM Khambhatwala, 198 ITR 144 (Guj)
- (iv) Malabar Industrial Co. Ltd., vs. CIT 109 Taxman 66(SC)
- (v) Rajmandir Estates Pvt. Ltd., vs. PCIT 70 taxmann.com 124(Cal)
- (vi) Swarup Vegetable Products Vs. CIT 54 Taxman 175 (All)
- (vii) Nagal Garment Industries (P) Ltd. vs. CIT 113 taxmann.com 4 (MP)

4. We have heard the submissions made by rival sides and have examined the orders of authorities below. We have also considered various documents on record and the decisions on which rival sides have placed reliance to support their contentions. The PCIT in show cause notice issued u/s. 263 of the Act has observed that the Assessing Officer has failed to make enquiry/

verification in respect of the issues marked for limited scrutiny assessment. We find that the PCIT in the show cause notice had identified the issues for limited scrutiny which appear to be different from the issues conveyed to the assessee by Assessing Officer vide notice u/s. 143(2) of the Act. The reasons for limited scrutiny as mentioned by the Assessing Officer and the PCIT in their respective notices are tabulated as under:

S.No.	Reasons for Limited Scrutiny as per Assessing Officer	Reasons for Limited Scrutiny as per PCIT.
1.	Contract Receipt/Fees mismatch.	Receipts u/s. 194C and 194J (As per 26AS) are more than the receipts shown in ITR-4/5/6 and assessee deposited large cash in saving bank account.
2.	Sundry creditors	Large increase in sundry creditors with respect to turnover as compared to preceding years.
3.	Sales turnover mismatch.	Higher turnover reported in Service Tax return compared to ITR and assessee has deposited large amount of cash in savings bank account.

From comparative analysis of the reasons for selecting the assessment for limited scrutiny as conveyed by the Assessing Officer and as recorded by the PCIT, it is evident that the reasons given by Assessing Officer and the reasons given under notice under section 263 of the Act are not at variance. The Assessing Officer has mentioned the reasons in generic expression and the PCIT has expressed the same in specific terms. In principle the reasons given by PCIT and the Assessing Officer are consistent. Therefore, we do not find force in the argument of Id. Authorized Representative of the assessee that the reasons for limited scrutiny given by the PCIT are totally different from the scope of limited scrutiny conveyed to the assessee.

5. The next argument of the Id. Authorized Representative of the assessee is that the assessee has revised the return of income in the light of the decision rendered in the case of PCIT vs. India Advantage Fund-VII (supra). The Assessing Officer accepted the revised return as the claim made in the revised return is supported by the decision of Hon'ble High Court. The assessee is a SEBI Registered Category -II Alternate Investment Fund. The substantial holding i.e. to the extent of 99.21% is by Piramal Enterprises Ltd., the interest received by the assessee was passed on to the real beneficiary and all the beneficiaries have disclosed interest income in their respective return of income. The assessee has furnished copy of Income Tax Returns of the beneficiaries and also confirmations to this effect from the respective beneficiaries. The assessee in the revised return of income has only modified its computation of income based on the decision rendered in the case of CIT vs. India Advantage Fund-VII(supra). We find that the Hon'ble Bombay High Court in the case of PCIT vs. Milestone Army Navy Trust (supra) has followed the ratio laid down by Hon'ble Karnataka High Court in India Advantage Funds-VII(supra). Thus, Hon'ble Jurisdictional High Court concurred with the law expounded by Hon'ble Karnataka High Court. Hence, on merits we find no infirmity in Assessing Officer accepting the revised return of income. Here it would be relevant to point that the Trust Deeds were not examined by the Assessing Officer. Never the less, the PCIT had occasion to examine the same. The PCIT also failed to examine the Trust deeds and give findings with respect to application of law as expounded by the Hon'ble Karnataka High Court to the facts of the case. The Hon'ble Bombay High Court in the case of PCIT vs. Costal Gujarat Power Ltd. (supra) has held that if the answer to the legal issue can be had on the basis of the material already on record, there would be no

useful purpose in asking the Assessing Officer to carry out the same exercise and came to the same conclusion. The relevant findings of the Hon'ble High Court are reproduced herein below for ready reference:

“9. The Revenue may be correct in contending that, the Assessing Officer had not carried out detailed, enquiries with respect to this claim of assessee. However, this by itself would not be sufficient to enable the Commissioner to exercise revisional power. In a given case, as in the present one, if the answer to the legal issue can be had on the basis of the material already on record, there would be no useful purpose in asking the Assessing Officer to carry out the same exercise and come to the same conclusion as the Tribunal in the present case has. In this context, we do not accept the contention of the Counsel for the Revenue that, answer in law had to come from the Assessing Officer and not the Tribunal. He had argued that even if the Tribunal was right in law, since the Assessing Officer had not come to the said conclusion, the order of the Commissioner should not be disturbed. In our opinion, if the Tribunal has come to the correct conclusions in law and said conclusions are based on materials already on record, it would be futile to reinstate the order of the Commissioner, which in turn, would require the Assessing Officer to carry out the same exercise and axiomatically come to the same conclusion. This line, we are adopting, is within the fold of the requirement of the order of Assessing Officer being 'erroneous'¹. In other words, if it can be demonstrated that the order was not erroneous, the order of revision would, in any case, require an interference. The matter can be looked from slightly different angle. If while examining the order of the A.O. Commissioner notices that, though the A.O. was not examined for claim of the assessee, but the claim itself is legally tenable, would be judicial in exercising and set aside the assessment? The answer may be in the negative.”

[Emphasized by us]

From above it can be safely concluded that if the claim of the assessee is legally sustainable and supported by decision of a High Court, the same should not have been disturbed in revision u/s. 263 of the Act. In the present case the claim of the assessee in revised return of income was based on the judgment of Hon'ble Karnataka High Court which was subsequently followed by the Hon'ble Jurisdictional High Court. The said claim of the assessee ought not to have been disturbed in revision proceedings. Unless it is shown that the ratio of judgment by Hon'ble High Court does not apply to the facts of the case of assessee.

6. We further observe that during assessment proceeding the Assessing Officer had sought information from the assessee on the issues identified for limited scrutiny. The assessee had furnished requisite information supported by documentary evidences. The Assessing Officer after having examined the same accepted the revised return of income of the assessee. Therefore, it is not a case of no enquiry. At the most there could have been inadequate enquiry. Lack of enquiry and inadequate enquiry are on different pedestal. It is a trait law that where Assessing Officer has made enquiry on the issues during assessment proceedings, the assessment order cannot be subject of revision if the view taken by the Assessing Officer is one of the possible view. In the present case the Assessing Officer has made enquiries with respect to the issues for which the assessment was selected for limited scrutiny. The submissions made by assessee in response to notice under section 143(2) are at pages 446 to 579 of the paper book. Therefore, it cannot be said that the Assessing Officer has not made enquiries with regard to issues for which the case was selected for scrutiny under CASS.

7. In so far as the judgment on which the Id. Departmental Representative has placed reliance, we have examined the same. The Revenue through various decisions (supra) has tried to emphasize that the PCIT is well within his jurisdiction to exercise revisional powers u/s. 263 of the Act if the Assessing Officer after having accepting documents failed to examine the same and carry out verification. We find that the ratio of said decisions does not support the cause of Revenue in the facts of the case in hand. In the instant case, the Assessing Officer accepted assessee's revised return of income as the claim was based on the judicial precedent.

8. Thus, in the light of our above observations we hold that the PCIT had exceeded his jurisdiction in invoking the provisions of section 263 of the Act. The twin mandatory conditions i.e. the order passed by the Assessing Officer should be erroneous and prejudicial to the interest of Revenue are not satisfied in the present case. Hence, the impugned order is quashed and appeal of the assessee is allowed.

Order pronounced in the open court on Monday the 11th day of April, 2022.

Sd/-

(M. BALAGANESH)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 11 /04/2022

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)

ITAT, Mumbai