

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

आयकर अपील सं. / ITA No.486/PUN/2021
निर्धारण वर्ष / Assessment Year: 2015-16

Shashikant Vijay Khairnar, Plot No.205, Jaihind Colony, Deopur, Dhule- 424002. PAN : AVIPK5759P	Vs.	PCIT-1, Nashik.
Appellant		Respondent

Assessee by : Shri Vinay Kawdia
Revenue by : Shri Kalika Singh

Date of hearing : 27.05.2022
Date of pronouncement : 06.06.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Pr. Commissioner of Income Tax- 1, Nashik (PCIT) dated 20.03.2020 for the assessment year 2015-16.

2. Briefly, the facts of the case are that the appellant is an individual engaged in the business of trading in cotton seed cake. The return of income for the assessment year 2015-16 was filed on 15.09.2015 declaring total income of Rs.2,96,460/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward- 2, Dhule ('the Assessing Officer') vide order dated 20.12.2017 passed u/s 143(3) of the Income Tax Act, 1961

(‘the Act’) at total income of Rs.7,26,150/- after making (i) addition on account of business receipt of Rs.2,04,069/- and (ii) addition on account of opening cash balance of Rs.2,25,618/-. While matter stood thus, the PCIT on examination of the assessment record formed an opinion that the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interests of the Revenue for the following reasons :-

- (i) The Assessing Officer considered the entire amount of deposits in the bank account represents the receipt of assessee’s business without making any enquiries or verification.
- (ii) The Assessing Officer had accepted the gross receipts from agricultural activities on the basis of 7/12 extracts is Rs.10,88,325/- although the assessee had submitted only two sale bills of cotton produce which aggregated to Rs.7,65,680/-. The yield of 186 quintal shown from the land under cultivation of cotton of area admeasuring 2.17 hectares is abnormally high. Thus, the Assessing Officer had accepted the claim of net exempt agricultural income without carrying out the necessary enquiries.

3. In the above circumstances, the Id. PCIT formed an opinion that the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interests of the Revenue. Accordingly, the Id. PCIT issued show-cause notice under the provisions of section 263 of the Act on 02.03.2020. Despite due

service of notice, the appellant had not availed the opportunity of representing the matter before the ld. PCIT. In the circumstances, the ld. PCIT in exercise the power vested with him u/s 263 set-aside the assessment order and directed the Assessing Officer to frame the assessment order *de novo* after affording reasonable opportunity of being heard to the appellant.

4. Being aggrieved by the above order of revision u/s 263 passed by the ld. PCIT, the appellant is in appeal before us in the present appeal.

5. It is submitted that the assessment was selected for scrutiny for the purpose of verifying the cash deposits in bank account and the assessment order cannot be termed as “erroneous and prejudicial to the interests of the Revenue” as the Assessing Officer after due examination of the issues which are sought to be revised by the ld. PCIT had passed the assessment order.

6. On the other hand, ld. Sr. DR placing reliance on the order of the lower authorities submitted that despite due service of notice, the appellant had not availed the opportunity of representing the matter before the ld. PCIT by responding to the show-cause notice issued u/s 263 of the Act. There is no glory mistakes in the order of revision. Thus, it is submitted that the order of revision should not be interfered with.

7. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the validity of assumption of jurisdiction u/s 263 by the ld. PCIT. 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 plausible views, the assessment order cannot be termed as an "erroneous". Applying the above principles to the facts of the present case, no doubt in the present case the assessment was selected for limited scrutiny under CASS for the purpose of verification of cash deposits in Savings Bank Account are more than turnover. From perusal of the original assessment order, it would clearly indicate that the Assessing Officer merely accepted the explanation of the assessee that unexplained cash deposits were made out of the sale proceeds of cotton seed cake without

examining any evidence. Similarly, the Assessing Officer estimated the gross receipts from the agricultural produce of Rs.10,88,325/- without examining the reasonableness of the yield of cotton per hectare. Thus, it is clear that the assessment order was passed by the Assessing Officer suffered from lack of necessary enquiries and the Explanation 2 to provisions of section 263 of the Act is squarely applicable to the present case. Hence, we uphold the order of revision passed by the ld. PCIT u/s 263 of the Act. Accordingly, the grounds of appeal filed by the assessee stand dismissed.

8. In the result, the appeal filed by the assessee stands dismissed.

Order pronounced on this 06th day of June, 2022.

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

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 06th June, 2022.

Sujeet

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

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

आदेशानुसार / BY ORDER,

// True Copy //

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