

आयकरअपीलीयअधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री जी मंजूनाथा, लेखासदस्य, एवं श्री राहुल चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER AND
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

आयकरअपीलसं./I.T.A No.:105/CHNY/2021
निर्धारणवर्ष/Assessment Year: 2015 - 2016

Shri Vikram Ram Phadke
No.4, 7th Street, J-Block,
Anna Nagar East,
Chennai – 600 102
PAN : AAAPP 7761M

..... अपीलकर्ता/Appellant

Vs.

The Principal Commissioner of Income Tax / CIT
Central Circle – 1,
New Building, III Floor,
Director-General of Income Tax,
New Income Tax Building No.46 (Old No.108)
M.G. Road, Chennai – 600 034.

..... प्रत्यर्था/Respondent

Appearances:

For the Appellant/Assessee : Mr. S. Sridhar, Advocate
For the Respondent/Department : Mr. Guru Bashyam, CIT-DR

Date of conclusion of hearing : 30.05.2022
Date of pronouncement of order : 01.06.2022

आदेश /ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant/Assessee has challenged the Order, dated 20.03.2020, passed by the Learned Principal Commissioner of Income Tax, Central – 1, Chennai [hereinafter referred to as the 'the PCIT'] under Section 263 of the Income Tax Act, 1961

[hereinafter referred to as 'the Act'] setting aside the Assessment Order, dated 29.06.2017, passed under Section 143(3) of the Act.

2. The present appeal is accompanied by application seeking condonation of delay of 332 days in filing the appeal. We note that the limitation of filing appeal expired during the lockdown imposed on account COVID-19 pandemic. Therefore, the present appeal, though filed 332 days after the expiry of period of 60 days prescribed in Section 253(3) of the Act, is being treated as having been filed within limitation since it has been filed within the extended time period allowed by the Hon'ble Supreme Court vide orders, dated 23.03.2020 and 27.04.2021 passed in the Suo Motu Writ Petition (Civil) No. 3 of 2020 read with order, dated 23.09.2021, passed in Miscellaneous Application No. 665 of 2021 in Suo Motu Writ Petition (Civil) No. 3 of 2020.

3. The brief facts of the case are that the Assessee, a resident individual engaged in civil Interior decoration business, e-filed his original return of income for the Assessment Year 2015 - 2016 on 29.09.2015 declaring a total income of INR 64,75,130/- that was revised on 20.03.2017 declaring a total income of INR 70,87,120/-. The case of the Assessee was selected for scrutiny and a notice under Section 143(2) and 142(1) of the Act along with a questionnaire were issued to the Assessee. The Assessing Officer, vide order, dated 29.06.2017 [hereinafter referred to as 'the Assessment Order'] completed the assessment under Section 143 (3) of the Act and accepted the returned income.

4. Subsequently, on examination of the assessment records, the PCIT noticed that the Appellant has claimed credit of entire amount of tax deducted at source from Professional Receipts and Contract Receipts without offering to tax the entire amount of such Professional Receipts and Contract Receipts. According to the PCIT, the aforesaid facts were not considered by the Assessing Officer while passing the Assessment Order. Accordingly, a show-cause notice under Section 263(1) of the Act was issued to the Appellant. In response to the same, the Appellant filed written submission, dated 25.11.2019. However, the PCIT not being satisfied with the explanations and submissions of the Appellant passed order, dated 20.03.2020, under Section 263 of the Act setting aside the Assessment Order by invoking the provisions of the Clause (a) of Explanation 2 to Section 263 of the Act on the ground that the Assessing Officer had failed to carry out necessary inquiry or verification before passing the Assessment Order. The relevant extract of the order passed by the PCIT is as under:

“8. Non-verification of reconciliation and lack of proper enquiry by the Assessing Officer had resulted in completion of assessment u/s 143(3) dated 29.06.2017, which is erroneous and prejudicial to the interest of revenue. Therefore, there is no bar for the undersigned to assume jurisdiction u/s 263 of the Income tax Act, 1961.

9. The Principal Commissioner of Income tax gets power of revision under Section 263 in a case where the assessment order is erroneous and also prejudicial to the interest of revenue. The twin conditions are required to be satisfied simultaneously. Non application of mind to relevant material or an incorrect assumption of facts or an incorrect application of law will satisfy the requirement of order being erroneous. The term “prejudice” contemplated under Section 263 is prejudice to the Income tax administration as a whole. The facts of the present case clearly indicate that the Assessing Officer had definitely not applied his

mind and hence the order is erroneous and prejudicial to the interest of revenue.

10. Further, it is pointed out here that the Hon'ble Tribunal, Chennai Bench and Jabalpur Bench, in their decisions in *Bharat Overseas Bank Ltd v. CIT [2013] 152 TTJ 546 (Chennai) (Trib.)* & *Pratap Footwear v. ACIT [2003] SOT 638 (Jabalpur) (Trib.)* have held that

“Non application of mind by the AO at the time of assessment — An order without application of mind is definitely prejudicial to the interest of revenue.”

In the case of *CIT v. Bhagwan Das [2005] 272 ITR 367 (All.)(HC)*, the Hon'ble Allahabad High Court has held that — “Non application of mind by the Assessing Officer was prejudicial to the interest of the revenue.”

11. From the facts of the case, I could find that the twin conditions are cumulatively satisfied in this case.

12. Further, Explanation 2 to Section 263 was inserted by Finance Act 2015 with effect 01.04.2015 which is reproduced as under:

“Explanation 2- For the purposes of this Section, it is hereby declared that an order passed by the Assessing shall be deemed to be erroneous insofar as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner:

- [1] The order is passed without making inquiries or verification which should have been made:
- [2] The order is passed without allowing any relief without inquiring into the claim;
- [3] The order has not been made in accordance with any order, direction or instruction issued by the Board under Section 19; or
- [4] 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”

Clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. Hence, what is relevant for clause (a) of Explanation 2 to Section 263 is whether the Assessing Officer has passed

the order after carrying out enquiries or verification, which a reasonable and prudent officer would have carried out or not. Therefore, the order passed by the Assessing Officer is not only erroneous but also prejudicial to the interest of Revenue Hence in my considered view it is a fit case for invoking provisions of Section 263 of Income tax Act 1961

13. In view of the foregoing discussion the order passed u/s 143(3) dated 29.06.2017 for the AY 2015-16 is thus held to be erroneous and prejudicial to the interest of revenue and the same is set-aside u/s 263 of the Act to the Assessing Officer to make the order de novo after conducting necessary verification/enquiries in accordance with law keeping in view my observations made and the directions given in the preceding paras and after giving due opportunity to the assessee company. Therefore in exercise of the powers conferred upon me u/s 263 of the Income tax Act 1961 I hereby set aside the assessment made by the Assessing Officer vide order u/s 143(3) dated 29.06.2017 with a direction to examine in detail the above issues. The Assessing Officer shall pass an order afresh after giving due opportunity to the assessee in adherence to the principles of natural justice after obtaining necessary reconciliation and making further enquiries / verification.”

5. Being aggrieved, the Appellant is before us in the present appeal. The Appellant has raised 9 grounds, all challenging exercise of power of revision by the PCIT under Section 263 of the Act, and supporting Assessment Order as being correct having been passed after making proper and adequate inquiry. Since all the grounds are inter-connected the same are being taken up together
6. The learned Authorized Representative of the Appellant appearing before us, referring to the notice, dated 20.09.2016, issued under Section 143(2) of the Act, submitted that the case of the Appellant was selected for limited scrutiny and the Assessing Officer had carried out necessary inquiry/verification before accepting the submissions of the Appellant. He submitted that during the assessment proceedings, letters dated 09.05.2017, 22.06.2017, 29.06.2017, 10.07.2017, 02.02.2018 and

07.12.2018 were filed, whereby the issue relating to mismatch/reconciliation of professional receipts, contract receipts, and credit of tax deducted at source were explained to the satisfaction of the Assessing Officer. He submitted that in the present case, the Assessing Officer had carried out all the inquiries/verifications during the assessment proceedings and therefore, it cannot be said that the Assessment Order has been passed without making inquiries. Referring to the expression '*without making inquiries*' used in Clause (a) of Explanation 2 to Section 263 of the Act, he further submitted that contrary to the view taken by the PCIT, the provisions contained in the aforesaid clause/explanation support the case of the Appellant. Admittedly, according to the PCIT inquiries were conducted, however, the same were found to be insufficient. Therefore, since the Assessment Order has not been passed '*without making inquiries*' provisions of Clause (a) of Explanation 2 to Section 263 are not attracted. As many as six responses were filed during the assessment proceedings which were considered by the assessing officer. Though the Assessment Order is silent on the issues raised by the PCIT, it does not mean that the same issues were not inquired into or verified by the Assessing Officer. In conclusion, the Ld. Authorized Representative of the Appellant submitted that the PCIT had reviewed the order passed by the Assessing Officer in the garb of exercising powers of revision under Section 263 of the Act, and therefore, the order passed by the PCIT is liable to be set aside.

7. Per Contra, the Learned Departmental Representative submitted that the Assessment Order was erroneous in so far as it was prejudicial to the interest of Revenue and therefore, the PCIT was justified in setting aside the same. He furnished a copy of the letter/reply, dated 09.05.2017, filed by the Appellant during the assessment proceedings. Taking us through the same, he submitted that the Appellant has not filed any reconciliation in respect of professional/contract receipts, and credit claimed for tax deducted at source during the assessment proceedings. The Assessing Officer made no attempt to inquire into the mismatch in the professional/contract receipts and credit of tax deducted at source, being the issues for which the case of the Appellant was selected for limited scrutiny. The Assessing Officer was required to make specific inquiries into the claims made by the Appellant and having accepted the submissions made by the Appellant without necessary inquiry/verification, the Assessing Officer failed to discharge this duty/obligation. He submitted that while the Appellant has in the paper book placed six letters/replies, the three letters/replies dated 10.07.2017, 02.02.2018 and 07.12.2018 cannot be considered as the same have been filed after the Assessment Order was passed on 29.06.2017. He further submitted that no prejudice has been caused to the Appellant as the PCIT has set aside issue with the directions to decide the same afresh.
8. We have heard the rival submissions and perused the materials on record. As per notice dated 19.09.2017 issued under Section 143(2) of the Act, the case of the Appellant was selected for limited scrutiny for

examination of following issues (i) whether sundry creditors are genuine, (b) whether contract receipts/fees have been correctly offered to tax and (iii) whether sales turnover/receipts has been correctly offered to tax. Thus, the Assessing Officer was required to carry out necessary verification and inquiries in relation to the above issues. The Appellant has contended that during the assessment proceedings the Appellant had filed necessary documents/confirmation and details reconciliation statement. We have examined the assessment order, the paper-book of the Appellant and copy letter date 11.06.2018 filed by the Appellant along with the annexures. The Assessing Officer has merely asked for age-wise details, and balance confirmation in relation to the sundry creditors. It is correct that the Appellant had provided the aforesaid information/documents during the assessment proceedings, however, but the same are not sufficient to enable the Assessing Officer to verify the genuineness of sundry creditors. Similarly, the statement of Reconciliation of 26AS filed by the Appellant is also not sufficient to show that the contract fee has been offered to tax correctly. Clearly, the Assessing Officer has not undertaken necessary inquires/verification during assessment proceedings. The Assessment Order is also silent on these issues and therefore, does not support the contentions of the Appellant. We are also not inclined to accept the contention advanced on behalf of the Appellant that provisions of Clause (a) of Explanation 2 to Section 263 of the Act support the case of the Appellant. The expression '*without making inquiries or verification*' used in Clause (a) of Explanation 2 to Section 263 of the Act, has to be read in conjunction with the words that follow this expression '*which should have been*

made'. In the case before us, the Assessing Officer has failed to carry out necessary inquiries and verification in relation to the issues identified for limited scrutiny which should have been made in the facts and circumstances of the present case.

9. In view of the above, the PCIT was legally justified in exercising powers of revision under Section 263 of the Act in the facts and circumstances of the present case. Accordingly, we uphold the order, dated 20.03.2020, passed the PCIT under Section 263 of the Act.

10. In result present appeal is dismissed.

Order pronounced in the court on 01.06.2022 at Chennai.

Sd/-
(जीमंजूनभा)
(G. MANJUNATHA)
लेखासदस्य/ACCOUNTANT MEMBER

Sd/-
(राहुलचौधरी)
(RAHUL CHAUDHARY)
न्यायिकसदस्यएवं /JUDICIAL MEMBER

चेन्नई/Chennai,
दिनांक/Dated, the 1st June, 2022

IA, Sr. PS

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF