

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

Before: Shri P.M. Jagtap, Vice President
And Shri Siddhartha Nautiyal, Judicial Member

ITA No. 299/Ahd/2020
Assessment Year 2015-16

Rashminbhai Mohanlal Majithia, Ahmedabad PAN: AAZPM0135F (Appellant)	Vs	Pr. CIT-4, Ahmedabad (Respondent)
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Assessee by: Shri S.N. Soparkar, A.R.
Revenue by: Shri Alok Kumar, CIT-D.R.

Date of hearing : 06-04-2022
Date of pronouncement : 17-06-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Principal Commissioner of Income Tax-4, Ahmedabad vide order dated 21/02/2020 passed for the assessment year 2015-16.

2. The assessee has taken the following grounds of appeal:-

“1. Ld. Principle Commissioner of Income Tax - 4, Ahmedabad has erred both in law and on facts of the case in passing an order u/s 263 of the I. T. Act, 1961 on 21.02.2020 for AY 2015-16.

2. The action of Id/Principle CIT is wholly bad in law because when AO passed the order under section 143 (3) on a limited scrutiny basis, there could be no justification on the part of the Principle CIT to invoke revisional jurisdiction on issues not covered by limited scrutiny.

3. Ld. Principle CIT has erred in law and on facts in passing an order u/s 263 of the Act by not considering the interest expense against the claim of interest income.

4. Ld. Principle CIT has erred in giving other direction as to interest and alleged disallowance u/s 14A without any basis in law or in facts.

5. Your appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal before the appeal is heard and decided.”

3. The brief facts of the case are that the assessee is an individual and he filed return of income on 31-08-2015 declaring total income of ₹ 1,21,22,140/- . The case of the assessee was picked up for limited scrutiny for verification of two issues: (a) deduction of expenses from “income from other sources” and (b) interest income mismatch. The assessing officer, in the assessment order accepted the returned income filed by the assessee and determined the total income of the assessee at ₹ 1,21,22,140/-. The Ld. Pr. CIT issued show cause notice dated 30-01-2020 on the ground that there is nothing on record to show that the interest expenses claimed under the head “income from other sources” amounting to ₹ 1,25,62,917/-were incurred wholly and exclusively for earning the interest income of ₹ 1,44,83,261/- and in view of the above, the assessment order has been passed by the

assessing officer without any proper enquiry or cross-verification of correct facts and thus, the assessment order is erroneous and prejudicial to the interests of the revenue. In response to the show cause notice, the assessee appeared before Ld. Pr. CIT and filed reply dated 10-02- 2020 in reply to the above show cause notice. However, the Ld. Pr. CIT rejected the assessee's contentions and set aside the assessment order holding the same to be erroneous and prejudicial to the interests of the revenue. While passing the order Ld. Pr. CIT made the following observations/directions:

“3.4 The overall discussion as made above clearly reflects that the Assessing Officer did not verify the nexus between the interest bearing borrowed funds obtained in earlier years and during the year under consideration and the interest bearing loans & advances were given including the advances on which no interest has been charged. This omission on the part of the Assessing Officer has resulted into passing an erroneous assessment order passed u/s 143(3) of the Act. Further, the A.O. has also ignored the provisions of section 14 read with Rule 8D as the assessee has credited huge' amount of dividend of Rs.3,25,00,000/- which is more than the investment made in the shares of Rs.1,13,07,630/-. He ought to have examined this issue in depth so as to find out as to whether all the dividend income was tax free or taxable and as to how such disproportionate amount has been shown in the profit & loss account.

4. In view of the above facts of the case as revealed through close scrutiny of the relevant documents, the assessment order passed u/s 143(3) of the Act dated 30.10.2017 is held to be erroneous and also prejudicial to the interest of revenue so far as the issues of allowing the interest expenses without verifying the nexus between the interest borrowed funds & interest bearing loans and advances given along with non-invoking the provisions of section 14A of the Act are concerned. The Assessing Officer is, therefore, directed to carry out necessary inquiries as under:-

1) To examine in detail the interest bearing borrowed funds and its direct nexus to the interest bearing loans and advances given including fresh loans obtained and given during the year under consideration with the help of bank entries made in the bank statements of all these transactions and the copies of accounts of all the related persons (both loan-givers and the loan-takers).

2) To examine the issue of disproportionate credit of the income with reference to investments in shares and depositing of the dividend income in the bank accounts. If the amounts so shown do not constitute the tax free dividend, they are required to be taxed as "income from other sources".

3) To work out the disallowance u/s 14A of the Act in respect of exempt dividend income, agricultural income and share of profit from the partnership firm and make such disallowance.

4.1 The revisionary proceedings u/s 263 of the Act are accordingly concluded by passing the aforesaid order and after considering the facts and circumstances of the case as discussed above. The assessment order passed u/s 143(3) of the Act dated 30.10.2017 is held to be erroneous and prejudicial to the interests of the revenue. Therefore, the A.O. is directed to carry out thorough inquiries as mentioned above and other issues which may be noticed during the course of assessment proceedings in pursuant to this order u/s 263 of the Act."

4. The assessee is in appeal before us against the aforesaid order of the Ld. Pr. CIT. At the outset, we note that the appeal is time-barred by 39 days. The Ld. Counsel for the assessee submitted that the appeal was filed on 05-06-2020 i.e. during the corona outbreak and hence there was a small delay of 39 days in filing of appeal due to circumstances beyond the control of the assessee. The Ld. Departmental Representative has also not contested assessee's request for condonation of delay in filing the appeal. Considering

the above circumstances, and in the interests of justice, we are hereby condoning assessee's delay in filing the appeal.”

5. On merits, the counsel for the assessee drew our attention to the contents of the show cause notice issued by the Ld. Pr. CIT u/s 263 of the Act, which mentions that the reason for initiating 263 proceedings was that the Ld. Assessing Officer did not carry out a proper enquiry or cross verification of correct facts to ascertain whether the interest expenses amounting to Rs. 1,25,62,917/-were incurred for earning interest income of ₹ 1,44,83,261/-. However, the ld. counsel for the assessee submitted that a perusal of the assessment record would clearly show that the assessing officer had examined this aspect in great detail and had made exhaustive inquiries during the course of assessment proceedings since the assessment was opened on limited scrutiny basis only for this specific reason. The Ld. Counsel for the assessee drew attention to pages 19, 21 and 22 (para 9) of the paper book to show that the assessment was opened on “limited scrutiny” basis to specifically examine the aspect of “deductions made against income from other sources” under section 57 of the Act. The counsel for the assessee then drew our attention to pages 23-24 of the paper book to point out that the assessee vide submission dated 08-08-2017 filed before the Assessing Officer had specifically given clarification on deduction of ₹ 1,44,83,261/- under section 57 of the Act claimed by the assessee and had also provided a copy of interest expenses ledger along with ledgers of unsecured loan provided by the assessee. He further drew attention to pages 26 and 27 (para 1) of the paper book wherein the assessing officer had called for bank details and details of secured and

unsecured loans given by the assessee and also statement showing particulars of loans and advances given by the assessee during the year under consideration. The counsel for the assessee then drew our attention to page 33 of the paper- book (para 1) wherein the assessing officer had asked the assessee to produce statement showing various details of unsecured loans received during the year. The counsel for the assessee drew attention to page 36 of the paper book wherein the assessee vide letter dated 29-09-2017 had submitted confirmations for unsecured loans received during the year and also submitted confirmations for unsecured loans repaid/having only interest entries during the year. He also drew our attention to pages 38 to 39 of the paper book wherein the assessee had filed detailed submissions in respect of disallowance of interest to the extent of interest-free advances given as requisitioned by the AO. The counsel for the assessee pointed out that at page 43 to 45 of paper book, vide submission dated 27-10-2017, the assessee provided the nexus between amount borrowed from parties to whom interest is paid and how the same is utilised in giving advances to concerns from whom interest is received. Accordingly, the counsel for the assessee submitted that in the instant facts the AO had conducted detailed enquiries which were duly replied by the assessee during the course of assessment proceedings and hence the assessment order is not erroneous and prejudicial to the interest of the revenue. Accordingly, the order passed under section 263 of the Act is liable to be set aside. The Ld. Departmental Representative in response has placed reliance on the observations of the Ld. Pr. CIT made in the 263 order.

6. We have heard the rival contentions and perused the material on record. We note that the assessment proceedings were reopened on “limited scrutiny basis” to analyse (a) Interest income mismatch and (b) deduction from income from other sources. During the course of assessment, the AO made detailed enquiries with respect to the above issues under consideration as can be seen from various notices issued from time to time during the course of assessment proceedings. The assessee also filed time to time replies in response to the notices issued by the AO giving details of interest paid/received and also gave justification/nexus for claim of deduction of interest expenditure against interest income. Accordingly, in our considered view, the Ld. Pr. CIT has erred in facts in observing that the assessing officer did not verify the nexus between interest-bearing borrowed funds obtained and the interest-bearing loans and advances given by the assessee. In fact, it is observed that while setting aside the assessment order, the Ld. Pr. CIT has asked the AO to also examine the issue of disproportionate credit of dividend income with reference to investments in shares and also directed the AO to work out the disallowance under section 14A of the Act in respect of dividend income, though the same did not form part of either the show cause notice issued under section 263 of the Act and also it was beyond the scope of original assessment proceedings which were opened on “limited scrutiny basis” to examine issues specified above. During the course of assessment proceedings, we note that the Ld. AO made detailed enquiries on these issues and after consideration of time-to-time written submissions filed by the assessee and documents / evidence placed on record, the Ld. AO accepted the return of income filed by the assessee. The Gujarat High Court in the case of **CIT v. Nirma Chemical Works 182**

Taxman 183 (Gujarat) held that when the assessing officer after making due enquiries had adopted one view and granted partial relief, merely because the Commissioner took a different view of the matter, it would not be sufficient to permit Commissioner to exercise powers under section 263 of the Act. The Gujarat High Court in the case of **CIT v. Kamal Galani 95 Taxman.com 261 (Gujarat)** has held that once assessing officer carried out detailed enquiries, it was not open for the Commissioner to reopen issues on mere apprehensions and surmises. Para 19 of the aforesaid order reads as below:

19. In the context of the present case, applying the ratio of the above noted decision, the scope of the Commissioner's power of revision under section 263 of the Act would be when the Assessing Officer conducts no enquiry or proper enquiries or does not applies mind to the legal issues arising out of the material on record, the revisional powers would be available. On the other hand, if the assessing officer has conducted proper enquiries and come to legal conclusions which are plausible, the Commissioner would not be justified in invoking revisional jurisdiction directing further enquiries or taking a different view.

The SLP filed by the Revenue against the High Court decision was dismissed by the Honourable Supreme Court of India in **CIT v. Kamal Galani 110 Taxman.com 213 (SC)**. In the instant case, as noted above, detailed enquiries were made during the course of assessment proceedings by the Ld. Assessing Officer to enquire about the claim of expenses u/s 57 of the Act, to which the assessee filed time to time replies. Hence, in the instant

facts, we are of the considered view that the assessment order was not erroneous or prejudicial to the interest of the revenue. In the result, the appeal of the assessee is allowed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 17-06-2022

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT
Ahmedabad : Dated 17/06/2022

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,
उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद