

IN THE INCOME TAX APPELLATE TRIBUNAL "B"
BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.171/Kol/2022
Assessment Year: 2017-18

M/s MBL A Capital Ltd.....Appellant
3rd Floor, 135A,
Biplabi Rash Behari Basu Road,
Kolkata – 1.
[PAN:AAECS4852K]

vs.

PCIT-2, Kolkata.....Respondent

Appearances by:

Shri S. K. Tulsian, Advocate, appeared on behalf of the appellant.
Shri Amal Kamat, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : June 9, 2022

Date of pronouncing the order : June 27, 2022

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order of the Principal Commissioner of Income Tax (hereinafter referred to as 'PCIT') dated 24.03.2022. The assessee is aggrieved by the action of the PCIT in setting aside the assessment order for de novo assessment exercising his revision jurisdiction u/s 263 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The PCIT has set aside the order of the Assessing Officer observing that as per the provisions of section 115JB of the Act, in calculating the books profits, the assessee was required to take into account the long-term capital gains from sale of shares, whereas, the assessee has not done so, and had not included the profit on sale of shares amounting to Rs.7,64,95,348/- in computing book profit u/s 115JB of the Act.

3. At the outset, the ld. counsel for the assessee has invited our attention to the impugned assessment order dated 14.05.2019 to submit that the same was a limited scrutiny order. The ld. counsel has further invited our attention to page 1 of the paper-book, which is the copy of the notice issued u/s 143(2) of the Act. As per the said notice,

the case of the assessee was selected for limited scrutiny relating to the examination of issue of expenses incurred for earning of exempt income. The ld. counsel for the assessee has submitted that the scrutiny assessment u/s 143(3) of the Act were initiated on the limited issue relating to expenses incurred for earning of exempt income. The Assessing Officer was not supposed to examine any other issue during the assessment proceedings except the aforesaid limited issue. The Assessing Officer accordingly carried out limited scrutiny assessment and examined this issue and passed the assessment order dated 14.05.2019. However, the ld. PCIT has held the assessment order as erroneous and prejudicial to the interest of the Revenue on the other issue relating to including of capital gains in computing book profit u/s 115JB of the Act. The ld. counsel has submitted that when the Assessing Officer was not supposed to look into the other issues then it cannot be said that the order of the Assessing Officer was erroneous for not looking into the said issue. The ld. counsel, therefore, has submitted that the exercise of revision jurisdiction by the PCIT in this case was wrong and illegal. He, in this respect, has relied upon the following case laws:

- (i) Balvinder Kumar v. PCIT in [2021] 125 taxmann.com 83 (ITAT Delhi)
- (ii) Best Trading and Agencies Ltd. vs. DCIT in [2020] 119 taxmann.com 129 (Karntaka HC)
- (iii) Nayek Paper Converters vs. ACIT in [2015] 93 ITD 144 (Kol) (ITAT Kolkata)
- (iv) Deccan Paper Mills Co. Ltd. in ITA Nos.1013&1635/Pun/2014 (ITAT Pune)
- (v) R&H Property Developers (P) Ltd. vs. Pr. CIT in ITA No.1906/Mum/2019 (ITAT Mumbai)
- (vi) Taj Paul Bhardwaj vs. PCIT in ITA No.463/Chd/2019 (ITAT Chandigarh)

4. The ld. counsel has further submitted that even otherwise the order of the Assessing Officer was not prejudicial to the interest of the Revenue. That after taking into account the indexed cost of acquisition, there will be resultant loss in the sale of shares. That since there was no capital gain, therefore, no prejudice has been occurred to

the Revenue in this respect. The Id. counsel has further relied upon the following case laws:

- (i) Best Trading and Agencies Ltd. vs. DCIT in [2020] 119 taxmann.com 129 (Karnataka HC)
- (ii) Karnataka State Industrial Infrastructure Development Corporation Ltd. vs. DCIT [2016] 76 taxmann.com 360 (ITAT Bangalore)

The Id. counsel has contended that as per the law laid down in the aforesaid decisions, benefit of indexed cost of acquisition is available to the assessee while computing capital gain for the purpose of computation of book profit u/s 115JB of the Act. The Id. counsel, therefore, has submitted that the order of the Assessing Officer was neither erroneous nor prejudicial to the interest of the Revenue.

5. The Id. DR, on the other hand, has relied upon the decision of Calcutta High Court in the case of Success Tours & Travels (P) Ltd. vs. ITO to submit that when the assessment is reopened u/s 147 of the Act, then not only the issue upon which the assessment is reopened but all other issues relating to the assessment are open for examination by the Assessing Officer.

6. We have heard the rival contentions and gone through the records. It is settled law that for exercising revision jurisdiction u/s 263 of the Act, two conditions must be satisfied: (i) order of the Assessing Officer is erroneous in nature, (ii) the same is prejudicial to the interest of Revenue.

In this case, the assessment u/s 143(3) of the Act was carried out on the limited issue of expenditure incurred in relation to exempt income. Under these circumstances, the Assessing Officer was authorised to examine only the aforesaid limited issue and he was not supposed to scrutinise any other issue relating to the assessment of income of the assessee. The Assessing Officer, therefore as per the law carried out limited scrutiny and passed the assessment order u/s 143(3) of the Act. The Id. PCIT, under these circumstances, could have exercised his revision jurisdiction in respect of observations/order of the Assessing Officer relating to the aforesaid limited issue of

expenditure incurred on exempt income. The assessment order cannot be said to be erroneous on ground of non-examination of the issue which the Assessing Officer otherwise was not authorised to examine during the limited scrutiny assessment. The case laws cited by the ld. counsel for the assessee are squarely applicable to the facts of the case wherein it has been held time and again that in case of limited scrutiny, since the Assessing Officer could not go beyond reason for which the matter was selected for limited scrutiny, thus it would not be open to the PCIT to pass revisionary order on any other aspect. So far as the reliance of the ld. DR on the decision in the case of 'Success Tour and Travels (P) Ltd.' (supra) is concerned, we find that the same is not applicable to the facts of the case in hand. The aforesaid observations made by the Hon'ble Calcutta High Court are in relation to the reopening of assessment u/s 147 of the Act wherein it has been held that apart from the issue on which the assessment is reopened, the Assessing Officer can also look into other issues, as the entire assessment is open for scrutiny before the Assessing Officer. However, in case of exercising of revision jurisdiction u/s 263 of the Act, the above proposition of law is not applicable as the very condition that the order of the Assessing Officer should be firstly erroneous is to be satisfied. If the order of the Assessing Officer is not erroneous then the ld. PCIT cannot exercise his revision jurisdiction u/s 263 of the Act. As observed above in this case, there was no error in the assessment order, for non-examination of the issue, which the Assessing Officer was not authorised to examine. Therefore, the ld. PCIT did not have jurisdiction u/s 263 of the Act to revise/set aside the order of the Assessing Officer on some other issue.

Even otherwise, the ld. counsel has demonstrated that as per the law laid down by the Karnataka High court in the case of Best Trading and Agencies Ltd. vs. DCIT (supra), the benefit of indexed cost of acquisition is to be taken into consideration for computing capital gains while computing book profit u/s 115JB of the Act. The ld. counsel has demonstrated that if benefit of indexed cost of acquisition is given to the assessee then the resultant figure will be long-term capital loss. Therefore, even otherwise, the order of the Assessing Officer is not prejudicial to the interest of the Revenue.

7. Since none of conditions stipulated u/s 263 of the Act is satisfied i.e. neither the assessment order is erroneous nor prejudicial to the interest of the Revenue, therefore, order passed by the Id. PCIT u/s 263 of the Act being without jurisdiction is wrong and illegal and the same is hereby quashed.

8. In the result, the appeal of the assessee stands allowed.

Kolkata, the 27th June, 2022.

Sd/-
[Girish Agrawal]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 27.06.2022.

RS

Copy of the order forwarded to:

1. M/s MBL A Capital Ltd
2. PCIT-2, Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches