

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.71/PUN/2021
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Rohit Devidas Nadkarni,
At Galel, Post-Banda,
Taluka-Sawantwadi,
Distt.-Sindhudurg – 416511

PAN : AEEPN4352G

.....अपीलार्थी / Appellant

बनाम / V/s.

Pr. Commissioner of Income Tax,
Kolhapur

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kumar Kale
Revenue by : Shri Sardar Singh Meena

सुनवाई की तारीख / Date of Hearing : 24-06-2022
घोषणा की तारीख / Date of Pronouncement : 06-07-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 03-02-2020 passed by the Pr. Commissioner of Income Tax, Kolhapur [‘PCIT’] for assessment year 2011-12.

2. We find that this appeal was filed with a delay of 280 days. Upon hearing both the parties, we find that the reasons explained by the ld. AR are bonafide which really prevented the assessee to file the appeal in time. Therefore, the delay of 280 days are condoned.

3. The only issue is to be decided is as to whether the order of PCIT is justified in setting aside the assessment order dated 28-12-2017 passed u/s. 143(3) r.w.s. 147 of the Act without appreciating that the relevant assessment order which did not survive as on the date of passing the impugned order u/s. 263 of the Act.

4. We note that the PCIT exercised its jurisdiction u/s. 263 of the Act on the assessment order which was completed on 28-12-2017 u/s. 143(3) r.w.s. 147 of the Act. The contention of ld. AR is that the said reassessment order was set aside by the CIT(A) in quantum proceedings vide order dated 03-10-2018 and argued that no order as such existing as on date of passing of 263 order by the PCIT. We note that the CIT(A) passed quantum appeal order dated 03-10-2018 wherein he allowed relief to the assessee by holding that the reopening of assessment is bad under law by taking support from the decision of Hon'ble Supreme Court in the case of Kelvinator of India Ltd. (2010) 187 Taxman 312 (SC). There is no dispute that the impugned order u/s. 263 was passed on 03-02-2020 whereas the quantum appeal was disposed off by the CIT(A) on 03-10-2018. Therefore, we find force in the arguments of ld. AR that no order existing as on the exercise of revision jurisdiction u/s. 263 of the Act by the PCIT. Therefore, the impugned order dated 03-02-2020 passed by the

PCIT is not maintainable and it is set aside. Thus, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 06th July, 2022.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

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

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

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

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune