

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA Nos.876 to 882/PUN/2018

निर्धारण वर्ष / Assessment Years : 2008-09 to 2014-15

Mr. Maruti Nivrutti Navale Sinhagad Technical Education Society, Vadgaon Campus, Vadgaon (BK), Pune – 411041 PAN: AAIPN0909R	Vs.	Pr.CIT (Central), Pune
Appellant		Respondent

Assessee by Shri Suhas Bora
Revenue by Shri Rajarshi Dwivedy

Date of hearing 06-07-2022
Date of pronouncement 15-07-2022

आदेश / ORDER

PER S.S. GODARA, JM :

These assessee's seven appeals for assessment years 2008-09 to 2014-15 arise against the PCIT(Central) Pune's as many orders, all dated 27-03-2018 passed in case Nos.Pn/PCIT(C)/263-MNN/2017-18/8508, Pn/PCIT(C)/263-MNN/2017-18/8507, Pn/PCIT(C)/263-MNN/2017-18/8506, Pn/PCIT(C)/263-MNN/2017-18/8505, Pn/PCIT(C)/263-MNN/2017-18/8504, Pn/PCIT(C)/263-MNN/2017-18/8503 and Pn/PCIT(C)/263-

MNN/2017-18/8502, respectively, in proceedings under Section 263 of the Income Tax Act, 1961, in short 'the Act'.

Heard both the parties. Case files perused.

2. It emerges at the outset that the assessee has raised its identical sole substantive grievance that the learned PCIT has erred in law and on facts in terming the corresponding assessments; all dated 30.03.2016 (former six years 2008-09 to 2013-14 involve section 143(3) r.w.s. 153A and last assessment year 2014-15 contains 143(3) assessment; as the case may be) in issue as erroneous ones causing prejudice to the interests of Revenue. We, therefore, propose to decide the instant batch of seven appeals together for the sake of convenience and brevity.

3. There is further no issue between the parties that the learned PCIT had issued a common section 263 show cause notice dated 23.02.2018 to the assessee as follows:

"No.Pn/PCIT(C)/263/2017-18/8069

Date : 23/02/2018

*To,
Shri Maruti Nivrutti Navale,
Sinhagad Technical Education Society,
Vadgaon Campus, Vadgaon (BK)
Off. Sinhagad Road,
Pune-411041.
PAN: AAIPN0909R*

Sir,

Sub:- Show cause notice u/s. 263 of the I.T. Act, 1961 for the A.Ys. 2008-09 to 2014-15 in case of Shri Maruti Nivrutti Navale – reg.

Kindly refer to the above.

02. *A proposal for taking remedial action u/s 263 of the IT Act by revision of assessment order has been received in this case for the A.Ys.2008-09 to 2014-15 from the ACIT, Central Circle-2(2), Pune through the Range head.*

03. *The facts of the case and reason for submitting the proposal is as under: -*

3.1 *A search and seizure action u/s 132 of the IT Act, 1961 was conducted on 06.08.2013 in the case of STES and M N Navale Group, Pune. Consequent to the search, the case of the assessee was centralized to the AO vide order dated 26.04.2006. Notice u/s 153A was issued in the case of M N Navale, Individual for the AYs. 2008-09 to 2013-14 and notice u/s 143(2) was issued for AY 2014-15. Assessment proceedings in the case of the assessee were completed for the AYs. 2008-09 to 2014-15 on 30.03.2016 after making various additions. Further, assessment proceedings were also completed in the case of M N Navale, HUF for the AYs. 2008-09 to 2014-15 on 30.03.2016.*

3.2 *Further the AO has reported that on verification of the assessment orders passed on 30.03.2016 in the case of Shri M N Navale (Indl) and M N Navale (HUF) for AYs. 2008-09 to 2014-15, it is observed that the then AO has taken contradictory stand in assessing the income of these two entities. The AO in his proposal has stated that certain income which would have been assessed in the hands of Shri Maruti N Navale (Indl) has been considered by the AO in the hands of Maruti N Navale (HUF) in the assessment orders passed by him in the month of March, 2016. The assessee namely Maruti N Navale (HUF) in its computation of total income filed with the return of income for AYs. 2008-09 to 2014-15 has shown rental income of various properties which it had claimed to have been received from Bigger HUF. Similarly, the assessee HUF has also shown capital gains for some years in its hands on sale of few properties received from the bigger HUF. Further, the AO in his assessment orders has made various additions to the returned income of the HUF which otherwise would have been required to be made in your hands for these years.*

3.3 Hence, this action of the AO is in contradiction with the stand taken by the department in the assessments orders framed earlier for AY 2008-09 vide order u/s 143(2) rws 254 dated 05.03.2015 with specific finding that all the properties were purchased by M N Navale (Indl) from his own funds and accordingly rental income as well as income from sale of property it to be taxed in the hands of M N Navale (Indl).

3.4 Therefore, in view of the above, the AO has requested to take remedial action so as to assess the income correctly in the case of Shri. Maruti Nivrutti Navale (Individual) for the A.Yrs. 2008-09 to 2014-15.

04. I have gone through the proposal submitted by the AO through the Range head in your case for the AYs. 2008-09 to 2014-15. I am satisfied that the assessment orders passed in your case u/s 153A/143(3) for the AYs. 2008-09 to 2014-15 appear to be erroneous in so far as it is prejudicial to the interests of revenue as it is in contradiction to the stand taken by the department in the assessment orders framed consequent to the first search. I, therefore, intend to set aside/ modify the assessment orders for years under consideration within the meaning of section 263 of the I. T. Act, 1961. An opportunity of being heard is therefore, given to you. You are requested to attend in person or through your authorized representative on 14/03/2018 at 12:00hrs in my office at Pune.

05. If you have authorized any representative to attend on your behalf, please ensure that the power of Attorney with proper court fee stamp is filed on or before the date of hearing. If you do not wish to attend in person or through your authorized representative, you may file written submission along with necessary evidence in support of your contention before the due date of hearing. Further, it may be noted that no adjournment will be provided and in case of non appearance/non submission of reply, order will be passed on merits.”

4. Both the parties next invited our attention to learned PCIT's detailed revision directions rejecting the assessee's submissions thereby directing the Assessing Officer to frame fresh assessments as under:

“5. I have carefully considered the facts of the case and the submission of the assessee. The assessee HUF was created by partition decree dated 16.04.2007. As such certain properties were received by the assessee HUF from the bigger HUF. In the earlier assessment years the department has already brought on record its stand that the bigger HUF came into existence in 1952 and its only source of income was agricultural income from 60.6 crore of inherited agricultural land and that income was not sufficient to generate any surplus which could have been available for making any investment in immovable property. This factual finding has been upheld in appeal. Accordingly, the rental income as well as any income from sale of property shown in the hand of HUF has consistently been taxed in the hands of Sri. M.N. Navale (Individual) as his individual income.

5.1 However during the assessment proceeding for the year under consideration the Assessing Officer failed to take into account the above facts and finding of the departments on the issue and inadvertently accepted the assessee's contention by considering the rental income and other income from these properties as income of M N Navale (HUF) and no rental income or other income arising from these properties was assessed on substantive basis in the hand of M.N. Navale (Individual).

5.2 Recourse to Section 263(1) can be taken if the impugned order is erroneous and prejudicial to the interest of the revenue. 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 and prejudicial to the interest of the revenue. In the case under consideration the AO has passed order on incorrect assumption of fact that rental income received / Capital gains on sale of properties has rightly been shown as income of M.N.Navale (HUF) in the return of income for the year under consideration. Whereas it is a established fact as per detail reason given in the assessments order dated 05.03.2015 passed under section 143(3) r.w.s 254 of the Act for A.Y. 2008-09 in the case of Shri M.N. Navale (Smaller HUF) which was created by partition of bigger HUF, that the bigger-HUF had no asset except the agricultural land inherited by it in 1952 and properties purchased thereafter by Shri M.N.Navale has to be treated as property purchased by Sri M.N. Navale in his individual capacity as the HUF has no capacity to make investment. The finding of the A.O has been upheld in appeal. Hence the rental or other income accruing or arising from the said properties need to be taxed in the hands of Sri. Maruti Nivruti Navale (Individual).

5.3 The various decisions cited by the L.d A.R. stating that the CIT cannot consider, the issue under section 263 of the Act which has been considered in appeal was considered and found to be not applicable as the facts of the case is totally different; The above ratio will be applicable only in the cases where the matter has been considered by the appellate authorities for the same assessment order which are subject matter of review before the CIT. However, in the case under consideration though the appeal for the assessment order in question is pending before the CIT(A), however no ground of appeal regarding the issue in question has been taken by the assessee.

5.4 Hence after considering the totality of facts & circumstances of the case and for the detailed reasons discussed herein above I hold that the assessment order u/s. 143(3) read with section 153A dtd 30.03.2016 for AY 2008-09 passed by the Assessing Officer as erroneous & prejudicial to the interest of revenue.

5.5 Accordingly, the assessment order u/s. 143(3) read with section 153A dtd. 30.03.2016 for AY 2009-10, is hereby set aside to the file of assessing officer to be framed de-novo after examining the issue of taxability of rental and other income accruing arising out of properties shown in the return of Income of Maruti Nivrutti Navale (HUF) in the hand of Shri Maruti Nivrutti Navale (Individual).”

5. We have given our thoughtful consideration to the vehement rival contentions against and in support of PCIT's impugned revision directions. Learned CIT-DR more particularly referred to section 263 Explanation (2)(b) inserted in the Act by the Finance Act, 2015 w.e.f. 01.06.2015 that the Assessing Officer had framed the impugned assessments without examining the issue of assessment of assessee's / individual's income thereby considering the same in the hands of the eponymous HUF. He, therefore, strongly supported the impugned revision directions.

6. We have given our thoughtful consideration to the foregoing rival contentions and find no merit in the Revenue's stand. It is indeed clear from a perusal of the PCIT's section 263 show cause notice reproduced in the preceding paragraphs that there is not even an indication therein nor in the revision directions as to which head as well as the corresponding specific income assessable in the assessee's hands (in individual capacity) has been considered in the said HUF's case. The very factual position continues in the learned PCIT's order's operative part as well wherein there is not an iota of discussion about the specific wrongful relief granted by the Assessing Officer to the assessee in these assessment years which could be taken as to have prejudiced interest of the Revenue. It is further made clear that the learned lower authorities have not even quantified such wrongful relief.

7. We further invited learned CIT-DR's attention to the PCIT's foregoing revision show cause notice wherein he has simply adopted the Assessing Officer's proposal without even verifying the corresponding facts on his own. Mr. Dwivedi at this stage quoted CIT vs. Amitabh Bachchan (2016) 384 ITR 200 (SC) that

what is sufficient in section 263 proceedings is only an opportunity of hearing by the CIT or PCIT; as the case may be. All these Revenue's arguments fail to evoke our concurrence. We deem it proper to quote *Malabar Industrial Co. Ltd. vs. CIT* (2000) 243 ITR 83 (SC) that an assessment has to be both an erroneous one as well as causing prejudice to the interest of Revenue; simultaneously before the impugned revision proceedings are sought to be invoked by the prescribed authority. Their lordships further hold that lack of inquiry on the Assessing Officer's part itself invites both the foregoing limbs. We keep in mind the same and note in light of their lordships latter decision in *Amitabh Bachchan's* case that it was an instance where the prescribed authority had exercised its revision jurisdiction on additional grounds other than those incorporated in the show cause notice whereas the case before us does not involve any such factual position. It is rather a case wherein the learned PCIT has nowhere made it clear about any specific income liable to be taxed in the assessee's hands; which in turn, stood assessed in the HUF case (*supra*). We thus conclude in these facts and circumstances that the PCIT herein has erred in law and on facts in exercising his

section 263 revision jurisdiction on the pretext of vague grounds as well as directions only. All these seven revision orders are accordingly reversed therefore. The corresponding assessments framed herein stand restored as the necessary corollary subject to all just exceptions. Ordered accordingly.

8. These assessee's seven appeals are allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the Open Court on 15th July, 2022.

Sd/-
(DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

पुणे Pune; दिनांक Dated : 15th July, 2022
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-12, Pune
4. The Pr.CIT Central, Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" / DR 'B', ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

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

		Date	
1.	Draft dictated on	05-07-2022	Sr.PS
2.	Draft placed before author	08-07-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		