

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

BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER  
AND  
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.713/PUN/2019  
निर्धारण वर्ष / Assessment Year : 2010-11

Asstt. Commissioner of Income Tax,  
Circle – 1, Nashik

.....अपीलार्थी / Appellant

बनाम / V/s.

Venugopal Bhaskaran,  
Mechmet Engineering,  
F-18, MIDC, Satpur,  
Nashik – 422007

PAN : ADHPB0631L

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pramod Shingte  
Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 16-08-2022  
घोषणा की तारीख / Date of Pronouncement : 26-08-2022

**आदेश / ORDER**

**PER S.S. GODARA, JM :**

This Revenue's appeal for assessment year 2010-11 arises against the CIT(A)-1, Nashik's order dated 18-02-2019 passed in case No. Nsk/CIT(A)-1/375/2016-17, in proceedings u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961; in short "the Act".

Heard both the parties. Case file perused.

2. Coming to the Revenue's sole substantive grievance that the CIT(A) has erred in law and on facts in reversing assessment findings adding rental income in the nature of interest on deposits received by the assessee from its tenant involving sum of Rs.1312302/-, we note that the lower appellate discussion to this effect reads as follows :

**"5.0** Ground No.4, 5 & 6 are directed against the addition of Rs.13,12,302/- in lieu of rent received and the amount is reduced from interest deduction claimed by the appellant, therefore, these grounds are taken up together for the sake of convenience.

5.1 I have carefully considered the facts of the case, the assessment order, order u/s 263 of the CIT-1, Nashik, Hon'ble ITAT Pune's order in I.T.A. No. 962/PUN/2016 dated 03/12/2018 for A.Y. 2011-12 and the submission of the appellant. The facts in this case are similar to the facts of the appellant's case for A.Y. 2011-12. The Hon'ble ITAT has held as under:-

"8. We have heard the rival submissions and perused the material on record. The issue in the present case is about the invoking of provisions of Section 263 by Commissioner of Income Tax, Sec. 263(1) of the Act, the powers under which CIT has assumed power for revision reads as under:-

"The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the ITO is erroneous in so far as it is prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."

The reading of the above provisions makes it very clear that the power of suo motu revision u/s 263(1) is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision u/s 263, namely (i) the order is erroneous (ii) by virtue of being erroneous prejudice has been caused to the interests of the Revenue. Hon'ble Apex Court in the case of Malabar Industrial Co. Ltd. (supra) has held that CIT has to be satisfied of twin conditions, namely, (i) the order of the AO sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent-if the order of the ITO is erroneous but is not prejudicial to the Revenue- recourse cannot be invoked to correct each and every type of mistake or error committed by the AO; when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the ITO is unsustainable in law.

9. In the present case, it is seen that Ld. PCIT has held that the order to be erroneous for the reason that assessee had claimed deduction of interest on housing loan and assessee had also taken interest free deposits over and above the rental income. According to

*Ld. PCIT since assessee had received deposits, assessee got the benefit in reducing the interest burden on housing loan, which fact was not considered by the AO while passing the assessment order. Before us, Ld. A.R. submitted that the proceedings u/s 263 of the Act had been initiated on the basis of audit objection and for which Ld. A.R. has referred to the proposal sent by AO to Ld. PCIT and the audit observation letter dated 04/02/2015. The contention of the assessee that the initiation of proceedings has been based on audit objection has not been controverted by Revenue. We find that on identical issue in the case of Inderchand Amarchand Chopda Vs. CIT (supra), the co-ordinate Bench of the Tribunal after relying on the decision of Hon'ble Gauhati High Court in the case of B & A Plantation & Industries Ltd., (supra) has held that when Ld. PCIT assumed jurisdiction u/s 263 of the Act to give effect to the audit objection, the assumption of jurisdiction to be not valid.*

10. *On the merits of considering the interest free deposits for determining A.L.V., we find that Hon'ble Bombay High Court in the case of CIT vs. Tip Top Typography (supra) has held that the notional rent on security deposits cannot be taken into account for determination of Annual Letting Value. Similar view has also been taken by the Hon'ble Bombay High Court in the case of CIT vs. J.K. Investors (Bombay) Ltd., (supra). We further find that no addition on the issue on which the present proceedings u/s 263 of the Act has been initiated, has been made by the AO in the assessment order passed u/s 143(3) of the Act for A.Y. 2010-11 and for subsequent assessment orders i.e., A. Y. 2012-13, and 2014-15. Here, it would be relevant to point out that the order for A. Y. 2014-15 was passed u/s 143(3) of the Act on 27/02/2014 which was much after the order passed by Ld. PCIT u/s 263 of the Act for A.Y. 2011-12. Before us, Revenue has not placed any material on record to demonstrate that the view taken by the AO while framing the assessment u/s 143(3) of the Act was an impermissible view or was upon erroneous application of legal principles necessitating the exercising of revisionary powers u/s 263 of the Act. Further, the case laws relied upon by Ld. D.R. are distinguishable on facts and are not applicable to the present facts. Considering the totality of the facts, we are of the view that in the present case, Ld. PCIT was not justified in resorting to revisionary powers u/s 263 of the Act. We therefore set aside the order and thus, the ground of the assessee is allowed".*

**5.2** *The Hon'ble ITAT has set aside the order passed by the Pr. CIT-1, Nashik u/s 263 holding that Ld. PCIT was not justified in resorting to revisionary powers u/s 263 of the Act and also allowed the appeal of the appellant on merits. Respectfully following the decisions of Hon'ble ITAT, Pune for A.Y. 2011-12 in appellant's own case on similar issue, the addition of Rs.13,12,302/- for A.Y. 2010-11 is deleted.*

*Ground of appeal Nos.4, 5 & 6 are allowed."*

3. Suffice to say, it has come on record that this tribunals' co-ordinate bench's order in assessee's case itself has examined the very issue on merits while deciding the same against the department (supra). That being

the case, we find no merit in the Revenue's vehement arguments seeking to revive the impugned addition representing the notional interest on interest free deposits for the purpose of computing assessee's rental income. The CIT(A) findings under challenge stand upheld therefore.

4. This Revenue's appeal is dismissed.

Order pronounced in the open court on 26<sup>th</sup> August, 2022.

Sd/-  
(G.D. Padmahshali)  
ACCOUNTANT MEMBER

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

पुणे / Pune; दिनांक / Dated : 26<sup>th</sup> August, 2022.  
रवि

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

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

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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