

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH: KOCHIN**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

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| ITA No.84/Cochin/2021 |
| Assessment Year: 2016-17 |

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| CSB Bank Ltd. (Formerly The Catholic Syrian Bank Ltd.) CSB Bhavan Accounts Department St. Mary's College Road Thrissur 680 020 PAN NO : AABCT0024D | Vs. | Principal CIT Kozhikode |
| APPELLANT | | RESPONDENT |

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| ITA No.563/Cochin/2022 |
| Assessment Year: 2017-18 |

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| CSB Bank Ltd. (Formerly The Catholic Syrian Bank Ltd.) Thrissur 680 020 | Vs. | Deputy Commissioner of Income-tax Circle-1(1) & TPS Thrissur Thrissur |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Shri C. Naresh, A.R. |
| Respondent by | : | Shri Shantam Bose, D.R. |

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| Date of Hearing | : | 14.09.2022 |
| Date of Pronouncement | : | 14.09.2022 |

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

These two appeals by assessee are directed against order passed by Ld. Principal CIT u/s 263 of the Income-tax Act,1961 ['the Act' for short] for the assessment years 2016-17 & 2017-18 dated 22.3.2021 and 24.3.2022 respectively.

A.Y. 2016-17:-

2. Facts of the case are that the assessment u/s 143(3) of the Act was completed on 14.12.2018 after making an addition of 10,51,000/- under section 14A/Rule 8D. The total loss was assessed as Rs. 172,76,00,175/-. On verification of the records, it is found that the assessee had charged Rs. 3.26 Crores to the profit and Loss account based on actuarial valuation in respect of provision for sick leave benefits of employees from FY 2015-16. The annual report of the bank made a remark in this regard that if the bank had followed this practice earlier the total loss would have been lower by Rs. 3.26 Crores. This note 1.6(e) page 66 of bank report clearly indicates that creation of the provisions from this year has increased the loss. Moreover, as per section 43B(f) any sum payable by the assessee as to employer in lieu of any leave at credit of his employee is an allowable deduction but on actual payment before the return filing due date. In addition to this, the assessee bank debited Rs. 3.01 crores in the Profit and Loss account towards provisions for fraud. The amount so debited was not seen utilised before filing of return of income. Moreover, no remarks has been made by the auditor in form 3CD in this regard. The amount of amortization of premium for FY 2015-16 was Rs.15.88 Crores netted against the income instead of treating

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the amortization of premium as allowable expenses, the securities held under category **HTM** could have been treated as capital assets after due verification. On account of these, notice u/s 263 was issued to the assessee on 12.02.2021. In response to the same the assessee made a detailed submission stating their points of contention in each issue. The points of contention in each issue are summarised as under:

2.1 **Allowability of provision for sick leave**

1. The assessee states that the section 43B(f) provides that any sum payable by any assessee in lieu of any leave at the credit of his employees shall be claimed as a deduction in the previous year in which sum is actually paid. For this purpose, the term "sum payable" is different from the term "sum incurred" during the year. The assessee also stated that the Explanation 2 of section 43B which provides that sum incurred is to be taken as sum payable is not applicable to clause (f) since the said explanation only applies to clause (a) of section 438.
2. Regarding the issue that the provision is only towards the contingent liability, the assessee submitted that this provision was made as mandated by mandatory accounting standard AS15- Employee Benefits.
3. The assessee contended that the provision for leave salary is based on actuarial valuation which is a scientific method of computing estimated liability towards leave encashment that the employees would be eligible to in future. Since this provision is not "such sum payable in lieu of any leave at the credit of the employee" during the previous year,

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section 43B(f) is not applicable in respect of such provision.

4. In the case of M/s. Bharat Earth Movers Ltd. Vs. CIT(2000) 245 ITR 428(SC), the Hon'ble Supreme Court held that the global provision made towards the liability incurred under the leave encashment scheme shall be allowable as a deduction in the same year irrespective of when such liability is being discharged by the assessee.

2.2 Addition in respect of provision of fraud

1. The assessee bank made a provision for fraud amounting to Rs.3.01 crores. Such provision related to advances related frauds. The said provision was debited to provisions and contingencies in profit and loss account and included along with provision towards NPA/write off.
2. In the computation of income submitted by the assessee for the AY 2016-17, Provision towards NPA/write offs amounting to Rs. 217,89,15,847/- was added back by the assessee bank.

2.3 Allowability of provision for amortization of premium on HTM securities

1. The amount of amortization of premium of HTM securities was netted off from income on investments as per guidelines of Reserve Bank of India and the same was claimed and allowed as expenditure.
2. The assessee has submitted that for the income tax purposes all securities held have been treated as stock in trade irrespective of the treatment given in books which is in accordance with RBI norms. This is evident from the fact that the entire profit on sale of all securities irrespective of the category as per RBI norms are taxed only as business income. Further,

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this is also fortified by CBDT circular 18 of 2015 dated 02.11.2015 which is binding on the department. Any loss arising on account of stock in trade is allowable as deduction. Since amortization represents write off of loss on account of securities the same has correctly been claimed and allowed as deduction.

2.4 Finally Ld. PCIT set aside the assessment order passed by the AO u/s 143(3) of the Act dated 14.12.2018 by observing as under:-

2.5 It is imperative to verify whether amount stated against provisions towards NPA/write offs amounting to Rs. 217.89 includes **provision for fraud amount by Rs. 3,00,57,799/-**. It is also further to be ascertained whether this particular amount against the provision created as provision for frauds was added back while computing the total income. Hence **the issue is set aside to the Assessing officer** concerned to verify the same to ascertain the taxability in respect of the provision for fraud after due verification of the facts by giving opportunities of being heard to the assessee. As described above, the assessment order u/s 143(3) dated 14.12.2018 set aside to the Assessing Officer for:

- 1) Creation of provision for sick leave on actuarial valuation shall be disallowed after due verification of amount involved in it.
- 2) To ascertain the tax liability in respect of provision for frauds after verifying the facts that the amount stated against provision towards NPA/Write off amounting to Rs.217.89 crores includes provision for fraud amounting to Rs.3,00,57,799/-.

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2.6 Regarding the allowability of provision for amortization of premium on HTM securities, the Ld. PCIT observed that the claim of the assessee is in accordance with the guidelines of the Reserve Bank of India. Hence, the assessee's claim of deduction of amortization of premium on HTM securities is allowed by the Ld. PCIT.

A.Y. 2017-18:

3. The first issue is similar as in earlier year i.e. with regard to the provision of fraud and allowability of provision for sick leave and third issue is with regard to computation of book profit u/s 115JB of the Act while adding provision for unascertained liability and depreciation attributable to evaluation of assets. In the assessment year 2017-18, he set aside all these issues to the file of AO for conducting verification and pass fresh assessment order after giving opportunity of hearing to the assessee. Against this assessee is in appeal before us.

4. We have carefully considered the rival submissions in the light of material placed before us and also gone through all the judgements cited by the parties before us. First, we take up the legal issue with reference to the jurisdiction of invoking the provisions of section 263 of the Act by the learned CIT. The scheme of the IT Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to erroneous order of the assessing officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interest of the revenue. As held in the case of Malabar Industries Co. Ltd., Vs. CIT (243 ITR

83 (SC), the Commissioner can exercise revision jurisdiction u/s 263 if he is satisfied that the order of the assessing officer sought to be revised is (i) erroneous; and also (ii) prejudicial to the interests of the revenue. The word 'erroneous' has not been defined in the Income Tax Act. It has been however defined at page 562 in Black's Law Dictionary (seventh Edition) thus';

'erroneous, adj. Involving error, deviating from the law'.

The word 'error' has been defined at the same page in the same dictionary thus:

'error No. 1 : A psychological state that does not conform to Objective reality; a brief that what is false is true or that what is true is false'.

At page 649/650 in P. Ramanatha Aiyer's Law Lexicon Reprint 2002, the word 'error' has been defined to mean-

'Error: A mistaken judgement or deviation from the truth in matters of fact, and from the law in matters of judgement 'error' is a fault in judgement, or in the process or proceeding to judgement or in the execution upon the same, in a Court of Record; which in the Civil Law is called a Nullitye" (termes de la ley).

Something incorrectly done through ignorance or inadvertence S.99 CPC and S.215 Cr.PC.

'Error, Fault, Error respects the act; fault respect the agent, an error may lay in the judgement, or in the conduct, but a fault lies in the will or intention."

5. At page 650 of the aforesaid Law Lexicon, the scope of Error, Mistake, Blunder, and Hallucination has been explained thus:

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“An error is any deviation from the standard or course of right, truth, justice or accuracy, which is not intentional. A mistake is an error committed under a misapprehension of misconception of the nature of a case. An error may be from the absence of knowledge, a mistake is from insufficient or false observation. Blunder is a practical error of a peculiarly gross or awkward kind, committed through glaring ignorance, heedlessness, or awkwardness. An error may be overlooked or atoned for, a mistake may be rectified, but the shame or ridicule which is occasioned by a blunder, who can counteract. Strictly speaking, Hallucination is an illusion of the perception, a phantasm of the imagination. The one comes of disordered vision, the other of discarded imagination. It is extended in medical science to matters of sensation, whether there is no corresponding cause to produce it. In its ordinary use it denotes an unaccountable error in judgement or fact, especially in one remarkable otherwise for accurate information and right decision. It is exceptional error or mistake in those otherwise not likely to be deceived.”

6. In order to ascertain whether an order sought to be revised under Section 263 is erroneous, it should be seen whether it suffers from any of the aforesaid forms of error. In our view, an order sought to be revised under Section 263 would be erroneous and fall in the aforesaid category of "errors" if it is, inter alia, based on an incorrect assumption of facts or an incorrect application of law or non-application of mind to something which was obvious and required application of mind or based on no or insufficient materials so as to affect the merits of the case and thereby cause prejudice to the interest of the revenue.

7. Section 263 of the Income-tax Act seeks to remove the prejudice caused to the revenue by the erroneous order passed by the Assessing Officer. It

empowers the Commissioner to initiate suo moto proceedings either where the Assessing Officer takes a wrong decision without considering the materials available on record or he takes a decision without making an enquiry into the matters, where such inquiry was prima facie warranted. The Commissioner will be well within his powers to regard an order as erroneous on the ground that in the circumstances of the case, the Assessing Officer should have made further inquiries before accepting the claim made by the assessee in his return. The reason is obvious. Unlike the Civil Court which is neutral in giving a decision on the basis of evidence produced before it, the role of an Assessing Officer under the Income-tax Act is not only that of an adjudicator but also of an investigator. He cannot remain passive in the face of a return, which is apparently in order but calls for further enquiry. He must discharge both the roles effectively. In other words, he must carry out investigation where the facts of the case so require and also decide the matter judiciously on the basis of materials collected by him as also those produced by the assessee before him. The scheme of assessment has undergone radical changes in recent years. It deserves to be noted that the present assessment was made under Section 143(3) of the Income-tax Act. In other words, the Assessing Officer was statutorily required to make the assessment under Section 143(3) after scrutiny and not in a summary manner as contemplated by Sub-section (1) of Section 143. Bulk of the returns filed by the assesseees across the country is accepted by the

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Department under Section 143(1) without any scrutiny. Only a few cases are picked up for scrutiny. The Assessing Officer is therefore, required to act fairly while accepting or rejecting the claim of the assessee in cases of scrutiny assessments. He should be fair not only to the assessee but also to the Public Exchequer. The Assessing Officer has got to protect, on one hand, the interest of the assessee in the sense that he is not subjected to any amount of tax in excess of what is legitimately due from him, and on the other hand, he has a duty to protect the interests of the revenue and to see that no one dodged the revenue and escaped without paying the legitimate tax. The Assessing Officer is not expected to put blinkers on his eyes and mechanically accept what the assessee claims before him. It is his duty to ascertain the truth of the facts stated and the genuineness of the claims made in the return when the circumstances of the case are such as to provoke inquiry. Arbitrariness in either accepting or rejecting the claim has no place. The order passed by the Assessing Officer becomes erroneous because an enquiry has not been made or genuineness of the claim has not been examined where the inquiries ought to have been made and the genuineness of the claim ought to have been examined and not because there is anything wrong with his order if all the facts stated or claim made therein are assumed to be correct. The Commissioner may consider an order of the Assessing Officer to be erroneous not only when it contains some apparent error of reasoning or of law or of fact on the face of it but also

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when it is a stereo-typed order which simply accepts what the assessee has stated in his return and fails to make enquiries or examine the genuineness of the claim which are called for in the circumstances of the case. In taking the aforesaid view, we are supported by the decisions of the Hon'ble Supreme Court in Rampyari Devi Saraogi v. CIT (67 ITR 84) (SC), Smt. Tara Devi Aggarwal v. CIT (88 ITR 323) (SC), and Malabar Industrial Co. Ltd's case (243 ITR 83) (SC).

8. In Malabar Industrial Co. Ltd. case the Hon'ble Court has held as under:

“There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall the orders passed without applying the principles of natural justice or without application of mind.

In our humble view, arbitrariness in decision-making would always need correction regardless of whether it causes prejudice to an assessee or to the State Exchequer. The Legislature has taken ample care to provide for the mechanism to have such prejudice removed. While an assessee can have it corrected through revisional jurisdiction of the Commissioner under Section 264 or through appeals and other means of judicial review, the prejudice caused to the State Exchequer can also be corrected by invoking revisional jurisdiction of the Commissioner under Section 263. Arbitrariness in decision-making causing prejudice to either party cannot therefore be allowed to stand and stare at the legal system. It is difficult to countenance such arbitrariness in the actions of the Assessing Officer. It is the duty of the Assessing Officer to adequately protect the interest of both the parties, namely, the assessee as

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well as the State. If he fails to discharge his duties fairly, his arbitrary actions culminating in erroneous orders can always be corrected either at the instance of the assessee, if the assessee is prejudiced or at the instance of the Commissioner, if the revenue is prejudiced. While making an assessment, the ITO has a varied role to play. He is the investigator, prosecutor as well as adjudicator. As an adjudicator he is an arbitrator between the revenue and the taxpayer and he has to be fair to both. His duty to act fairly requires that when he enquires into a substantial matter like the present one, he must record a finding on the relevant issue giving, howsoever briefly, his reasons therefor. In S.N. Mukherjee v. Union of India AIR 1990 SC 1984, it has been observed by the Hon'ble Supreme Court as follows:

“Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances or arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.”

9. Similar view was earlier taken by the Hon'ble Supreme Court in Siemens Engg. & Mfg. Co. Ltd. v. Union of India AIR 1976 SC 1785. It is settled law that while making assessment on assessee, the ITO acts in a quasi-judicial capacity. An assessment order is amenable to appeal by the assessee and to revision by the Commissioner under Sections 263 and 264. Therefore, a reasoned order on a substantial issue is legally necessary. The judgments on which reliance was placed by the learned Counsel for the assessee also points to the same direction. They have held that orders, which are subversive of the administration of revenue, must be regarded as erroneous and prejudicial to the interests of the revenue. If the Assessing Officers are allowed to make assessments in an arbitrary manner, as has been done in the case before us, the administration of revenue is bound to suffer. If without discussing the nature of the transaction and materials on record, the Assessing Officer had made certain addition to the income of the assessee, the same would have been considered erroneous by any appellate authority as being violative of the principles of natural justice which require that the authority must indicate the reasons for an adverse order. We find no reason why the same view should not be taken when an order is against the interests of the revenue. As a matter of fact such orders are prejudicial to the interests of both the parties, because even the assessee is deprived of the benefit of a positive finding

in his favour, though he may have sufficiently established his case.

10. In view of the foregoing, it can safely be said that an order passed by the Assessing Officer becomes erroneous and prejudicial to the interests of the Revenue under Section 263 in the following cases:

- (i) *The order sought to be revised contains error of reasoning or of law or of fact on the face of it.*
- (ii) *The order sought to be revised proceeds on incorrect assumption of facts or incorrect application of law. In the same category fall orders passed without applying the principles of natural justice or without application of mind.*
- (iii) *The order passed by the Assessing Officer is a stereotype order which simply accepts what the assessee has stated in his return or where he fails to make the requisite enquiries or examine the genuineness of the claim which is called for in the circumstances of the case.*

11. Coming to the facts of the present case, as seen from the assessment order, there is no enquiry by AO with regard to issues dealt by Ld. Principal CIT in his order and he has passed the assessment order without applying mind on these issues. As such, Ld. Principal CIT was of the opinion that there was no property enquiry by the AO. The A.O. has not gathered any information regarding these 3 impugned issues and he absolutely closed his eyes for the reason best known to him. Hence, the Ld. Principal CIT has directed the AO to carry out further enquiry on these issues and we do not find any infirmity in the findings of Ld. Principal CIT in directing the AO to carry

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necessary enquiry on the above issues. Accordingly, we confirm the order of Ld. Principal CIT passed u/s 263 of the Act.

12. In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open court on 14th Sept, 2022

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 14th Sept, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.