

THE INCOME TAX APPELLATE TRIBUNAL  
"A" Bench, Mumbai  
Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 1361/Mum/2022 (A.Y. 2017-18)

Ashokkumar Bhanwarlal Chhajer 2001/2002, Mahaavir Amrut B-Wing, Sector-19, Sanpada Navi Mumbai-400 705.  PAN : AAAPC8632L (Appellant)	Vs.	PCIT(Central) Aayakar Sadan Bodhi Tower Salisbury Park Gultekadi Pune-411 037. (Respondent)
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Assessee by	Shri Mani Jain
Department by	Smt. Shailja Rai
Date of Hearing	21.09.2022
Date of Pronouncement	30.09.2022

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the revision order dated 29.03.2022 passed by Ld PCIT (Central), Pune and it relates to the assessment year 2017-18. The assessee is challenging the validity of revision order passed by Ld PCIT.

2. The facts relating to the issue are discussed in brief. The assessment for the year under consideration was completed by the AO u/s 143(3) of the Act on 29-11-2019. The Ld PCIT examined the assessment records and noticed that the assessee has given interest free advances of Rs.16.42 crores. He also noticed that the assessee has incurred interest expenditure of Rs.8.49 crores and earned interest income of Rs.5.85 crores and accordingly claimed net interest expenditure of Rs.2.64 crores in the Profit and Loss account. The Ld PCIT took the view that the AO has not examined the issue of non-charging of interest on the loan of Rs.16.42 crores given by the assessee. He also took the view that the AO ought to have charged interest @ 12% on the above said loan given by the assessee. Accordingly, the Ld PCIT

took the view that the AO has not carried out necessary enquiries on the above said issue and there was complete non-application of mind on the part of the Assessing Officer in not examining the above said issue. Accordingly, the Ld PCIT initiated revision proceedings u/s 263 of the Act.

3. Before Ld PCIT, the assessee submitted that the AO has verified the loans received by the assessee as well as loans given by the assessee during the course of assessment proceedings. It was further submitted that all the details including the details of non-charging of interest on certain loans were furnished before the AO. Accordingly, it was contended that the AO has passed the assessment order after examining those details and hence the said assessment order cannot be considered to be erroneous and prejudicial to the interests of revenue.

4. The Ld PCIT was not convinced with the explanations given by the assessee. He held that the assessing officer has not properly examined and verified the issue and that there was lack of enquiry on the issue under consideration in terms of Explanation 2 to sec. 263(1) of the Act. In support of his view, the Ld PCIT also relied upon various judicial decisions. Accordingly, he held that the assessment order is erroneous in so far as it is prejudicial to the interests of revenue. Accordingly, he set aside the assessment order and restored the same to the file of the AO for examining the above stated issue in detail. Aggrieved by the revision order so passed by Ld PCIT, the assessee has filed this appeal before the Tribunal.

5. The Ld A.R submitted that the AO has raised queries with regard to the loans taken by the assessee as well as the loans given by the assessee during the course of assessment proceedings. In this regard, the Ld A.R invited our attention to the notice dated 03-05-2019 & 30-08-2019 issued by the AO u/s 142(1) of the Act, wherein the AO has asked the assessee to furnish the details of loans taken by the assessee in a tabular format. In the said format,

the AO has asked the assessee to furnish the details of "Rate of interest charged". In the similar way, the AO has also asked the assessee to furnish the details of loans given by the assessee, wherein also the details of "Rate of interest charged" were asked. The Ld A.R submitted that the assessee furnished all relevant details before the AO, vide his letter dated 27-09-2019. Accordingly, the Ld A.R submitted that the AO was very much aware of the fact that the assessee has not charged interest on certain loans given by him. Hence it is not a case of inadequate enquiry as observed by Ld PCIT. Accordingly, the Ld A.R submitted that the Ld PCIT was not justified in drawing conclusion that the AO has not conducted proper enquiry and also not adequately verified the issue.

6. The Learned AR further submitted that impugned revision order is not sustainable, as the Ld PCIT has failed to follow the binding decision rendered by Hon'ble Bombay High Court. Explaining this point, the Ld A.R submitted that the assessee was having sufficient interest free funds with him as at the year end. Inviting our attention to the Balance sheet as on 31.3.2017 placed at page No. 15 of the paper book, the learned AR submitted that the capital available with the assessee as on 31.3.2017 was Rs. 74.73 crores, while the interest free loans given by the assessee was only Rs. 16.42 crores. He submitted that own funds available with the assessee was far in excess of the amount of interest free loans given by the assessee. Accordingly he submitted that the interest free loan should be considered as given out of own capital available with the assessee as per the decision rendered by Hon'ble Jurisdictional Bombay High Court in the case of Reliance Utilities and Power Ltd. (313 ITR 340). In view of the binding decision of the jurisdictional High Court, there is no scope for making any disallowance out of interest expenditure. Since the impugned revision order has been passed by the learned PCIT without considering the binding decision of Hon'ble Bombay High Court, the same is liable to be quashed.

7. The Learned DR, on the contrary, submitted that the Assessing Officer has not raised any specific query with regard to non-charging of interest on the loans given by the assessee. The Learned DR further submitted that the AO has merely asked for the details of loans given by the assessee. She contended that, mere issuing of questionnaire asking for details from the assessee could not be construed as application of mind by the Assessing Officer. For this proposition, the learned DR placed her reliance on the decision rendered by Hon'ble Madhya Pradesh High Court in the case of Nagar Garment Industries Pvt. Ltd. Vs. CIT (2020) 113 taxman.com 4 (MP) and also the decision rendered by Hon'ble Bombay High Court in the case of Jeevan Investment & Finance Ltd. (2017) 88 taxman.com 552 (Bom). In the instant case the Assessing Officer has merely called for the details from the assessee and it is not discernible from the assessment order that the Assessing Officer has actually applied his mind on this issue. Accordingly, the learned DR submitted that the impugned revision order passed by the learned PCIT does not call for any interference.

8. We have heard the rival contention and perused the record. The scope of revision proceedings initiated under section 263 of the Act was considered by Hon'ble Bombay High Court, in the case of Grasim Industries Ltd. V CIT (321 ITR 92) by taking into account the law laid down by the Hon'ble Supreme Court. The relevant observations are extracted below:

“Section 263 of the Income-tax Act, 1961 empowers the Commissioner to call for and examine the record of any proceedings under the Act and, if he considers that any order passed therein, by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue, to pass an order upon hearing the assessee **and after an enquiry as is necessary, enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment.** The key words that are used by section 263 are that the order must be considered by the Commissioner to be “erroneous in so far as it is prejudicial to the interests of the Revenue”. This provision has been interpreted by the Supreme Court in several judgments to which it is now necessary to turn. In *Malabar Industrial Co. Ltd. v. CIT* [2000] 243 ITR 83, the Supreme Court held that the provision “cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer” and “it is only when an order is erroneous that the section will be attracted”. The

Supreme Court held that an incorrect assumption of fact or an incorrect application of law, will satisfy the requirement of the order being erroneous. An order passed in violation of the principles of natural justice or without application of mind, would be an order falling in that category. The expression “prejudicial to the interests of the Revenue”, the Supreme Court held, it is of wide import and is not confined to a loss of tax. What is prejudicial to the interest of the Revenue is explained in the judgment of the Supreme Court (headnote) :

“The phrase ‘prejudicial to the interests of the Revenue’ has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law.”

The principle which has been laid down in *Malabar Industrial Co. Ltd.* [2000] 243 ITR 83 (SC) has been followed and explained in a subsequent judgment of the Supreme Court in *CIT v. Max India Ltd.* [2007] 295 ITR 282.”

9. In the case of *Nagesh Knitwears P Ltd* (2012)(345 ITR 135), the Hon’ble Delhi High Court has elucidated and explained the scope of the provisions of sec. 263 of the Act and the same has been extracted by the Delhi High court in the case of *CIT Vs. Goetze (India) Ltd* (361 ITR 505) as under:-

“Thus, in cases of wrong opinion or finding on merits, **the Commissioner of Income tax has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under section 263 is passed.** In such cases, the order of the Assessing Officer will be erroneous because the order is not sustainable in law and the said finding must be recorded. The Commissioner of Income tax cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous. In cases where there is inadequate enquiry but not lack of enquiry, again **the Commissioner of Income tax must give and record a finding that the order/inquiry made is erroneous. This can happen if an enquiry and verification is conducted by the Commissioner of Income tax and he is able to establish and show the error or mistake made by the Assessing officer, making the order unstainable in law.** In some cases possibly though rarely, the Commissioner of Income tax can also show and establish that the facts on record or inferences drawn from facts on record per se justified and mandated further enquiry or investigation but the Assessing officer had erroneously not undertaken the same. However,

the said finding must be clear, unambiguous and not debatable. **The matter cannot be remitted for a fresh decision to the Assessing Officer to conduct further enquiries without a finding that the order is erroneous.** Finding that the order is erroneous is a condition or requirement which must be satisfied for exercise of jurisdiction under section 263 of the Act. In such matters, to remand the matter/ssie to the Assessing Officer would imply and mean the Commissioner of Income tax has not examined and decided whether or not the order is erroneous but has directed the Assessing Officer to decide the aspect/question....” Similar view has been expressed by Hon’ble Madras High Court in the case of CIT Vs. Amalgamations Ltd (238 ITR 963).

10. The law interpreted by the High Courts would make it clear that the Ld Pr. CIT, before holding an order to be erroneous, should conduct necessary enquiries or verification in order to show that the finding given by the assessing officer is erroneous or the Ld Pr. CIT should show that the view taken by the AO is unsustainable in law.

11. In the instant case, we noticed that the Assessing Officer has called for the details of loan taken by the assessee as well as given by the assessee in a particular format which included a specific column for mentioning rate of interest charged. The Ld A.R submitted that the details called for by the Assessing Officer were duly furnished before him and hence the Assessing Officer is very much aware of the fact that the assessee has not charged interest on certain loans aggregating to Rs. 16.42 crores. According to learned AR, that the Assessing Officer has taken a conscious view of the matter after due application of mind and hence the assessment order cannot be considered as erroneous and prejudicial to the interest of revenue. On the contrary, it is the submission of learned DR that the assessment order does not speak about the non-charging of interest on certain loans and further the Assessing Officer has not raised any specific query questioning non-charging of interest on certain loans. The Ld D.R also contended that mere calling for details would not reveal application of mind. Accordingly, the learned DR contended that it is not clear as to whether the Assessing Officer has actually applied his mind on this issue or not. However, the fact would remain that

the Assessing Officer has called for the details of all loans given by the assessee and the assessee has also furnished those details.

12. We noticed that the Hon'ble High Courts have expressed the view that it is imperative on the part of the learned PCIT to examine record in order to find out as to whether the question raised by him on the issue of non-charging of interest is sustainable in the facts and circumstances of the case. It is further stated that, after examining the record, the learned PCIT has come to the conclusion that the assessment order passed erroneous and prejudicial to the interest of revenue.

13. In the instant case, a cursory glance of the Balance sheet as on 31.3.2017 of the assessee would show that the assessee is having own funds, i.e., Capital balance of Rs. 75.74 crores as on 31.3.2017, whereas interest free loan given by the assessee was to the tune of the Rs. 16.42 crores only. Since own funds available with the assessee far exceeds amount of interest free loan, no interest disallowance under section 36(1)(iii) is called for, as per the decision rendered by Hon'ble Jurisdictional Bombay High Court in the case of Reliance Utilities and Power Ltd. (supra). Admittedly the learned PCIT has failed to examine these factual aspects and has also failed to follow binding decision of Hon'ble Jurisdictional High Court. When the case of the assessee is covered by the binding decision of the jurisdictional High Court, then there is no scope for holding the assessment order to be erroneous and prejudicial to the interest of revenue. Non-examination of these factual aspects and non-application of the binding decision of jurisdictional High Court on the issue sought to be revised by Ld PCIT would make the impugned revision order unsustainable in law. Accordingly, we quash the revision order passed by the learned PCIT.

14. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 30.09.2022.

Sd/-  
(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 30/09/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

PS

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai