

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
(CONDUCTED THROUGH VIRTUAL COURT)**

**BEFORE Ms. MADHUMITA ROY, JUDICIAL MEMBER &
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

I.T.A. Nos.132 to135/Ind/2021
(Assessment Years: 2012-13 to 2015-16)

Shri Arvind Kumar Singh, 5, Nafees complex, 210, Zone-1, M.P. Nagar, Bhopal	Vs.	Principal Commissioner of Income Tax-1, Bhopal
PAN No.BGQPS2705D		
(Appellant)	..	(Respondent)

Appellant by :	Shri S.S. Deshpandey, C.A.
Respondent by :	Shri P.K. Mitra, CIT-DR

Date of Hearing	11.10.2022
Date of Pronouncement	10.11.2022

ORDER

PER BENCH:

The bunch of appeals filed by the assessee(s) are directed against the common order dated 15.02.2022 passed by the Ld. PCIT-1, Bhopal, issued under section 263 of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for the A.Ys 2012-13 to 2015-16. Since all the matters are relating to the identical issue and of the same assessee, these are heard analogously and are being disposed of by a common order for the sake of convenience.

IT(SS)A No. 132/Ind/2021 for A.Y. 2012-13 is taken as a lead case:-

2. The notice under section 148 of the Act was issued to the assessee after recording reasons assessment whereof was completed under section 143(3) r.w.s 147 of the Act on 27.12.2017 assessing total income at Rs.70,23,010/- upon making the addition of Rs.64,87,360/- on account of unexplained money.

3. The facts in brief is this that the assessee is an individual, regularly assessed to tax since long. He is a spiritual guru belongs to the family of his holiness Shri Brahman and Sarawati, (who was "Shankracharya" of Badrinath Peeth) and devotes his full time in holy speeches and spiritual works.

4. The assessee has filed the original Income Tax Return on 30.08.2012 for the Assessment Year 2012-13, showing income of Rs. 5,35,650/- and paid the taxes due as per return.

5. The case was reopened u/s 147 by issuing of notice u/s 148 on 24.03.2017 for the reason that the cash of Rs.1,08,78,635/- was deposited in the appellant's Bank account.

6. Assessment under section 147 r.w.s. 143(3) was completed at an income of Rs.70,23,010/- by making addition of Rs. 64,87,360/- on

account of unexplained money under section 69A of the Income Tax Act 1961. The determination is reproduced hereunder:

Income as shown in the Return of income Rs. 5,35,650/-

Add:

1. Out of unexplained money u/s69A Rs.&4,87,360/-

Assessed Income Rs-70,23,010/-

7. The appellant filed an appeal before the Ld.CIT(A), Bhopal vide Ack. No. 383778091020218 dated 02.02.2018 contesting the addition made in the order under Section 147 of the Act.

8. Subsequently, a notice dated 23.10.2019 was issued to the appellant under section 263 of the Income Tax Act, 1961 by the Ld. Principal Commissioner of Income-tax, Bhopal-1 whereby and whereunder the reassessment order passed u/s 147 r.w.s. 143(3) dated 27.12.2017 has been considered to be erroneous in so far as it is prejudicial to the interest of revenue for the following reasons:

"On perusal of the assessment order and case records, it is noticed that the assessee made cash deposits of amount of Rs.43,91,275/- and claimed this amount as cash sales. However, assessee produced self made balance sheet and profit & loss account which were not audited and did not submit documentary evidence regarding business activities carried out by the assessee. No cash book or cash flow statement was submitted by the assessee to establish the nexus that cash received from sale of books and other item has deposited in bank account. In view of the above, the claim of the assessee regarding cash sales of Rs.43,91,275/- was liable to be rejected and the AO was required to add Rs.43,91,275/- to the income of the assessee which was not done by the AO. Thus, there was under assessment of income."

It is relevant to mention that the appeal is *sub judice* and pending for final hearing as on the date of filing of the present appeal before us.

9. The assessee in its reply dated 11.12.2019 submitted that during the course of assessment proceedings under section 147 r.w.s 143(3) various questions relating to the deposit of cash in the bank account were raised by the Department and it was submitted by the assessee that the cash deposit was partly out of proceeds of donation received from Mandir construction and partly for proceeds of sale of books and other documents whereupon the Ld.AO on 27.12.2017 finally made the addition of Rs.64,87,360/- which was also appealed against and the same is still pending before the First Appellate Authority.

10. However, the 263 proceedings has been finalized on 15.12.2020 holding the assessment order under section 147 r.w.s 143(3) of the Act dated 27.12.2017 for the year under consideration passed by the ITO 1(2)Bhopal to be erroneous and prejudicial to the interest of Revenue. The Ld.AO has been directed to make fresh assessment after giving reasonable opportunity of being heard to the assessee.

11. At the time of hearing of the instant appeal the Ld. Counsel appearing for the assessee submitted before us that the order dated 27.12.2017 passed by the AO under Section 143 r.w.s 147 of the Act is pending before First Appellate Authority on the issue which is again been

raised by the Ld.PCIT by and under notice under section 263 of the Act. Since the larger issue is pending before the Commissioner of Appeal the PCIT cannot invoke jurisdiction u/s.263 of the Act. Exercising power under section 263 is barred by Clause (c) of explanation 1 of section 263 of the Act. Hence the order impugned proceeding is liable to be quashed as the ultimate argument advanced by the Ld.A.R. In support of his submission he has relied upon the following judgment.

- (i) CIT, Meerut vs. Vam Resorts & Hotels Ltd., reported in (2019) 418 ITR Taxmann.com 723(Allahabad).
- (ii) Smt. Renuka Philip Vs. ITO, Business Ward-XV(2), Madras High Court reported in (2019) 101 taxmann.com 119 (Madras)
- (iii) RNR Devcon Vs PCIT, Bhopal in ITA No.459/Ind/2018

12. We have heard the rival submissions made by the respective parties and we have perused the relevant materials available on record. We find that the issue is covered by the ratio laid down in the matter of CIT vs. Vam Resorts & Hotels Ltd. (supra), passed by the Hon'ble Allahabad High Court, and the judgment passed by the Madras High Court in the case of Smt. Renuka Philip (supra). In fact, the Co-ordinate Bench, in the case of Manishbhai Laljibhai Vekaria vs. PCIT, Rajkot in ITA No.107/Rjt/2022 in the identical situation has been pleased to quash the proceeding initiated under Section 263 of the Act with the following observation:

6. It appears from the records that Ld. AO has examined each and every aspect of the matter after analyzing the entire set of documents submitted by the assessee as demanded by Revenue which is reflecting in the order passed by the Ld. AO. In that view of the matter we do not justify the remand order to be sustainable particularly when the appeal has been preferred by the assessee against the said order passed by the Ld. AO. We further note that the Ld. CIT(A) is yet to decide the order either way and therefore, we do not find any reason to initiate and proceed against the said order passed by the Ld. AO under Section 147 of the Act taking recourse of the provision of law under Section 263 of the Act by holding the order passed by the Ld. AO erroneous and prejudicial to the interest of Revenue. In our considered opinion, the same is premature. We have carefully considered the judgment relied upon by the Ld. A.R. in the matter of Smt. Renuka Philip (*supra*). While dealing with the issue the Hon'ble Court was pleased to observe as follows:

“22. The above explanation makes it clear that when the appeal is pending before the Commissioner, the exercise of jurisdiction under Section 263 of the Act is barred. The Commissioner in the order dated 14.03.2012 states that the appeal pertains to the claim made by the assessee under Section 54 of the Act and it has got nothing to do with the order passed by the Assessing Officer under Section 54F of the Act. The said finding rendered by the Commissioner is wholly unsustainable, since the assessee went on appeal against the reassessment order dated 31.12.2009 stating that his claim for deduction under Section 54 of the Act should be accepted.

23. Therefore, in the process of considering as to what relief the assessee is entitled to, the Assessing Officer held that the assessee is entitled to claim deduction under Section 54F of the Act and assigned certain reasons for that. Therefore, the larger issue was pending before the Commissioner of Appeals, and in such circumstances, the Commissioner could not exercise power under Section 263 of the Act on account of the statutory bar. Therefore, on this ground also, the assumption of jurisdiction under Section 263 of the Act was wholly erroneous.”

Apart from that we have further considered the judgment passed by the Hon'ble Allahabad High Court in the case of Vam Resorts & Hotels Pvt. Ltd. (*supra*). We find that on the identical situation the Hon'ble Court was pleased to quash the order passed under Section 263 of the Act during the pendency of the appeal preferred by the assessee under Section 250 of the Act. While upholding the order passed by the Tribunal in holding the order exercising power under Section 263 was barred by Clause (c) of Explanation 1 of Section 263 of the Act was the Hon'ble Court observed as follows:

“25. As, Clause (c) of Explanation 1 to Section 263 of the Act provides that when an appeal is pending before the Commissioner, the exercise of jurisdiction under Section 263 of the Act by CIT is barred. Thus, in the present case, the CIT wrongly exercised jurisdiction under Section 263 of the Act by remanding back the matter to assessing authority on 25.3.2013, while the appeal was decided by CIT (A) on 5.6.2013. Thus, the order passed by the ITAT does not suffer from any irregularity and needs no interference.

26. As far as the word "record" appearing in Clause (b) of Explanation-1 to Section 263 is concerned, it means the record available at the time of examination by the Commissioner of Income Tax and not any material or record available subsequent to his examination or exercise of power under Section 263. Thus, any order passed by the AO in the assessment proceedings after the remand by the CIT cannot be

looked upon and the argument made by the counsel for the revenue for relying upon the fresh assessment order made on 7.3.2004 under Section 263/143(3) of the Act cannot be accepted in view of the above provision of law.

27. In the present case, the Tribunal had recorded specific finding of fact that the assessing authority had examined each and every aspect of the case on which the remand order hinges, as such the remand order was not sustainable in the eyes of law.

28. Considering the facts and circumstances of the case, we are of the considered opinion, that the revenue has failed to make any case for interference in the order of the ITAT, as the CIT had proceeded to remand the matter back to the assessing authority while the appeal of the assessee was pending under Section 250 and the power of exercise under Section 263 was barred by Clause (c) to Explanation 1 of Section 263 of the Act. Further, the remand order by the CIT was based merely on suspicion and presumption.

29. The appeal is devoid of merit and is hereby dismissed. The question of law is, therefore, answered against the revenue and in favour of the assessee.”

Hence, respectfully relying upon the same we do not find any reason/basis of the impugned proceeding under Section 263 of the Act when the appeal preferred by the assessee under Section 250 of the Act before the CIT(A) is pending against the order passed by the Ld. AO under Section 147 of the Act which has been sought to be revised by the Ld. PCIT in the garb of the provision of Clause (c) of Explanation 1 of Section 263 of the Act. The same is, thus, found to be unsustainable and therefore, quashed. Assessee's appeal is, therefore, allowed.

13. Hence, respectfully relying upon the order passed by the Co-ordinate Bench, the proceeding imitated under section 263 of the Act is found to be not sustainable. The same is, thus, quashed. Assessee's appeal is therefore, allowed.

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

- 8 -

ITA No. 133/Ind/2021(A.Y. 2013-14):-

ITA No.134/Ind/2021(A.Y. 2014-15):-

ITA No.135/Ind/2021(A.Y.2015-16)

15. The identical issue involved in the case has already been dealt with by us in ITA No. 132/Ind/2021 for A.Y. 2012-13 and in the absence of any changed circumstances the same shall apply mutatis mutandis. Hence, the above three appeal preferred by the same assessee are dismissed.

16. In the combined result, all the appeals filed by the assessee are allowed.

Order pronounced on 10/11/2022 by placing the result on the Notice Board as per Rule 34(4) of the Income Tax (Appellate Tribunal) Rule, 1963.

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Ahmedabad; Dated 10/11/2022
MANISH, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Indore
6. गार्ड फाईल / Guard file.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

(Dy./Asstt.Registrar)

ITAT, Indore

1. Date of dictation 18.10.2022
2. Date on which the typed draft is placed before the Dictating Member 19.10.2022
3. Other Member.....
4. Date on which the approved draft comes to the Sr.P.S./P.S .10.2022
5. Date on which the fair order is placed before the Dictating Member for pronouncement .10.2022
6. Date on which the fair order comes back to the Sr.P.S./P.S .10.2022
7. Date on which the file goes to the Bench Clerk .10.2022
8. Date on which the file goes to the Head Clerk.....
9. The date on which the file goes to the Assistant Registrar for signature on the order.....
10. Date of Despatch of the Order.....