

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1561/Mum./2022
(Assessment Year : 2012-13)

ITA no.1560/Mum./2022
(Assessment Year : 2015-16)

Shailesh D. Shah
Sarvodaya Bhuvan
Ramchandra Lane Extension
Malad (West), Mumbai 400 064
PAN – ACLPS2368A

..... Appellant

v/s

Principal Commissioner of Income Tax-17
Mumbai

.....Respondent

Assessee by : Shri Hitesh Shah
Revenue by : Shri Prabhat Kumar Gupta

Date of Hearing – 06/09/2022

Date of Order – 02/12/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the separate impugned order of even date 15/03/2022, passed under section 263, of the Income Tax Act, 1961 ("*the Act*") by the learned Principal Commissioner of Income Tax, Mumbai, [*learned PCIT*], for the assessment years 2012-13 and 2015-16.

2. In both appeals, the assessee has raised the following common grounds:-

"GROUND 1:

On the facts and in the circumstances of the case, the Principal Commissioner of Income Tax-17 Mumbai (hereinafter referred to as Pr CIT) has erred in invoking the provisions of section 283 and order passed by Pr. CIT although the order passed by the AO u/s 143(3) rws 147 of the Act was neither erroneous nor prejudicial to the interest of revenue

(a) The Pr.CIT failed to appreciate and ought to have held that the assessing officer has passed an assessment order u/s. 143(3) r.w.s. 147 which was re-opened on the basis of information available and after making a conscious application of mind and keeping in mind the various jurisdictional pronouncements and therefore the order passed by AO is neither erroneous nor prejudicial to the interest of revenue.

(b) That the exercise of jurisdiction by Pr. CIT us 263 is bad in law and without any base as the same has been done on mere assumption and therefore as such the assessment order is not erroneous and there is no prejudice to the interest of Revenue.

(c) That the Pr CIT has erred on facts and in law in not appreciating that the facts in specific reference to agricultural income was enquired during the assessment proceedings.

(d) That the Pr. CIT has erred on facts and in law in assuming jurisdiction u/s 283 when the assessment order u/s 143(3) rws 147, was passed only after making detailed enquiries in respect to agricultural income and its allowability to the appellant. The assessment order u/s 143(3) rw.s. 147 cannot be set aside merely because the Pr.CIT feels that further enquiry should have been made.

On the facts and circumstances of the case the Appellant therefore, prays that the said order passed u/s. 263 being bad-in-law, unwarranted and illegal be quashed.

GROUND III:

The appellant craves leave to add, to amend, to alter and/or to withdraw any of the grounds at the time of hearing."

3. Since identical issues are involved, therefore, both appeals are taken up together and disposed off by this common order for the sake of convenience. With the consent of the parties, the appeal of the assessee for the assessment year 2012-13 is taken up as a lead case and the decision rendered therein

would apply *mutatis mutandis* to the other appeal filed by the assessee for the assessment year 2015-16.

4. In both appeals, the only grievance of the assessee is against the assumption of jurisdiction under section 263 of the Act by the learned PCIT.

5. The brief facts of the case as emanating from the record are: The assessee is an individual and was engaged in the business of shares, stocks securities, and is also a partner in some construction companies. For the assessment year 2012-13, the assessee filed its return of income on 30/09/2012 declaring loss of Rs. 7,38,262. From the ITS details (AIR), for the financial year 2011-12, it was noticed that the assessee has deposited cash amounting to Rs. 15,05,000 in his savings account. It was also observed that the nature and source of said cash deposits were not explained by the assessee in the return of income filed for the assessment year 2012-13. Accordingly, based on the above information, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued on 28/03/2019. During the reassessment proceedings, the assessee submitted that the cash deposits made in his savings account were pertaining to the cash sales of agricultural products. The assessee also submitted that the cash amount of Rs. 15,05,000 was deposited after incurring and reducing the agricultural expenses. In absence of any details of expenses incurred towards fertilisers, seed, labour, etc., the Assessing Officer ('AO') vide order dated 24/12/2019 passed under section 143(3) read with section 147 of the Act disallowed 10% of the total agriculture income as unexplained agricultural expenses and added the same to the total income of the assessee. Further, as

regards the depreciation on the motor car claimed by the assessee, in absence of any log book maintained for the motor car, the AO disallowed 10% of depreciation as the use of the motor car for the personal purpose could not be ruled out.

6. Subsequently, vide notice dated 03/03/2022, issued under section 263 of the Act revision proceedings were initiated in the case of the assessee on the basis that the AO has not verified the reason for not showing the agricultural income in the original return filed by the assessee which was claimed to be the source of cash deposit. Further, the AO also did not verify whether the agricultural land was used for the cultivation of the products. The assessee filed no response to the notice issued under section 263 of the Act despite opportunities granted by the learned PCIT.

7. Vide impugned order dated 15/03/2022 passed under section 263 of the Act, the learned PCIT set aside the assessment order by treating the same to be erroneous and prejudicial to the interest of the Revenue on the basis that the same has been passed without proper verification and enquiries on the source of cash deposit. Further, the AO has also not examined whether the agricultural land was used for cultivation of the products (Mango, Chikoo and dry raw coconut) as the copy of 7/12 extract of the land revenue record claim pertains to the year 2008 and the certificate of Talati (a village level Revenue official) shows crops grown in the plot are rice, maziyan plant, and grass. The learned PCIT, vide impugned order, directed the AO to make thorough verification and due enquiries regarding sources of cash deposit and frame the assessment *de novo*. Being aggrieved, the assessee is in appeal before us.

8. During the hearing, the learned Authorised Representative ('learned AR') submitted that reassessment proceedings were initiated based on cash deposit and the AO after due verification accepted that the source of same is from agriculture income. The learned AR further placed reliance upon the 7/12 extracts annexed with the sale deed forming part of the paper book.

9. On the contrary, the learned Departmental Representative vehemently relied upon the impugned order.

10. We have considered the rival submissions and perused the material available on record. In the present case, based on information from ITS details (AIR) that assessee has deposited cash amounting to Rs. 15,05,000 in his saving bank account, and the nature and source of the said cash deposit was not explained in the return of income, proceedings under section 147 of the Act were initiated. It is the plea of the assessee that the cash deposit made in his savings account was pertaining to cash sales of agricultural products. During the hearing, learned AR in order to substantiate the assessee's claim placed reliance upon the copy of the invoices of agricultural products sold as well as 7/12 extract annexed with the sale deed.

11. From the perusal of the invoices, which form part of the paper book from pages 25 - 34, it is evident that these invoices appear to be mere self-made invoices showing the sale of Mango, chikoo and dry raw coconut. We also find that two invoices issued to the same party on different dates have the same invoice number. This appears to be more than a mere coincidence. Further, apart from the name of the person to whom the assessee alleged to have sold

the agricultural products, there is no mention of the address or village/town/city to which that person belongs, even though a huge quantity of aforesaid products has been alleged to have been sold.

12. As regards the reliance placed on 7/12 extracts and land revenue records, we find that the coordinate bench of the Tribunal in *Abhijit Subash Gaikwad vs DCIT, (2015) 70 SOT 429 (Pune-Trib.)* held that in absence of fulfilment of fundamental fact that land was used for agriculture, merely mentioning of land as agricultural land in purchase deed or sale deed or even in revenue records cannot establish the case of the assessee that land sold by it was agricultural land. However, we find that none of the aforesaid aspects have been gone into by the AO while accepting the claim of the assessee that cash deposited is pertaining to cash sales of agricultural products. Apart from the documents, as discussed above, no other evidence has been brought on record by the assessee in support of its claim. Further, it is pertinent to note that the cash deposit of Rs. 15,05,000 was claimed as cash sales of agricultural products only during the reassessment proceedings, and therefore it was all the more important for the AO to have thoroughly examined the fresh claim made by the assessee.

13. Thus, in the present case, it cannot be said that the AO has carried out the enquiry/verification that would have been carried out by a prudent officer. The lack of investigation/enquiry by the AO, particularly when the assessment has been reopened on the very same issue and the information was received in this regard from ITS details (AIR), would render the assessment order amenable to revision under section 263 of the Act, in the peculiar facts of the

present case. Therefore, the assumption of jurisdiction under section 263 of the Act read with Explanation 2 to the said section is upheld. As a result, grounds raised by the assessee for the assessment year 2012-13 are dismissed.

14. As stated earlier, the facts for the assessment year 2015-16 are identical to the assessment year 2012-13 except for variance in figures. Hence, the decision rendered hereinabove for the assessment year 2012-13 shall apply *mutatis mutandis* to the assessment year 2015-16, and accordingly, the revision order passed by the learned PCIT under section 263 of the Act for the assessment year 2015-16 is upheld. As a result, grounds raised by the assessee for the assessment year 2015-16 are dismissed.

15. In the result, both the appeals by the assessee are dismissed.

Order pronounced in the open Court on 02/12/2022

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 02/12/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai