

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
Ms. PADMAVATHY S, ACCOUNTANT MEMBER

ITA No.491/Bang/2022
Assessment year : 2017-18

Kantharajapura Ramaiah Ananthababu, No.937, 2 nd Cross, Agnihamsa Road, E & F Block, Kuvempunagara, Mysuru – 570 023. PAN: AGNPA 0036H	Vs.	The Principal Commissioner of Income Tax, Bengaluru-3, Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Narendra Sharma, Advocate
Respondent by	:	Shri K. Sankar Ganesh, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	07.12.2022
Date of Pronouncement	:	19.12.2022

ORDER

Per Padmavathy S., Accountant Member

This appeal is against the order of the PCIT passed u/s. 263 of the Income-tax Act, 1961 [the Act] dated 30.3.2022 for the assessment year 2017-18. The assessee raised the following grounds:-

“1. The order of revision passed by the learned Principal Commissioner of Income tax, Bengaluru -3, Bengaluru, under Section 263 of the Act dated 30/03/2022, in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.

2. The learned Principal Commissioner of Income tax is not justified in law and on facts to set aside the assessment order passed under section 143[3] of the Act dated 17/12/2019 and direct the assessing officer to modify the original assessment passed by the learned assessing officer, on the facts and circumstance of the case

3. The learned Principal Commissioner of Income tax is not justified in passing an order under section 263 of the Act, as the order passed under section 143[3] of the Act, was pursuant to proper enquiry conducted by the learned assessing officer on the facts and circumstances of the case.

4. The learned Principal Commissioner of Income tax has grossly erred in revising the order passed by the learned Assessing officer without appreciating that there is no error, much less prejudicial to the interests of the Revenue to warrant a revision and therefore the order passed by the (learned PCIT is ultra vires to the scope of Section 263 and requires to be cancelled on the facts and circumstances of the Appellant's case. The direction to make thorough and detailed enquiry amounts to ordering fishing and roving enquires without any material in support thereof and consequently the impugned order passed is bad in law and is liable to be cancelled.

5. The learned Principal Commissioner of Income tax failed to appreciate that the Assessing Officer before completing the assessment order under section 143[3] of the Act on 17/12/2019 had made detailed enquiries calling for relevant records and documents and explanation pertaining to the matter at hand, the same being produced by the appellant during various instances during the assessment proceedings and having applied his mind and considering the facts the order of assessment has been passed. Hence on the very same issue no action can be taken under Section 263 of the Act as the actions of the Assessing Officer is pursuant to applying his mind to the matter and in accordance with law.

6. The learned Principal Commissioner of Income tax, failed to appreciate that since the appellant is one of the partner in the Firm i.e. M/s. P.S. Associates, the liquor license is in the name of the appellant and was running the said liquor retail business in the

name of Vijayalakshmi Wines, was completely managed by the said Firm i.e. M/s. P.S. Associates and consequently the entire purchases and sales are recorded in the books of M/s. P.S. Associates, on the facts and circumstances of the case.

7. The learned Principal Commissioner of Income-tax, further failed to appreciate that the Firm i.e. P.S. Associates has consolidated the profit and loss account of the respective liquor shops and taken the net profit or loss of a particular liquor shop, for which separate profit and loss account have been maintained by the firm i.e. P.S. Associates and thus has taken in its profit and loss account the net result from particular liquor shop in its financial statements, on the facts and circumstances of the case.

8. The learned Principal Commissioner of Income-tax, failed to appreciate that the amount of deposit made in the bank account of the appellant are all pertaining to the sale of liquor business of M/s. Vijayalakshmi Wines, which is managed by the Firm i.e. M/s. P.S. Associates and the said deposits are nothing but the proceeds of sale made in Vijayalakshmi Wines, and the same have been duly recorded in the books, which fact was completely examined and enquired by the learned assessing officer in the original assessment proceedings and thus, the observations of the learned Commissioner of Income-tax, is merely on suspicion and surmises and devoid of merits and the same requires to be quashed on the facts and circumstances of the case.

9. The learned Principal Commissioner of Income-tax, failed to appreciate that the Revenue cannot justifiably claim to put itself in the arm-chair of the tax payer to determine what is reasonable as the learned Principal Commissioner of Income-tax, had alleged that the learned assessing officer failed to examine the low profits / income declared from the liquor business which is not in accordance with law and facts. Parity of reasoning is drawn from the decision of the Hon'ble Apex Court in the case of M/s. S.A Builders Limited Vs. Commissioner of Income-Tax reported in 288 ITR 1 [SC].

10. The learned Principal Commissioner of Income tax has passed an unsustainable order which is based purely on assumptions and presumptions. The order is arbitrary and full of surmises, without considering the relevant material and

considering irrelevant materials. Consequently, the order passed is a perverse order on the facts and circumstance of the case.

11. The Appellant craves leave to add, alter, substitute and delete any or all the grounds of appeal urged above.

12. For the above and other grounds to be urged during the hearing of the appeal, the Appellant prays that the appeal be allowed in the interest of equity and justice.”

2. The assessee is in the liquor business as a partner in M/s. P S Associates. The assessee holds a liquor license in the name of the proprietary concern M/s. Vijayalakshmi Wines and the assessee has given the said license on lease to be used in the partnership firm for an agreed percentage in the profits of the partnership firm. The assessee filed the return of income for AY 2017-18 on 29.11.2017 declaring total income of Rs.3,67,310. The case was selected for scrutiny under CASS for verification of low income from TCS receipts – liquor and Cash deposits during the year and a notice u/s. 143(2) was duly served on the assessee. During the course of hearing the AO called for various details in relation to the liquor business and the cash deposits. The assessee filed the required details before the AO and the assessment was completed u/s. 143(3) accepting the returned income by the assessee.

3. The PCIT on verification of assessment records was of the view that the order of the AO is erroneous and prejudicial to the interests of the revenue for the following reasons:-

1. Failed to verify the sources of cash deposits made, account # 00000064191958615 held by the assessee with Kanakatte Br. of SBI and bring the unexplained deposit therein to tax.
 2. Failed to examine the low profits/income declared from the liquor business and accepting without proper enquiry.
4. The PCIT issued a show cause notice to the assessee in this regard to which the assessee made a detailed submission. However the PCIT did not accept the contentions of the assessee and proceeded to set aside the order passed u/s 143(3). Aggrieved, the assessee filed an appeal before the Tribunal.
5. The Id. AR submitted that the assessee has given his liquor license under the trade name 'Vijayalakshmi Wines' to the partnership firm, M/s. P S Associates vide partnership deed executed on 10.11.2015 for a consideration of 1% of net profit or loss, excluding all expenditure relating to the business. The Id. AR submitted that P S Associates runs the liquor business using the liquor licenses in the name of M/s. Vijayalakshmi Wines and bears all the expenses relating to M/s. Vijayalakshmi Wines. The Id. AR brought to our attention the books of accounts of P S Associates includes the transactions in the name of M/s. Vijayalakshmi Wines to substantiate the above submission. It is submitted that according to the Excise Act & Rules the liquor license issued to a party cannot be transferred to anybody and therefore the partnership firm is running the business using the same license name M/s. Vijayalakshmi Wines. The Id. AR also brought to our attention that P S Associates which does business using the license in the name of Vijayalakshmi Wines handles the bank

account and sales of liquor which is in the name of Vijayalakshmi Wines. It is further submitted that the cash sales and deposits of cash is directly made by P S Associates into the bank account in the name of Vijayalakshmi Wines.

6. The ld. AR submitted that all the above factual details have been submitted before the AO including the partnership deed, return copy of the partnership firm, VAT returns, ledger copies of Vijayalakshmi Wines and Profit & loss account of Vijayalakshmi Wines. The ld. AR also submitted that all these details have been properly verified by the AO during the course of assessment which is evidenced by the detailed findings given by the AO in the order of assessment. It is therefore submitted that the PCIT has without understanding the facts of assessee's case has substituted his views with respect to the verification of various details and has held the assessment order to be erroneous and prejudicial to the interests of the revenue. The ld. AR in this regard relied on the decision *Gabriel India Ltd. (1993) 203 ITR 108*

7. The ld. DR submitted that the reason for invoking the revisionary power by the PCIT is that the AO has not verified the lease deed whereby the license in the name of Vijayalakshmi Wines was given on lease to the partnership firm. The ld. DR also submitted that 1% profit margin agreed by the assessee in terms of partnership deed has not been properly verified by the AO. The ld. DR therefore

supported the order of the PCIT in invoking the revisionary power u/s. 263.

8. We heard the rival submissions and perused the material on record. We notice that the AO during the course of assessment has called for the relevant details pertaining to the reasons for which notice u/s. 143(2) was issued. We also notice that in the order of assessment, the AO has brought out clear findings with regard to various details submitted by the assessee during the course of assessment. The relevant part of the AO's order is extracted as below:-

“4. In response to the above, assessee submitted his response in e-filing portal. The assessee in response to cash transactions 2016 has submitted that Rs.34,28,160/- was deposited in cash in to his bank account number 64191958615 held with State Bank of Mysuru. The total cash deposits were made out of cash received on sales of liquor and opening cash on hand. Assessee in his submission has stated that, he is a labor contractor for civil works contract and proprietor of Vijayalakshmi Wines, Channarayapatana. He is also partner in firm M/s P S Associates and had given his liquor license, trade name known as Vijayalakshmi Wines to Partnership Firm M/s P.S.Associates vide partnership deed executed on 10.11.2015 for 1% net profit or loss basis excluding all expenditure relating to running the business. The place of business is situated at Kanakatte, Arisikere tq Hassan Dist., The liquor license business controlled and managed by P A Associates.

5. Further, assessee had stated that, the business turnover and TCS included in P A Associates. The firm P A Associates filing its income tax returns regularly. The P A Associates filed GST returns in the name of Vijayalakshmi Wines separately. The Tin No. of Vijayalakshmi Wines as TIN: 29040254324. He had received his share of profit of Rs.80,428/-from P A Associates for the financial year 2016-17 & same is shown in his return of income filed for the Asst.year 2017-18. In support of his claim he

had submitted the income computation statement,' profit & loss account & Balance Sheet of the Firm

6. After detail verification of documents submitted like partnership deed, return copy of P A Associates for the AY 2017-18 along with financial statements, VAT returns copy, sales ledger copy in respect of Vijayalaxmi Wines and profit & loss account of Vijayalaxmi Wines the assessment is completed by accepting the return of income.”

9. The contentions of the PCIT is with regard to non-verification of cash deposits made in the Kanakatte Branch of State Bank of India. In this regard, we notice that the Kanakatte Branch of SBM is reflected in the current assets of P S Associates (pg. 63 of PB). We also notice that in the profit & loss account and balance sheet of PS Associates (pg. 60 & 65 of PB), income from Vijayalakshmi Wines and Stock-in-hand in Vijayalakshmi Wines are part of the financials. We also notice that the income as reflected in P S Associates P&L account is matching with the P&L account of Vijayalakshmi Wines (pg. 15 of PB). Based on these facts, it is clear that the business transaction pertaining to the license in the name of Vijayalakshmi Wines are accounted in the books of account of partnership firm, P S Associates, since the license has been given to the partnership firm vide partnership deed executed on 10.11.2015.

10. Before proceeding further, it is apposite to take note of the relevant extract of section 263 and the Explanation (2) to section 263 of the Act, which read as under :-

“Revision of orders prejudicial to revenue.”

263. (1) The [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner] or 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 Assessing Officer 89[or the Transfer Pricing Officer, as the case may be,] 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, 90[including,—

Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer 94[or the Transfer Pricing Officer, as the case may be,] shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal 95[Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner,—

- (a) the order is passed without making inquiries or verification which should have been made;
- (b) the order is passed allowing any relief without inquiring into the claim;
- (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
- (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.”

11. Thus, from close scrutiny of the provisions of section 263, it is evident that twin conditions are required to be satisfied for exercise of revisional jurisdiction under section 263 of the Act i.e., firstly, the

order of the Assessing Officer is erroneous; and secondly, it is prejudicial to the interests of the revenue on account of error in the order of assessment. The Bombay High Court in the case of *Gabriel India Ltd. (1993) 203 ITR 108* has explained as to when an order can be termed as erroneous as follows:-

“From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an income tax officer acting in accordance with the law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order, unless the decision is held to be erroneous. Cases may be visualised where the Income tax officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income tax officer. That would not vest the Commissioner with power to examine the accounts and determine the income himself at a higher figure. It is because the Income tax officer has exercised the quasi judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion There must be some prima facie material on record to show that the tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed.”

12. There is no dispute that u/s. 263 of the Act, the PCIT does have the power to set aside the assessment order and send the matter for a fresh assessment if he is satisfied that further enquiry is necessary and the assessment order is prejudicial to the interests of the Revenue. However, in doing so, the PCIT must have some material which would enable to form a *prima facie* opinion that the order passed by the AO is erroneous, insofar as it is prejudicial to the interests of the Revenue. In the present case of the assessee it is clear from the order of the AO which is extracted above, the AO has verified all these details as submitted by the assessee and has applied his mind while concluding the assessment accepting the income returned by the assessee. We see merit in the submission of the Id AR that the license is given to P S Associates vide partnership deed and there was no requirement for a separate license deed to be entered in this regard. The entire premise on which the PCIT has exercised the revisionary power is that the AO should have conducted further enquiries. However the PCIT has not brought anything on record to shown adverse effect of the lack of enquiry or any material to show that there been an error in the order that is prejudicial to the interest of the revenue. The views of the Id. PCIT as given in the order u/s.263, in our opinion, is not the right reason for exercising revisionary powers u/s. 263 of Act, as the error envisaged by Section 263 of the Act is not one that depends on possibility as a guess work, but it should be actually an error either of fact or of law.

13. In view of the above discussion, we are of the considered view that the PCIT is not justified in setting aside the order of the AO and accordingly we hold that the order of the PCIT u/s. 263 is without jurisdiction and liable to be quashed.

14. In the result, the appeal of the assessee is allowed.

Pronounced in the open court on this 19th day of December, 2022.

Sd/-

Sd/-

(N V VASUDEVAN)
VICE PRESIDENT

(PADMAVATHY S)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 19th December, 2022.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.