

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER
AND
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.159/PUN/2021
निर्धारण वर्ष / Assessment Year : 2016-17

Rupal Manish Tejani,
C/o. Hotel Dreamland,
Behind St. Stand, Mahabale,
Satara – 412608

PAN : AFEPT9050J

.....अपीलार्थी / Appellant

बनाम / V/s.

Pr. Commissioner of Income Tax-3,
Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri M.K. Kulkarni & Mrs. J.R. Chandekar
Revenue by : Shri P.R. Mane

सुनवाई की तारीख / Date of Hearing : 08-12-2022

घोषणा की तारीख / Date of Pronouncement : 21-12-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 31-03-2021 passed by the Principal Commissioner of Income Tax-3, Pune ("PCIT") for assessment year 2016-17.

2. The assessee raised four grounds of appeal amongst which the only issue emanates for our consideration is as to whether the PCIT justified in invoking the provisions of section 263 of the Act by holding the assessment

order dated 07-12-2018 is erroneous and prejudicial to the interest of Revenue.

3. Heard both the parties and perused the material available on record. We note that the PCIT was of the opinion that the assessee explained in assessment proceedings that he had derived agriculture income from sale of strawberry, various vegetables, mushroom and food grains, but however, the 7/12 extracts shows cultivation of crops like rice, nachani, vatana, grass and potato. Further, no costs were debited to the profit and loss account on sale of agricultural products. He issued show cause notice on the premise that the AO has failed to verify genuineness of cash in hand/sundry debtors as on 31-03-2016. In response to the said show cause notice, the assessee contended that all the details relating to agriculture income were furnished before the AO and on an examination of which by following earlier assessments which were conducted under scrutiny, accepted agriculture income. Further, regarding the cash deposits as on 31-03-2016, the assessee contended that it is not relating to the year under consideration and the same was accepted by the AO.

4. We note that the PCIT reproduced the order of assessment at page 2 of the impugned order. On perusal of the same, we note that the case of the assessee was selected for limited scrutiny in respect of agricultural income in ITR and also for large cash deposits during demonetization. The AO called for details of agricultural income and also with regard to cash deposits during demonetization period. It is also noted from the said assessment order that the AO accepted the agricultural income as declared by the assessee by holding that the agricultural income was regularly assessed in the hands under scrutiny proceedings in earlier years and after

considering the reply regarding the agricultural income, the AO accepted the same. Regarding the cash deposits, the assessee also placed on record the details as called by the AO, the AO did not record any reasoning regarding the cash deposits as the said cash deposits are relating to subsequent year and does not relate to the year under consideration.

5. Coming to the agricultural income, it is noted that the AO in assessee's own case for earlier years, on due enquiries accepted the agricultural income declared by the assessee. It appears from the impugned order that the said earlier assessment pertaining to A.Ys. 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 were filed before the PCIT contending that the assessee was also awarded IWG/2021-Winner IWGA-2020 Award for agriculture activities. Therefore, it is clear from the record the case of the assessee were selected for limited scrutiny finding huge agricultural income in the year under consideration and also in the earlier assessment years. On perusal of the assessment order dated 07-12-2018, it is noted that the AO asked the assessee to give details in respect of agricultural income and the assessee submitted details as called for by the AO. On reading of para 4 of the assessment order, it is clear the AO considered the submissions of assessee in respect of declaration of huge agricultural income and satisfied taking into account the assessments of earlier years. Therefore, it is apparent from the record that the AO conducted full examination of details relating to agricultural income thoroughly and accepted the said return of income without any variation. Now, the question is whether the PCIT could exercise his jurisdiction u/s. 263 of the Act or not? When the AO passed assessment order after due enquiries and it is pertinent to note in the order to exercise jurisdiction u/s. 263 of the Act, the twin conditions are to be satisfied, namely that the

assessment order is erroneous as well as prejudicial to the interest of Revenue. On an examination of impugned order, the PCIT held that the AO is failed to make proper enquiry and directed that the assessment order should be framed as per the provisions of law after considering proper facts and circumstances of the assessee without giving definite, as to how the assessment order is erroneous, prejudicial to the interest of Revenue as well.

6. As discussed above, we are satisfied on perusal of the assessment order that there was no lack of enquiry by the AO in the scrutiny proceedings. We note that the assessee furnished costs which were debited to the profit and loss account before the PCIT which is reproduced at page 4 of the impugned order. On perusal of the said submission of assessee regarding costs in respect of sale of agricultural produce, it was stated that the agricultural goods were mainly transported by its own Mahindra Scorpio vehicle and sometimes goods were transported by ST parcel service. It is also contended that the respective Shopping Mall personnel used to pick up the agricultural goods from the assessee. It is also enclosed ledger extract from the books of account in the year under consideration, wherein, it is noted ledger extract received from assessee's customers were placed on record. However, that all the sale proceeds from the sale of agricultural produce were credited in the bank account of assessee and in support of which the assessee enclosed bank account in State Bank of India together with books of account. The PCIT made no adverse remarks or reference to the reply submitted by the assessee in respect of transport expenses, proof of sale of agricultural produce and details of bank accounts. It is settled position that the PCIT mandated to give reasoning why the order of assessee is erroneous as well as prejudicial

to the interest of Revenue. As discussed above, the PCIT did not give any reasons for non-consideration of reply submitted by the assessee and we note the PCIT simply directed the AO to frame assessment as per provisions of law, in our opinion, the order of PCIT is not justified in holding the assessment order is erroneous and prejudicial to the interest of Revenue as no nowhere in the impugned order it was held on specific point the assessment order is erroneous and prejudicial to the interest of Revenue. In the absence of which initiation of revision proceedings u/s. 263 fails and is set aside. Thus, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 21st December, 2022.

Sd/-
(G.D. Padmahshali)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 21st December, 2022.

रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-3, Pune
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune