

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No.188/PUN/2021

निर्धारण वर्ष / Assessment Year : 2016-17

Jagu Dnyanu Deokate, At Dhanore, Post Velaur, Taluka Malshiras, District Solapur 413 113 Maharashtra PAN : BEXPD8584A	Vs.	ITO, Ward-2, Solapur
Appellant		Respondent

Assessee by
Revenue by

Shri Sunil Ganoo
Shri Keyur Patel, CIT-DR

Date of hearing

23-12-2022

Date of pronouncement

23-12-2022

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the learned Principal Commissioner of Income Tax-4, Pune dated 31-03-2021 for assessment year 2016-17 passed u/s.263 of the Act as per the grounds of appeal on record.

2. The solitary grievance of the assessee in this case is the assumption of revisionary jurisdiction and passing order u/s.263 of the Income-tax Tax Act, 1961 (hereinafter to be called and referred as 'Act').

3. The relevant facts in this case are that the assessee e-filed the return of income declaring total income of Rs.80,000/-. The case was selected under Computer Aided Scrutiny Selection (CASS) for Limited scrutiny for the reason “*Large Cash deposits in bank account and the assessee has also purchased / sold one or more properties during the year*”. During the assessment proceedings, as per the notices served on the assessee u/s.143(2) and 142(1) calling for the information regarding the evidences of the sources of cash deposits and sources of properties purchased/sold and working of capital gain in respect of properties sold, the assessee made online submissions, furnished necessary details, as called for by the Assessing Officer (AO). It was submitted before the AO that the assessee is a farmer belonging to traditional farmers family and earning only Agricultural income which is exempt from tax. The cash deposited in the savings bank with Bank of Baroda, Branch Velapur was out of the sale of agricultural land, withdrawal from other bank accounts out of Agricultural income only. In support, the assessee also furnished statement showing cash deposits with sources thereof. The assessee also has given the copies of Index-II for purchase and sale of land. Regarding the property sold, it was

explained that property sold is rural agricultural land and not a capital asset taxable under capital gain. The sources of purchase of agricultural lands were explained to be out of the source of sale of his old rural agricultural land and out of agricultural income only and the assessee claimed that he has no other source of income which is taxable under the Income-tax Act. In support, the assessee has also given copies of 7/12 extracts, confirmation of advances received against sale of land, cash flow statement etc. The Id. AO, after proper verification of the details of the submissions of the assessee, accepted the return of income filed. On the other hand, the Id. Principal Commissioner of Income-tax (in short 'PCIT'), in the order passed u/s.263 of the Act, observed that the assessee had submitted that the cash deposits were for the sum of Rs.86,19,000/- only as on 02-06-2015 from all sources including agricultural income, advances received and cash deposits. Out of the funds of Rs.86,19,000/- a sum of Rs.2,04,000/- was stated to have been out of own cash balance. However, no supporting documentary evidences such as cash book etc., had been furnished by the assessee. Therefore, the assessee had only a sum of Rs.84,15,000/- with him as on 02-06-2015 from all sources. The new land which

the assessee purchased was for a total consideration of Rs.94,80,340/-. The assessee could not explain the source of Rs.10,65,340/-, i.e.(Rs.94,80,340 – Rs.84,15,000). The Id. PCIT further observed that the assessee had claimed huge agricultural land cultivation from cultivation of Pomegranate and Sugarcane which was rather on the higher side as compared to the productivity levels estimated in the reports of State Government of Maharashtra for F.Y. 2015-16. With these observations, the Id. PCIT held that the order of assessment completed by the AO was erroneous so as to be prejudicial to the interest of the Revenue and therefore, passed the order u/s.263 of the Act.

4. At the time of hearing, the Id. Authorised Representative (AR) of the assessee vehemently contended that the assessee is a farmer belonging to a joint family of Agriculturists and the only source of income is the Agricultural income as declared in the return filed by the assessee during the year. There is no other source of income of the assessee. The Id. AO completed the assessment u/s.143(3) which was for limited scrutiny of all the issues as per the said limited scrutiny was verified and examined by the AO. In response to the notices u/s.143(3) and 142(1), the assessee submitted all the

details/evidences as inquired by the Id. AO. Therefore, it cannot be said that the assessment order was erroneous so as to be prejudicial to the interest of the Revenue. Per Contra, the Id. Departmental Representative supported the order of the Id. PCIT passed u/s.263 of the Act.

5. We have heard the rival contentions, analysed the facts and circumstances in this case. Admittedly, the assessee filed return of income declaring total income of Rs.80,000/-. The case was selected for limited scrutiny for the reason that “*large cash deposits were made in the bank account of the assessee and that he had purchased/sold one or more properties during the year*”. In this regard, the Id. AO, while completing the assessment u/s.143(3) of the Act, issued notices to the assessee u/s.143(2) and 142(1) calling for information with evidences regarding the source of cash deposit, source of property purchased and working of capital gain in respect of the properties sold. In response to these queries, the assessee had submitted online submissions and furnished necessary details as called for by the Id. AO. It was submitted that the assessee belongs to family of traditional farmers and staying with the joint family having only agricultural income as the source of income. During

the year, the assessee had deposited cash in his savings bank account with Bank of Baroda, Velapur Branch out of sale of agricultural lands, withdrawal from other bank accounts out of agricultural income only. The assessee had furnished statement showing cash deposits with sources thereof before the AO and has also given index copies of the purchase and sale of lands. It was also explained before the AO that the property sold was a rural agricultural land and not a capital asset taxable under the head 'capital gain'. The sources of purchase of agricultural land were out of the sources of sale of his agricultural land and out of agricultural income only. It was further submitted that the only source of income was agriculture and that the assessee had no other source of income which is taxable under the Act. The assessee had even submitted the copies of 7/12 extracts, confirmation of advances received against the sale of land, cash flow statement before the AO. Therefore, when the case was selected for limited scrutiny enquiring regarding the cash deposits in the bank account of the assessee and purchase and sale of property during the year, those areas were duly examined and verified by the Id. AO as evident from the assessment order. Even the Id. AR of the assessee stated that the assessee has

only agricultural income as his sole source of income and there is no other income which the assessee has and which can be made subject matter of tax under the Act. In this factual analysis, the contentions raised by the Id. PCIT cannot be held to be justified. The Id. PCIT in this case is only adventuring on a roving and phishing enquiry, which is not permissible within the scope and ambit of section 263 of the Act. The AO has completed full inquiry on the subject of the limited scrutiny and passed the assessment order u/s.143(3) of the Act. The assessment order cannot be erroneous and prejudicial to the interest of the Revenue.

6. The Hon'ble Supreme Court in *Malabar Industrial Company Ltd. Vs. CIT (2000) 243 ITR 83 (SC)* has held that "On a bare reading of section 263 of the Act makes it clear that the Commissioner has to be satisfied with twin conditions that the order of the AO which he seeks to revise has to be erroneous so as to be prejudicial to the interest of the Revenue. If one of them is absent, for example, if the order of the AO is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue recourse cannot be taken to section 263 of the Act. The Hon'ble Rajasthan High Court in the case of *CIT Vs. Trustees*

of Anupam Charitable Trust (1987) 167 ITR 129 (Raj.) held that the error envisaged u/s.263 of the Act is not one which depends on possibility or guess work, but it should be actually an error either on fact or on law.

7. Reverting to the facts of the present case before us, the AO as per the limited scrutiny inquired every detail and evidences before the AO. He had examined them and had then passed the assessment order u/s.143(3) of the Act. Therefore, there is no error committed by the AO either on fact or on law. When such is the position, the assessment cannot be held to be erroneous so as to be prejudicial to the interest of the Revenue. The ld. PCIT, on the other hand, has not brought out any satisfaction in his order as to why the assessment order should be held erroneous so as to be prejudicial to the interest of the Revenue. This is so because the ld. PCIT has not given any finding regarding the detailed inquiry already completed by the ld. AO which is evident in the assessment order itself. Without giving such finding regarding the entire evidences furnished by the assessee, *vis-à-vis* the sources of income of the assessee, merely pointing out some discrepancies which is also not coming out from the admitted facts of the case, is nothing but an

action that the ld. PCIT resorted to passing order u/s.263 only for the purposes of roving enquiry not permissible within the Act. The Commissioner has no jurisdiction to set-aside the order of assessment to conduct another purposeless enquiry to reach the same result which was already arrived at earlier. The Hon'ble Bombay High Court in the case of *CIT Vs. Gabriel India Ltd. (1993) 203 ITR 108 (Bom)* observed and held that "in the garb of exercising power u/s.263, the Commissioner cannot initiate proceedings with a view to start phishing and roving enquiry in matters or orders which are already concluded. Such action will be against the well accepted policy of law that there must be a point of finality in all legal proceedings that stale issues should not be re-activated beyond a particular stage and with lapse of time itself induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity. Therefore, upon examination of the facts and circumstances and the judicial pronouncements, we are of the considered view that the order passed by the ld. PCIT u/s.263 of the Act is misplaced in the present facts of this case. It is not a fit case for assumption of revisionary jurisdiction and passing order u/s.263 of the Act which

is held to be devoid of any merits. The order of the ld. PCIT is set-aside and the appeal of the assessee is allowed.

8. In the result, the appeal is allowed.

Order pronounced in the Open Court on 23rd December, 2022.

Sd/-
(R.S.SYAL)
VICE PRESIDENT

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

पुणे Pune; दिनांक Dated : 23rd December, 2022
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A) concerned
4. The CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "A" /
DR 'A', ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	23-12-2022	Sr.PS
2.	Draft placed before author	23-12-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		