

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH: DB : INDORE

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER

ITA No.114/Ind/2022
Assessment Year: 2017-18

Shri Akhilesh Rathi 408 A, Sector AD, Scheme No. 74C, Vijay Nagar, Indore (M.P) PAN AENPR4694E	vs.	The Principal Commissioner of Income Tax-1, Indore
(Appellant)		(Respondent)

For Assessee :	Shri Anil Kamal Garg, C.A
For Revenue :	Shri P.K. Mishra, CIT(DR)

Date of Hearing :	17.11.2022
Date of Pronouncement :	30.01.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal filed by the assessee is directed against the order dated 17.03.2022 of the Ld. CIT(A), Indore, relating to Assessment Year 2017-18.

2. The grounds of appeal raised by the assessee read as under:-

1(a) That, on the facts and in the circumstances of the case, the learned Pr. CIT grossly erred in law in invoking the provisions of section 263 of the Income-Tax Act, 1961 in the appellant's case without considering the material fact that the Assessment Order passed by the learned Assessing Officer was neither erroneous nor prejudicial to the interest of the Revenue.

1(b) That, the learned Pr. CIT grossly erred, both on facts and in law, in assuming the jurisdiction u/s. 263 of the Income-Tax Act, 1961 without considering the material fact that the appellant had already shown the entire salary income of Rs.2,00,00,000/- in his original return of income furnished under s.139(1) of the Act for the relevant assessment year which was duly verified and accepted by the AO, while framing the assessment under s.143(3) after proper application of his mind.

2(a). That, without prejudice to the above, the learned Pr. CIT grossly erred, both on facts and in law, in passing the impugned Order on the ground that the employer had deducted tax at source at a lesser amount of Rs.1,00,00,000/- without considering and appreciating the appellant's detailed submission made along with the necessary documentary evidences to establish that, factually, during the relevant previous year, the appellant had derived salary income amounting to Rs.2,00,00,000/- only and not of Rs. 1,00,00,000/- on which the employer had erroneously made TDS and further, without considering the material fact that the entire salary income of Rs.2,00,00,000/- was duly offered by the appellant for taxation in his return of income furnished under s.139(1) of the Act for the relevant assessment year.

2(b). That, without prejudice to the above, the learned Pr. CIT grossly erred, both on facts and in law, in not appreciating the material fact that (i) the appellant had

shown a higher amount of salary income in his return of income in contrast to the salary payment shown to the appellant by his employer and (i merely for the reason that the employer has made deduction of tax at a lower amount cannot be a ground for presuming that any prejudice has caused to the interest of the revenue.

2(c). That, without prejudice to the above, the learned Pr. CIT grossly erred, both on facts and in law, in passing the impugned Order without taking into consideration the revised TDS return filed by the employer followed by the issuance of the revised Form 16 to the appellant.

3. That, without prejudice to the above, the learned Pr. CIT grossly erred, both on facts and in law, in invoking the provisions of s.263 of the Act on a completely wrong and non-existent ground that the appellant had credited an amount of Rs.1,00,00,000/- on account of salary directly to his capital account without paying taxes thereon.

4. That, without prejudice to the above, the learned Pr. CIT grossly erred, both on facts and in law, in setting aside the assessment order passed by Assessing Officer under section 143(3) of the Income-Tax Act, 1961 merely for re-examination of the issue without first forming any objective satisfaction that the original Assessment Order passed by the AO was prejudicial to the interest of the Revenue.

5. That, the appellant further craves leave to add, alter and/or amend any of the foregoing grounds of appeal as and when considered necessary.

3. The learned assessee representative (AR) drawing our attention towards copy of the notices u/s. 263 of the Act, dated 25.02.2022 placed at paper book pages 1 to 3 submitted that the learned PCIT

has invoked provisions of section 263 of the Act solemnly on the basis of allegation that the assessee has received salary to the tune of Rs. 2 crore but as per statement u/s. 26AS for the relevant assessment year the received under the head of salary income has been shown to tune of Rs. 1 crore only. The learned AR further drawing out attention towards copy of the return income of assessee for A.Y. 2017-18 placed at pages 21 to 24 of the assessee's paper book submitted that the assessee has shown salary income of Rs. 2 crores in its computation income. Therefore the learned PCIT has invoked provisions of section 263 of the Act, without perusing the assessment records for A.Y. 2016-17 and such revisionary order cannot be held as sustainable and the same may kindly be set aside.

4. Replying to the above learned CIT-DR, except supporting the revisionary order could not brought on record any fact to controvert the allegation of the learned AR that the assessee had already shown salary income of Rs. 2 crore in its return of income. Therefore the show cause notice and impugned revisionary order passed u/s. 263 of the Act is not sustainable.

5. On a careful consideration of rival submissions we are of the considered view that the sole premise for invoking provisions of section 263 of the Act, by the learned PCIT is that the TDS shown by the form 26AS is not in confirmatory with the receipt of salary by the assessee. Therefore the assessment order is erroneous and prejudicial to the interest of revenue. At the same time from the copy of the return of income, we observed that that assessee already shown salary income of Rs. 2 crore in its computation of income for A.Y. 2017-18. Therefore we safely gather that the learned PCIT has invoked provisions of section 263 of the Act without considering the relevant assessment record and return of income filed by the assessee for A.Y. 2016-17 therefore impugned revisionary order passed u/s 263 of the Act dated 17.03.2022 cannot be held as valid and sustainable thus the same deserves to be quashed. Accordingly grounds of assessee are allowed and revisionary order u/s. 263 of the Act for dated 17.03.2022 for A.Y. 2017-18 being unsustainable and bad in law is quashed.

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

Order pronounced in the open court on 30.01.2023.

Sd/-

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 30th January, 2023.

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, Indore

		Date
1.	Draft dictated on	17.01.2023
2.	Draft placed before the author	18.01.2023
3.	Draft placed before the other Member	.01.2023
4.	Approved Draft comes to the Sr.PS/PS	.01.2023
5.	Order uploaded on	.01.2023
6.	File sent to the Bench Clerk	.01.2023
7.	Date on which file goes to the Head Clerk.	
8.	Date on which file goes to the AR	
9.	Date of dispatch of Order.	