

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.424/Hyd/2021		
Assessment Year: 2015-16		
Shri Krishna Murthy Tirupati PAN: AOZPS5794Q (Appellant)	Vs.	Income Tax Officer Ward 1(2) Tirupati (Respondent)
Assessee by:	Shri Shashank Dundu, Advocate	
Revenue by:	Shri K.E. Sunil Babu, DR	
Date of hearing:	02/02/2023	
Date of pronouncement:	06/02/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 11.12.2017 of the learned Pr.CIT Tirupati, relating to A.Y.2015-16.

2. Facts of the case, in brief , are that the assessee is an individual and filed his return of income on 14.02.2017 admitting taxable income of Rs.9,10,510/- and agricultural income at Rs.2,40,000/-. The case was selected for scrutiny to examine “(i) whether the cash deposit has been made from disclosed sources and (ii) whether investment and income relating to properties are duly disclosed”. Accordingly notice u/s 143(2) of the Act was issued to the assessee in response to which the A.R of the

assessee appeared before the Assessing Officer from time to time and filed the requisite details such as I.T return copy with statement of computation of total income with receipts and payments statement, bank statements, sale deed copy etc., The Assessing Officer completed the assessment u/s 143(3) on 11.12.2017 determining the total income of the assessee at Rs. 11,49,510/- wherein he made addition of Rs.2,39,000/- on lumpsum basis on account of huge cash transactions done by the assessee.

3. Subsequently, the learned PCIT examined the record and noted that the assessee has purchased 5.39 acres of land for a consideration of Rs.1,13,00,000 against the market value of Rs.4,04,25,000/-. The assessee has also paid stamp duty of Rs.24,25,600/- on the market value of Rs.4,04,25,000/- itself. Therefore, the difference of Rs.2,91,25,000/- should have been treated as income from other sources in the hands of the assessee. Since the Assessing Officer has not made this addition or not made any inquiries, the learned PCIT issued a notice u/s 263 of the Act on 17.01.2020 asking the assessee to explain as to why the order passed by the Assessing Officer on 11.12.2017 should not be revised being erroneous and prejudicial to the interest of the Revenue. Rejecting the various explanations given by the assessee, the learned PCIT set aside the order passed by the Assessing Officer with a direction to re-do the assessment denovo in accordance with law.

4. Aggrieved with such order of the learned PCIT, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

“1. The order of the learned Pr. Commissioner of Income Tax, u/s 263 of the Income Tax Act dated 04.03.2020 is erroneous both on facts and in law.

2 The Learned Pr. Commissioner of Income Tax erred in holding that there is any error in the assessment made by the Assessing Officer u/s 143(3) of the I.T.Act on 11.12.2017 which is prejudicial to the interests of revenue.

3. The learned Principal Commissioner of Income Tax ought to have seen that the Assessing Officer, during the course of scrutiny proceedings, obtained copy of the Receipts and Payments account, bank statements, sale deed and held that they were all verified by him and that, therefore, the entire information required was made available before the Assessing Officer.

4. The learned Commissioner of Income Tax ought to have seen that proper decision was taken by the Assessing Officer after duly considering the information submitted and that, therefore, ought not have set aside the order u/s 143(3) by passing order u/s 263 of the I.T.Act.

5. Any other ground or grounds that may be urged at the time of hearing”.

5. The learned Counsel for the assessee referring to the observation of the Assessing Officer at Para 2 of the assessment order drew the attention of the Bench to the same and submitted that the Assessing Officer mentioned that the assessee has been doing real estate business and in respect of investment in properties, he has explained the source to be advances and loans from various persons. Referring to the written submission filed by the assessee and the chronology of events, he submitted that on 23.7.2014 one Mrs. Kalavathi Rajendran desperately sold the disputed property (disputed under OS No. 454/2012) to the assessee for a sale consideration of Rs.1,13,00,000/-. He submitted that on 16.8.2016 a judgment and decree was passed in OS No.454/2012 wherein the title of Mrs. Sukul Yashoda was upheld to be valid and claim of Mrs. Kalavati about alleged title and ownership of the impugned property was declared as void.

6. Referring to the order of the learned PCIT's order from Para 6 onwards, the learned Counsel for the assessee submitted that the learned PCIT in the instant case has quoted the order of some other assessee in the impugned order wherein he has discussed regarding the source for cash deposit in excess of turnover at Rs.89,08,650/- which was not examined. Further interest income of Rs.54,175/- received from Syndicate Bank was also not examined for which he set aside the order dated 18.4.2017 for the A.Y 2015-16. He submitted that the facts narrated by the PCIT in the concluding para of the order passed u/s 263 relate to somebody else and do not pertain to the assessee. He submitted that since the learned PCIT has not applied his mind and without considering the facts of the assessee has arrived at a conclusion on the basis of the facts of some other assessee, therefore, the order passed by the learned PCIT should be set aside and the grounds raised by the assessee should be allowed. He also relied on the following decisions:

- i) Hon'ble Delhi High Court in the case of PCJ Securities Pvt Ltd in W.P (C) 6415/2022 dated 4.5.2022.
- ii) Hon'ble Bombay High Court in the case of Gabriel India Ltd (203 ITR 108)
- iii) Sirpur Paper Mills Ltd vs. Income Tax Officer (1978) 114 ITR 404 (AP)

7. The learned DR, on the other hand, heavily relied on the order of the learned PCIT. He submitted that the case was selected for scrutiny to verify the investment and income relating to properties, however, the Assessing Officer has not examined the same and therefore, the order passed by the Assessing Officer is erroneous as well as prejudicial to the interest of the Revenue.

Therefore, the learned PCIT was fully justified in invoking the jurisdiction u/s 263 of the I.T. Act.

8. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned PCIT and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case, on the basis of various details filed by the assessee, completed the assessment determining the total income of the assessee at Rs.11,49,510/- by making addition of Rs.2,39,000/- on lumpsum basis to the returned income of Rs.9,10,510/-. We find the learned PCIT on examination of the record noted that the assessee has purchased a land for a consideration of Rs.1,13,00,000/- against the market value of Rs.4,04,25,000/- and has also paid stamp duty of Rs.24,25,260/- on the above market value. Since the Assessing Officer has not inquired regarding the difference of Rs.2,91,25,000/- and has not made addition of the same as "income from other sources" in the hands of the assessee, therefore, the order has become erroneous and prejudicial to the interest of the Revenue for which he set aside the order passed by the Assessing Officer with a direction to redo the assessment denovo in accordance with law. It is the submission of the learned Counsel for the assessee that the assessee during the course of assessment proceedings had filed the requisite details and explained the case based on which the Assessing Officer has passed the order and therefore, the order is neither erroneous nor prejudicial to the interest of the Revenue for which it falls outside the ambit of section 263 of the I.T. Act. It is also his submission that although the assessee has explained the factual matter to the learned PCIT, however, the learned PCIT without considering the

submissions made by the assessee and in a very cryptic order has quoted the facts of some other person and set aside the assessment with a direction to the Assessing Officer to redo the assessment denovo and in accordance with law.

9. We find some force in the above argument of the learned Counsel for the assessee. A perusal of the order of the learned PCIT from Para 4 onwards read as under:

“4. The assessee was asked vide the show cause notice dated 17.01.2020 mentioned supra to furnish his explanation on 28.01.2020. In response to the above notice the assessee's A.R. Smt. K.A.J. Krishna Kumari appeared and filed written submissions on 27.02.2020.

6 Further, the reading of the assessment order shows that it is a case where assessment has been completed almost without examining anything before accepting certain bank deposits allowable or otherwise. The sources for cash deposits in excess of Instead interest income of Rs. turnover (at Rs. 89,08,650/-) were not examined. 1,58,861/- was added. Further Interest income at Rs. 54,175/- received from the Syndicate Bank is to be brought to the tax. Hence the assessment is said to be assessment made without proper verification of the reasons for which the case was selected for scrutiny. The gist of some of the judicial pronouncements discussed as under whose issues and facts are that of similar to the case of the assessee.

In the case of Gee Vee Enterprises Vs Addl.CIT 99 ITR 375 (Delhi), it is held that the AO being not only an adjudicator but also an ' Investigator', he cannot remain passive in the fact of a return which is apparently in order but calls for further enquiry in the facts and circumstances of the case and the word erroneous in section 263 of the I.T. Act includes the failure to make such an enquiry. The CIT was justified in exercising his provisional jurisdiction on the ground that the ITO had not made sufficient enquiries before granting registration to the firm and it was not necessary for the CIT to have himself made enquiries before cancelling the assessment.

7 The Hon'ble Supreme Court in the case of Rampyari Devi Sarogi Vs CIT 67 ITR 84 (SC) ha_ held that an assessment order passed by the AO “in undue haste without making any inquiry “ would be rendered as an assessment order erroneous and prejudicial to the interests of Revenue. Similar view again is held by the Hon'ble Apex Court in the case of Smt. Tara Devi Agarwal Vs. CIT reported in 88 ITR 323 (SC) .

8. Section 263(1) of the I.T. Act stands amended by which the word " erroneous" has been further made clear and this amended section is

effective from 01.06.2015. The section 263(1) of the I.T. Act is reproduced as under: "

"For the purpose of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of revenue, if in the opinion of the Principal Commissioner of Income tax:-

(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 any 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.

9 Commissioner may consider an order of Assessing Officer to be erroneous not only when it contains some apparent error of reasoning or of law or of fact on face of it but also when it is stereo-type order which simply accepts what assessee has stated in his return and fails to make enquiries or examine genuineness of claim which are called for in circumstances of the case" as held in the case of Indu Fine Lands (P) Limited Vs CIT (2014) 45 Taxmann. Com 307 (Hyd)(Trib).

10. For the purposes of invoking the jurisdiction u/s 263, it is settled law that the revisional authority should apply the tests as to whether such an order contains some apparent error of reasoning or of law or of the fact on the face of it and also whether it is an order wherein the AO simply accepted what the assessee has stated in its return &/or in the other particulars and failed to make examination/verification/enquiries which are called for on the facts and circumstances of the case which he as an investigator of that case was duty bound to do. If we apply above tests to the facts and circumstances of this case and the material available on record, it is clear that the order. passed by the AO u/s 143(3)) on 18.04.2017 for the A.Y. 2015-16 is erroneous in so far as it is prejudicial to the interests of revenue within the scope of section 263 of the Act and hence it is set-aside. The AO is directed to re-do the assessment, de-novo, in accordance with law and established procedure on such issues and after affording a reasonable opportunity of being heard to the assessee. 11. Accordingly, the order u/s 263 is passed for the A.Y. 2015-16."

10. A perusal of the above shows that after Para 4, para No.5 is missing. In Para No.6, the learned PCIT has discussed the source of cash deposits in excess of turnover at Rs.89,08,650/-

and interest income of Rs.54,175/- which was not brought to tax. However, that was never the issue either before the Assessing Officer or the learned PCIT. Similarly at Para No.10 of the order, he has cancelled the order passed by some Assessing Officer u/s 143(3) on 18.4.2017 whereas the Assessing Officer in the instant case has passed the order on 11.12.2017. The chronology of the above events indicates that the learned PCIT in a very casual and negligent manner has passed the order and copy pasted the finding of some other assessee in the instant case. In our opinion, great power comes with extraordinary responsibility and should be exercised mindfully and cautiously. However, in the instant case, the same appears to be not at all exercised in the manner in which it should have been exercised.

10.1 Even on merit also, we find that by the time the Assessing Officer passed the assessment order u/s 143(3) on 11.12.2017, the Civil Court vide order dated 16.8.2016 in OS No.454/12 had passed the judgment against the seller namely Ms. Kalavati Rajendran who had sold the property to the assessee and has held that the title of Ms. Sukul Yashoda is valid and the claim of Ms. Kalavati about the title and ownership of the impugned property was declared as void. Since the title of the seller and in consequent of the assessee are held to be bad in law, therefore, the question of making the addition on the basis of such a defective and illegal title cannot be sustained.

11. In our opinion, since the Assessing Officer in the instant case has passed the order on the basis of the receipts and payments statement, bank statement, sale deed copies etc., therefore, in absence of any specific reasoning given by the learned PCIT as to how the order has become erroneous and

prejudicial to the interest of the Revenue and since he has cancelled an order passed u/s 143(3) dated 18.4.2017 whereas the order passed u/s 143(3) in the instant case is 11.12.2017, therefore, it is a complete non-application of mind by the learned PCIT for which we set aside the order of the learned PCIT passed u/s 263 of the I.T. Act, 1961. The grounds raised by the assessee are therefore, allowed.

12. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 6th February, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 6th February, 2023.

Vinodan/sps

Copy to:

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4	Jt. CIT-, Range-1, Tirupati
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order