

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.215/Chny/2022**
(निर्धारण वर्ष / **Assessment Year: 2017-18**)

M/s. Kamalesh Kumar Sheth (HUF) 42, Ranganathan Avenue, Uthandi, Chennai-600 119.	बनाम / Vs.	Pr. CIT-3, Chennai.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AAAHK-0332-F		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri B.Ramakrishnan, FCA & Shrenik Chordia, ACA - Ld. ARs
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri S.Senthil Kumar, (CIT)-Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	06-12-2022
घोषणाकीतारीख / Date of Pronouncement	:	17-02-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member):

1. By way of this appeal, the assessee assails the validity of revisional jurisdiction u/s. 263 as exercised by Ld. Principal Commissioner of Income Tax, Chennai-3 (Pr.CIT) vide order dated 13.03.2022 against the assessment framed by Ld. Assessing Officer (AO) u/s.143(3) of the Act on 25-12-2019. The grounds raised by the assessee read as under: -

1. For that the order of the Learned Principal Commissioner of Income Tax-3, Chennai u/s 263 of the Act is contrary to law, facts, and circumstances of the case.
2. For that the Learned Principal Commissioner of Income Tax-3, Chennai is not justified in invoking the provisions of section 263 of the Act, when the impugned Assessment made under section 143(3) of the Act is not 'erroneous and prejudicial to the interest of the revenue' and thereby erred in setting aside the Order passed by the Assessing Officer u/s 143(3) of the Act dated 25.12.2019.
3. For that the Learned Principal Commissioner of Income Tax-3, Chennai has erred in setting aside the impugned Assessment Order to verify the compensation expenses claimed as loss, without appreciating the fact that where all the relevant details called for were submitted before the Assessing Officer and where the Assessing Officer had applied his mind and allowed the claim of loss on account of compensation paid, the impugned Assessment Order cannot be termed to be erroneous and the revision u/s 263 of the Act is not sustainable.
4. For that the Learned Principal Commissioner of Income Tax-3, Chennai has erred in not appreciating the fact that the property was originally owned by the partnership firm, M/s. Mittulaul Lalah & Sons, wherein Mr. Kamalesh Kumar Sheth was one of the partners and subsequently the same property was transferred to the appellant.
5. For that the Learned Principal Commissioner of Income Tax-3, Chennai in para 6 of his Order has erred in stating that *'the claim of these expenses in the hands of the assessee HUF is only to reduce the taxable income of the assessee HUF'* without appreciating the fact that the appellant being the owner of the property as per the family arrangement deed, any loss arising on that account is to be borne by the appellant."

2. The Ld. AR assailed the impugned order on the ground that the issue flagged by Ld. Pr. CIT in the revisional order was already examined by Ld. AO during the course of regular assessment proceedings and a plausible view was taken in the matter. The Ld. CIT-DR, on the other hand, submitted that only vague information was supplied by the assessee and no inquiry was made by the Ld.AO during the course of regular assessment proceedings. It was submitted that the loss belonging to individual assessee was set-off against the income earned by the assessee-HUF and accordingly, revision of the order was justified. Having heard rival submissions and after perusal of case records, our adjudication would be as under.

3. The assessee being resident HUF was assessee u/s 143(3) on 25.12.2019. During the course of assessment proceedings, notices were

issued u/s 142(1) on 25.10.2019 and 15.11.2019 calling various details from the assessee. After examining the relevant details, the returned income filed by the assessee for Rs.148.51 Lacs was accepted by Ld. AO.

4. Subsequently, upon perusal of case records, Ld. Pr. CIT sought revision of the order by observing that a sum of Rs.270 Lacs was paid by assessee to one Shri B. Sivaramakrishnan (in short BS). However, Shri Kamalesh Kumar Seth (KKS-Kartha of HUF), in individual capacity, along with Shri S. Venkataramanan (in short SV) (who had no connection with assessee HUF) obtained loan from BS for Rs.270 Lacs on 19.11.2019 for running a business in the name and style of M/s RJK investments in their individual capacity and not in HUF capacity. Due to non-payment of loan along with interest of Rs.814.86 Lacs, the claim was settled through court by payment of compensation of principal amount of Rs.270 Lacs.

5. Similarly, another sum of Rs.1101.50 Lacs was paid to Shri Harinder as compensation. However, KKS (the Kartha of HUF), his wife and another individual received advance amount of Rs.15 Crores towards real estate business in their individual capacity and not in HUF capacity. Due to non-payment, the compensation was settled at Rs.1101.50 Lacs. The adjustment of aggregate business loss of Rs.1371.50 Lacs as claimed by the assessee against income from capital gain was not in order. Moreover, deduction would be allowable u/s 37(1) only when the expenditure was incurred wholly and exclusively for the purpose of business. Therefore, the assessment order was held to be erroneous and prejudicial to revenue and accordingly, the assessee was put to show cause notice.

5. The assessee objected to the same and submitted that the assessee-HUF entered into 'Memorandum of Understanding' (MOU) with its Kartha Shri Kamalesh Kumar Sheth in individual capacity to allow him to mobilize funds by utilizing the premises of the assessee. Accordingly, a loan was raised from BS for Rs.270 Lacs on execution of promissory note which was sanctioned on the strength of ownership of KKS in property situated at Lalah Towers, Aminijikarai which was owned by the assessee-HUF. The promissory note was renewed from time to time and the outstanding loan and interest aggregated to Rs.814.86 Lacs which was ultimately settled at Rs.270 Lacs since Hon'ble High Court of Madras directed parties to amicably settle the dispute. Accordingly, the sum of Rs.270 Lacs was paid. As per MOU between the assessee-HUF and KKS, the entire business loss / profits were to be borne by the assessee only and accordingly, the said loss was claimed.

6. Similarly, the assessee along with Shri Venkataramanan entered into aggregation agreement with another entity i.e., M/s Rattha Holding Company Private Ltd. (RHCPL) on 24.09.2012. As per terms, RHCPL paid the amount to Shri Venkataramanan which was to be paid to land-owners through Shri Venkataramanan. However, the obligations of aggregating the land and providing public access to the land could not be fulfilled. Shri Venkataramanan collected the amount from RHCPL and produced bogus agreements of sale to RHCPL. Due to this, RHCPL suffered huge loss which was ultimately settled by the assessee-HUF at Rs.1101.50 Lacs out of sale consideration of Rs.15 Crores received by the assessee-HUF. The loss suffered on account of failure to execute aggregation arrangements was done on behalf of the assessee-HUF and therefore, any business loss arising on this account was to be borne by

the assessee-HUF which was claimed as loss while filing the return of income.

7. The assessee made further submissions on 18.02.2022 in support of the claim. It was submitted that M/s Mittulaul Lalah & Sons was a partnership firm consisting of two partners namely Shri Rajkumar Manradiyar and KKS. The firm entered into a joint development agreement with M/s Thandiyadi Realtors Private Ltd. (TRPL) on 26.04.2008. As per the terms, the firm was entitled for 52% of the built-up area of the building situated at 54/72, Nelson Manickam Road, Aminijikarai, Chennai and the balance 48% would be owned by TRPL. Thereafter, the assessee represented by KKS along with his sisters had entered into a family arrangement deed on 29.03.2012 wherein the assessee was entitled to 27.365% of the UDS of the property and the remaining 24.635% out of 52% of UDS of the property was enjoyed by the respective sisters as per the schedule in the deed. Subsequent to the family arrangement, the said property was converted as the property held by the assessee-HUF. The assessee-HUF being the owner of the property as per schedule of the family arrangement deed, entered into an MOU between the members of the HUF and KKS to mobilize funds for developing the office infrastructure in the commercial complex. Based on this MOU, KKS along with his partner Shri Venkataramanan had entered into an agreement in their individual capacity to obtain loan from Shri Sivaramakrishnan for Rs.270 Lacs on execution of the promissory note. The promissory notes were renewed from time to time. Since the loan was outstanding for a long time, Mr. Sivaramakarishnan had filed a civil suit against KKS and the court had ordered for amicable settlement. The same was settled and the loss was claimed.

8. However, Ld. Pr. CIT held that the assessee HUF had not taken loan. The claim of expense in the hands of the assessee HUF was to reduce the taxable income and accordingly, Ld. AO was directed to redo the assessment after making detailed enquiries after affording opportunity of hearing to the assessee. Aggrieved the assessee is in further appeal before us.

Our findings and Adjudication

9. From the facts, it emerges that the assessee HUF was subjected to an assessment u/s 143(3) wherein notices were issued u/s 142(1) on 25.10.2019 and 15.11.2019 calling various details from the assessee. The assessee claimed certain losses against capital gains earned out of sale of property. A specific query was raised by Ld. AO on this issue and Ld. AO also proposed to disallow the loss thus claimed by the assessee. The assessee, vide reply dated 27.11.2019, inter-alia, filed note on business loss and explained the loss thus claimed by the assessee. A copy of relevant documents was also filed along with the reply. After having satisfied with assessee's submissions and documentary evidences, Ld. AO framed an assessment u/s 143(3) vide order dated 25.12.2019 and chose not to make any such addition in the hands of the assessee. Thus, it is quite clear that specific query was raised by Ld. AO against this issue which was duly replied to by the assessee along with documentary evidences. Accordingly, a plausible view was taken in the matter by Ld. AO.

10. We find that as per the provisions of Section 263 of Income Tax Act, 1961, the revenue authorities namely Pr. Commissioner of Income Tax / Commissioner of Income Tax is vested with the supervisory powers of suo-moto revision of any order passed by the Assessing

Officer [AO]. For the said purpose, the appropriate authority may call for and examine the record of any proceedings under the Act and may proceed to revise the same provided two conditions are satisfied-(i) the order of the assessing officer sought to be revised is erroneous; and (ii) it is prejudicial to the interest of the revenue. If one of the conditions is absent i.e. if the order of the Income-tax Officer is erroneous but is not prejudicial to the revenue or if it is not erroneous but it is prejudicial to the revenue - recourse cannot be had to Section 263 of the Act as held by Hon'ble Supreme Court in **Malabar Industrial Co. Ltd. V/s CIT [243 ITR 83 10/02/2000]** & noted by Hon'ble Delhi High Court in **CIT V/s Vikas Polymers [194 Taxman 57 16/08/2010]**. The Hon'ble Supreme Court in **Malabar Industrial Co. Ltd. V/s CIT (supra)** has held that the phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the revenue. For example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue, unless the view taken by the Income-tax Officer is unsustainable in law. The said principal has been reiterated by Hon'ble Court in its subsequent judgment titled as **CIT V/s Max India Ltd. (295 ITR 282)**. Similar principal has been followed by jurisdictional High Court in **Grasim Industries Ltd. V/s CIT (321 ITR 92)**. Thus, 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 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 differently or more elaborately. The Section does not visualize the substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is not in accordance with law. Further, there is a fine though subtle distinction between "lack of inquiry" and "inadequate inquiry". It is only in cases of "lack of inquiry" that the Commissioner is empowered to exercise his revisional powers by calling for and examining the records of any proceedings under the Act and passing orders thereon. The Hon'ble Bombay High Court in **CIT vs. Gabriel India Ltd. [1993 203 ITR 108 (Bombay)]** held as under: -

"The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries 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 reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity [Parashuram Pottery Works Co. Ltd. vs. ITO, (1977) 106 ITR 1 (SC)].

It was further observed as under: -

"From the aforesaid definitions as 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 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 visualize 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 visualized 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 the 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 re-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 conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion.

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There must be some prima facie material on record to show that 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.

Thus as long as the view taken by the Assessing Officer is a possible view, the same ought not to be interfered with by the Commissioner under Section 263 merely on the ground that there is another possible view of the matter. Permitting exercise of revisional power in a situation where two views are possible would really amount to conferring some kind of an appellate power in the revisional authority. This is a course of action that must be desisted from.

11. Keeping the above principles in mind, it could be said that once a plausible view was taken by Ld. AO on the impugned issue, the same could not be interfered by the revisional authority. The assessee, during revisional proceedings, vide reply dated 18.02.2022 explained all the circumstances under which the loss was suffered by assessee-HUF. From assessee's submissions, it could be seen that the M/s. Mittulaul Lalah & Sons was a partnership firm consisting of two partners namely Mr. Rajkumar Manradiyar and KKS. The firm entered into joint Development Agreement with TRPL on 26.04.2008. As per the terms, the firm was entitled for 52% of the built-up area of certain property whereas the balance 42% would belong to TRPL. Thereafter, the assessee-HUF represented by KKS along with his sisters had entered into a family arrangement deed on 29.03.2012 wherein the assessee-HUF was entitled to 27.365% of the UDS of the said property and

remaining 24.635% of the total 52% of the UDS of the property were enjoyed by the respective sister as per the schedules in the deed. Subsequent to the family arrangement, the said property was converted as the property held by the assessee-HUF. The assessee-HUF, being the owner of the property, entered into an MOU between the members of the HUF and KKS to mobilize funds for developing the office infrastructure in the commercial complex. Based on this MOU, KKS along with his partner Shri Venkataramanan had entered into an agreement in their individual capacity to obtain loan from Mr. Sivaramakrishnan to the tune of Rs.270 Lacs on execution of the promissory note. The promissory note was renewed from time to time and after a brief period since the loan was outstanding for a long period, Mr. Sivaramakrishnan had filed a civil suit against KKS and the court had ordered to settle the dispute by discharging the loan of Rs.270 Lacs. Since, KKS was acting on behalf of the assessee-HUF for arranging the loans in his individual capacity, the said amount paid to Mr. Sivaramakrishnan was claimed as loss by the assessee-HUF.

12. Similarly, KKS along with his partner also entered into an aggregation agreement with RHCPL. The contractual terms could not be fulfilled and Shri Venkataramanan acted fraudulently. Consequently, the assessee had to negotiate and amicably settle the dues to RHCPL at Rs.11.01 Crores which were claimed as loss. Since KKS was arranging the funds by solely acting on behalf of the assessee-HUF for the purpose of achieving the intention of the assessee-HUF to furnish the commercial space into office space, the loss incurred for settling loans were to be borne by assessee-HUF and the assessee-HUF accordingly claimed impugned loss. However, these submissions could not be controverted

by revisional authority and no case could be made out as to why the claim was not acceptable.

13. Considering the facts and circumstances of the case, the revisional jurisdiction as exercised u/s 263 could not be held to be valid and therefore, liable to be quashed. We order so.

14. In the result, the appeal stands allowed in terms of our above order.

Order pronounced on 17th February, 2023.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 17-02-2023
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF