



॥ आयकर अपीलीय न्यायाधिकरण, पुणे "ए" न्यायपीठ, पुणे में ॥
IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE "A" BENCH, PUNE
BEFORE HON'BLE SHRI S. S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.532/PUN/2021

निर्धारण वर्ष / Assessment Year : 2016-2017

Abhijit Arun Modi,
Mahavir Autolines,
Pandharpur Sangli Road, Sangola.

PAN : ASTPM7598Q

..... अपीलार्थी / **Appellant**

बनाम / V/s.

The Principle CIT-6,
Pune.

..... प्रत्यर्थी / **Respondent**

द्वारा / Appearances

Assessee by : Shri Deepak S. Sasar

Revenue by : Shri Pankaj Kumar

सुनवाई की तारीख / Date of conclusive Hearing : 28/11/2022

घोषणा की तारीख / Date of Pronouncement : 30/12/2022

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

The present appeal of the assessee is assailed against the revisionary order of the Pr. Commissioner of Income Tax - 6, Pune [for short "**PCIT**"] dt. 27/03/2020 passed u/s 263 of the Income-tax Act, 1961 [for short "**the Act**"] holding the assessment order dt. 27/03/2018 passed u/s 143(3) of the Act, by the ITO, Ward-1, Pandharpur [for short "**AO**"] for the assessment year 2016-17 as erroneous and prejudice to the interest of the revenue.



2. The sole substantive grievance of the appellant is that, the Ld. PCIT has erred in law and on facts in exercising 263 revisionary jurisdiction, treating the regular assessment framed u/s 143(3) as erroneous and prejudice to the interest of the revenue, agitating on following grounds raised in the memorandum;

“1. That the Ld. Principal Commissioner of Income Tax has erred in invoking the provisions of section 263 of the Income Tax Act on the ground that the assessment order u/s 143(3) passed by the Assessing Officer dated 27.03.2018 for AY 2016-17 is erroneous inasmuch as it is prejudice to the Interest of revenue.

2. That the Ld. Principal Commissioner of Income Tax has erred in invoking the provisions of section 263 of the Act in the present case on the ground that no proper verification was made by the Assessing Officer during the proceeding u/s 143(3) of the Act whereas the extensive verification had been made by Assessing Officer.

3. The Ld. Principal Commissioner of Income Tax has mis appreciated the fact that Assessing Officer during the assessment proceeding found discrepancy of cash deposit of Rs.8,72,006/- on account of business receipts out which Rs.5,10,000/- is added to total income by allowing the appellant adhoc deduction of Rs.3,62,006/- for business expenses . Thus, the order passed by Assessing Officer not prejudicial to the interest of revenue.

4. That the proceeding and the order passed by the Ld. Principal Commissioner of Income Tax u/s 263 is



perverse as it is based on general observation, surmises and conjectures and not specific to the facts of the case.

5. The Ld. Principal Commissioner of Income Tax erred in law while directing the Assessing Officer to do fresh assessment without considering the records and submission furnished during the regular assessment proceedings.

6. That the appellant seeks leave to add, amend, alter, abandon or substitute any of the above grounds during the hearing of the appeal.”

3. During the course of physical hearing, the learned authorised representative for the assessee [for short “AR” at the outset adverting to assessment order propelled that, the case was subjected to limited scrutiny for the very reason to verify “**large cash deposits in saving bank account**” and after due verification of the same, applying the mind, the Ld. **AO** framed the assessment accepting the submission of the appellant, for the reasons there remains no scope to interfere therewith. It is also argued by the Ld. **AR** that, without any fresh material brought on record, the Ld. PCIT tried to substitute his findings in the guise of revision, which is impermissible under law. **Au contraire** the learned departmental representative



[for short **"DR"**] pinpointing the glaring error in bringing to tax the identified and unexplained difference of cash deposit by Ld. AO, has strongly supported the revisionary jurisdiction.

4. We have heard the rival contentions of both the parties; and subject to the provisions of rule 18 of Income Tax Appellate Tribunal Rules, 1963 [for short **"ITAT, Rules"**] perused the material placed on records till the date of conclusive hearing and duly considered the facts of the case in the light of settled legal position forewarned to either parties.

5. On the perusal of case records we note that;

5.1 The appellant is an individual engaged in the trading business of auto parts in the name of **"Mahavir Autolines"** who filed his return of income [for short **"ITR"**] 09/08/2017 declaring total income of ₹4,93,790/- which initially was processed summarily u/s 143(1) of the Act and subsequently taken up for limited scrutiny u/s 143(3) under CASS to verify the large cash deposits made into saving bank account.

5.2 During the course of regular assessment, upon the scrutiny of records and bank statements, the Ld. AO put the assessee to notice to explain identified difference of cash deposit of ₹30,12,010/- over his cash sales / turnover and considering the submission **vis-a-vis** explanation of the appellant, in the light of evidential documents, the findings were summited to a unexplained difference of cash deposits of ₹8,72,006/- holding it to be exigible to tax u/s 69A of the Act, however the assessment was finally framed bringing to tax only ₹5,10,000/- as against the findings laid in para 04 of page 3 of the assessment order.

5.3 Perusing the assessment records and identifying the blatant error on the face of assessment order, the Ld. PCIT by service of showcase notice [for short "**SCN**"] dt. 04/02/2020 called upon the assessee to explain as to why the regular assessment order should be revised on following two counts;

- a. Non verification cash deposits vis-à-vis total sales revenue to satisfactorily establish the



genuineness of cash generated out of business transactions.

b. Error in bringing to tax an identified difference of cash correctly u/s 69A of the Act.

5.4 After considering the appellants submission and both the pleas that, all the cash deposits emanated out of his trading business and difference of excess cash deposit over cash sales achieved by him was on account of inter-bank cash transactions (withdrawal & deposit), the Ld. PCIT vide para 5 to 6 placed on page 4 to 6 of his order set-aside the order with a direction to redo the assessment after conducting enquiries and affording reasonable opportunity of being heard to the assessee.

6. In the aforestated context, it pertinent to take note of certain fundamental tests propounded to judge the revisionary action in various judicial precedents including the landmark decision of Hon'ble Supreme Court in **"Malabar Industries Vs CIT"** reported in 243 ITR 83 and two of such test are;

- a. **Lack of inquiry** or insufficient inquiry will suffice the requirement as to order being erroneous.
- b. Where the order is passed **without application of mind**, will fall under the category of erroneous order.

7. In the evince of patented error glaring on very face of the order of assessment, there remains hardly any dispute over the action of Ld. PCIT in setting aside the order for de-nova assessment, which beyond an iota of doubt established one being not only erroneous but prejudicial to the interest of the revenue in the light of Hon'ble Supreme Court decision in **"Malabar Industries Vs CIT"** (supra) wherein their Lordship vide para 9 held that;

"There must be some grievous error in the Order passed by the Income-tax Officer, which might set a bad trend or pattern for similar assessments, which on a broad reckoning, the Commissioner might think to be prejudicial to the interests of Revenue Administration. In our view this interpretation is too narrow to merit acceptance. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue.



If due to an erroneous order of the Income-tax Officer, the revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the revenue.”
(Emphasis supplied)

8. As Ld. AO left the **elephant in the room unattended** in bringing to tax the correct amount of difference of cash deposits which remain unexplained by the appellant, **ergo**, we see no reasons to interfere with the revisionary order, and order accordingly.

9. Resultantly, the appeal of the appellant assessee is DISMISSED in above terms.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this FRIDAY 30th day of December, 2022.

-S/d-

S. S. GODARA
JUDICIAL MEMBER

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 30th day of December, 2022.

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT -6, Pune (MH-India)
4. DR, ITAT, Pune Bench 'A', Pune
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / By Order,
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.