

॥ आयकर अपीलीय न्यायाधिकरण, पुणे “बी” न्यायपीठ, पुणे में ॥
IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE “B” BENCH, PUNE
BEFORE HON’BLE SHRI S. S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 192/PUN/2021

निर्धारण वर्ष / Assessment Year : 2015-16

Vision Enterprises,
Hotel Sulai, Dhankawadi, Pune.

PAN: AAJFV0168P

..... अपीलार्थी / Appellant

बनाम / V/s

Pr. Commissioner of Income Tax-1,
Pune

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Shri Dharmesh Shah & Shri Akshay Garg

Revenue by : Shri Sardar Singh Meena

सुनवाई की तारीख / Date of conclusive Hearing : 11/04/2023

घोषणा की तारीख / Date of Pronouncement : 11/04/2023

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

With the following grounds of appeal the assessee challenges the revisionary order of the Principal Commissioner of Income Tax -1, Pune [for short ‘PCIT’] dt. 22/03/2021 passed u/s 263 of the Income-tax Act, 1961 [for short ‘the Act’] for assessment year [for short ‘AY’] 2015-16;

“1. The Ld. Principal Commissioner of Income Tax has erred in law and in facts in passing order u/s. 263 of the Act without appreciating that the Assessment



Order passed under section 143(3) was erroneous and prejudicial to the interest of revenue.

2. The Ld. Principal Commissioner of Income Tax has erred in law and in facts without complying the principles of natural justice.

3. The Ld. Principal Commissioner of Income Tax has erred in law and in facts in directing the Assessing Officer to consider the disallowance of ₹ 2,01,635/- u/s. 40(a)(ia) of the Act, being 30% of the interest paid u/s. 194A of the Act amounting to ₹ Rs.6,72,116/- paid to Ahmednagar Zilha Maratha Seva Nagari Sahakari Patsanstha.

4. The Ld. Principal Commissioner of Income Tax has erred in Law and in facts in directing the Assessing Officer to verify whether the repayment of loans to Ahmednagar Zilha Maratha Seva Nagari Sahakari Patsanstha, Ahmednagar were in violation of the provisions of section 269T of the Income-tax Act, 1961 and that the Assessing Officer failed to initiate penalty in view of provisions of section u/s.271E.

5. The Appellant craves leave of Your Honour to add, alter, amend and/or delete all or any of the foregoing grounds of appeal.”

2. Both the parties reiterated the following undisputed facts for our consideration;

2.1 The Ld. AO by an order dt. 26/12/2017 had assessed the total income of the assessee at ₹36,20,920/- u/s 143(3) of the Act as against the income of ₹4,49,920/- originally declared by the assessee in its return filed on 30/09/2015. Post



culmination of assessment proceedings, the Ld. PCIT on perusal of records observed the said order as erroneous in so far as it was prejudicial to the interest of the revenue on three counts viz;

(i) Payment of interest of ₹6,72,116/- without deduction of tax at source [for short 'TDS'] u/s 194A(1) of the Act.

(ii) Repayment of unsecured loan otherwise than by an account payee cheque/draft in violation of provisions of section 269T.

(iii) Failure to charge interest u/s 234C of the Act.

2.3 In the light of aforestated observations, the Ld. PCIT by service of notices dt. 08/03/2021 & 11/03/2021 called upon the assessee to show cause as to why the order of assessment passed by the Ld. AO should not be revised u/s 263 of the Act. In the event of effective failure of the assessee, the Ld. PCIT set-aside the order with a direction to re-frame the assessment after examining three issues in question after according a reasonable opportunity of being heard.



3. In this context, we have heard the rival contentions of both the parties; and subject to the provisions of rule 18 of ITAT-Rules, 1963 perused the material placed on record, as well as considered the judicial pronouncements pressed into service by the Ld. AR to drive home his contentions.

4. We have given our thoughtful consideration to the foregoing rival contentions and find merit in the Revenue's stand. A bare perusal of assessment records suggests that there is a complete absence of verification and findings in relation to three issues in question by the Ld. AO while framing the assessment u/s 143(3) of the Act, and it is when the case was indeed subjected to complete scrutiny under CASS mechanism.

5. The very factual position continues in the body of assessment order wherein there is not an iota of discussion about; (i) verification of interest payment vis-à-vis findings on specific violation of provisions of



section 194A of the Act by the appellant assessee while claiming the interest payment as expenses, (ii) verification of repayment of loan otherwise than an account payee cheque or draft vis-à-vis violation of provisions of section 269T (iii) verification of application of correct interest u/s 234C of the Act in the event of failure of the assessee to adhere to advance tax payment schedules or instalments.

6. Beyond a doubt we note that, while framing the original assessment u/s 143(3) of the Act, the Ld. AO lost sight to the application of mandatory provisions of section 194A, 269T & 234C of the Act, which in turn clearly suggest that, the factual positions attracting these compliance cum penal provisions remained to be inquired into by the Ld. AO during the course of assessment proceedings before him. Thus non application of aforesaid provision being prejudicial to the interest of the Revenue, we find the exercise of revisionary jurisdiction by the Ld. PCIT as flawless.



7. We state that, all the arguments of Ld. DR could successfully evoke our concurrence in the light of decision of Hon'ble Apex Court in '*Malabar Industrial Co. Ltd. Vs CIT*' reported in 243 ITR 83 (SC), that the order of assessment sought to be revised by the Ld. PCIT has both the characteristics or limbs as envisaged u/s 263 of the Act. As the lack of inquiry into three issues in question coupled non-application of mind in carrying out the assessment itself invites both the foregoing limbs, therefore we find no reasons to interfere with the impugned order of revision.

8. In result, the appeal of the appellant assessee stands DISMISSED.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Tuesday 11th day of April, 2023.

-S/d-

S. S. GODARA

JUDICIAL MEMBER

-S/d-

G. D. PADMAHSHALI

ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 18th day of May, 2023.

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

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|-------------------------------|---------------------------------|-----------------------------------|
| 1. अपीलार्थी / The Appellant. | 2. प्रत्यर्थी / The Respondent. | 3. The Pr. CIT -1,Pune (MH-India) |
| 4. The CIT(A)-2, Pune | 5. DR, ITAT, Bench 'B', Pune | 6. गार्डफ़ाइल / Guard File. |

Ashwini

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