

आयकर अपीलीय अधिकरण
मुंबई पीठ "डी", मुंबई पीठ
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री गगन गोयल, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
आअसं.1263/मुं/ 2023 (नि.व.2018-19)
ITA NO. 1263/MUM/2023(A.Y. 2018-19)

Rajendra Raja Bali Singh,
V aswani Mansions,
120, Dhinshaw Vacha Road,
Churchgate, Mumbai – 400 020
PAN: AAVPS-0558-E

..... अपीलार्थी /Appellant

बनाम Vs.

Principal Commissioner of Income Tax, Mumbai -17
Room NO.120, 1st Floor,
Kautilya Bhavan, G.Block, BKC, Bandra (East),
Mumbai – 400 051.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri K.Gopal ,Advocate.

प्रतिवादी द्वारा/Respondent by : Smt. Riddhi Mishra –CIT DR

सुनवाई की तिथि/ Date of hearing : 22/06/2023

घोषणा की तिथि/ Date of pronouncement : 22/06/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Principal Commissioner of Income Tax, Mumbai -17 [in short 'the PCIT'] dated 30/03/2023 passed under section 263 of the Income Tax Act, 1961 [in short 'the Act'], for the Assessment Year 2018-19.

2. Shri K.Gopal appearing on behalf of the assessee submitted that the assessee filed its return of income for the impugned assessment year declaring total income of Rs.2,52,88,590/-. The case of assessee was selected for limited scrutiny on the issues i) Business Loss; (ii) Investment in Immovable Property. The Assessing Officer issued notice u/s. 142(1) of the Act dated 11/12/2020. A specific query was raised by the Assessing Officer to justify with documentary evidence Business Loss and Administrative Expenses amounting to Rs.1,05,32,712/- reflected in the P&L Account. The assessee vide reply dated 22/12/2020 furnished details alongwith annexures including ledger accounts. The Assessing Officer after examining the documents furnished by the assessee was satisfied and accepted the return of income. The Assessing Officer examined both the issues for which the case of the assessee was selected under limited scrutiny. Thereafter, the PCIT issued notice dated 15/03/2023 u/s. 263 of the Act again raising the issue of business loss and administrative expenditure claimed by the assessee. The assessee gave a detailed reply to the PCIT on 21/03/2023, however, the reply furnished by the assessee was not considered and the impugned order was passed. The Id.Counsel for the assessee submitted that the assessee has three proprietary concerns, Yogayatan Films, Yogayatan Exports and Yogayatan Corporation. The first two proprietary concerns are defunct and only proprietary concern that is active is Yogayatan Corporation. Assessment Year 2019-20 is the first year in which the said firm has earned profit. In Assessment Year 2017-19 and Assessment Year 2018-19 the firm had losses. The Id.Counsel for the assessee referred to income and expenditure table for the three Assessment Years starting from Assessment Year 2017-18 to 2019-20 at page 109 of the paper book. The Id.Counsel for the assessee submitted that the documents on

record would clearly show that the assessee had furnished all the relevant documents before the Assessing Officer. The Assessing Officer after examining the documents made no addition in the income returned. The Id.Counsel for the assessee submitted that if the Assessing Officer has not made any detailed discussion in the assessment order it shall not be presumed that the Assessing Officer has not applied his mind or has not examined the documents furnished by the assessee. The Id.Counsel for the assessee placed reliance on the decision in the case MOIL Ltd. vs. CIT, 396 ITR 244 (Bom) to contend that where the Assessing Officer allow certain expenditure without specifically mentioning about them in the assessment order, the CIT(A) cannot invoke revisional jurisdiction holding that order was passed without making any enquiry qua allowability of assessee's claim.

3. Per contra, Smt. Riddhi Mishra representing the Department strongly supported the impugned order. The Id. Departmental Representative submits that the Assessing Officer while completing the assessment has not made enquiries ought to have made by him during the course of scrutiny assessment. It is apparent on record that the Assessing Officer has not applied his mind on the issue.

4. Rebutting the arguments advanced on behalf of the Revenue, the Id.Counsel for the assessee submits that all the relevant documents as sought by the Assessing Officer were furnished during the assessment proceedings. It was for the Assessing Officer to examine the same. If the assessment order does not reflect the enquiries conducted by the Assessing Officer, the fault cannot be attributed to the assessee.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. It is an undisputed fact that the case of assessee was selected for limited scrutiny to examine (i) business loss; (ii) investment in immovable properties. The Assessing Officer had issued notice u/s. 142(1) dated 11/12/2020 raising queries regarding business loss and administrative expenses amounting to Rs.1,05,32,712/-. The assessee in reply to said notice furnished reply on 22/12/2020. From the documents on record it is not emanating the queries and the verifications made by the Assessing Officer in respect of the issue for which the assessment was specifically selected from scrutiny except the initial notice u/s. 142(1) of the Act. The assessee has claimed certain administrative expenditure viz. salary and wages, consultancy fee, insurance, hospitality, repairs and maintenance, depreciation, etc. The assessee is maintaining fleet of cars as well. It is not emanating from records as to whether these expenditure is wholly and exclusively for the purpose of business or there is some element of personal expenditure. The PCIT while issuing notice u/s. 263 of the Act has invoked Explanation -2 to section 263 of the Act. The PCIT vide impugned order has directed to frame assessment denovo after proper verification of the claim of the assessee with regard to expenses exclusively related to the business of the assessee. The Id.Counsel for the assessee has placed reliance on the decision in the case of MOIL Ltd. vs. CIT(supra). We find that the aforesaid decision does not help the case of assessee as the basic enquiries were not conducted by the Assessing Officer in the instant case for which assessment was selected under limited scrutiny.

6. The *sine qua non* for invoking provisions of section 263 of the Act is that the order passed by the Assessing Officer “ is erroneous in so far as it is prejudicial to the interest of Revenue”. Thus, the twin conditions viz. order being erroneous and prejudicial to the interest of Revenue have to be fulfilled before entering the arena of revisional jurisdiction. In the instant case, the PCIT has exercised revisional powers on the ground that the Assessing Officer has failed to examine assessee’s claim of business expenses, hence, the assessment order is erroneous and prejudicial to the interest of Revenue.

7. After examining the documents on record, we are of considered view that the PCIT has rightly exercised jurisdiction u/s. 263 of the Act as the Assessing Officer has failed to discharge his duty in making even basic enquiries and verifications with respect to the business expenditure claimed by the assessee. We find no infirmity in the impugned order, hence, the same is upheld. Consequently, appeal of the assessee is dismissed.

8. In the result, appeal by the assessee is dismissed.

Order pronounced in the open court on Thursday the 22nd day of June, 2023.

Sd/-

(GAGAN GOYAL)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 22/06/2023

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
- 4.. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar), ITAT, Mumbai