

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

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

ITA No.303/Hyd/2021		
Assessment Year: 2013-14		
Shri Nadiminty Ganapathy Sastry, Hyderabad PAN:AALPG5424F (Appellant)	Vs.	Dy. C. I. T. Circle 14(1) Hyderabad (Respondent)
Assessee by:	Shri K.A. Sai Prasad, CA	
Revenue by:	Smt.T.H. Vijayalakshmi,DR	
Date of hearing:	05/07/2023	
Date of pronouncement:	11/07/2023	

ORDER

Per R.K. Panda, Vice-President

This appeal filed by the assessee is directed against the order dated 31/03/2021 passed u/s 263 of the I.T. Act, 1961 by the learned Pr.CIT-1, Hyderabad relating to A.Y.2013-14.

2. There is a delay of 50 days in filing of this appeal by the assessee for which the assessee has filed a condonation application explaining the reasons for delay along with an affidavit. After considering the contents of the condonation petition filed along with the affidavit and after hearing the learned DR, the delay in filing of this appeal by the assessee is condoned and the appeal is admitted for adjudication.

3. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the learned PCIT u/s 263 setting aside the assessment order passed by the Assessing Officer u/s 143(3) r.w.s. 147 of the I.T. Act.

4. Facts of the case, in brief, are that the assessee filed its e-return for the A.Y 2013-14 on 25.05.2018 declaring taxable income of Rs.43,59,780/-. Since the return was filed beyond the specified date and is an invalid return, the same could not be processed u/s 143(1). Subsequently, the case was reopened u/s 147 after taking approval from the PCIT-1, Hyderabad and accordingly notice u/s 148 was issued on 21.6.2018. In response to the said notice, the assessee requested the Assessing Officer through letter dated 9.7.2018 to treat the return filed on 25.5.2018 as the return filed in response to notice u/s 148 of the I.T. Act. The Assessing Officer thereafter issued statutory notices u/s 143(2) and 142(1) to which the AR of the assessee appeared before the Assessing Officer from time to time and filed certain details. The Assessing Officer completed the assessment u/s 143(3) r.w.s. 147 on 27.07.2018 determining the total income of the assessee at Rs.44,36,504/- by making addition of Rs.54,458/- being disallowances of expenses @ 5% and Rs.19,266/- being the difference in 26AS.

5. Subsequently, the learned PCIT examined the record and noted that as per Form 26AS, the assessee has made an investment of Rs.54,30,000/- in mutual funds but has not disclosed the same in his balance sheet for the year under consideration. He further noted that an amount of Rs.33,39,898/-

were credited as mutual fund redemptions and dividends. Since there is redemption of units and also receipt of dividend income against those securities or units, section 94(7) of the I.T. Act is applicable. Since there were no details of the dividend or income of such securities or units received and the details of such exemption claimed on the dividend brought on record by the Assessing Officer, he was of the opinion that the taxability of the capital gain that arose remained unverified. He was of the opinion that the order passed by the Assessing Officer has become erroneous and prejudicial to the interest of the Revenue on account of non-verification of the investment of Rs.54,30,000/- and taxability on the capital gain. He therefore, issued a show cause notice u/s 263 of the I.T. Act asking the assessee to explain as to why the order passed by the Assessing Officer should not be cancelled. Rejecting the various explanation given by the assessee, the learned PCIT set aside the order passed by the Assessing Officer u/s 143(3)/147 with a direction to re-do the same as per law after due verification.

6. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal.

7. The learned Counsel for the assessee strongly challenged the order passed by the learned PCIT cancelling the assessment order. Referring to page 15 of the Paper Book, he drew the attention of the Bench to the capital account wherein an amount of Rs.24,92,669/- has been shown as drawings. Referring to the copies of the Bank accounts maintained with ICICI Bank and City Bank, copies of which are placed at pages 19 to 47 of the Paper Book, he submitted that all the investments are through proper banking channel and there is no cash deposit in the bank

account. He submitted that Form 26AS was filed before the Assessing Officer and after examining the same, the Assessing Officer has made the addition of Rs.19,266/- on account of difference in 26AS. Referring to the statement of TDS reconciliation filed with the Assessing Officer and the statement of mutual funds filed before the Assessing Officer, copies of which are placed at pages 48 & 49 of the Paper Book, he submitted that the assessee has filed full details and the Assessing Officer after due verification has made certain disallowances and passed the order. Merely because the PCIT does not agree with the manner of inquiry conducted by the Assessing Officer, the same cannot be a ground for cancelling the order passed by the Assessing Officer by invoking the provisions of section 263 of the I.T. Act. He also relied on the decision of the Kolkata Bench of the Tribunal in the case of Infinity Infotech Parks Ltd vs. DCIT vide ITA No.329/Kol/2017 order dated 2.6.2017 for the ay 2012-13 and the decision of the Mumbai Bench of the Tribunal in the case of Narayan Tatu Rane vs. ITO reported in 70 Taxmann.com 227 (Mum).

8. The learned DR, on the other hand, while supporting the order of the learned PCIT, submitted that when the assessee has declared taxable income of Rs.43,59,780/- out of which the TDS is Rs.11,34,670/- and the amount credited in the Bank account towards redemption of Mutual Fund etc. has been utilized for other purposes not being shown as withdrawals for investment in Mutual Fund, it is not understood as to how the Assessing Officer has accepted the investment of Rs.54,30,000/- in Mutual Funds. Therefore, the order passed by the Assessing Officer is not only erroneous but also is prejudicial to the interest of the Revenue and therefore, the learned PCIT was fully justified

in setting aside the assessment order passed by the Assessing Officer.

9. So far as the decisions relied on by the learned Counsel for the assessee are concerned, she submitted that these decisions are distinguishable and not applicable to the facts of the present case since in the instant case it is apparent from the order itself that the Assessing Officer failed to make any inquiry regarding the source of investment of Rs.54,30,000/- in mutual funds.

10. We have heard the rival arguments made by both the sides and perused the record. We find the assessee filed the return of income declaring taxable income of Rs.43,59,780/- and the Assessing Officer completed the assessment determining the total income at Rs.44,36,504/- wherein he made disallowance of Rs.57,458/- being 5% of the expenditure on estimate basis and Rs.19,266/- being the difference in 26AS. Although the assessee has made investment of Rs.54,30,000/- in Mutual Funds, however, the Assessing Officer has not verified the source of the investment in mutual funds. A perusal of the submission filed before the Assessing Officer shows that out of the total investment of Rs.54,30,000/-, the assessee explained that an amount of Rs.33,39,898/- is on account of redemption of mutual fund. However, a perusal of the bank statement shows that although the same amounts have been credited in the bank account, however, the assessee has neither shown such investment in the balance sheet under the head "investment", nor has withdrawn the same for investment. However, the assessee has shown only an amount of Rs.24,92,669/- from the capital account towards drawings which he is trying to explain the source of investment of

Rs.54,30,000/- . The Assessing Officer has completely lost his sight while accepting the explanation given by the assessee towards source of investment which not only made the assessment order erroneous but also is prejudicial to the interest of the Revenue. Under these circumstances, the order passed by the Pr. CIT cancelling the assessment order passed u/s 143(3), in our opinion, is fully justified.

11. So far as the two decisions relied on by the learned Counsel for the assessee are concerned, these are distinguishable and not applicable to the facts of the present case. In the case of Infinity Infotech Park Ltd vs. DCIT (Supra), the Tribunal has held that a case of lack of inquiry would by itself render the order being erroneous and prejudicial to the interest of the Revenue. It has been held that where there is inquiry by the Assessing Officer, even if inadequate, the CIT would not be entitled to revise u/s 263 on the ground that he has a different opinion in the matter. Further, in a case where the Assessing Officer has made a wrong opinion or finding on merits, the CIT has to come to the conclusion and himself decide that the order is erroneous by conducting necessary enquiry before passing the order u/s 263. However, in the instant case, as mentioned earlier, the withdrawal shown by the assessee at Rs.24,92,669/- is insufficient to explain the source of investment of Rs.54,30,000/-. Since the maturity proceeds of the mutual funds were credited into the bank account and remained as it is in the bank account or utilized otherwise, and the assessee is neither showing the investment in the balance sheet nor has shown as withdrawals to explain the source of investments, therefore, the investment in mutual funds remained unexplained and therefore, the decision in the case of Infinity

Infotech Park Ltd (Supra) is not applicable to the facts of the present case.

12. Similarly, in the case of Narayan Tatu Rane vs. ITO (Supra) also the facts are different. In that case the assessment was reopened to assess the income, if any, that has escaped the assessment for the year under consideration on the basis of the incriminating documents found during the course of search in the premises of one M/s. RNS Infrastructure. The Tribunal has given a finding that the assessee was not implicated in the answer given by the VP-Finance and the allegation of the Pr. CIT in that case was that the Assessing Officer has completed the assessment without making proper inquiries with regard to the incriminating documents. Therefore, the facts in that case also are different from the facts of the present case and therefore, the same is not applicable. Since in the instant case, the Assessing Officer failed to inquire about the source of the investment of Rs.54,30,000/- in mutual funds, etc., therefore, the order has not only become erroneous but also is prejudicial to the interest of the Revenue. Therefore, the Pr. CIT was fully justified in setting aside the order passed by the Assessing Officer by invoking the revisional powers vested in him u/s 263 of the I.T. Act. The grounds raised by the assessee are accordingly dismissed.

13. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 11th July, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
----------------------------------------------------------------	-------------------------------------------------------------

Hyderabad, dated 11th July, 2023.
Vinodan/sps

Copy to:

S.No	Addresses
1	Shri Nadiminty Ganapathy Sastry C/o Katrapati & Associates, 1-1-298/2/B/3, 1 st Floor, Ashoknagar, Hyderabad 500020
2	Dy.CIT, Circle 14(1) 6 th Floor, C Block, AC Guards, Hyderabad
3	Pr. CIT-1 Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order