

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.44/RPR/2022
निर्धारण वर्ष / Assessment Year : 2015-16

Shri Sanjay Mittal
23/272, Agrasen Ward, Kharsia Road,
Ambikapur, Sarguja (C.G.)
PAN : ADTPM5911C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Pr. Commissioner of Income Tax (Central),
Bhopal

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Shri V.K Singh, CIT-DR

सुनवाई की तारीख / Date of Hearing : 05.07.2023

घोषणा की तारीख / Date of Pronouncement : 11.07.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Pr. Commissioner of Income Tax (Central), Bhopal (for short 'Pr. CIT') u/s.263 of the Income Tax Act, 1961 (for short 'Act') dated 10.02.2022, which in turn arises from the order passed by the A.O. u/ss. 153A/143(3) of the Act, dated 29.12.2019 for A.Y. 2015-16. The assessee has assailed the impugned order on the following grounds of appeal before us:

“1. Ld. Pr. CIT erred in invoking the provisions of sec.263 and in setting aside the assessment order for fresh enquiry. Order passed u/s.263 is unsustainable and is passed without properly appreciating the facts and evidences. The assessment order is neither erroneous nor prejudicial to the interest of the revenue.

2. The appellant reserves the right to add, amend or modify any of the ground/s of appeal.”

2. Controversy involved in the present appeal lies in a narrow compass, i.e. sustainability of the order passed by the Pr. CIT u/s.263 of the Act dated 10.02.2022, wherein the order passed by the A.O u/ss.153A/143(3) of the Act dated 29.12.2019 was set-aside with a direction to A.O to re-frame the assessment after conducting proper enquiries.

3. Original assessment was framed u/ss.143(3)/147 of the Act dated 23.12.2018, determining the income of the assessee at Rs.42,60,182/-.

Search and seizure proceedings u/s.132 of the Act were conducted on the business/residential/factory premises of the assessee on 15.02.2018. Assessment was, thereafter, framed by the A.O vide his order passed u/ss.153A/143(3) of the Act dated 29.12.2019, determining the income of the assessee at Rs.42,60,182/-, i.e. as originally assessed vide order passed u/s.143(3)/147 of the Act dated 23.12.2018.

4. The Pr. CIT observing, that the A.O while framing assessment u/ss.153A/143(3) of the Act dated 29.12.2019 had failed to conduct any enquiry or verification on certain issues, viz. (i) verification of multi-facet issues pertaining to the assessee's claim for deduction u/s.54F of the Act, viz. documentary evidence to substantiate the transfer transaction i.e. purchase deed, valuation report of the base year 1981, the purchase deed of land on which new residential property was being constructed, thus, vide his order passed u/s.263 of the Act dated 10.02.2022, held the order passed by the A.O u/ss.153A/143(3) of the Act as erroneous in so far it was prejudicial to the interest of the revenue, and set-aside the same with a direction to the A.O to frame a fresh assessment after conducting proper enquiries and affording a reasonable opportunity of being heard to the assessee.

5. The assessee being aggrieved with the order of the Pr. CIT passed u/s.263 of the Act dated 10.02.2022 has carried the matter in appeal before us.

6. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

7. Admittedly, it is a matter of fact borne from record that the case of the assessee was initially reopened by the A.O u/s.147 of the Act. Assessment was, thereafter, framed by the A.O vide his order passed u/ss.143(3)/147 of the Act, dated 23.12.2018 at Rs.42,60,182/-. Consequent to search conducted on the assessee, assessment was framed u/ss.153A/143(3) of the Act dated 29.12.2019 at Rs.42,60,182/-, i.e. as was originally assessed vide order u/ss. 143(3)/147 of the Act.

8. As no addition was made by the A.O while framing the assessment u/ss.153A/143(3) of the Act, and income of the assessee was assessed as was originally assessed vide order u/ss. 143(3)/147 of the Act, dated 23.12.2018 at Rs.42,60,182/-, therefore, it can safely be concluded that no incriminating material for the year under consideration was seized in the course of search and seizure proceedings conducted on the assessee u/s.132 of the Act on 15.02.2018. Also, on the date on which, search and

seizure proceedings were conducted in the case of the assessee u/s.132 of the Act, i.e. on 15.02.2018, no assessment proceedings were pending in the case of the assessee. Notice u/s.148 of the Act dated 20.02.2018 was issued to the assessee only subsequent to the date on which search and seizure action was conducted in his case. On the basis of the aforesaid facts, it can safely be gathered that assessment in the case of the assessee for the year under consideration i.e. A.Y.2015-16 was unabated on the date on which search proceedings were conducted in his case. Also, there is nothing discernible from the assessment order which would reveal that any incriminating material for the year under consideration i.e. A.Y.2015-16 was found and seized in the course of the search proceedings conducted on the assessee.

9. On the basis of the aforesaid facts, we are of the considered view that now when no incriminating material was found and seized in the course of search and seizure proceedings conducted in the case of the assessee u/s.132 of the Act for the year under consideration i.e. A.Y.2015-16, therefore, no addition as regards the unabated assessment for the said year could have been made by the A.O. Our aforesaid view is fortified by the judgment of the **Hon'ble Supreme Court** in the case of **Pr. Commissioner of Income Tax Vs. Abhisar Buildwell P. Ltd. [2023] 149 taxmann.com 399 (SC)**, wherein the Hon'ble Apex Court has held as under:

“13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra) and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

14. In view of the above and for the reasons stated above, it is concluded as under:

i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

ii) all pending assessments/reassessments shall stand abated;

iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the ‘total income’ taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.”

10. Considering the aforesaid facts involved in the case of the assessee r.w. the settled position of law which is no more *res-integra* as on date, i.e.

no addition in absence of any incriminating material can be made in respect of unabated assessment of the assessee, we are of a strong conviction that now when the A.O could not have made an addition on the basis of which his order u/ss.153A/143(3) of the Act had been held by the Pr. CIT to be erroneous, therefore, the very assumption of jurisdiction by the Pr. CIT u/s.263 of the Act, on the said count, being bad in law is liable to be vitiated.

11. At the same time, we are of the considered view that in case the Pr. CIT held a conviction that there was any failure of the A.O to have carried out necessary enquiries/verifications with respect to certain issues which had in turn formed the very basis for reopening of his case u/s.147 of the Act, then the only remedy available with him was to have revised the order that was passed by the A.O u/ss. 143(3)/147 of the Act dated 23.12.2018. Our aforesaid observation is supported by the judgment of the **Hon'ble Supreme Court** in the case of **Commissioner of Income Tax Vs. Alagendran Finance Ltd. (2007) 293 ITR 1(SC)**. The Hon'ble Apex Court in its aforesaid order, had held, that as the case before them was reopened on an issue which did not form subject of reassessment proceedings, thus the period of limitation provided for under sub-section (2) to Section 263 of the Act would begin to run from the date of the order of assessment and not from the order of reassessment. For the sake of clarity, the relevant observation of the Hon'ble Apex Court is culled out as under:

“15. We, therefore, are clearly of the opinion that keeping in view the facts and circumstances of this case and, in particular, having regard to the fact that the Commissioner of Income Tax exercising its revisional jurisdiction reopened the order of assessment only in relation to lease equalization fund which being not the subject of the reassessment proceedings, the period of limitation provided for under Sub-section (2) of Section 263 of the Act would begin to run from the date of the order of assessment and not from the order of reassessment. The revisional jurisdiction having, thus, been invoked by the Commissioner of Income Tax beyond the period of limitation, it was wholly without jurisdiction rendering the entire proceeding a nullity.”

Considering the judgment of the Hon'ble Apex Court, we are of the considered view, that the Pr. CIT in the case of the present assessee before us was only vested with the jurisdiction to have revised the reassessment order that was passed by the A.O u/ss.143(3)/147 of the Act dated 23.12.2018. However, as the aforesaid order u/ss.143(3)/147 dated 23.12.2018 could have been revised u/s.263 latest by 31.03.2021, which had lapsed way back, therefore, even the said remedy would not be available with the Pr. CIT.

12. Be that as it may, on the basis of our aforesaid deliberations, we are of the considered view that the Pr. CIT had clearly exceeded his jurisdiction u/s.263 of the Act and had wrongly revised the order passed by the A.O u/ss. 153A/143(3) of the Act dated 29.12.2019. We, thus, in terms of our aforesaid observations set-aside the order passed by the Pr. CIT u/s.263 of the Act dated 10.02.2022 and restore the order passed by the A.O u/ss. 153A/143(3) of the Act dated 29.12.2019.

13. In the result, appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in open court on 11th day of July, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 11th July, 2023
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT (Central), Bhopal
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.