

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'B' BENCHES :: PUNE

BEFORE SHRI R.S. SYAL, HON. VICE-PRESIDENT &
SHRI PARTHA SARATHI CHAUDHURY, HON. JUDICIAL MEMBER

ITA No.583/PUN/2023
(A.Y. 2018-19)

M/s. Pratham Constructions, 208/2A, Near Swaminathan Clinic, Station Road, Pimpri, Pune-411018.	vs	Pr.CIT (Central), Pune.
PAN: AABFP 3894 N		
Appellant		Respondent

Assessee by	:	Shri Mahesh O. Rajora, CA
Revenue by	:	Shri Ajay Kumar Kesari, DR
Date of hearing	:	17/08/2023
Date of pronouncement	:	21/08/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of Principal Commissioner of Income Tax (Central), Pune (for short, 'PCIT'), dated 23.03.2023 for A.Y.2018-19 as per the grounds of appeal on record.

2. The solitary grievance of the assessee is pertaining to the revisionary jurisdiction exercised by the Id.PCIT in passing the order u/sec. 263 of the Income Tax Act, 1961 (for short, 'the Act').

3. The relevant facts of the case are that assessee is a partnership firm engaged in the business of real-estate development and construction, filed its return of income declaring total income of

Rs.5,81,64,270/-. The assessment was completed u/sec. 143(3) by accepting the returned income. During the course of 263 proceedings, the PCIT observed that assessee had claimed expenses of Rs. 37,665/- on account of interest on TDS. However, the assessee has not added back the same while computing its total income nor the Assessing Officer (AO) has disallowed the same in the assessment order. Since, the interest on TDS is not allowable as deduction u/sec. 37(1), the same was required to be disallowed. That, further on perusal of the financial statements submitted by the assessee, it was noticed that the assessee firm had undertaken a project called 'Sukhwani Pacific', which was under construction during the year under consideration. As per the profit & loss account, the assessee firm has shown total sales of Rs.20.17 crores and closing stock of Rs.20.51 crores. Further, vide submission dated 31/01/2020, the assessee firm has submitted that part of the project was already completed and sold and some part of the project was unsold as was under construction. This was the justification given in reply to one of the reasons for selection of case under CASS i.e. having higher closing stock as compared to the sale. Further, the assessee vide its submission dated 15/07/2020 had given details of closing stock working as per which buildings C, D & E were already completed, whereas building B was having some work in progress. The unsold stock of these three completed buildings i.e. C, D & E was valued at Rs.19.50 crores. Therefore, the unsold flats valued at Rs.19.50 crores were lying in the balance sheet as stock-in-

trade. Therefore, the assessee was liable for offering deemed rent on account of these unsold flats held as stock-in-trade in the return of income filed during the year under consideration. However, the assessee has not offered any deemed rental income on account of these unsold stock of flats nor the AO has carried out any enquiry with regard to taxability of deemed rental income on this issue. Hence, deemed rental income of the assessee firm to the tune of Rs. 97.50 lakhs was not at all considered during the assessment proceedings for the year under consideration. It was further held by the PCIT, after considering the detailed submissions of the assessee as well as assessment order that in fact the AO has not at all carried out verification/enquiry in the course of the assessment proceedings. The AO has failed to call for the relevant details in respect of disallowance of interest paid on TDS and applicability of deemed rent on unsold flats. There is a categorical mention in the order of the PCIT that as per the record, it is obvious that no examination on these issues were conducted by the AO who has also not raised any query in this regard. There was complete non-application of mind on the part of the AO and, therefore, the assessment order passed by the AO was erroneous insofar as prejudicial to the interest of the Revenue.

4. At the time of hearing, Id.AR for the assessee submitted that in order to invoke revisionary jurisdiction u/sec. 263, the PCIT must satisfy twin conditions laid down in the statute i.e. the order of assessment should be erroneous so as to be prejudicial to the interest

of the Revenue. In the case of the assessee, the order may be erroneous, but it is not prejudicial to the interest of the Revenue because vide Finance Act, 2017, sub-sec. (5) has been inserted in sec. 23 of the Act, and this amendment has been brought w.e.f. 01/04/2018 which provides that the annual value of the property held as stock-in-trade for a period of one year from the end of the financial year in which certification of completion of construction of property is obtained from the competent authority shall be nil. In the given facts, the occupation certificate for buildings C, D & E was received in A.Y. 2018-19 and one year from the end of the financial year when the completion certificate was received shall end on 31/03/2019. Thus, as per the provisions of sec. 23(5) of the Act, the annual value till the period 31/03/2019 has to be taken as nil. The assessee, therefore, submitted that deemed rental income shall be applicable for the A.Y. 2020-21, if there is unsold stock of the C, D & E wing for the year end 31/03/2020. Therefore, in the relevant year, there is no deemed rental income on unsold stock and the same would be applicable on from A.Y. 2020-21. The second limb of argument of Id.AR that the PCIT has not arrived at any satisfaction regarding the arguments put-forth before him during the proceedings u/sec. 263, and hence, without such satisfaction, revisionary jurisdiction cannot be invoked.

5. We have considered the submissions of the parties, assessment order as well as order passed u/sec. 263 of the Act.

5.1 That, upon examining the facts and circumstances involved in this case as enshrined in the aforesaid paras, we agree with the order of the PCIT passed u/sec. 263 of the Act. It is correct that the AO has failed to carry out any enquiry or examination regarding the issue of interest paid on TDS and the applicability of deemed rent on the unsold flats. Explanation 2 to sec. 263 is very precise and clear that *"For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner - (a) the order is passed without making inquiries or verification which should have been made"*. This is a deeming provision which states that when the very fact is proved that the AO has passed an order without making any enquiry or verification, such an order shall be deemed to be erroneous so as to be prejudicial to the interest of the Revenue. In this case of the assessee, the AO has not conducted any enquiry or verification regarding the disallowance of interest paid on TDS and the applicability of deemed rent on unsold flats. The argument of the Id.AR cannot be accepted because the very fact that there was no enquiry conducted by the AO as per explanation 2(a) to sec.263, such an assessment order is deemed to be erroneous so as to be prejudicial to the interest of the Revenue. Once that is so, the question does not arise whether

the order of assessment was just erroneous and not prejudicial to the interest of the Revenue or just prejudicial to the interest of the Revenue but not erroneous. This interplay application of the provision becomes irrelevant when the said deeming provision is applied. The case-laws relied on by the Id.AR are substantially different on facts and are not applicable to the facts of the present case. We must also mention here that if the AO had conducted enquiry regarding the disputed issues, then the argument of the Id.AR would have carried some weight as to whether the assessment order was just erroneous and not prejudicial to the interest of the Revenue. In such scenario also, the issue of satisfaction by the PCIT would have been relevant, but in the instant case when in the threshold itself, the AO has failed to do his duty in conducting and verifying the issues involved, then in such situation, explanation 2(a) to sec.263 as clearly stated as a deeming provision that such an assessment order passed shall be deemed to be erroneous insofar as it is prejudicial to the interest of the Revenue shall apply. We do not find, therefore, any infirmity with the order passed by the Id. Pr.CIT which is upheld. Grounds of appeal raised by the assessee are dismissed.

6. In the result, appeal of the assessee is dismissed.

Order pronounced in open Court on 21st August, 2023.

Sd/-
(R.S. SYAL)
VICE-PRESIDENT

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 21st August, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, "B" Bench Pune.
6. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.