

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.261/PUN/2022
निर्धारण वर्ष / Assessment Year : 2011-12

M/s. Sunil Chetandas Katariya, 649, Sai Villa, Lam Road, Deolali Camp, Nashik- 422401. PAN : AATHS6634R	Vs.	Pr.CIT-1, Nashik.
Appellant		Respondent

Assessee by : Shri Sanket Joshi
Revenue by : Shri Ajay Kumar Kesari

Date of hearing : 10.08.2023
Date of pronouncement : 21.08.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of ld. Pr. Commissioner of Income Tax-1, Nashik ['PCIT'] dated 12.03.2021 for the assessment year 2011-12.

2. The appellant raised the following grounds of appeal :-

"1. The learned PCIT erred in holding that the asst. order passed u/s 143(3) r.w.s. 147 in the case of the assessee for A.Y.2011 - 12 was erroneous and prejudicial to the interest of revenue and thereby

directing the AO to pass fresh asst. order after carrying out verification on the certain issues without appreciating that the said action of the PCIT was not justified in law and on facts of the case.

2. The learned PCIT failed to appreciate that in the asst. order passed u/s 147 r.w.s. 143(3), the A.O. had not made any addition on the core issue of cash deposits of Rs.24,50,166/- for which the case was reopened u/s 147 and even in the order u/s 263, the PCIT did not direct the A.O. to make any addition on the said issue and hence, the A.O. could not be expected to make any verification on other issues in the asst. u/s 147 when no addition is made on the core issue on which the case was reopened and therefore, the asst. order u/s 147 could not be termed as 'erroneous' as contemplated u/s 263 of the Act.

3. Without prejudice, it is submitted that the notice u/s 263 dated 23.02.2022 was served only by email on 06.03.2021 and the revision order u/s 263 was passed on 12.03.2021 and hence, the said revision order passed in violation of principles of natural justice without providing proper opportunity of being heard may be declared as null and void in law.

4. The appellant craves, leave to add, alter, amend and delete any of the above grounds of appeal."

3. Briefly, the facts of the case are as under :-

The appellant is a Hindu Undivided Family (HUF). No voluntarily Return of Income u/s 139 of the Income Tax Act, 1961 ('the Act') was filed for the assessment year 2011-12. However, on receipt of the information that the assessee had made cash deposit of Rs.24,50,166/- in Savings Bank Account maintained with Axis Bank Ltd., Deolali Camp Branch, Nashik during the previous year relevant to the assessment year 2011-12, the assessment was reopened u/s 147 by issuing of notice u/s 148 on 30.03.2018. In

response to notice u/s 148, the assessee filed the return of income on 30.06.2018 declaring income of Rs.80,503/-. Against the said return of income, the assessment was completed by the Assistant Commissioner of Income Tax, Circle-2, Nashik ('the Assessing Officer') vide order dated 24.12.2018 accepting the returned income. During the course of assessment proceedings, the Assessing Officer sought a detailed information as regards to the source of the cash deposits of Rs.24,50,166/- in the Savings Bank Account maintained with Axis Bank Ltd., Deolali Camp Branch, Nashik. The assessee submitted that the assessee is into business of buying and selling of lands and properties, the amount deposited in the savings bank account is out of the advance received either in cash or through cheques etc. and the part of deposits were also made out of the earlier withdrawals from the bank accounts. The assessee also submitted the statement of bank account and cash flow statement, etc. The assessee also submitted the details such as name, address and PAN of the parties from whom the advance were received by the assessee and also the confirmations from those parties. On verification of these details, on being satisfied about the

source of cash deposits, the Assessing Officer had not made any addition on account of cash deposits.

4. Subsequently, the ld. PCIT, on perusal of the assessment record, was of the opinion that though the appellant had explained the source of the cash deposits made, however, the Assessing Officer had failed to verify the genuineness of the transactions, as no documentary evidence was furnished by the assessee regarding the purpose for which the amounts were advanced from the parties to the appellant. Further, the ld. PCIT was of the opinion that since the advance were accepted in cash without any supporting evidence, these amounts received by the assessee were in the nature of unsecured loans and, therefore, the Assessing Officer should have brought the transactions with the purview of provisions of section 269SS of the Act. Secondly, the ld. PCIT was of the opinion that the unsecured loans of Rs.1,01,95,773/- shown in the books of account remain unverified and assessee had failed to discharge the onus of proving the identity, creditworthiness and genuineness of unsecured loans in terms of provisions of section 68 of the Act and, therefore, the Assessing Officer should have made addition u/s 68

r.w.s. 115BBE of the Act. Accordingly, the ld. PCIT issued a show-cause notice u/s 263 of the Act dated 23.02.2021. In response to the show-cause notice, the appellant had not responded. In the circumstances, the ld. PCIT had formed an opinion that the assessment order is erroneous and prejudicial to the interests of the Revenue and, accordingly, set-aside the assessment order to the file of the Assessing Officer to pass a fresh assessment order in accordance with law.

5. Being aggrieved, the appellant is in appeal before us in the present appeal.

6. The ld. AR, Shri Sanket Joshi submits that in the given facts of the case, the ld. PCIT ought not to have exercised the jurisdiction u/s 263 of the Act, inasmuch as, ld. PCIT has no jurisdiction u/s 263 to direct the Assessing Officer to initiate penalty proceedings u/s 269SS of the Act.

As regards to the addition in respect of unsecured loan of Rs.1,01,95,773/-, he submits that since no addition was made in the reassessment proceedings in respect of items *qua* the reasons recorded in the notice u/s 148 of the Act, the assessment order made

by the Assessing Officer u/s 143(3) r.w.s. 147 of the Act cannot be said to erroneous and, the ld. PCIT was not justified in exercising the jurisdiction u/s 263 of the Act, as the Assessing Officer could not have made any other addition in view of the law laid down by the Hon'ble Bombay High Court in the case of CIT vs. Jet Airways (I) Ltd., 331 ITR 236 (Bom.) and the decision of the Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd. vs. CIT, 336 ITR 136 (Delhi).

7. On the other hand, ld. CIT-DR supporting the order of revision of ld. PCIT, submits that no interference by this Tribunal is warranted.

8. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the validity of assumption of jurisdiction u/s 263 by the ld. PCIT. The Parliament had conferred the power of revision on the Commissioner of Income Tax u/s 263 of the Act in case the assessment order passed is erroneous and prejudicial to the interests of revenue. In order to invoke the power of revision, the above two conditions are required to be satisfied cumulatively. References in this regard can be made

to the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT, 243 ITR 83 (SC) and in the case of CIT vs. Max India Ltd., 295 ITR 282 (SC). The error in the assessment order should be one that it is not debatable or plausible view. In a case where the Assessing Officer examined the claim took one of the plausible views, the assessment order cannot be termed as an "erroneous".

9. Now, we proceed to examine the facts of the present case whether the order of reassessment dated 24.12.2018 is erroneous or not?. On mere perusal of the reasons recorded u/s 148 of the Act, it would be clear that the reassessment proceedings were initiated in order to verify the source for cash deposits in the bank account. The Assessing Officer on being satisfied with the explanation of the assessee as to the source of the cash deposits had chosen not to make any addition and accepted the returned income. However, the ld. PCIT was of the opinion that in view of the explanation given for the source of cash deposits that deposits were made out of the advance received from customers, the same should have been treated as cash loans received in cash from the customers attracting

the provisions of section 269SS of the Act. From the findings of the ld. PCIT, it is clear that the explanation of the assessee as to the source of the cash deposits is not in doubt, but, the Assessing Officer should have treated the advance as cash loans within the ambit of the provisions of section 269SS of the Act. Thus, it is evident that no addition on account of cash deposits is required to be made. Therefore, the assessment order cannot be said to be erroneous on this aspect. It is also equally settled of law that the penalty proceedings cannot be initiated at the instance of the higher authorities and more particularly in exercising the power of revision u/s 263 of the Act, as held in the following decisions :-

- (i) Ahmedabad Electricity Co. Ltd. vs. CIT, 66 Taxman 27 (Bom.).
- (ii) VMT Spinning Co. Ltd. vs. CIT, 74 taxmann.com 33 (P&H).
- (iii) CIT vs. Indian Bank, 55 taxmann.com 372 (Madras).

10. In these circumstances, we hold that the jurisdiction u/s 263 could not be exercised to direct the Assessing Officer to initiate penalty proceedings u/s 269SS of the Act of cash advance received from the customers.

11. As regards to the issue of addition u/s 68 in respect of unsecured loans of Rs.1,01,95,773/-, admittedly, no addition in respect of cash deposit was made in the reassessment proceedings in respect of which the revision is sought to be made. Therefore, the assessment order passed by the Assessing Officer cannot be termed “erroneous and prejudicial to the interests of the Revenue”. In the light of the law laid down by the Hon’ble Bombay High Court in the case of CIT vs. Jet Airways (I) Ltd., 331 ITR 236 (Bom.), the Hon’ble Delhi High Court in the case of Ranbaxy Laboratories Ltd. vs. CIT, 336 ITR 136 (Delhi) and the Hon’ble Rajasthan High Court in the case of CIT vs. Shri Ram Singh, 306 ITR 343 (Rajasthan), it is not permissible for the Assessing Officer to make any other addition. Therefore, what follows from this is that the Id. PCIT could not have exercised the jurisdiction u/s 263 in respect of item, which could not have been disallowed in the reassessment proceedings in respect of which the 263 proceedings were initiated. In this connection, reliance can be placed on the decision of the Hon’ble Delhi High Court in the case of CIT vs. Software Consultants, 341 ITR 240 (Delhi). Therefore, we are of the

considered opinion that the assessment order cannot be termed as “erroneous” amenable for jurisdiction u/s 263 of the Act. Thus, the ld. PCIT ought not to have exercised the jurisdiction u/s 263 of the Act. Accordingly, the grounds of appeal filed by the assessee stand allowed.

12. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 21st day of August, 2023.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 21st August, 2023.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Nashik.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “B” बेंच, पुणे / DR, ITAT, “B” Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.