

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH, PANAJI – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.33/PAN/2022
निर्धारण वर्ष / Assessment Year : 2017-18

S. M. Steels, 4878/C, Iron & Steel Dealer, Karnataka Garage, Patil Galli, Belagavi- 590002. PAN : AADFS0793B	Vs.	Pr.CIT, Hubli.
Appellant		Respondent

Assessee by : None
Revenue by : Shri Prabhakar Anand

Date of hearing : 07.09.2023
Date of pronouncement : 05.10.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Pr. Commissioner of Income Tax, Hubli [‘PCIT’] dated 26.03.2022 passed u/s 263 of the Income Tax Act, 1961 (‘the Act’) for the assessment year 2017-18.

2. Briefly, the facts of the case are that the appellant is a partnership firm engaged in the business of trading in iron and steel. The Return of Income for the assessment year 2017-18 was filed on 31.10.2017 declaring total income of Rs.19,15,210/-. Against the

said return of income, the assessment was completed by the Income Tax Officer, Ward-3, Belgaum ('the Assessing Officer') vide order dated 18.12.2019 passed u/s 143(3) of the Act accepting the returned income. The factual background of the case is as under :

The survey operations under the provisions of section 133A of the Act were conducted in the business premises of the appellant on 22.09.2016. During the course of survey proceedings, the partner of the appellant firm, namely, Shri Riyaz Abubakar in the statement recorded on oath u/s 131 of the Act on 22.09.2016 offered the additional income of Rs.2,00,270/- being the difference in cash of Rs.11,80,734/- being difference in stock for the assessment year under consideration aggregating to Rs.13,81,004/- and the same was credited to the Profit & Loss Account and offered to tax in the return of income filed by the assessee.

Subsequently, on review of the assessment records, the Id. PCIT was of the opinion that the income offered to tax during the course of survey proceedings should have been taxed under the provisions of section 69A r.w.s. 115BBE of the Act and the penalty proceedings u/s 271AAC should have been initiated and, accordingly, formed an opinion that the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interests of

the Revenue in terms of the provisions of section 263 of the Act. Accordingly, the ld. PCIT issued a show-cause notice dated 18.03.2022 calling upon the assessee to explain as to why the assessment order should not be treated as erroneous and prejudicial to the interests of the Revenue. The said show-cause notice was sent by e-mail on 22.03.2022. In response to such show-cause notice, no representation was made by the assessee. In the circumstances, the ld. PCIT vide order dated 26.03.2022 had set-aside the assessment order and directed the Assessing Officer to make fresh assessment and also initiate penalty proceedings in accordance with law.

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

4. When the appeal was called on, none was represented on behalf of the assessee despite due service of notice of hearing.

5. We heard the ld. CIT-DR and perused the material on record. The issue in the present appeal relates to the validity of the assumption of jurisdiction u/s 263 of the Act by the ld. PCIT.

6. At the outset, we find that the show-cause notice was issued by the ld. PCIT by e-mail on 22.03.2022 and the order passed by the ld. PCIT u/s 263 setting aside the assessment order on 26.03.2022

thereby giving a short period of time i.e. less than one week, which is against the Standard Operative Procedure ('SOP') issued by the CBDT dated 19.11.2020, wherein, minimum period of 15 days is required to be given to the assessee to comply with notices from the date of issue of the notice. Recently, the Hon'ble Delhi High Court in the case of Dauphin Travel Marketing Private Limited vs. ITO in W.P.(C) 8870/2023 & CM Nos.33516-17/2023 dated 05.07.2023 taking note of this SOP held that the grant of insufficient time to respond the notice violates the principles of natural justice and, therefore, set-aside the assessment. Therefore, we are of the considered opinion that the appellant was given unreasonably short period of time to respond to the show-cause notice in violating of the principles of natural justice.

7. Furthermore, the proceedings u/s 263 were initiated by the ld. PCIT during the Covid-19 Pandemic period. It can be safely assumed that the appellant was prevented from causing the appearance before the ld. PCIT on account of difficulties faced by the appellant on account of Covid-19 Pandemic in view of the decision of the Hon'ble Supreme Court in the case of Cognizance for Extension of Limitation, In re (2022) 441 ITR 722 (SC) dated 10.01.2022, wherein, the limitation prescribed by various statutes

was *suo motu* extended on account of difficulties faced by the citizens of the country on account of Pandemic Covid-19.

8. In the light of the above facts, we set-aside the order passed by the Id. PCIT u/s 263 of the Act and direct him to pass the order *de novo* after giving reasonable opportunity of being heard to the assessee. Thus, the grounds of appeal filed by the assessee stand partly allowed.

9. In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced on this 05th day of October, 2023.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 05th October, 2023.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CCIT-1, Bengaluru.
4. DR, ITAT, Panaji.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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