

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR**

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No.55/JAB/2023
Assessment Year:2018-19

Mohammad Shahid Khan, 01, Ganga Jamna, Futera Ward, 5, Damoh. PAN:BEFPK2080K	Vs.	Income Tax Officer, Ward-1, Sagar.
(Appellant)		(Respondent)

Appellant by	Shri M. P. Tiwari, Advocate
Respondent by	Smt. Garima Chaudhary, CIT (D.R.)
Date of hearing	23/11/2023
Date of pronouncement	19/12/2023

ORDER

PER YOGESH KUMAR U.S.:J.M.

The present appeal has been filed by the assessee against the order of learned Pr. CIT, Jabalpur-1 dated 26/03/2023 pertaining to assessment year 2018-19 passed u/s 263 of the Income Tax Act, 1961 ("Act" for the short). In this appeal, the assessee has raised the following grounds:

- "1. That the assessment order passed u/s 143(3) on 02/03/2021 is not at all erroneous so far as prejudicial to the interest of Revenue under the facts and circumstances of the case.*
- 2. That the disputed property is purchased from relative therefore, the provision to section 56(2)(x) with explanation 56(2)(vii) is not applicable under the facts of the case. More over it not a capital asset being a rural agriculture land."*

2. The facts of the case, in brief, are that the assessee filed his return of income on 24/07/2018 declaring total income of Rs.4,66,110/-. The case was selected for scrutiny through CASS under Limited Scrutiny to examine the following issues:

- (i) Investment in immovable property
- (ii) Unsecured loans

The Assessing Officer issued notice to the assessee u/s 143(2)/142(1) of the Income Tax Act, 1961 ('Act' for short) to file his explanation on 'investment in immovable property' and 'unsecured loans'. In response to the notice u/s 143(2)/142(1) of the Act, the assessee filed his explanation on the above two issues which was found satisfactory by the Assessing Officer and no addition was made. The assessment was completed u/s 143(3) r.w.s. 143(3A) and 143(3B) of the Act on 02/03/2021 by accepting the return income at Rs.4,66,110/-.

3. The learned Pr. CIT(A) while exercising the power conferred u/s 263 of the Act was of the opinion that certain aspects of the case were not properly examined by the Assessing Officer during the assessment proceedings and the order passed by the Assessing Officer was found to be erroneous in so far as it was prejudicial to the interest of Revenue. Accordingly, learned Pr. CIT issued notice u/s 263 of the Act to the assessee. In compliance with the notice issued by learned Pr. CIT, the assessee filed his written submissions. The learned Pr. CIT, after considering the submissions of the assessee, found that no supporting evidence and no documentary evidence has been produced by the assessee either during the course of assessment proceedings or during the proceedings u/s 263 of the Act, thus on 26/03/2023 cancelled the assessment order passed u/s 143(3) r.w.s. 143(3A) and 143(3B) of the Act

and directed the Assessing Officer to pass fresh assessment order denovo after affording opportunity of being heard to the assessee. Aggrieved by the order of learned Pr. CIT dated 26/03/2023, the assessee preferred the present appeal on the grounds mentioned above.

4. The learned counsel for the assessee submitted that the assessment order passed u/s 143(3) of the Act is not erroneous and so far as prejudicial to the interest of the Revenue under the facts and circumstances of the case and further submitted that the disputed property is purchased from relative, therefore, the provision of section 56(2)(x) with explanation 56(2)(vii) is not applicable under the facts of the case and the same is not a capital asset being a rural agricultural land. Learned counsel for the assessee has taken us to the various documents and judicial precedents in support of his contentions and prayed for allowing the appeal.

5. Per contra, learned D.R. by relying on the order impugned submitted that the appeal of the assessee is devoid of merit, which requires no interference at the hands of the Tribunal.

6. We have heard both the parties and perused the materials available on record. During the assessment proceedings initiated u/s 143(3) r.w.s. 143(3A) and 143(3B) of the Act, the case of the assessee was selected for limited scrutiny on the issue of:

- (i) Investment in immovable property
- (ii) Unsecured loans

7. During the Assessment Proceedings, the learned Assessing Officer while enquiring the issue of investment in immovable property was of the opinion that the assessee had claimed to have purchased a land on

24/03/2018 for a consideration of Rs.4,53,000/- whereas the stamp duty is payable of the property was Rs.52,28,160/- therefore, as per provision of section 56(2)(x) of the Act, the excess of Rs.47,75,160/- was required to be shown in the return as income from undisclosed sources for the assessment year under consideration which was not offered by the assessee as income. It was the case of the assessee that the learned Assessing Officer has specifically raised query regarding the said issue and it has been explained to the Assessing Officer by the assessee that the land, which was purchased by the assessee, is purely a rural agricultural land situated more than 6 km. from Nagar Palika, Damoh as per the population is between 1,00,000 to 10,00,000 and the seller Mohd. Khalil alias Khalik is a relative of the assessee and in support of the above contention, a confirmation letter from the seller has also been furnished. The learned Assessing Officer accepted the said contention/clarification given by the assessee and made no addition. In our considered opinion, the said approach of the A.O. requires any interference u/s 263 of the Act.

8. Further, it is also found that in so far as second issue i.e. increase in unsecured loan during the assessment year under consideration, the assessee had furnished 41 lenders from unsecured loans of Rs.2,59,00,000/- which has been taken during the year under consideration. The assessee had also furnished the bank statement of the lenders. Learned counsel for the assessee contended that the assessee had passed the three tests i.e. identity of the lenders, creditworthiness of the lenders and genuineness of the transactions, except the case of Ganga Jamuna Traders of Rs.60,00,000/- and all the transactions are being made through bank account. The learned Assessing Officer accepted the clarification which was supported by the documentary evidence given by the assessee and made no addition. The assessee had complied and

answered all the queries raised by the Assessing Officer u/s 143(2) and 142(1) of the Act by submitting satisfactory details and clarifications in respect of both the issues i.e. 'purchase value of the property less than the value as per stamp authority' and 'large increase in unsecured loan during the year'.

9. The ITAT Bench of Jabalpur in I.T.A.No.101/Jab/2010 in the case of Manish Nayar, prop. Shree Nath Ji Jewellers, Sarafa Bazar, Damoh held as under:

".....The assessee has discharged his onus in respect of gold ornaments found in black bag hence the ratio of the Hon'ble M.P. High Court in the case of Metachem Industries V CIT (2000) 245 ITR 160 was applicable. In this case it has been held that :

"Once it is established that the amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee is over. Whether that person is an income tax payer or not and where he had brought this money from is not the responsibility of the firm. The moment the firm gives a satisfactory explanation and produces the person who has deposited the amount, then the burden of the firm is discharged and in that case that credit entry cannot be treated to be the Income of the firm for the purpose of income tax.

It was argued that in view of this decision of Hon'ble M.P. High Court since all the customers has accepted the ownership of the gold ornaments in which chit of their name was attached hence, addition of Rs.10,61,752/- made to the income of the appellant was against the law."

10. Considering the fact that the assessee has discharged his initial onus by providing the supporting evidence such as confirmation, PAN & Adhar Numbers of all 41 lenders and the Bank statements, the burden of the assessee is discharged which has been accepted by the A.O. Further in so

far as second issue is concerned, since the assessee has purchased the land from the 'relative' and the said contention was duly supported by the genealogical tree, placed at page 45 of the paper book and the said fact has also already been examined by the Assessing Officer, thus, in our considered opinion, the order of the Pr. CIT deserves to be quashed. Accordingly, we allow the grounds of appeal of the assessee and set aside the order impugned of the Pr. CIT dated 26/03/2023.

11. In the result, the appeal of the assessee is allowed.

(Order was pronounced in the open court on 19/12/2023)

Sd/-
(DR. B.R.R. KUMAR)
Accountant Member

Dated:19/12/2023
*Singh/R.N, Sr. PS

Sd/-
(YOGESH KUMAR U.S.)
Judicial Member

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R.,

Asstt. Registrar