

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.214/Ind/2020
Assessment Year: 2015-16

Smt. Anamika Garg, 117, Tukoganj Marg, Nayapura, Dewas	<u>बनाम/</u> Vs.	PCIT, Ujjain
(Assessee / Appellant)		(Revenue / Respondent)
PAN: AIWPG 3922 D		
Assessee by	Shri Suresh Gupta, AR	
Revenue by	Ms. Simran Bhullar, CIT DR	
Date of Hearing	02.11.2023	
Date of Pronouncement	02.01.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by revision-order dated 21.03.2020 passed by learned Pr. Commissioner of Income-Tax, Ujjain ["PCIT"] u/s 263 of Income-tax Act, 1961 ["the Act"] which in turn arises out assessment-order dated 21.03.2020 passed by learned DCIT, Circle-1(1), Ujjain ["AO"], the assessee has filed this appeal on the grounds raised in Appeal-Memo (Form No. 36).

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Brief facts leading to present appeal are such that the assessee-individual filed her return of income of AY 2015-16 declaring a total income of Rs. 36,17,360/- from house property, capital gain and other sources, which was assessed by AO u/s 143(3) of the Act at a total income of Rs. 42,17,604/- after making certain disallowance/addition. Subsequently, Ld. PCIT examined the record of assessment-proceeding and viewed that the assessment-order passed by AO is erroneous in so far it is prejudicial to the interest of revenue which attracts revisionary-jurisdiction u/s 263. Accordingly, he passed revision-order which is impugned in present appeal. The precise reason of making such revision by PCIT is such that the AO has not examined the exemption u/s 54B/54F and deduction of transfer expenses claimed by assessee against 'long-term capital gain'. By impugned order, Ld. PCIT has set aside the assessment-order to the file of AO with a direction to re-frame assessment after examining these issues raised by him. Aggrieved by such revision-order, the assessee has filed this appeal.

4. Ld. AR for the assessee made a very strong and straightforward submission attacking the jurisdictional deficit in the revisionary-action undertaken by PCIT. To demonstrate this, he carried us to Para No. 2 of the impugned order where the PCIT has made following noting:

"2. Proceedings u/s 263 were, therefore, initiated by issue of show-cause notice dated 02.03.2020, which was duly served upon the assessee. The proposal u/s 263 was received through the O/o Jt. CIT, Range-1, Ujjain on 16.10.2019."

5. Ld. AR submitted that it is very much apparent from above noting that it is not the PCIT who has called for and examined the records of

assessment-proceeding; it is the AO who has mooted the proposal for revision by PCIT. Ld. AR strongly contended that the PCIT has not called for and examined the record of assessment-proceeding done by AO as required by section 263; it is the AO who has examined his own record, set into motion the jurisdiction of revision and thereby usurped the power of PCIT. Ld. AR submitted that the verdict of section 263 is very clear, specific and unambiguous which prescribes thus:

“The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous”

Therefore, to invoke action u/s 263, not only the PCIT has to himself call for and examine the record of proceeding conducted by AO but also himself consider that the assessment-order passed by AO is erroneous-cum-prejudicial to the interest of revenue. But in the present case, this exercise done by AO. Therefore, the revisionary-action suffers from a serious jurisdictional deficit, consequently the revision-order is liable to be quashed.

6. Ld. AR submitted that an exactly identical case has been decided by ITAT, Pune in **Alfa Laval Lund AB Vs. CIT(IT/TP), Pune, ITA No. 1287/Pun/2017, order dated 02.11.2021** wherein the ITAT, after analysis of the prescription and requirement of section 263, held that the revision exercise done by PCIT suffered from a jurisdictional deficit. Accordingly, the ITAT quashed the revision-order. The relevant paragraphs of order are reproduced below:

"3. We have heard both the sides through Virtual Court and gone through the relevant material on record. It can be seen from para 4 of the Id. CIT"s order that:

"A proposal for revision u/s 263 of the IT Act, 1961 was received from DCIT(IT)-1, Pune through the Jt.CIT(IT), Pune vide letter No. Pn/Jt.CIT(IT)/263/2016-17/61 dated 23.05.2016".

It is thus manifest that the edifice of the revision in the extant case has been laid on the bedrock of receipt of the proposal from the AO. At this stage, it would be worthwhile to have a glance at sub-section (1) of section 263 of the Act, which runs as under:-

"The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he, may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."

4. Sub-section (1) of section 263 of the Act is an enabling provision which confers jurisdiction on the CIT to revise an assessment order which he considers erroneous and prejudicial to the interests of revenue. The process of revision u/s 263 of the Act initiates only when the CIT calls for and examines the record of any proceeding under this Act and considers that any order passed by the AO is erroneous and prejudicial to the interests of the revenue. The twin conditions of – (i) the CIT calling for and examining the record; succeeded by (ii) his considering the assessment order as erroneous etc. – are sine qua non for the exercise of power under this section. The use of the word 'and' between the expression 'call for and examine the record' and the expression 'if he considers that any order ... is erroneous ...' abundantly demonstrates that both these conditions must be cumulatively fulfilled by the CIT and in the same order, that is, the first followed by the second. In other words, the kicking in point for invoking jurisdiction u/s 263 is calling for and examining the record of any proceedings under the Act by the CIT leading him to consider the assessment order erroneous etc. A communication from the AO is not 'the record of any proceedings under this Act'. To put it simply, the

consideration that the assessment order is erroneous and prejudicial to the interests of the revenue should flow from and be the consequence of his examination of the record of proceedings. If such a consideration is not preceded by the examination of record of the proceedings under the Act, the condition for revision does not get magnetized.

5. *It is trite that a power which vests exclusively in one authority, can't be invoked or cause to be invoked by another, either directly or indirectly. Section 263 of the Act confers power on the CIT to revise an assessment order, subject to certain conditions. Instantly, we are confronted with a situation in which the revision was initiated on the basis of the AO sending a proposal to the CIT and not on the CIT suo motu calling for and examining the record of the assessment proceedings and thereafter considering the assessment order erroneous and prejudicial to the interests of the revenue. The AO recommending a revision to the CIT has no statutory sanction and is a course of action unknown to the law. If AO, after passing an assessment order, finds something amiss in it to the detriment of the Revenue, he has ample power to either reassess the earlier assessment in terms of section 147 or carry out rectification u/s 154 of the Act. He can't usurp the power of the CIT and recommend a revision. No overlapping of powers of the authorities under the Act can be permitted. As the revision proceedings in this case have triggered with the AO sending a proposal to the Id. CIT and then the latter passing the order u/s 263 of the Act on the basis of such a proposal, we hold that it became a case of jurisdiction deficit resulting into vitiating the impugned order. Without going into the merits of the case, we quash the impugned order on this legal issue itself.*

6. *In the result, the appeal is allowed."*

7. With this submission, Ld. AR prayed this Bench to quash the revision-order passed by PCIT.

8. Per contra, Ld. DR for the Revenue submitted that the PCIT has undertaken action u/s 263 by issuing a valid show-cause notice as required

under law. She submitted that the assessee has not raised any such objection before PCIT himself in reply filed in response to show-cause notice u/s 263, therefore this objection must be turned down. She stressed that the PCIT has ultimately passed a valid revision-order on the basis of show-cause notice; there is no infirmity or fallacy in the action of PCIT. Therefore, the impugned order must be preserved.

9. We have considered rival contentions of both sides and perused the material placed before us. After reading of Para No. 2 of revision-order to which our attention has been drawn, as re-produced in foregoing Para No. 4 of this order, we find that that the PCIT received proposal for revision from AO and such proposal triggered the PCIT to undertake revisionary-action. There is no rebuttal to this fact from revenue's side. Thus, the revision in this case had been conducted on the bedrock of AO's proposal. That means, the conditions prescribed in section 263 are not fulfilled. We have gone through the decision of **ITAT, Pune in Alfa Laval Lund AB (supra)** and find that the said decision quashing the revision has been rendered on exactly same set of facts as involved in present appeal of assessee. Although Ld. DR for the revenue has dutifully made certain arguments as noted in foregoing paragraph but neither been able to rebut the arguments made by Ld. AR nor the applicability of the decision of ITAT, Pune on facts or in law. Therefore, respectfully following the said decision, we are inclined to hold that the present case is having a jurisdictional deficit resulting into vitiating the impugned order. Therefore, we quash the impugned order on legality aspect

itself and restore the original assessment-order passed by AO. Since we have quashed the revision-order, other pleadings made by both sides are rendered academic and not required to be dealt.

10. Resultantly, this appeal of assessee is allowed.

Order pronounced in the open court on 02.01.2024.

Sd/-
VIJAY PAL RAO
JUDICIAL MEMBER

Sd/-
B. M. BIYANI
ACCOUNTANT MEMBER

Indore

दिनांक/Dated : 02.01.2024

CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore