

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No. 230/Ahd/2023
(Assessment Year: 2018-19)

Pankaj Madhusudan Trivedi, 19B, VIP Society, Nr. Utkarsh Vidyalaya, Diwalipura, Vadodara	Vs.	Principal Commissioner of Income Tax, Vadodara-1
[PAN No.ABDPT5848H]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Tushar Hemani, Sr. Advocate & Shri Parimalsinh B. Parmar, A.R.
Respondent by:	Shri Sudhendu Das, CIT D.R.
Date of Hearing	11.01.2024
Date of Pronouncement	17.01.2024

ORDER

PER SIDDHARTHA NAUTIYAL, JM:

This appeal has been filed by the assessee against the order passed by the Ld. Principal Commissioner of Income Tax, (in short “Ld. PCIT”), Vadodara-1 in DIN & Order No. ITBA/REV/F/REV5/2022-23/1051138598(1) vide order dated 22.03.2023 passed for A.Y. 2018-19.

2. The assessee has raised the following grounds of appeal:-

“1. The Order u/s. 263 of the Act has been passed beyond the period of limitation prescribed u/s. 263(2) of the Act and is thus illegal and bad in law.

2. The Ld. PCIT has grossly erred in law and on facts in assuming jurisdiction u/s. 263 of the Act on the erroneous ground that the impugned assessment order is erroneous in so far as it is prejudicial to the interest of the revenue.

3. The Ld. PCIT has grossly erred in not appreciating that in order to invoke S.263, two conditions must be fulfilled viz. the impugned assessment order must be erroneous and that error must be prejudicial to the interest of the revenue. In the present case, Ld. AO passed the assessment order after analysing and being satisfied

with all details furnished by the Appellant and adopted one of the possible views. Hence, there was no error in the impugned assessment order so as to justify action u/s. 263 of the Act. Under the circumstances, the very assumption of power u/s. 263 of the Act is unjustified and bad in law and therefore, order u/s. 263 of the Act deserved to be quashed.

4. *The subject order u/s. 263 passed by Ld. PCIT is illegal and bad in law in absence of any finding of Ld. PCIT how the alleged error of AO has resulted in loss of revenue particularly when TDS, as contemplated in the scheme of the Act, has been correctly effected by the appellant. The Ld. PCIT has blindly and without application of mind made a disallowance u/s. 40(a)(ia) of the Act despite the fact that the Appellant had provided the AO all the necessary explanation as well as evidences in regards of the same which have been duly verified by the AO.*

5. *The Ld. PCIT has further erred in law in not coming to any concrete conclusion and without conducting any inquiry or investigating the issue, merely directed the AO to frame the assessment order afresh. Without there being any positive finding about order being erroneous and prejudicial to the interest of the revenue, the action of Ld. PCIT is without jurisdiction and illegal and hence deserves to be deleted.*

6. *Ld. PCIT has erred in not considering various facts and in not appreciating the facts and law in their proper perspective.*

7. *The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.”*

3. The brief facts of the case are that the assessee had filed original return of income on 13.10.2018 declaring total income at Rs. 3,32,72,650/-. Thereafter, the assessee filed revised return of income on 05.02.2019 declaring total income at Rs. 3,20,88,190/-. The scrutiny proceedings were completed under Section 143(3) of the Act vide order dated 25.02.2021, accepting the returned income of Rs. 3,20,88,190/-.

4. The Principal Commissioner of Income Tax initiated proceedings under Section 263 of the Act on the ground that assessee had not deducted tax at source on part of the salary amounting to Rs. 1,94,800/- and on account of non-deduction of tax on commission / brokerage payment of Rs.

42,71,900/- . Since, the assessee has not deducted tax at source on payment of Rs. 44,66,700/- provisions of Section 40(a)(ia) of the Act are attracted. However, the Assessing Officer did not made disallowance of Rs. 13,40,010/- (30% of Rs. 44,66,700/-) under Section 40(a)(ia) of the Act, and hence the assessment order is erroneous and prejudicial to the interest of the Revenue.

5. The assessee is in appeal before us against the aforesaid order passed by Ld. PCIT holding the assessment order to be erroneous and prejudicial to the interest of the Revenue. Before us, the Counsel for the assessee submitted that in order to invoke revisionary jurisdiction under Section 263 of the Act, the twin conditions of the assessment order being erroneous and also assessment order being prejudicial to the interest of the revenue need to be fulfilled simultaneously. The Counsel for the assessee submitted that in the instant either of the two conditions are not satisfied, and therefore, CIT cannot invoke revisionary jurisdiction. In the instant case, the Counsel for the assessee submitted that so far as the non-deduction of salary of Rs. 1,94,800/- paid to Shri Nirav Bhatt is concerned, though admittedly, the assessee failed to deduct tax at source, but Nirav Bhatt has filed returned of income under Section 139 of the Act and has duly offered the sum of Rs. 1,94,800/- as his income while computing his total income and has also paid due taxes on such income. It was submitted that this fact was specifically brought to the notice of the Ld. PCIT during the course of 263 proceedings, however, he committed to consider the same. The Counsel for the assessee submitted that since the recipient of income has already paid due taxes on such salary income, there is no loss to the revenue and hence no

disallowance is warranted in terms of Second Proviso to Section 40(a)(ia) of the Act. Therefore, it was submitted that so far as TDS on payment of Rs. 1,94,800/- is concerned, there is not prejudice to the Revenue on account of non-deduction of tax at source, on the part of the assessee.

6. With respect to non-deduction of TDS on commission / brokerage payment amounting to Rs. 42,71,900/-, the Counsel for the assessee submitted that such commission is related to transfer of land by the assessee during the impugned assessment year. The Counsel for the assessee submitted that the assessee has not claimed the aforesaid commission / brokerage as expenses while computing business income and therefore, there is no question of making disallowance under Section 40(a)(ia) of the Act. In support of the aforesaid contention, the Counsel for the assessee submitted acknowledgement of ITR and statement of total income, Annual Report (Schedule-21) and ITR-3 (Commission). Accordingly, it was submitted that since there was no question of making disallowance under Section 40(a)(ia) of the Act in the first instance, the assessment order is neither erroneous nor prejudicial to the interest of the Revenue on account of non-deduction of TDS on the sum of Rs. 40,10,900/-. The Counsel for the assessee further submitted that the recipient of commission income of Rs. 40,10,900/- (M/s. R.K. Associates) has filed return of income and offered the above amount as it's business income. The recipient has paid due taxes on such income and therefore, there is no loss to the Revenue. Therefore, in view of Second Proviso to Section 40(a)(ia) of the Act the assessee is not an "assessee in default" on account of non-deduction of taxes at source. The Counsel for the assessee placed relevant documents on

record in support of the contention with the recipient of such commission income has duly incorporated the same in the return of income filed by the recipient and has paid due taxes thereon. Further, the Counsel for the assessee submitted that so far as non-deduction of TDS on commission payment of Rs. 2,61,000/- is concerned, the amount of Rs. 78,300/- should be disallowed under Section 40(a)(ia) of the Act as was submitted by the assessee during the course of 263 proceedings.

7. In response, the Ld. D.R. placed reliance on the observation made by the PCIT in the 263 order.

8. We have heard the rival contentions and perused the material on record.

9. We are in agreement with the contentions of the Ld. Counsel for the assessee that once the recipient of income has offered the income on which no taxes were deducted by the assessee at source and paid due taxes thereon, in view of Second Proviso to Section 40(a)(ia) of the Act, the assessee is deemed to have deducted and paid taxes on such sum and the assessee is not an “assessee in default”. In the instant case, it has been argued before us that so far as salary amounting to Rs. 1,94,800/- and commission of Rs. 40,10,900/- is concerned, the recipient has offered such income in their respective returns of income and have paid due taxes thereon. However, the Ld. PCIT has omitted to consider and analyze these arguments during the course of 263 proceedings. Accordingly, in so far as the issue of non-deduction of TDS on aforesaid two payments are concerned, we are of the considered view that the assessee was not could

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not be held to an assessee in default once the recipient of income has offered such income in their return of income and paid due taxes thereon. Further, with respect to the disallowance of commission amounting to Rs. 2,61,000/- is concerned, the assessee has himself agreed for disallowance of Rs. 78,300/- before Ld. PCIT during the course of 263 proceedings. Accordingly, in so far as TDS on commission amounting to Rs. 2,61,000/- is concerned, the aforesaid amount is liable to be disallowed and added to the income of the assessee for the impugned assessment year. Accordingly, it is so directed that the aforesaid amount may be added to the income of the assessee during the impugned assessment year.

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

This Order pronounced in Open Court on	17/01/2024
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 17/01/2024

TANMAY, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad