

IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH, PATNA

[Before Shri Rajesh Kumar, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 66/Pat/2021
Assessment Year : 2016-17

Asha Devi L/H of Late Gayan Chand Prasad	Vs	PCIT-1, Patna
PAN: DABPP 8190 J	.	
Appellant		Respondent

Date of Hearing	22.11.2023
Date of Pronouncement	13.02.2024
For the Assessee	Shri Ashish Kr. Agrawal, CA
For the Revenue	Shri Rupesh Agrawal, Addl. CIT, Sr. DR

ORDER

Per Sonjoy Sarma, JM:

The appeal of the assessee for the assessment year 2016-17 is directed against the order dated 25.02.2021 passed by the Id. Pr. Commissioner of Income-tax – 1, Patna [hereinafter referred to as ‘the ‘Id. CIT(A)’]. The assessee has raised the following grounds of appeal:

“1. For that the Learned Commissioner of Income Tax has erred in invoking power u/s 263 of the Income Tax Act and has also erred in canceling the order passed u/s 143(3) by the Assessing Officer.

2. For that the Learned Commissioner of Income Tax has erred in passing order u/s 263 of the I.T. Act on mere change in opinion.

3. For that the Learned Commissioner of Income Tax has erred in assuming jurisdiction u/s 263 although the condition precedent for such assumption were absent in the appellant's case.

4. For that the order passed u/s 263 is without jurisdiction and ab-initio void.

5. For that the Learned Commissioner of Income Tax has failed to appreciate that the order passed by the Assessing Officer was neither

erroneous nor prejudicial to the interest of revenue and thus the very invocation of power u/s 263 is wholly illegal and beyond jurisdiction.

6. For that the Learned Commissioner of Income Tax has erred in invoking power u/s 263 and passing order holding the order of assessment to be erroneous and prejudicial even without pointing out which of the two phraseology used in the section is applicable to the appellant's case.

7. For that the Learned Commissioner of Income Tax has failed to appreciate that the Assessing Officer has passed the order after conducting proper inquiry and investigation and after due application of mind and thus the order passed could not be said to be either erroneous or prejudicial to the interest of revenue.

8. For that the Learned Commissioner of Income-tax has erred in holding that order u/s 143(3) by the Assessing Officer is erroneous in so far as it prejudicial to the interests that exemption from tax liability laid down in the RFCTLAAR Act is not applicable to the appellant's case.

9. For that the Learned Commissioner of Income-tax has erred in holding that the Assessing Officer has without making enquiries and verification reached the finding that the appellant fulfills the condition for availing exemption u/s. 10(37) of the IT Act, 1961 on account of compulsory acquisition of agricultural land.

10. For that the Learned Commissioner of Income-tax has erred in not considering the various evidences/ records filed and considered by the Assessing Officer in course of assessment proceedings.

11. For that the whole order is bad in fact and law of the case and is fit to be annulled.

12. For that the other grounds, if any, shall be urged at the time of hearing of appeal.”

2. Brief facts of the case are that assessee filed its return of income electronically and assessment was completed u/s 143(3) of the Act. During the assessment proceeding, the ld. AO noticed that the assessee had received high ratio of refund to TDS and

payment of compensation on acquisition of immovable property is shown in TDS return filed by acquirer but the assessee did not declare any capital gains in its ITR. Accordingly, statutory notices were issued to the assessee and in compliance to such notices, assessee has furnished the following documents at the time of hearing before the AO:

“i. Assessee is a farmer and the land which was compulsory on acquisition and compensation received u/s 3(E) of the National Highway Act, 1956 by the Govt. of India.

ii. Assessee and his family were engaged in agricultural activities.

iii. Income arisen from the compensation or consideration for such transfer received by the assessee on different dates mentioned.

iv. Proof of agricultural land and type of compensation received enclosed for reference.

v. It is compulsory acquisition of land (news paper cutting attached for the same as announced in the Gazette of India for compulsory acquisition.”

3. The ld. AO on examination of the submission and papers submitted by the assessee satisfied that the capital gains earned on alleged agricultural land exempt u/s 10(37) of the Act. Soon after completion of the assessment, the ld. PCIT, Patna subsequently initiated the proceeding u/s 263 of the Act by issuing show cause notice dated 31.12.2020 stating the following facts to the assessee:

“i. The assessee received total compensation amounting to Rs. 1,62,33,976/- towards acquisition of land under section 3(E) of the National Highway Act, 1956 from the Govt. of India. The assessing officer in his order accepted the claim of non-taxability of compensation relying on the provision of the RFCTLAAR Act read with Circular No. 36/2016 dated 25.10.2016 issued by CBDT. It is noted that assessee received

compensation in pursuance of NHAI Gazette notification published on 9th October, 2009 and subsequent notification by Govt. of Bihar in the gazette of India dated 14.01.2013 whereas the RFCTLAAR Act came into force from 1st January, 2014. Therefore, the exemption from tax liability laid down in the RFCTLAAR Act is not applicable to the assessee's case. In view of the above, it was found that the assessing officer erroneously allowed the exemption from taxability of capital gain arising out of compensation.

Accordingly, the assessment order u/s 143(3) of the I.T. Act, 1961 dated 29.12.2018 was found to be erroneous in so far as it is prejudicial to the interest of revenue within the meaning of section 263 of the Income-tax Act, 1961."

4. In response to the notice of the ld. PCIT, assessee had replied its contention by filing his reply in the following manner:

"Hon'ble Sir, It is informing to you that my client/assessee Shri Gyan Chand Prasad passed away on 31. 03.2020, and Smt. Asha Devi, w/o. Gyan Chand Prasad legal heir and She authenticate me to present for representing the assessee.

Hon ble Sir, A.O. in his order dated 29/12/2018 had accepted the claim of non taxability of compensation received on compulsory acquisition of Land under the head Capital Gain. The statement of non taxability based on Circular No. 36/2016 dated 25/10/2016 Issued by CBDT With relying on the provision of the RFCTLARR ACT, 2013.

CIRCULAR 36/2016 dated 25/10/2016 issued by CBDT

Non-taxability of the compensation received by the land owners for the land acquired under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLAAR Act)

RFCTLARR ACT, 2013

The RCTLARR Act, 2013 came in force from 01st January 2014 and some description about the same Act as follows:

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013: Section 96 mandates that no

Income-tax shall be levied on any award made under the Act except under Section 46. Section 46 deals with the purchase of land by a person other than a Specified person through private negotiations. The benefit of Section 96 is not available when a land is purchased through private negotiations by a person other than a specified person under Section 46(1).

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("New Act of 2013") came into force from January, 2014 repealing the erstwhile Land Acquisition Act, 1894 ("LA Act 1894"). Section 24(2) of the 2013 Act.

Retrospective Application: Provisions under the 2013 Act

Section 24(1) of the 2013 Act provides that the Act will not be applicable cases where an award has been made under section 11 of the old Act. Further, section 24(2) of the 2013 Act starts with a non-obstante clause and provides-

Section 24(2) of the RFCTLARR Act 2013

"Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holding has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

Hence, the benefit under the provisions of the 2013 Act as per the above-stated statutory provision is being given in the cases wherein the award has been made under the provisions of the old Act five years (5) or more prior to the commencement of the 2013 Act (i.e. on or before 01.01.2009)

but the compensation has not been paid or the physical possession of the property has not been taken.”

5. Similarly on 29.01.2021 assessee filed its reply before the ld. PCIT under following manner:

“The reply of the assessee dated 29.01.2021 is under:

“Section 263 of the Income Tax Act, 1961 provides revisional power to Principal Commissioner (Pr. CIT) or Commissioner (CIT) if he is of the opinion that an order passed by the AO is erroneous and prejudicial to the interests of the revenue.

1. Erroneous Order

The order should be erroneous. Thus, if any order is not erroneous it could not be subject to revision u/s 263. This issue is discussed below in detail along with Explanation 2 to section 263(1).

2. Prejudicial to the revenue's interests

The order should be prejudicial to the interests of the revenue. Inter-alia, in the following situations, an order can be said to be prejudicial to the interests of the revenue:

- Income has been under assessed;*
- Loss has been over assessed;*
- Income has been assessed at a lower rate;*
- Excess deductions, allowances and reliefs have been allowed to assessee.*

The powers under section 263 of the Act are to be invoked on satisfaction of twin conditions of the order being both erroneous and prejudicial to the interests of the Revenue.

Punjab Wool Syndicate v. ITO [2012] 17 ITR 439 (Chandigarh) (Trib.)

The tax effect because of an order passed by the Assessing Officer is NIL such order even if erroneous being not prejudicial to the interests of the Revenue, is not open to revision under section 263 of the Act.

In our Case,

Assessing officer has made order u/s 143(3) dated 29/12/2018 with hearing dates from 16/08/2018 to 04/12/2018 in order no. ITBA/AST/S/143(3)/2018/1014656805(1) duly make assessment proceedings and order of NIL (0/) demand.

Such order even if erroneous being not prejudicial to the interest of the revenue is not open to revision u/s 263 of the Income Tax Act, 1961.

Hon'ble Sir,

Accept out appeal to revoke the proceeding u/s 263 of the Income Tax Act, 1961 and to make the order of AO correct."

6. However, after examining the contention made by the assessee, ld. PCIT did not satisfy with the submission made by the assessee and setting aside the assessment order passed by ld. AO with the direction to him to frame the assessment order de novo by framing fresh enquiries and verification regarding the above issue involved. At the time of hearing the ld. counsel for the assessee contended that assessment proceeding framed by the AO on 29.12.2018 has already examined the issue as alleged by ld. PCIT in his order. In this regard, he invited to our attention to the assessment order framed by the ld. AO where the observation was made at page no. 2 in the following manner:

"On perusal of submissions and paper filed by the assessee such as copy of receipts of agriculture land justifying papers, copy of the dreceipt of malguzari tax of agriculture work copy of indemnity bond, copy of receipt of land holder which was obtained from office of the Circle Officer, Patna with respect to the proof of ancestral property and also has produce document evidence such as copy paper cutting of Gazette of India for compulsory acquisition and the said land was shown agricultural land."

7. The ld. AR further stated that when the issue involved had already been examined by the AO while framing the assessment

order and in the present case when assessee has already submitted of necessary supported documents as asked by the AO in order to prove facts in its favour and after satisfying the same, the ld. AO has thoroughly examined the issue by passing the assessment order as in the case of assessee. Therefore, there is no need to frame the assessment afresh in terms of the order passed by the ld. PCIT.

8. On the other hand, ld. DR supported the order passed by the ld. PCIT by justifying the same.

9. We heard the rival submissions and on examining the documents available on record. The assessment proceeding is completed by verification capital gain earned by the assessee on alleged sale of land as an exempt income u/s 10(37) of the Act. The assessee had provided details during proceeding. In the present case specific issue relating to exemption of capital gain earned by the assessee claiming exemption u/s 10(37) of the Act allowed by the AO. However, mere change of opinion of ld. PCIT in respect of issue cannot be reason to invoke revisionary powers under section 263. We respectfully relied on the order of ITAT, Mumbai Bench in the case of Reliance Payment Solutions Ltd. v. Principal Commissioner of Income-tax-8, [2022] 136 taxmann.com 277 (Mumbai - Trib.).

“9. Clearly, therefore, as long as the action of the Assessing Officer cannot be said to be lacking bonafides, his action in accepting an explanation of the assessee cannot be faulted merely because it could have been lawful to make mere detailed inquiries or because he did not write specific reasons of accepting the explanation. As for learned PCIT's observations regarding accepting the explanation "without appropriate

evidence", there is nothing to question the bonfides of the Assessing Officer or to elaborate as to what should have been 'appropriate' evidence. The fact remains that the specific issue raised, in the revision order was specifically looked into, detailed submissions were made and these submissions were duly accepted by the Assessing Officer. Merely because the Assessing Officer did not write specific reasons for accepting the explanation of the assessee cannot be reason enough to invoke powers under section 263, and non-mentioning of these reasons do not render the assessment order "erroneous and prejudicial to the interest of the revenue".

Considering the above discussion, the ld. PCIT had invoked the section 263 which is beyond the jurisdiction.

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

Order pronounced in the open court on 13.02.2024.

Sd/-

Sd/-

(Rajesh Kumar)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 13.02.2024

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Asha Devi L/H of Late Gayan Chand Prasad, Chunauti Kuan, Gupta Clinic, Phulwari Sharif, Patna-801505.
2. Respondent – PCIT-1, Patna.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata