

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : A : NEW DELHI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.580/Del/2021
Assessment Year: 2016-17

Ashok Kumar,
S/o Naseeb Chand,
Dangra Road, Near Bus Stand,
Tohana, Distt. Fatehabad,
Haryana – 125120.

Vs PCIT,
Rohtak,
Haryana.

PAN: AMMPK4875B

(Applicant)

(Respondent)

Assessee by : Shri Lalit Mohan, CA
Revenue by : Ms Sunita Verma, CIT, DR
Date of Hearing : 04.03.2024
Date of Pronouncement : 21.03.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the assessee against the order dated 23.03.2021 of the Principal Commissioner of Income Tax, Rohtak, (hereinafter referred as Ld. PCIT) u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) n Revision No.PCIT, Rohtak/Revision-263/100000183581/2021 arising out of the order dated 06.12.2018 passed u/s 143(3) of the Act by the ITO, Ward-1, Fatehabad (hereinafter referred as the Ld. AO).

2. The assessee had filed return of income which was picked up for limited scrutiny to examine the issue: 'Whether the investment and income relating to the securities are duly disclosed.' The assessment was completed u/s 143(3) of the Act on the returned income. The ld.PCIT was, however, not satisfied with the assessment order and, on the basis of the assessment record, had show-caused the assessee with the following notice:-

"2. The assessment record for the period under consideration was called upon and examined. On such examination, it has been noticed that during the course of assessment proceedings, you have submitted that there is loss of Rs.93,319/- from the share trading. The cash amounting to Rs.17,60,000/- was deposited in your saving account with Central Bank of India and Axis Bank. You have submitted that these cash deposits were out of the sale proceeds amounting Rs.24,96,580/- of cloth business. But, from the perusal of Bank statements, it is noticed that cash deposited in the different dates are being transferred to M/s Edelweiss Broking Ltd and M/s Sharekhan Ltd. In normal business practice, the sale proceeds of business are utilized to purchase of goods for subsequent business operation. Further, the AO has not examined the cash book for the relevant period. You have also transferred the money to M/s Elelweiss Broking Ltd. The statement of profit and loss account with M/s Elelweiss Broking Ltd has not been submitted by you. Therefore, AO has not carried out proper investigation and enquiry to unearth the facts involved in the case which should have been made.

3. The above failure on the part of the Assessing Officer have prima facie rendered the assessment order erroneous in so far as it is prejudicial to the interest of revenue. Therefore, you are required to show cause as to why an appropriate order u/s 263(1) of the Act should not be passed."

3. The assessee came up with the following submission:

"It is submitted that cash was deposited as per cash in hand out of the sales proceeds. Cash book for examination for cash deposited entries in the bank is enclosed herewith. Copy of account of Elelwiss Broking Ltd. are enclosed herewith."

4. However, the ld. PCIT was not satisfied and observed in para 3 as follows:-

“3. I have carefully examined the entire facts of the case from the assessment record and the reply of the assessee. Perusal of assessment record shows that the replies filed during the assessment proceedings were just placed on record and the A.O. has failed to make any enquiries in regard with the transfer of cash deposited by the assessee to two concerns namely M/s Edelweiss Broking Ltd and M/s Sharekhan Ltd during the year under consideration. The A.O. has also failed to examine the cash book for the relevant period to verify the contention of the assessee as submitted during the course of assessment proceedings. In view of the facts discussed above it is clear that the assessment order is erroneous and prejudicial to the interest of revenue. The A.O. should conduct detailed enquiries on the above issues. The details of investment made relating to securities should be inquired into by examining documentary evidences. The income relating to securities should also be examined and inquiries should be made from M/s Edelweiss Broking Ltd and M/s Sharekhan Ltd.”

5. Thus, holding that the assessment order was passed in a casual manner without due diligence and without conducting any worthwhile inquiries that the assessment order is erroneous so far as prejudicial to the interest of the Revenue and directed the AO to pass a fresh order in accordance with the law keeping in view the observations of the ld.PCIT.

6. The assessee is in appeal raising the following grounds:-

“1. On the facts and in the circumstances of the case and in law the order u/s 263 of the income-tax Act, 1961 dated 23-03-21 passed by the Pr. Commissioner of income-tax, Rohtak is devoid of jurisdiction as no error prejudicial to the interest of the Revenue has neither been identified nor brought on record and so must be quashed.

2. Additionally the order u/s 263 of the Income-tax Act, 1961 based on doubts, suspicion, assumptions, presumptions and conjectures and not on the material on record of the proceedings is erroneous and vitiated and not being according to law must be quashed.

3. *That the order of revision passed u/s 263 of the Income-tax Act, 1961 proposing a redoing of the assessment merely because certain material connected with the issues in assessment are not on record and so, in the opinion of the Pr. Commissioner, necessary or proper enquiry/verification has seemingly not been made is untenable on facts and law and unsustainable as such, and must be quashed.*

4. *That the finding u/s 263 of the Income-tax Act, 1961 of the Pr. Commissioner of Income- tax that Ld. AO has passed the order u/s 143(3) of the Act, on 06-12-18 in a very causal manner without due diligence and without conducting any worthwhile enquiry, as AO has failed to make any enquiries in regard with the transfer of cash deposited by the assessee two concerns namely M/s Edelweiss Broking Ltd and M/s Sharekhan Ltd during the year under consideration. Assessment order dated 06-12-2018 u/s 143(3) of the Act for the A.Y. 16-17 is cancelled with the direction to pass an order afresh in accordance with law keeping in view the observations made in the order after affording reasonable opportunity of being heard to the assessee, which is bad in law and must be quashed.*

5. *That Pr. Commissioner of Income Tax has not considered the reply and cash book which was submitted along with reply before the Pr. CIT through portal. All the cash deposited transactions are duly accounted for in cash book. Without examination of cash book order passed by Ld. Pr. Commissioner of Income Tax, Rohtak u/s 263 of the Income Tax Act, 1961 is bad in law and must be quashed.*

The above actions being arbitrary, erroneous and unlawful must be quashed with directions for appropriate relief.”

7. Heard and perused the record. The ld. AR has primarily came up with the plea that the return was filed on the presumptive income and the scrutiny proceedings were for a limited purpose which was duly examined by the ld. AO. The ld. AR, referring to the paper book, has pointed out the various queries raised during the scrutiny assessment and the response of the assessee. The ld. DR has, however, defended the order of the ld. PCIT submitting that the ld. AO had fallen in error by accepting the source of cash investment.

8. On giving thoughtful consideration to the matter on record, we are of the considered view that the grounds before us are composite in nature and, accordingly, are taken up together for discussion. It is pertinent to mention that the additional ground raised by the assessee questioning the legality of the proceedings arising out of the notice and the order of ld. PCIT not bearing DIN was not pressed.

9. It comes up that the notice u/s 143(2) of the Act for limited scrutiny was issued on 29.09.2017 where the primary query under consideration was 'whether the investment and income relating to security transactions are duly disclosed' (copy of this notice is available at pages 25 and 26 of the paper book). Then, at page 27 of the paper book, there is a notice dated 05.01.2018 wherein certain information/documents were called by the AO and we consider it appropriate to reproduce those queries below:-

"1. Please furnish copies of all the bank accounts for verification. Also furnish reconciliation in case of any difference in the balances at the close of the year w.r.t. the balance shown in the balance sheet. Please get the source of cash deposits verified with documentary evidence.

2. Please furnish cash flow statement for the year under consideration for verification.

3. Please furnish detailed trading account with the broker/ sub broker with whom you carried out transactions in shares during the year.

4. Please furnish complete details of shares purchased / sold during the year in the following format:

Sr. No.	Name of the share purchased	Date of purchase	No. of share purchased	Purchase price per share	Total purchase price	Date of sale	Sale price of per share	Total sales price	Profit/ loss from the transaction
1	2	3	4	5	6	7	8	9	10

5. *Please let this office to know method of valuation of the closing stock of shares and furnish copies of bills on the basis of stock has been valued.*

6. *Please furnish Form 10DB in your case.”*

10. At page 29 of the paper book, there is a reply of the assessee wherein, in response to notice dated 05.01.2018, the assessee had submitted relevant replies to queries No.3, 4 and 5 as follows:-

“3. *That, trading account with the broker with whom transaction of share is been carried out is enclosed herewith. There is a loss of Rs.93319.00 in the trading of shares. Due to loss in trading of share, loss has not been claimed in the return of income.*

4. *That, copy of account issued by broker regarding sale/purchase of share is enclosed herewith.*

5. *That, during the year under consideration closing balance of Reliance Communication share were 1200 and rate was @50 per share, value of closing stock come to Rs.60000.00.”*

11. However, during the assessment proceedings, the assessee, by a letter made available at page 77 of the paper book also provided the following replies:-

“1. *Investment in shares was made out of retail sale of goods amounting to Rs.24,96,580/-. This sale has already been shown in the Income tax return and income as per section 44AD of the Income tax Act has already been declared in the Income tax return.*

2. *Nature of transactions of shares have been given in form no. 10DB, which is delivery cash segment & squared of transaction cash segment.”*

12. The copy of return of income available at pages 87 and 88 shows that the assessee had filed presumptive income return. The aforesaid leaves no doubt in the mind of this Bench to conclude that the finding of the Id. PCIT that the AO had not been diligent enough and had not conducted worthwhile inquiries during the scrutiny assessment is erroneous. It appears that the Id. PCIT had questioned the prudence of the assessee for investing the sale proceeds of the business in security investment and transactions. We are of the considered view that such observations cannot be the foundation to hold that the order is erroneous so far as prejudicial to the interests of the Revenue. Rather, without pointing out anything specific during the revision proceedings, the Id.PCIT has merely substituted his own view to the matter examined by the Id. AO during assessment proceedings. Thus, the grounds raised are sustained.

13. In the result, the appeal of the assessee is allowed. The impugned order is set aside.

Order pronounced in the open court on 21.03.2024.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 21st March, 2024.

dk

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi