

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “B” , HYDERABAD**

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.486/Hyd/2023		
Assessment Year: 2014-15		
Kushal Das Dayaram Manghanani, Hyderabad. PAN : AGBPM9633N (Appellant)	Vs.	The Assistant Commissioner of Income Tax, Circle – 5(1), Hyderabad. (Respondent)
Assessee by:	Shri M.V. Joshi, C.A.	
Revenue by:	Ms. Sheetal Sarin, Sr. AR.	
Date of hearing:	20.03.2024	
Date of pronouncement:	22.03.2024	

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi invoking proceedings under section 143(3) r.w.s. 263 of the Income Tax Act, 1961 (in short, “the Act”) for the A.Y 2014-15 on the following grounds :

2. The grounds raised by the assessee reads as under :

“1. The Ld. CIT(A) is erroneous both on facts and in law to the extent the order is prejudicial to the interest of the appellant.

2 The Ld. CIT(A) ought to have appreciated the fact that the Assessing Officer's regular assessment u/s 143(3) has been accepted by the ITAT vide its order ITA No.1193/Hyd/2019 dt. 30.08.2021 and adjudicated in favour of the assessee.

3. The Ld. CIT(A) erred while passing the Order u/s 250 considering the facts and merits of some other assessee which are not at all related to the assessee's appeal which is in valid.

4. The Ld.CIT(A) erred in passing the order u/s 250 which is considered to be a mistake which is apparent from record and the same is requested to be rectified.

5. The Ld.CIT(A) erred in not considering the fact that the order u/s 263 has been treated as infructuous by ITAT therefore the assessment u/s 143(3) r.w.s 263 of the Act has no relevance.”

3. Facts of the case, in brief, are that assessee is an individual deriving income from house property and income from other sources. He filed his return of income for the AY 2014-15 on 25.03.2015 declaring total income of Rs. 2,80,100/-. The return was selected for scrutiny assessment and the assessment was completed u/s. 143(3) on 30.11.2016. The assessee, owning a commercial property, did not declare rental income for AY 2014-15, claiming it was leased to his son without rent due to business difficulties. As, Section 23(1)(a) mandates deemed rental income, the order of Assessing Officer u/s 143(3) was deemed erroneous, leading to a 263 order for reassessment by the PCIT. Thereafter, notice under section 142(1) was issued on 22.03.2019, with a hearing scheduled

on 05.04.2019. The assessee sought an adjournment citing the absence of their auditor. After no response, another notice under 142(1) was sent on 30.08.2019 to explain why deemed rental income for AY 2014-15 should not be assessed based on AY 2013-14's declared rental income. The assessee, citing an appeal against the PCIT-4's order under section 263, requested a pending status. Due to limitations, another show-cause notice was issued on 10/11/2019. However, the assessee did not respond. Hence, an amount of Rs.48,96,000/- (as per AY 2013-14) was taken as the annual deemed rental value under section 23(1)(a) for this assessment. Accordingly, the assessment was completed by adding Rs. 34,27,200/- as income from house property to the total income of the assessee and passed order u/s 143(3) r.w.s. 263 of the Act on 06.12.2019.

4. Feeling aggrieved by the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A), who dismissed the appeal of assessee.

5. Feeling aggrieved with the order of ld.CIT(A), assessee is now in appeal before us.

6. At the outset, ld.AR for the assessee has drawn our attention to the order passed by the Assessing Officer in the present case and also the order in ITA 1193/Hyd/2019. The ld.AR further submitted that if we read the two orders together with the CIT(A)'s order then it

is clear that the order passed by the ld.CIT(A) is not in conformity with the order passed by the Tribunal in ITA No.1193/Hyd/2019.

7. It was submitted that the ld.CIT(A) has mentioned the facts of the other case which are not relevant to the case of the assessee and had ignored the binding decision of the Tribunal in ITA No.1193/Hyd/2019.

8. Per contra, ld.DR has fairly submitted that the order passed by the ld.CIT(A) does not pertaining to the subject matter of the assessment order passed by the Assessing Officer u/s 263 r.w.s 143(3) of the Act.

9. We have heard the rival submissions and perused the material on record and also the order of the Tribunal passed in ITA No.1193/Hyd/2019. In this case, the Assessing Officer has passed the order u/s 143(3) r.w.s. 263 on 06.12.2019 and thereafter, the Tribunal vide its order passed in ITA No.1193/Hyd/2019 dt.30.08.2021. From the perusal of the assessment order, Tribunal order, then it is clear that the Tribunal has quashed the notice issued under section 263 of the Act with the following order.

“4. Both parties reiterated their respective stand against and in support of the PCIT’s foregoing revision direction. There can hardly be any dispute that this revision jurisdiction comes into play incase the corresponding regular assessment is both are erroneous one as well as causing prejudice to the interest of Revenue, simultaneously, as per hon’ble apex court land mark decision in Malabar Industrial Co. Ltd.

Vs. CIT (2000) 243 ITR 83 (SC). The fact also remains that whether or not an assessment suffers from the foregoing twin elements or not depends on the corresponding facts and circumstances only. Their lordship's further make it clear that it is not each and every assessment which could be revised u/s. 263 section only those wherein the Assessing Officer has not exercised one of the two possible views.

5. We keep in mind the foregoing legal proposition and revert back to the facts of the instant case. There is no quarrel between the parties that the assessee had leased out the premises in issue to his son Sri Rajesh Mangani for carrying out furniture business. It is further an admitted fact that the assessee has not derived any rental income in the relevant previous year therefrom. Learned PCIT has directed the Assessing Officer to apply section 23(1)(a) of the Act and determine the Annual Letting Value (ALV) of the rented premises. We find no reason to sustain all these directions for the reason that learned CIT's impugned order has given the instant issue an altogether a new footing. We observe so keeping in mind that this is an instance of noncollection of rent than lack of determination of ALV u/s. 23(1)(a) of the Act only wherein the assessee had not actually received his rent which was already determined. We further emphasise that as this is not the first assessment year of the impugned property being given on rent. We wish to make it clear that so far the already determined rent is concerned, there is a special provision dealing with recovery of arrears of rent and unrealized rent received subsequently u/s. 25A of the Act. We thus go by the very reasoning to reverse the learned Pr.CIT's revision directions on this count alone and conclude that the Assessing Officer's regular assessment herein dt.30.11.2016 had been rightly framed without determining or adding the rent amount not actually collected and assessed in assessee's income stands. The same is restored as the necessary corollary."

10. Quiet surprisingly, the ld.CIT(A) without following the decision of the Tribunal dt.30.08.2021, has passed the cryptic, non-speaking, perfunctory and incorrect order by reproducing the facts of some other unrelated case. We strongly deprecate the same and warn the ld.CIT(A) not to pass any such order, which is not the subject matter of the appeal.

11. This kind of careless approach of the Id.CIT(A) while passing order resulted into generation of unwarranted litigation.

12. In the light of the above, we remand back the matter to the file of Assessing Officer to pass a fresh order after considering the binding directions of the Tribunal in order dt.30.08.2021 (supra) and after granting hearing to the assessee in accordance with law. Thus, the appeal of the assessee is allowed for statistical purposes.

13. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 22nd March, 2024.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 22nd March, 2024.

TYNN/sps

Copy to:

S.No	Addresses
1	Kushal Das Dayaram Manghanani, Hyderabad, C/o. P. Murali and Co., 6-3-655/2/3, Somajiguda, Hyderabad, Telangana - 500082
2	The Assistant Commissioner of Income Tax, Circle – 5(1), Hyderabad.
3	PrI.CIT(Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order