

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एवं श्रीनरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM& SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 46/JPR/2024
निर्धारणवर्ष / Assessment Year : 2015-16

Ms. Anita Lodha A-110, Atrey Path, Shyam Nagar, Jaipur-302019.	बनाम Vs.	PCIT-1, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AASPL5637Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Mukesh Khandelwal (Adv.)
राजस्व की ओरसे / Revenue by: Shri Anoop Singh (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 16/04/2024
उदघोषणा की तारीख / Date of Pronouncement: 17/04/2024

आदेश / ORDER

PER: NARINDER KUMAR, J.M.

Present appeal has been preferred under section 253 of the Income
Tax Act, 1961 (hereinafter referred to as " the Act").

2. The assessee-appellant has challenged the order dated 4.01.2024 passed by Learned PCIT, Jaipur-1, while exercising powers of revision under section 263 of the Act.

3. Section 263 of the Act empowers PCIT, besides others specified therein, to call for and examine the record of any proceeding under the Act, and where he considers that any order passed therein by the Assessing Officer or the Transfer Pricing Officer, as the case may be, is erroneous in so far as it is prejudicial to the interests of the revenue, he may, pass such order thereon as the circumstances of the case justify, including an order directing a fresh assessment.

4. Vide impugned order, Learned PCIT has held the assessment order dated 30.03.2022, for the assessment year 2015-16, to be erroneous, due to the reason that the same is prejudicial to the interest of the Revenue, it having been passed by the AO in routine, a casual manner, and without applying relevant provisions of the Act as the details, required to be verified by way of scrutiny, were not verified.

As a result of the impugned order, the assessment order dated 30.03.2022 came to be set aside with the direction for fresh assessment order, after making necessary verification in view of the observations made

in the impugned order, of course, after allowing opportunity to the assessee. Hence, this appeal.

5. Arguments heard. File perused.

6. While opening the arguments, Learned AR for the assessee has contended that while recording reasons for the belief that income tax had escaped assessment, it was observed that the assessee had not filed her return of income for the assessment year 2015-16, whereas, as per record, actually the assessee had filed her original return on 30.01.2016.

It has also been pointed out that in column 6 of Annexure (page 6 of the appeal file) meant for quantum of income which is stated to have escaped assessment, depicts the amount as Rs. 10,00,000/-, but, while granting approval u/s 151 of the Act, Learned PCIT quantified this amount at Rs. 40,00,000/-. Learned AR has contended that said discrepancy in the record prepared by the Revenue, having remained unexplained, goes against the Department. In support of his contention, Learned AR of the assessee has relied upon decision in case of **Aishwarya Rai Bachchan v. PCIT**, in ITA No. 754/Mum/2021 dated 25.02.2022.

7. On the other hand, Learned DR has submitted, and rightly so, that the assessee having not challenged the above observations made by the

concerned authority, and the assessment proceedings having attained finality, there is no merit in the abovesaid contention now raised by Learned AR of the assessee, while challenging the legality of the proceedings then conducted. In the given situation, the decision in **Aishwarya Rai Bachchan's** case (supra) cited by Learned AR for the assessee does not come to the aid of the assessee.

8. As to when an order passed by the Assessing Officer would amount to be erroneous and prejudicial to the interests of the revenue, as per Explanation 2 of sub-section (1) of Section 263 of the Act, an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, it is opined that the order has been passed without making inquiries or verification which should have been made.

9. Here, it is significant to note that the assessment order was passed by the Assessing Officer under section 143(3) read with section 147 and section 144 B of the Act.

Record reveals that the Assessing Officer clearly observed in the assessment order dated 30.03.2022 that the assessee had filed her initial return on 30.01.2016 declaring total income of Rs. 22,03,530/-.

He further observed that the case was reopened as per provisions of Section 147 of the Act, after obtaining prior approval in this regard, the reason being that the assessee had sold immovable property worth Rs. 4 crore during the year, but not declared capital gains from said transaction.

10. Admittedly, the assessee submitted her response to the notice u/s 148 of the Act and again filed return of income on 10.04.2021 declaring an income of Rs. 22,03,530/-. Same income was declared by her in the return initially filed. This is also not in dispute.

11. Record reveals that in the impugned order, Learned PCIT referred to decision in case of **Rameshwar Rao Vs CIT, 42 ITR 179**, wherein Hon'ble Supreme Court held that when a person acquires land with a view to selling it after developing, he carries on an activity resulting in profit and the activity could only be described as business venture. On same point, Learned PCIT also relied upon decision in case **Indramani Bai & Another Vs Addl. CIT (SC), 200 ITR 594**.

Learned PCIT went on to observe in the impugned order that the Assessing Officer had failed to apply his mind to the material available on record and also to invoke the relevant provisions of law.

12. On the other hand, Learned AR of the assessee has relied on the decision in **Malabar Industries Limited v. CIT, 243 ITR 83** to contend

that incorrect assumption of facts or any incorrect application of law will satisfy the requirement of the order being erroneous, and further that in the same category fall orders passed without applying the principles of natural justice.

It has also been contended that when Assessing Officer had gone through the material made available and applied his mind, Learned PCIT was not justified in passing the impugned order u/s 263 of the Act.

13. As is available from the assessment order, the Assessing Officer accepted the returned income of the assessee after having considered the submissions put forth.

From the assessment order, it is also evident that the Assessing Officer had called upon the assessee to furnish every detail as regards verification of capital gains and the assessee provided entire information sought from her from time to time.

14. In view of specific observations made by the Assessing Officer that he had called upon the assessee to furnish every detail as regards verification of capital gains and that after the assessee provided entire information sought from her from time to time, he (the Assessing Officer) considered the entire submissions and then framed the assessment, it cannot be said that the Assessing Officer framed assessment without

making inquiries or verification which should have been made. At the cost of repetition, it may be mentioned that the assessment order came to be passed under section 143(3) read with section 147 and section 144B of the Act. Having regard to the procedure prescribed under section 144B, specific reasons are expected to be recorded before such an assessment is opined to be erroneous or prejudicial to the interests of the revenue. In absence of any particular allegations or motive attributed to the Assessing Officer or as to which fact appears to have not been enquired into or verified for passing of the assessment order, it would be difficult to accept the opinion of Learned PCIT that the order was passed without making inquiries or verification. There is nothing in the impugned order to suggest as to which fact was required to be enquired further, but was not enquired into or as to which fact was required to be verified by the Assessing Officer, but was not verified.

15. In view of the method and the process adopted by the Assessing Officer, before recording his reasons in passing the assessment order, it cannot be said that this is a case where he allowed any relief without inquiring into the claim of the assessee.

16. In Malabar Industries 's case (supra), Hon'ble Supreme Court observed in the manner as:-

“9. The phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the assessing officer. Every loss of revenue as a consequence of an order of the assessing officer cannot be treated as prejudicial to the interests of the revenue, for example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law. It has been held by this court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the assessing officer accepting the same as such will be erroneous and prejudicial to the interests of the revenue-Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 (SC) and in Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC)”.

17. Ratio decidendi in Malabar’s case is binding. Learned AR for the assessee has referred to the paper book and submitted that the assessee had purchased land in the year 2001-02, raised construction thereon from time to time, and completed the same in the years 2013-14 and 2014-15.

The contention is that from the construction raised by the assessee in phases, it cannot be said that the assessee was in any business venture.

18. As noticed above, Assessing Officer had reopened the matter, then issued notice u/s 148 of the Act, called for and, gone through, various details to verify the factum of capital gains. Assessing Officer did not

observe that it was a case of any addition or concealment of any material fact on the part of the assessee. Rather, he accepted the returned income submitted by the Assessee in both the returns.

When the Assessing Officer arrived at same conclusion even after having issued notice u/s 148 of the Act, the Assessing Officer cannot be said to have not verified the details or to have passed order in routine and in a causal manner.

Applying the settled law to the given facts and circumstances, we do not find any merit in the contention raised by Learned DR that the assessment order has been rightly found and held to be erroneous or as the one prejudicial to the interests of the Revenue.

Result

19. In view of the above findings, this appeal filed by the assessee deserves to be allowed. Accordingly, while allowing the appeal, the impugned order passed by Learned PCIT is hereby set aside.

Order pronounced in the open court on 17/04/2024.

Sd/-
(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 17/04/2024

Sd/-
(नरेन्द्रकुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

***Santosh**

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Anita Lodha, Jaipur.
2. प्रत्यर्थी / The Respondent- PCIT-1, Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 46/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar