

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.17/Nag./2021
(Assessment Year : 2016-17)

Shri Vishal V. Mundhada
Radhakisan Pulses, Nandura Road Appellant
Malkapur 443 101 PAN – AEPPM6261C

v/s

Pr. Commissioner of Income Tax
Nagpur Respondent

Assessee by : Shri Rachit Thakar
Revenue by : Shri Kailash C. Kanojiya

Date of Hearing – 04/06/2024

Date of Order – 04/06/2024

ORDER

PER V. DURGA RAO, J.M.

The present appeal has been preferred by the assessee challenging the impugned order dated 26/02/2021, passed under section 263 of the Income Tax Act, 1961 ("*the Act*") by the learned Principal Commissioner of Income Tax, Nagpur-1, [*learned PCIT*], for the assessment year 2016-17.

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

"1] Assessment order passed by learned A.O. after considering all the facts was neither erroneous nor prejudicial to the interest of revenue and hence learned C.I.T. has no jurisdiction U/s.263 of I.T. Act, 1961 to revise the order. Thus the impugned order of C.I.T. U/s. 263 is without jurisdiction and is liable to be cancelled.

2] Learned C.I.T. failed to see that all the issues raised by him in 263 Notice were already inquired by A.O. in great detail with supporting documents and submissions filed by Assessee before A.O. and the A.O. after applying his mind had accepted the same. All these aspects were reiterated by Assessee in his reply dt. 26.02.2021 before C.I.T. In spite of this written submission and

material on record, the observation of C.I.T. that A.O. had not made any inquiry or verification is seriously erroneous bordering falsity.

3] Learned C.I.T., it appears, has not at all applied his mind to the Assessee's written submission dt.26.02.2021 and documents annexed herewith. This, appears clear from the fact that the Assessee e-filed the said written submission with documents at about 12 noon on 26.02.2021 and the Assessee received 263 order at about 4 pm on 26.02.2021 itself. Order passed without application of min is nullity.

4] Only issue was whether the A.O. passed the assessment after proper inquiry on issues referred to in 263 Notice or not. Thus the case laws cited in the impugned order to the effect that if no inquiry is made before passing the order, the same can be considered as erroneous has no relevance at all.

5] Assessee craves leave to urge additional grounds and refer to the documents and record as may be necessary at the time of hearing of appeal."

3. During the course of hearing, the learned Counsel for the assessee, by way of an application dated 03/06/2024, submitted that pursuant to the order dated 26/02/2023, passed under section 263 of the Act by the learned PCIT, Nagpur-1, the Assessing Officer has made the assessment under section 143(3) r/w section 263 of the Act and accepted the assessee's income assessed under the original assessment order. He thus does not wish to pursue this appeal, as the same has become infructuous. The learned Departmental Representative has no objection to the submissions made by the learned Counsel for the assessee. Consequently, accepting the prayer of the learned Counsel for the assessee, we hereby allow the assessee to withdraw her appeal.

4. In the result, assessee's appeal is dismissed as withdrawn.

Order pronounced in the open Court on 04/06/2024

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 04/06/2024

Copy of the order forwarded to:

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The PCIT / CIT (Judicial);*
- (4) The DR, ITAT, Nagpur; and*
- (5) Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur