

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

**BEFORE
SHRI MANJUNATHA G., ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

आ. अपी. सं / ITA No. 239/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2018-19)

M/s. Phoenix Infocity (P) Ltd, Hyderabad
[PAN : AAECA3063C] Vs. Dy. Commissioner of
Income Tax,
Central Circle-2(3),
Hyderabad

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri P. Murali Mohan Rao, CA
राजस्व द्वारा/Revenue by: Shri Kumar Pranav, CIT(DR)

सुनवाई की तारीख/Date of hearing: 01/07/2024
घोषणा की तारीख/Pronouncement on: 12/07/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Assessment order in the case of Phoenix info city Pvt. Ltd for the assessment year 2018-19 under section 143(3) of the Income Tax Act, 1961 (for short "the Act") was passed on 20/3/2021. Subsequently learned PCIT on examination of records and particularly the reconciliation statement filed by the assessee, explaining the difference between the amount of interest income recorded in the books and that as per 26AS statement, found that the claimed interest income of Rs. 7,11,640/-reflected in the

26AS as received from the APCPDCL does not relate to the assessee, but to other parties, and similarly with respect to the interest income received from M/s Avance Atlas Infratech Pvt. Ltd and FD interest also, the reconciliation statement was not obtained during the assessment proceedings and no verification was made to ascertain the reason for the discrepancy between the figures reflected in the books and then 26AS statement. Learned PCIT, in exercise of jurisdiction under section 263 of the Act, by way of impugned order set aside the assessment order to the file of the learned Assessing Officer for the purpose of examining the taxability of interest income of Rs. 3,21,34,917/-which happens to be the difference between the interest income reflected in 26AS statement and interest income admitted in the ITR and assessed, after giving an opportunity to the assessee of being heard and also giving an opportunity to the assessee to furnish necessary evidence.

2. This order of PCIT is challenged before us broadly on two grounds. Firstly, that the PCIT cannot direct the learned Assessing Officer to conduct further enquiry to verify, without examining the aspect himself and giving a finding as to how the assessment order happens to be erroneous. learned AR submitted that all the details relating to the AS-26 and also the reconciliation statement was submitted before the PCIT, but the PCIT did not look into the aspect by himself to determine the escapement of income with reference to such material, but directed the learned Assessing Officer to undertake such an exercise after giving an opportunity to the assessee, which is impermissible under the settled law. He placed reliance on a decision of the Hon'ble Delhi High Court in the case of D.G. Housing Projects Ltd., (2012) 20 Taxmann.com 587 (Delhi). Second ground is that all the requisite enquiry was made by the learned Assessing Officer on this aspect during assessment proceedings and it is only after receiving the explanation of the assessee, assessment was complete. On these two grounds learned AR stated that the order passed under section 263 of the Act is not maintainable.

3. Per contra, learned DR placing heavy reliance on the orders of the learned PCIT and submitted that since the learned Assessing Officer did not verify the difference that emerged between the income reflected in the 26AS statement and the interest income admitted in the ITR, learned PCIT is justified in invoking the jurisdiction under section 263 of the Act.

4. We have gone through the record in the light of the submissions made on either side. It could be seen from the notices dated 22/9/2019 and 7/12/2020 issued under section 143(2) of the Act and section 142 (1) of the Act that there was in fact an enquiry in respect of the details in form 26AS. The notice dated 7/12/2020 specifically says that the reason for selection for scrutiny was low receipt from the house property and ITR as compared to rental receipt in 26AS. Apart from this the PCIT notice of the details mentioned in 26AS of the assessee available in ITS data. Assessee also made available the details relating to the reconciliation of income as per books in form 26AS and as a matter of fact learned PCIT referred to the same in his order. Instead of coming to a conclusion as to the erroneous nature of the assessment order basing on these details, learned PCIT left such a question open, without returning a finding as to the erroneous nature of the assessment order. On the other hand, while setting aside the matter to the learned Assessing Officer he directed the learned Assessing Officer to examine the taxability of interest income which is the difference between the interest income reflected in 26AS statement and the interest income admitted in the ITR.

5. To this set of facts, the decision of the Hon'ble Delhi High Court in the case of D.G. Housing Projects Ltd., (2012) 20 Taxmann.com 587 (Delhi), is applicable on all fours and when the learned PCIT entertained a doubt as to the difference between the interest income reflected in the 26AS statement and the interest income admitted in the ITR and assessed, he himself should have conducted enquiry on that aspect and recorded his satisfaction as to the erroneous nature of the impugned order insofar as it is prejudicial to the interest of Revenue, and without recording the

satisfaction of the twin conditions under section 263 of the Act as laid down by the Hon'ble Apex Court in the case of Malabar Industrial Co. Ltd., vs. CIT [2000] 109 Taxman 66 (SC). On this score, the assessee succeeds. In DG Housing projects Ltd (supra) Hon'ble Delhi High Court held in unequivocal terms that in the context of the decision of the Hon'ble Apex Court in the case of Malabar industries Co Ltd (supra), the phrase "prejudicial to the interest of Revenue" has to be read in conjunction with the erroneous order passed by the learned Assessing Officer; and that every loss of Revenue as a consequence of an order of learned Assessing Officer cannot be treated as a prejudicial to the interest of Revenue. Apart from this we noticed that there was an enquiry conducted by the learned Assessing Officer on the aspect of the discrepancies in respect of 26AS, assessee submitted the details and though the learned Assessing Officer did not discuss elaborately in the order passed under section 143(3) of the Act, no adverse comments offered by him. Respectfully following the decision referred to above, we find it difficult to sustain the order under section 263 of the Act and accordingly crash the same.

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

Order pronounced in the open court on this the 12th day of July, 2024.

Sd/-
(MANJUNATHA G.)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 12/07/2024
Pvv/SPS

Copy forwarded to:

1. M/s. Phoenix Infocity P Ltd c/o P Murali & Co. CAs, 6-3-655/2/3
Somajiguda, Hyderabad 500082
2. Dy. Commissioner of Income Tax, Central Circle-2(3), Hyderabad.
 1. Pr.CIT (Central), Hyderabad.
 2. DR, ITAT, Hyderabad.
 3. GUARD FILE

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ASSISTANT REGISTRAR
ITAT, HYDERABAD