

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "सी", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" C " BENCH, AHMEDABAD

सुश्री सुचित्रा काम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.659/Ahd/2024
निर्धारण वर्ष /Assessment Year : 2018-19

Aaravi Developers A-312, Siddhi Vinayak Tower B/h. Divya Bhaskar S.G. Highway, Makarba Ahmedabad - 380 051 (Gujarat)	बनाम/ v/s.	The Pr.CIT-3 Ahmedabad
स्थायी लेखा सं./PAN: ABDFA 5385 J		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Vimal Desai, AR
Revenue by :	Shri Kamlesh Makwana, CIT-DR

सुनवाई की तारीख/Date of Hearing : 16/07/2024
घोषणा की तारीख /Date of Pronouncement: 23/07/2024

आदेश/ORDER

PER SHRI MAKARAND V. MAHADEOKAR, AM:

This appeal is filed by the Assessee against the order dated 16-03-2024 passed by the Principal Commissioner of Income Tax-3, Ahmedabad (hereinafter referred to as "PCIT" in short) in exercise of the revisionary powers under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act" in short) for the Assessment Year (AY) 2018-19.

Facts of the case:

2. The assessee, originally a partnership-firm engaged in real estate development, filed its original return of income for the year under consideration on 30-09-2018 and revised return on 31-10-2018 declaring total income at Rs.NIL. The assessee-firm was converted into a Private Limited Company, Aaravi Developers Private Limited on 31.10.2018.

2.1. The assessment under Section 143(3) of the Act was completed on 22-04-2021 accepting the returned income of the assessee. Subsequently, a notice under Section 263 of the Act was issued on 04-01-2024 by the PCIT, Ahmedabad proposing the revision of the assessment order dated 22.04.2021 on the ground that the Assessing Officer (AO) had not verified the creditworthiness of two depositors; Festino Vincom Limited and Kirit Bavishi (HUF), from whom the assessee had taken unsecured loans amounting to Rs.6,25,00,000/-.

2.2. The PCIT set aside the order of AO passed u/s.143(3) of the Act and directed the AO to pass fresh assessment order, after ascertaining correct facts on the issue.

3. Aggrieved by the order of PCIT, the assessee is in appeal before us with following Grounds of Appeal:

- “1. *The order passed by the learned Principal CIT under Section 263 is bad in law.*
2. *The learned Principal CIT erred in law as well as on facts by exercising jurisdiction under Section 263, though the order passed by the AO under Section 143(3) was not erroneous and prejudicial to the interest of revenue.*

3. *The learned Principal CIT erred in law as well as on facts in setting aside the assessment order passed by the AO under Section 143(3) with a direction to re-examine the issue of creditworthiness of two specific depositors in light of the provisions of Section 68 of the Act."*

4. Before us, the Ld.Counsel for the assessee stated that the assessee-firm was converted into a Private Limited Company on 31-10-2018 and the said fact was communicated to the jurisdictional AO on 05-05-2021 with a letter to surrender the PAN. Irrespective of the fact that all necessary documents were given to the AO, the PCIT passed order u/s.263 of the Act in the name of Aaravi Developers, a non-existing entity. Therefore, the Ld.Counsel for the assessee contented that the order passed by the PCIT on 16-03-2024 should be treated as void *ab initio*. He placed reliance on decisions of **Hon'ble High Court of Delhi in case of PCIT Vs. Kaizen Products (P) Ltd. [2018] 97 taxmann.com 574** and decision of **Delhi Tribunal in case of Varnika RPG Trust Vs. PCIT, Gaziabad [2021] 133 taxmann.com 32.**

5. The Ld.Departmental Representative (DR) contented that in the faceless regime, the AO cannot make any changes in the name and other details to consider the change in the constitution due to conversion of the firm into company and, therefore, the order is in the name of the firm. The Ld.DR also pointed out that this issue is not a ground of appeal. Also, this issue was not taken before the PCIT and, hence, should not be entertained.

5.1. On the merits of the review by the PCIT, the Ld.Counsel for the assessee, submitted that the AO had made detailed inquiries regarding the

unsecured loans during the assessment proceedings. The assessee furnished complete details, including names, addresses, PANs, transaction amounts, and bank statements. The AO's inquiries and the assessee's responses are evident from the records of the assessment proceedings. The assessee provided further explanations and documents in response to specific queries raised by the AO regarding the creditworthiness of the depositors. The AO specifically asked these questions vide his notice u/s.142(1) of the Act in para-8 of the notice. The detailed submissions and documentary evidence were duly considered by the AO before concluding the assessment.

5.2. The Ld.Counsel for the assessee also contented that as per the scheme of the faceless assessment the details provided by the assessee are also verified by the verification unit and, therefore, due inquiry must have been conducted not only by the AO but also by Verification Unit.

5.3. The Ld.DR argued that since the company Festino Vincom Ltd. is a Kolkata based company, the AO should have conducted detailed inquiry about creditworthiness of party, who gave loan to the assessee and, therefore, the review is justified.

6. We have heard the rival contentions, also perused the material available on records. Regarding the contention of the assessee that the order was passed in the name of non-existing entity, we note that the assessee had informed the AO about the conversion of firm into company. However, it is also noted that the assessee has not taken this issue as a ground before us and also before the PCIT. We also note that the assessee

has responded to all the notices of the AO and the PCIT in proper spirit. In the case of conversion of firm into a company, the outer shell of the firm is undoubtedly destroyed; it ceases to exist. Yet, in every other sense of the term, the venture continues - enfolded within the new entity. In other words, the business, on a going concern basis, lives on but within the new company. It is, therefore, essential to look beyond the mere concept of destruction of entity which brings to an end or terminates any assessment proceedings. The cause of action or the complaint does not *per se* cease - depending of course, upon the structure and objective of enactment. Considering the circumstances, we will decide the issue on the merit of the PCIT's order u/s.263 of the Act, rather than deciding on validity of the orders of both the AO and the PCIT.

6.1. Regarding the review by the PCIT, it is a settled law that for exercising revisionary powers under Section 263 of the Act, the order must be both erroneous and prejudicial to the interests of the revenue. This twin condition is highlighted in the decision of the **Hon'ble Supreme Court in Malabar Industrial Co. Ltd. vs. CIT - 243 ITR 83 (SC)**. The Court held that for an order to be revised under Section 263, it must be shown that the order is erroneous and such error has caused prejudice to the revenue. An incorrect application of law or a failure to make necessary inquiries would render an order erroneous.

6.2. The **Hon'ble Gujarat High Court in CIT vs. Nirma Chemical Works Pvt. Ltd. - 309 ITR 67 (Guj.)** emphasized that the presence of two views on an issue, where the AO has taken one permissible view, does not make the order erroneous and prejudicial to the interests of the revenue. The Court

held that merely because the Commissioner disagrees with the view taken by the AO, it does not justify exercising revisionary powers under Section 263 of the Act unless the view taken by the AO is unsustainable in law.

6.3. We noted the contention of the assessee that the AO's inquiry was neither inadequate nor insufficient. The AO verified the identity, creditworthiness, and genuineness of the transactions in terms of Section 68 of the Act. The AO's decision to accept the assessee's submissions after thorough verification cannot be deemed erroneous. We have also reviewed the judicial pronouncements relied upon by the assessee. These judicial precedents establish that revisionary action under Section 263 of the Act is not justified on grounds of inadequate inquiry if the AO has conducted sufficient inquiries and taken a permissible view. In the case of **CIT vs. Hindustan Marketing & Advertising Co. Ltd. - 46 DTR 109 (Delhi High Court)**, it was held that if the AO has made inquiries and the Commissioner believes more inquiries should have been made, it does not justify revision under Section 263 of the Act. Similarly, in the case of **Metacaps Engineering & Mahendra Construction Co. (J.V.) vs. CIT - 86 Taxmann.com 128 (ITAT Mumbai)**, it was held that merely because the Commissioner was not satisfied with the manner of verifications and investigations carried out by the AO, the assessment order could not be held to be erroneous.

6.4. The PCIT's jurisdiction under Section 263 of the Act hinges on proving both error and prejudice. The AO conducted thorough inquiries and verified the details provided by the assessee regarding the unsecured

loans. The view taken by the AO was a permissible one, supported by the facts and evidence on record.

6.5. In the case of **Vodafone Essar South Ltd. vs. CIT - 141 TTJ 84 (ITAT, Delhi)**, it was held that if the AO has made inquiries, even if the inquiries are deemed inadequate by the Commissioner, the order cannot be revised under Section 263 of the Act on that ground alone. The AO's acceptance of the assessee's explanations after due verification cannot be deemed erroneous.

6.6. In the case of **CIT vs. Ashish Rajpal - 320 ITR 674 (Delhi High Court)**, it was held that the absence of specific mention of inquiries made by the AO in the assessment order does not imply that no inquiries were made. The AO's inquiries and the assessee's responses are evident from the records of the assessment proceedings.

6.7. The assessee's reliance on the **Hon'ble Supreme Court's decision in Malabar Industrial Co. Ltd. vs. CIT(supra)** and the **Hon'ble Gujarat High Court's decision in CIT vs. Nirma Chemical Works Pvt. Ltd.(supra)** is well-placed. These rulings support the assessee's contention that the AO's order, based on due inquiry and verification, cannot be revised under Section 263 of the Act merely because the PCIT holds a different view.

6.8. We also note that the PCIT has not demonstrated that the AO's insufficient investigation has led to an erroneous assessment. In our opinion, inadequate inquiry alone does not justify revision unless it results in a prejudicial outcome for the revenue. Thus, if the AO has conducted an

inquiry, however minimal, the PCIT must provide concrete evidence of the resultant error and prejudice to the revenue to justify invoking Section 263 of the Act.

6.9. In light of the above findings and considering the judicial precedents cited, we hold that the order passed by the AO under Section 143(3) of the Act was neither erroneous nor prejudicial to the interests of the revenue. Therefore, the revisionary action taken by the PCIT under Section 263 of the Act is not justified. Thus, the appeal filed by the assessee is allowed, and the order passed by the Principal Commissioner of Income Tax under Section 263 of the Act is hereby quashed.

7. In the result, the appeal of the Assessee is allowed.

Order pronounced in the Open Court on 23 July, 2024 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 23/07/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The Pr.CIT-3, Ahmedabad
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad