

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.18/Nag./2021
(Assessment Year : 2014-15)

Shri Amjad Ahmed Sheikh
Ward-no.1, Old Basti, Butibori
Nagpur 441 108 PAN – APTPS0918R

..... Appellant

v/s

Principal Commissioner of Income Tax
Nagpur-2, Nagpur

..... Respondent

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

Date of Hearing – 06/08/2024

Date of Order – 13/08/2024

ORDER

PER K.M. ROY, A.M.

The present appeal has been filed 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-2, Nagpur, [*learned PCIT*], for the assessment year 2014-15.

2. In its appeal, the assessee has raised following grounds:-

"1] Assessment order passed by learned A.O. U/s.143(3) r.w.s. 147 dt.19.12.2018 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 Pr.C.I.T.-2 has not given proper opportunity to file Written Submission. Pr.C.I.T.-2 has also not considered Assessee's adjournment application dt. 15.02.2021.

3] Only issue was whether the A.O. passed the assessment order after proper inquiry relevant to make the assessment. 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.

4] 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.

PRAYER:- It is prayed that the impugned order u/s 263 dt. 26.02.2021 be kindly cancelled.”

3. Facts in Brief:- The assessee is an individual. For the year under consideration, the assessee filed his return of income on 23/01/2015, declaring total income of ₹ 10,27,770. The assessee is engaged in the business of labour contract in the name and style as Taj Enterprises. The assessee is also engaged in agricultural activities. The Assessing Officer stated that the Department had received information which includes details of purchase of immovable property by the assessee during the year under consideration. During the financial year relevant to the assessment year under consideration, Shri Amjad Ahmedbhai Sheikh and Shri Parinay Ramesh Fuke, purchased immovable property from Shri Abhay Shamrao Potdukhe and fourteen others for a consideration of ₹ 1,50,00,000. Keeping this in view, the Assessing Officer asked the assessee to produce details of persons from whom he has taken the advance against plot of land. In its reply, the assessee showed his incapability to furnish the details of these persons, as the assessee has not filed any return of income for the year under consideration and hence the case was re-opened by issuing notice under section 148 of the Act on 25/07/2017, after recording reasons and obtaining prior approval from

competent authorities and the notice under section 148 of the Act was served on 25/07/2017. In response, the assessee filed his return of income for assessment year 2014-15 on 01/12/2018, declaring total income ₹ 83,77,020. Further, notice under section 143(2) of the Income Tax Act, 1961 issued on 03/12/2018 and duly served upon the assessee. Notice under section 142(1) of the Act along with questionnaire was issued on 03/12/2018 and duly served upon the assessee on 03/12/2018. The Assessing Officer, considering the deliberations made by the assessee during the course of hearing, the Assessing Officer held that it is clear that the reasons for re-opening of the case which can be verified from the documents produced and the reason for reopening of the case is verified while passing the order under section 143(3) r/w section 147 of the Act. Accordingly, the Assessing Officer completed the assessment by accepting the returned income of ₹ 83,77,020.

4. Meanwhile, the learned Principal Commissioner of Income Tax ("*the learned PCIT*") invoked his jurisdiction conferred on him under section 263 of the Act. Here, we deem it appropriate to reproduce the show cause notice issued by his under section 263 of the Act.

"Please refer to the assessment framed in your case on 19.12.2018 by the DCIT, Circle-3, Nagpur u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961.

2. On examination of the case records it is seen that you had filed return of income on 23.01.2015 declaring total income of Rs.10,27,770/-. Assessment u/s.143(3) r.w.s.147 of the Act was completed on 19.12.2018 by accepting the revised returned income. You are proprietor of M/s. Taj Enterprises, Butibori, Nagpur, engaged in the business of manpower supply and during this year under consideration you had also entered into a transaction of purchase of immovable property.

3. The case was reopened u/s.147 of the Act. on the basis of following information received from the DDIT (I&CI), Nagpur regarding purchase of immovable property jointly with one other person on 18.06.2013:

Details of property purchased	Date of purchase	Purchase Value	Market value	Share & Investment made by assessee in the property
Agricultural land 5.16 acres situated at Kh. No.9, Mouza Borkhedi, Nagpur (Gramin)	18.06.2013	1,50,00,000	2,75,00,000	33% & ₹ 1,29,12,000 (1,14,00,000 + 15,12,000 (stamp duty + registration

3.1 It has also been informed by the DDIT (I&CI), Nagpur, that the details furnished by you regarding source of investment in the property are as under:-

Sr. no.	Particulars	Amount
1.	Paid by Pariney Fuke the Co-owner	₹ 36,00,000
2.	Unsecured loan taken by assessee from friends through banks	₹ 42,00,000
3.	From Taj Enterprises	₹ 13,00,000
4.	Advances taken by assessee from different persons against plot of land	₹ 74,00,000
	Total:	1,65,00,000

However, you could not substantiate the statement and therefore, offered additional income of ₹ 49,50,000/- over and above your returned income.

3.2 In response to notice u/s. 148 you revised the return on 21.11.2017 declaring the total of Rs. 58,77,270/-, Thereafter the return was again revised on 01.12.2018 declaring the total income of Rs. 83,77,020/- after incorporating the demand income of Rs.24,99,750/-u/s.56(2) of the Act.

3.3 During 147 proceedings, in support of the source of investment in property. you had furnished a copy of bank statement of your savings account held with Allahabad Bank Butibori branch. From the statement it is seen that part of the purchase consideration, ie. of Rs. 30,00,000/- had been paid by you in FY 2012-13. Further, from the purchase deed it is seen that purchase consideration of Rs.84,00,000-has been paid in cash.

3.4 Vide another submission dated 06.12.2018 you had contended the sources of investment as under:

- i. From Taj Enterprises
- ii. Other sources (property dealing)
- iii. Past savings of assessee
- iv. Unsecured loans taken by assessee from friends and relatives.

However, from the record it is seen that no document in support of any of your contentions has been brought on record. Owing to which the reason for re-opening of the case for the case for scrutiny has remained unverified. Non-examination of this aspect has resulted into under assessment of income by Rs.40,31,471/- for current AY and by Rs.30,00,000/- for AY 2013-14 detailed as under:

Particulars	Amount in Rupees
Purchase consideration including stamp duty.	1,65,12,000
Less: Amount paid by Shri Fuke	36,00,000
Less: Income shown in ITR filed on 21.11.2017	58,80,529
Balance	70,31,471

4. Regarding the issue of charging of deemed income u/s 56(2), in the hands of the assessee, authentic document from appropriate authority in support of stamp valuation of the property as on the date of agreement to sale, i.e. on 29.08.2012, is not seen to have been brought or record.

5. Further as per the ITS details you had purchased one more immovable property on 17.10.2013 and had also sold one immovable property on 18.02.2014. This information is also not seen to have been verified.

6 In view of the above, it is clear the AO has not examined the issue thoroughly thereby resulting in under-assessment of income by Rs.40,31,471/- for current AY 2014-15 and by Rs.30,00,000/- for AY 2013-14 (total of Rs.70,31,471/-). Hence the assessment order passed in your case u/s.143(3) r.w.s.147 of the Act dated 19.12.2018 is not only erroneous but also prejudicial to the interest of revenue.

7. In the exercise of powers conferred upon me under sub-section (1) of section 263 of the Act. I, therefore, propose to revise the said assessment order.

8. You are hereby given an opportunity of being heard in the matter on 16.02.2021 at 3.00 P.M. at 2nd floor, Saraf Chambers, Sadar, Nagpur.

9. You may file a reply regarding the proposed revision, together with necessary supporting evidence, at the time of hearing. In case you fail to respond to this communication, it shall be presumed that you have no objection to the proposed and the action and the proceedings u/s. 263 shall be finalized on merits."

5. However, there was no response by the assessee and thereafter the learned PCIT has elaborately dealt with the issue in the impugned order and held as under:-

"6. Decision of the PCIT:-

I have considered the materials available on the records and after giving due consideration to the entire facts as well as circumstances of the case, I find that during the year under consideration the assessee has derived income from business of supply of manpower and also from transactions of immovable properties.

6.1 The assessee has filed his return of income for A.Y. 2014-15 on 23.01.2015 declaring total income of Rs. 10,27,770/-. The assessment u/s.143(3) r.w.s.147 of the Act was completed on 19.12.2018 and the income was assessed at the income of Rs.83,77,020/- returned by the assessee in response to notice issued u/s.148 of the Act.

It is noted from the records that the case of the assessee was reopened u/s.147 of the Act on the basis of information received from the DDIT (I&CI), Nagpur that the assessee had purchased immovable property jointly with one other person on 18.06.2013 for Rs.1.50 Crores as against market value of Rs.2.75 crores. Further, the DDIT(I&CI), Nagpur informed that the assessee could not explain the sources of investment in the above property and offered additional income of Rs.49,50,000/- over and above the returned income for the AY 2014-15. Accordingly, the assessee revised the return on 21.11.2017 and declared the total of Rs.58,77,270/-, It was revised again on 01.12.2018 and the total income was shown at Rs.83,77,020/-after incorporating the deemed income of Rs. 24,99,750/- u/s.56(2) of the Act. Further, it was noted from the purchase deed that out of the total purchase consideration amount of Rs.84,00,000/- was paid in cash.

Further, it was noted from the record that no supporting documents relating to sources of investment was furnished and therefore it remained unverified. Therefore, non- examination of this aspect has resulted into under assessment of income by ₹ 40,31,471/- for A.Y. under consideration.

As regards the issue of charging of deemed income u/s.56(2), in the hands of the assessee, authentic document from appropriate authority in support of stamp valuation of the property as on the date of agreement to sale, ie. on 29.08.2012, is not seen to have been brought on record.

Also, as per the ITS details the assessee had purchased one more immovable property on 17.10.2013 and had also sold one immovable property on 18.02.2014. This information was also not seen to have been verified.

In view of the above, it is clear that the AO had not examined the issue thoroughly thereby resulting in under-assessment of income by Rs.40,31,471/- for current AY 2014-15. Hence the assessment order passed in the case of the assessee u/s.143(3) r.w.s.147 of the Act dated 19.12.2018 is not only erroneous but also prejudicial to the interest of revenue.

From the above narrated facts it is clear that the AO has not applied his mind with reference to the relevant provisions of the Act while framing the assessment order rendering the assessment order erroneous as well as prejudicial to the interest of the revenue. In the case of the assessee the assessment order passed by the AO on 19.12.2018 and the time to invoke section 263 has not elapsed.

6.2. Besides, it is also relevant to cite the provisions of Explanation 2 to Section 263 of the Income Tax Act which is as under :-

Explanation 2. For the purposes of this section, it is hereby declared that 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, in the opinion of the Principal Commissioner or Commissioner,-

(a) The order is passed without making inquiries or verification which should have been made:

(b) The order is passed allowing any relief without inquiring into the claim;

c) The order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) The order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

6.3 In this case, the assessment order has been passed without making enquiries relating to many aspects viz, the sources of huge cash deposited in the bank account, sources of investment explained without any supporting evidences, sources of investment in another property and capital gain derived on sale of another property appearing on ITS, all these aspects should have been verified by the AO. Accordingly, it has to be considered erroneous and prejudicial to the interest of revenue.

6.4 to 6.10

7. In the light of facts mentioned in the foregoing paras and the details on record clearly indicate that the said issue and discrepancies were neither verified nor inquired upon and the effect of the same has not been brought on the record and in the absence of express consideration and reflection of same in the assessment order as well as on perusal of the records, the assessment order passed by the AO is erroneous in so far as prejudicial to the interest of the revenue. Therefore, the said assessment order passed by the AO, is set aside to the Assessing Officer who is directed to reassess the income of the assessee afresh after examining the relevant details and other issues and conduct proper and necessary enquiry, as may be relevant and necessary and then pass a speaking assessment order. Needless to state, the Assessing Officer should follow due procedure and also afford reasonable and fair opportunity of being heard to the assessee before the completion of the reassessment."

6. During the course of hearing, the learned Authorised Representative invited our attention to the detailed paper book filed containing written submissions which runs into 106 pages, but he could not point out as to

whether any enquiry was made by the Assessing Officer to verify the source of investment. It is seen from the assessment order that the assessee was asked to produce details of persons from whom he has taken the advance against the plot of land. The assessee has explained the following sources of income against which the investments were made:—

- i) Business income from activities of manpower supply;
- ii) Income from property as discussed in the return of income;
- iii) Past saving of the assessee duly offered for tax in the respective year; and
- iv) Unsecured loans from friends / relatives.

7. It is surprising to note that the assessee failed to furnish the basic details of his lenders such as name of the lenders, address, amount, PAN details, etc. It is a classic case of non-enquiry and non-application of mind by the Assessing Officer by not advertent to the very issue of re-opening of assessment. In fact, the learned A.R. submitted that no enquiry was made during the course of assessment proceedings, but he pointed out certain factual and numerical mistakes in the show cause notice and the order issued by the learned PCIT. Be that as it may, the learned A.R. could not controvert the fact that there has been an abject failure to conduct proper enquiry. Consequently, we hold that the exercise of power conferred on the learned PCIT in invoking the revision proceedings under section 263 of the Act is justified on the ground of no enquiry. Thus, all the grounds raised by the assessee are dismissed holding that the learned PCIT was justified in usurping the jurisdiction under section 263 of the Act.

8. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 13/08/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 13/08/2024

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