

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 288/RPR/2024
निर्धारण वर्ष / Assessment Year : 2013-14

The Income Tax Officer-4(1),
Raipur (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

Shri Surendra Kumar Daga
C/o. Maya Rui Bhandar, Gol Bazar,
Near Churi Lane, Sadar Bazar,
Raipur (C.G.)-492 001
PAN : ACVPD7464L

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 22.08.2024

घोषणा की तारीख / Date of Pronouncement : 27.08.2024

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the revenue is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 18.04.2024, which in turn arises from the order passed by the A.O under Sec.143(3) r.w.s. 263 of the Income-tax Act, 1961 (in short 'the Act') dated 31.12.2018 for the assessment year 2013-14. The revenue has assailed the impugned order on the following grounds of appeal:

- "1. "Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in quashing the order passed by the AO u/s 143(3) r.w.s. 263 of the Income Tax Act merely on the decision of the Hon'ble ITAT, Raipur?"
2. "Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in deleting the addition of Rs. 1,94,20,000/- by quashing the order, ignoring the facts as brought on record by the AO that the assessee has failed to prove the genuineness and creditworthiness of the lenders as per the parameters of the legal provisions u/s 68 of the Act?"
3. "Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in deleting the addition by quashing the order which is contrary to the ratio of the decisions of Hon'ble Supreme Court in the case of A. Govinda Rajulu Mudliar Vs. CIT (1958) 34 ITR 807 (SC), CIT Vs M. Ganapathi Mudaliar (1964) 53 ITR 623 (SC), which clearly states that where the assessee failed to prove satisfactorily the source and nature of a credit entry in his books, and it is held that the relevant amount is the income of the assessee, it is not necessary for the Department to locate its exact source?"
4. "Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in deleting the addition by quashing the order which is contrary to the ratio of the decisions in CIT Vs. Precision Finance Pvt. Ltd. 1994 2008 ITR 465, wherein it

was held that it is for the assessee to prove the creditworthiness and genuineness of the transaction and mere furnishing of particulars is not enough?"

5. "Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in deleting the addition by quashing the order without considering and distinguishing the ration. of the judgement of the cases such as Rameshwar Prasad Bagla 68 ITR 653 (Allahabad) & Homi Vs. CIT 41 ITR 135, 142 (Supreme Court) wherein it is stated that the totality of circumstances must be considered in a case of circumstantial evidence and the totality of the circumstances has to be taken into consideration and the combined effect of all those circumstances is determinative of the question as to whether or not a particular act is proved?"

"Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in deleting the addition made by the AO and giving a decision in favour of the assessee and against the revenue, thereby giving a finding against the ratio of the settled Law of the Hon'ble Bombay High Court in the case of Sanjay Bimalchand Jain, Nagpur ITA No.18/2017 dated 10.04.2017, Bombay High Court, Nagpur Bench* wherein it is stated that since there is no economic or financial justification for the investment in are sha-es, the transaction has all the ingredients of attracting the rigors of Section 68 of the I. T. Act? Similar view involved in this case as the lenders were not having financial justification for the lending money.

7. "Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in quashing the order without giving a finding which is contrary to the evidence on record, as the Id. CIT(A) did not appraise the creditworthiness and genuineness of the lenders, a finding which is factually incorrect, thereby rendering the decision, which is perverse?"

8. The order of the Id. CIT(A) is erroneous both in law and on facts.

9. Any other ground that may be adduced at the time of hearing."

2. Succinctly stated, the assessee had e-filed his return of income for A.Y.2013-14 on 22.03.2014, declaring an income of Rs.6,11,180/-. Thereafter, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

3. Original assessment was framed by the A.O vide his order passed u/s. 143(3) of the Act, dated 30.03.2016, wherein income of the assessee was determined at Rs.9,77,970/- after, inter alia, making two additions, viz. (i) addition on account of interest income : Rs.2,66,795/-; and (ii) addition on account of personal drawings : Rs.1,00,000/-.

4. The Principal Commissioner of Income Tax (for short "Pr. CIT") after culmination of the assessment proceedings called for the assessment records of the assessee. The Pr. CIT observed that the assessee during the subject year had made investment towards purchase of a piece of land at Raipur which was, inter alia, sourced from loans stated to have been raised from certain parties. The Pr. CIT observed that a perusal of the records revealed that deposit of cash in the bank account of the lenders immediately before advancing of loan by them to the assessee. The Pr. CIT, observed that as the A.O had failed to carry out necessary verifications and failed to investigate the source of loans that were raised by the assessee, thus, the assessment order passed by him u/s. 143(3) of the Act, dated 30.03.2016 was rendered as erroneous in so far it was prejudicial to the interest of the revenue u/s. 263 of the Act. Accordingly, the Pr. CIT vide his order passed u/s. 263 of the Act, dated 27.03.2018 set-aside the assessment order passed by the A.O u/s. 143(3) of the Act, dated 30.03.2016 with a direction to him to carry out necessary verification qua the loans that were stated to have been raised by the assessee for making

investment, and frame a fresh assessment after affording reasonable opportunity of being heard to the latter.

5. The A.O pursuant to the order of the Pr. CIT u/s. 263 of the Act, dated 27.03.2018 framed the assessment vide his order passed u/s. 143(3) r.w.s. 263 of the Act, dated 31.12.2018, wherein he held the loans of Rs.1,94,20,000/- raised by the assessee for making investments towards purchase of land as unexplained cash credit u/s. 68 of the Act. Accordingly, the A.O vide his order passed u/s. 143(3) r.w.s. 263 of the Act dated 31.12.2018, determined the income of the assessee at Rs.2,03,97,970/-.

6. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). As the order passed by the Pr. CIT u/s. 263 of the Act, dated 27.03.2018 was in the mean time quashed by the Tribunal for want of valid assumption of jurisdiction vide its order passed in ITA No.915/KOL/2018, dated 12.10.2021, therefore, the CIT(Appeals) taking cognizance of the said development held the order passed by the A.O u/s. 143(3) r.w.s. 263 of the Act, dated 31.12.2018 as infructuous.

7. The revenue being aggrieved with the order passed by the CIT(Appeals) dated 18.04.2024 has carried the matter in appeal before us.

8. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record.

9. Shri R.B Doshi, Ld. Authorized Representative (for short 'AR') for the assessee, at the threshold submitted, that as the Tribunal vide its order passed in ITA No.915/KOL/2018, dated 12.10.2021 had quashed the order passed by the Pr. CIT, Kolkata u/s. 263 of the Act, dated 27.03.2018, therefore, the CIT(Appeals) after taking cognizance of the said fact had rightly quashed the order passed by the A.O u/s. 143(3) r.w.s. 263 of the Act, dated 31.12.2018. The Ld. AR in order to fortify his aforesaid contention had placed on record a copy of the order passed by the ITAT, Kolkata in ITA No.915/KOL/2018, dated 12.10.2021 for A.Y.2013-14.

10. We have thoughtfully considered the issue involved in the present appeal, and are of the view, that as the order passed by the Pr. CIT, Kolkata u/s. 263 of the Act dated 27.03.2018, which had formed the very genesis for framing of the assessment by the A.O vide his order passed u/s. 143(3) r.w.s. 263 of the Act had been quashed by the Tribunal vide its order passed in ITA No.915/KOL/2018, dated 12.10.2021, therefore, as observed by the CIT(Appeals), the impugned order of assessment passed by the A.O u/s. 143(3) r.w.s. 263 of the Act, dated 31.12.2018 was destined

to meet the same fate and was liable to be quashed. We, thus, finding no infirmity in the view taken by the CIT(Appeals), uphold the same.

11. In the result, appeal of the revenue being devoid and bereft of any merit is dismissed in terms of our aforesaid observations.

Order pronounced in open court on 27th day of August, 2024.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 27th August, 2024.
****SB, Sr. PS

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT, Raipur-1 (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.