

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.600/PUN/2024  
निर्धारण वर्ष / Assessment Year: 2018-19

Sudarshan Bhagwandas Naval, Naval Multispecialty Hospital, Near Bhaskar Market, Jilla Peth, M.J. College Road, Jalgaon- 425001. PAN : AAFPN7830C	Vs.	PCIT (Central), Nagpur.
Appellant		Respondent

Assessee by : Shri Abhishek K. Choksy &  
Shri Ankit Davda  
Revenue by : Shri Ajay Kumar Keshari  
Date of hearing : 27.08.2024  
Date of pronouncement : 30.08.2024

**आदेश / ORDER**

**PER SATBEER SINGH GODARA, JM:**

This assessee's appeal for assessment year 2018-19 arises against the PCIT (Central), Nagpur's order dated 01.02.2024 passed in case no. ITBA/REV/F/REV5/2023-24/1060387551(1) involving proceedings u/s 263 of the Income Tax Act, 1961; in short "the Act".

Heard both the parties at length. Case file perused.

2. Both the learned representatives invite our attention to learned PCIT's impugned revision directions terming the Assessing Officer's section 143(3) assessment herein dated 30.09.2021 as an erroneous one causing prejudicial to interest of the Revenue, reading as under :-

*"8. I have carefully considered the facts of the case and the submissions made by the assessee. In response to the show cause, the assessee has filed a written submission dated 15/01/2024 uploaded on 16/01/2024 which is placed on record. The reply submitted by the assessee is considered, but found not acceptable for the detailed reasons mentioned hereunder.*

*(a) The assessee in its submission has stated that "Notice under Section 263 is prima facie bad in law, since Assessing Officer was well aware that Valuation Report from DVO has not been received till the date of Assessment Order and construction cost has been assessed based on the books of account subject to rectification under Section 154 of Income Tax Act. In other words, there is no errors in the Assessment order, since all the facts were on the record and were considered before passing the Assessment Order and therefore, the basic element to invoke the provision of Section 263 of Income Tax Act is absent, since there is no error and therefore it cannot be treated as pre-judicial in the interest of revenue.". The objection of the assessee is not acceptable in view of the explanation 1(b) to the section 263, which define the record as under;*

*"Record" shall include and shall be deemed always to have included all records relating to any proceeding under this act available at the time of examination by the principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner;*

*Further the Hon'ble Supreme Court in the case of CIT v. Shree Manjunathware Packing Products & Camphor Works (1998) 96 Taxmann 1, vide order dated 02-12-1997 has held that "Record, connotation of Word record used in section 263(1) would mean record as it stands at the time of examination by commissioner and not as it stands at the time of order passed by Assessing Officer and, as such, Commissioner would be justified in invoking section 263 on the basis of valuation report submitted by DVO subsequent to assessment order."*

*Further in the case of Commissioner of Income Tax Vs. S.M. Oil Extraction Pvt. Ltd. [(1991) 190 404], Calcutta High Court itself interpreted the word "record". In that case the assessment was completed on February 1, 1983. The Income Tax Officer before he*

*completed the assessment had referred the matter of plant and machinery and electrical installation to the Valuation Officer (P&M). His report was not received by the Income Tax Officer when the assessment was completed. It was received by him after the assessment proceeding was completed. The Commissioner of Income-Tax took into consideration the said Valuation Report and found the assessment order erroneous. In that context the question which had arisen for consideration was whether the Commissioner, in exercise of jurisdiction under Section 263 (1) of the Act could have relied upon the valuation report which had come into the possession of the Income-tax Officer subsequent to the completion of the assessment. The Calcutta High Court held that "the record contemplated in section 263(1) does not mean only the record on which the order of assessment is based. The Commissioner is entitled, for the purpose of exercising his revisional jurisdiction, to look into the whole evidence. The expression "record" as used in section 263 of the Act is comprehensive enough to include the whole record of evidence on which the original assessment order was passed. The valuation proceeding is a part of the assessment proceeding. But once the valuation report was received by the Income Tax officer, although subsequent to the completion of the assessment, it forms part of the assessment record in question." It further held that "where any proceeding is initiated in the course of the assessment proceeding having a relevant and material bearing on the assessment to be made and the result of such proceeding was not available with the Income-tax officer before the completion of the assessment, but the result came subsequently, the revising authority is entitled to look into such material as it forms part of the assessment records of the particular assessment year".*

*Considering the above decisions of the courts, the submission of the assessee is not acceptable. The order passed by the assessing officer is erroneous and prejudicial to the interest of revenue.*

*(b) Further the assessee in its submission has stated that "the valuation stated is mentioned in the valuation report as Rs. 3,73,14,000/-, till the time of visit assessee has incurred the expenses on building construction upto 31st March 2020 is Rs.4,07,98,516.88/-, which is higher than that of final valuation report. In view of the same, the foundation of issuance of notice itself is defeated and notice requires to be withdrawn on this ground alone." The submission of the assessee is not acceptable as the assessment year under consideration is A.Y.2018-19 and as per the valuation of building shown by the assessee in his return of income as on 31-03-2018 is Rs.2,12,73,898/- and the DVO has determined the valuation on that date at Rs.3,73,14,000/-, whereas the assessee in his submission is referring to the valuation of the building as on 31-03-2020 at Rs.4,07,98,516. The value of the building as on 31-03-2020 is not relevant for the assessment year under consideration.*

*(c) The decision of the Hon. Karnataka High Court in the case of CIT Vs Gokuldas Exports 2011- 333-ITR-214 and Hon Gujarat High*

*Court in the case of Commissioner of Income-tax-I v. Berry Plastics (P.) Ltd. [[2013] 35 taxmann.com 296 (Gujarat)] relied upon by the assessee are not applicable to the facts of the present case. The facts of the cases relied upon are different from the fact of the present case in as much as the cases relied upon by the assessee do not deal with the situation where the valuation to the DVO was referred during the course of the assessment proceedings and the report of the DVO is received after the completion of the assessment.*

*(d) The assess in his submission has further stated that "In the present case, value shown in the valuation report is almost equal to the actual value incurred by the assessee. Rather, actual value of the building is Rs. 4,07,98,516.88/- as against the valuation report of Rs. 3,73,14,000/- and hence in terms of above decision, report cannot be considered as vague and ambiguous and hence needs to be accepted and there is no need of any invoking of provisions of Section 263 of Income Tax Act 1961 and Hon Assessing Officer has correctly assessed the income following the principles of law. This Valuation Report as such do not show much deviation than that of actual amount spent on the construction of building and therefore, there is no need of invoking the provision of Section 263 of Income Tax Act 1961. without prejudice, I state that the valuation report is the indicative to ascertain whether there is any undisclosed income or under-valuation. Valuation is as per books of account is Rs. 4,07,98,516.88/- whereas valuation report specifies Rs. 3,73,14,000/-.*

*The submission given by the assessee is not acceptable as it has been already pointed out herein above that the assessment year under consideration is A.Y.2018-19 and as per the valuation of building shown by the assessee in his return of income as on 31-03-2018 is Rs.2,12,73,898/- and the DVO has determined the valuation on that at Rs.3,73,14,000/-, whereas the assessee in his submission is referring to the valuation of the building as on 31-03-2020 at Rs.4,07,98,516. The value of the building as on 31-03-2020 is not relevant for the assessment year under consideration.*

*(e) Lastly, the assessee has submitted that "I would like to draw your kind attention on the Para 5 & last para of the assessment order dtd 30.09.2021 that when all the details are available, provision under Section 154 to be invoked, if required. Therefore, The notice under Section 263 of Income Tax Act 1961 will not be sustainable and tenable in law on this ground as well as valuation as per books of account if Rs. 4,07,98,516.88/- as against reflected in the valuation report by independent valuer at Rs. 3,73,14,000/-." The Contention of the assessee is not acceptable as already pointed out in the above paras on the basis of various court's decision including the decision of the Hon'ble Supreme Court, the Commissioner would be justified in invoking section 263 on the basis of valuation report submitted by DVO subsequent to assessment order. As such the order passed by the assessing officer is erroneous and prejudicial to the interest of revenue.*

*9. Considering the specific facts as discussed above and also keeping in view the provisions of Explanation 1(b) to section 263 of the Act and the decision of the Hon'ble Supreme Court in the case of CIT v. Shree Manjunathware Packing Products & Camphor Works (1998) 96 Taxmann 1, I am of the considered view that the assessment order passed by the AO u/s 143(3) dated 30-09-2021, is erroneous in so far as it is prejudicial to the interest of revenue. Accordingly, the order is set aside for framing fresh assessment. The A.O is directed to consider the specific issues as discussed above and make necessary enquiries to ascertain the income of the assessee and pass the assessment order afresh in accordance with the law, after providing an opportunity of being heard to the assessee."*

3. We advert to the basic relevant facts. The assessee; an individual, was subjected to section 133A survey action at his business premises (hospital) on 27.02.2018. The same followed his e-return u/s 139(1) dated 17.10.2018 stating income of Rs.24,92,830/-. The Assessing Officer took up scrutiny. Learned counsel invites our attention to para 4 in assessment dated 30.09.2021 that the Assessing Officer had made section 142A(1) reference to the DVO for valuation of construction cost of his new hospital building on 29.12.2020. The said valuation authority did not file its report up to 30.09.2021. This made the Assessing Officer to finalize the impugned assessment with a rider that since the matter was getting time barred, the same would indeed subjected to modification, if any, based on the DVO's valuation report to be received latter.

It is in this factual background that this learned PCIT has assumed his revision jurisdiction as extracted in foregoing paragraphs. This leaves the assessee aggrieved.

4. Learned counsel states before us is that once the Assessing Officer had made his statutory reference to the DVO on 29.12.2020, the corresponding valuation report; submitted on 28.04.2022, received on 02.05.2022, had arrived at the cost of construction as Rs.3,73,14,000/- as against the assessee having shown the same as Rs.2,12,73,898/- as on 31.03.2018 and, therefore, it was an instance of difference in investment of Rs.1,60,40,102/-. He quotes section 142A(6) of the Act that the above valuation report had not been submitted within the statutory period of “six months from the end of the month in which the reference is made under sub-section (1)”, and the same could not have been acted upon so as to result in the corresponding addition to be made in assessee’s hands.

5. Learned counsel further submits that the legislature has used statutory expression “shall” in section 142A(6) of the Act which implies that it is a mandatory provision than a directory one and, therefore, we ought to follow (2024) 159 taxmann.com 247 (Raipur – Trib.) Shree Krishna Colonisers vs. PCIT, (2023) 156 taxmann.com 511 (Amritsar – Trib.) Golden Tulip Hospitality Pvt.

Ltd. vs. ACIT and ITA No.2415/Hyd/2018 dated 05.09.2019 Shri Zulfi Revdjee vs. ACIT to hold it as time barred in very terms.

6. We have given our thoughtful consideration to the assessee's instant first and foremost argument and find it to be devoid of merits. We make it clear that not only section 153, Explanation 1(v) excludes the time spent between the date of section 142A reference and submission of the consequential valuation report in such a case but also the CBDT Circular No.15 dated 21.01.2015 makes it clear in para 43.2 that there is no time limit for furnishing of the report by the valuation officer under the above statutory provision. We further deem it appropriate to conclude that once the legislature has not even included the time spent between the date of reference and submission of DVO report in the time limit prescribed for framing of an assessment, such a mutuality contradictory interpretation of section 142A(6) is not sustainable in law. We accordingly reject the assessee's first and foremost substantive argument. Learned counsel could hardly dispute that the foregoing judicial precedents do not apply in very terms.

7. Learned counsel next takes us the PCIT's detailed discussion in para 4 that he had not applied his mind once having acted as per the Assessing Officer proposal made for section 263 revision jurisdiction. We note that the assessee's instant second substantive

argument also deserves to be rejected as the learned PCIT's revision directions have duly discussed all the relevant facts before reaching to an independent conclusion that the foregoing regular assessment was an erroneous one causing prejudicial to interest of the Revenue. Rejected accordingly.

8. Learned counsel raises the assessee's third substantive argument that once the Assessing Officer had made it clear in para 5 of the assessment order that the matter shall be examined afresh in section 154 proceedings once the DVO submits his report, the PCIT has erred in law on facts in assuming his section 263 revision jurisdiction.

9. We are of the considered view that the assessee's instant third substantive argument deserves to be declined only as an issue which is subject matter of valuation to be followed by the objection thereto, would hardly be treated as an apparent mistake so as to attract section 154 rectification as per T.S. Balaram ITO vs. Volkart Bros (1971) 82 ITR 50 (SC). Rejected accordingly.

10. Learned counsel's last argument is that the PCIT (Central), Nagpur did not have jurisdiction in section 263 revision proceedings once the Assessing Officer had framed his assessment at Nashik, therefore, the order under challenge before us deserves to be annulled on this jurisdictional aspect as well. We find that the

assessee has failed to bring any material in the case file indicating the PCIT (Central), Nagpur lacking jurisdiction as per provisions of the Income Tax Act. We make it clear that till the time contrary is proved, an income-tax authority exercising its jurisdiction in proceedings which are treated as general in nature u/s 136 of the Act, could not be held as lacking jurisdiction on mere conjectures and surmises. We accordingly reject the assessee's instant last argument as well.

No other argument has been pressed before us.

11. This assessee's appeal is dismissed.

Order pronounced on this 30<sup>th</sup> day of August, 2024.

Sd/-  
**(G. D. PADMAHSHALI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 30<sup>th</sup> August, 2024.

*Sujeet*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT (Central), Nagpur.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.