

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'A', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. **335/CHD/2024**

निर्धारण वर्ष/ Assessment Year : 2016-17

Jaspreet Singh Sidhu, H. No. 1656, Sector 33-D, Chandigarh	Vs. बनाम	The PCIT-1, CR Building, Sector 17, Chandigarh
स्थायी लेखा सं./PAN No: BYKPS6091L		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ RESPONDENT

(PHYSICAL HEARING)

निर्धारिती की ओर से/Assessee by : Shri Parikshit Aggarwal, CA
राजस्व की ओर से/ Revenue by : Shri Rohit Sharma, CIT DR

सुनवाई की तारीख/Date of Hearing : 05.09.2024
उद्घोषणा की तारीख/Date of Pronouncement : 18.09.2024

आदेश/Order

Per Krinwant Sahay, A.M.:

The appeal in this case has been filed by the Assessee against the order passed u/s 263 of the Income Tax Act, 1961 (in short 'the Act') dated 12.03.2024 of the ld. Principal Commissioner of Income Tax (PCIT), Chandigarh-1.

2. Grounds of appeal are as under: -

1. *That on law, facts & circumstances of the case, the Worthy Pr. CIT has grossly erred in assuming jurisdiction u/s 263 even when:*

1.1. *The impugned assumption of jurisdiction and the order passed u/s 263 is time barred.*

1.2. *The original assessment order passed u/s 147 did not satisfy the twin conditions of being an 'erroneous order' and 'prejudicial to the interest of revenue'.*

1.3. *The Worthy Pr. CIT has erred in setting aside the assessment order u/s 147 and in directing the AO to make assessment afresh on the ground that AO had not conducted worthwhile enquiries during the assessment proceeding even when the AO had conducted thorough enquiries and also most importantly the Pr. CIT failed to carry out any enquiry himself and also failed to demonstrate which most necessary enquiry the Ld. AO failed to carry out.*

1.4. *The Worthy Pr. CIT failed to appreciate that inadequate inquiry does not amount to lack of inquiry so as to assume valid jurisdiction u/s 263.*

1.5 *The Worthy Pr. CIT has erred in setting aside the original assessment on the issue of interest income of Rs. 8,75,726/- during the financial year in question.*

1.6 *The worthy Pr. CIT has conducted the impugned proceedings u/s 263 in extreme haste and without affording reasonable opportunity of being heard to the applicant.*

2. *That the appellant crave leave for any addition, deletion or amendment to the Grounds of appeal on or before the disposal of the same.*

2. The only ground that the Assessee is agitating is regarding the order passed by the PCIT, Chandigarh-1 on the issue of interest income of Rs. 8,75,726/-.

3. Brief facts, as per the order of the order u/s 263 of the PCIT, Chandigarh-1 are as under: -

“The brief facts of the case are that the case was reopened u/s 147 of the Act based on the information that the assessee had purchased immovable property of Rs. 5,04,19,380/-. Subsequently, the assessment u/s 147 r.w.s. 144B of the Income Tax Act, 1961 on 29.03.2022 at returned income i.e. Rs. 3,64,700/-

2. On perusal of the assessment record, it was noticed that the assessee had declared the interest income to the tune of Rs. 2,839/- in the Rol whereas as per the bank statement was been found that the assessee had received interest income amounting to Rs. 8,75,726/-. The FAO, however, while finalizing the assessment, did not add this amount to the taxable income. Consequently, a notice u/s 263 was issued to the assessee vide letter ITBA/REV/F/REV1/2023-24/1061619619(1) dated 27.02.2024 by fixing the hearing on 04.03.2024.”

4. During the proceedings before us, the Id. Counsel of the Assessee reiterated the submissions made before the Id. CIT(A), the relevant part of the same are reproduced as under:

“I would like to draw your kind attention to decision of honourable Delhi High court in [2023] 156 taxmann.com 446 (Delhi) re Prosperous Buildcon (P.) Ltd.:

13. We agree with the view taken by the Tribunal on this score as well. This view is covered by the various judgments including the judgment rendered in Martech Peripherals (P.) Ltd. v. Dy CIT [2017] 81 taxmann.com 73/394 ITR 733 (Mad) by one of us Le., Rajiv Shakhder, J, when sitting in the Madras High Court. The following observations being apposite are extracted hereafter:

"20 The petitioner-assessee, however, challenges this action of the respondents-Revenue, on the ground that it was not permissible for the respondents-Revenue to tax the forfeited share application money, by taking recourse to provisions of section 147 read with section 148 of the Act, unless it assesses to tax that income with reference to which the Assessing Officer had formed reason to believe (within the meaning of section 147), that it had escaped assessment.

21 To my mind, a careful reading of section 147 of the Act would show that it empowers an Assessing Officer to reopen the assessment, if, he has reason

to believe, that any income chargeable to tax has escaped assessment for the relevant year, "and also bring to tax", any other income, which may attract assessment, though, it is brought to his notice, subsequently, albeit, in the course of the reassessment proceedings.

21.1. To put it plainly, the purported income discovered subsequently during the course of reassessment proceedings, can be brought to tax, only, if the escaped income, which caused, in the first instance, the issuance of notice under section 148 of the Act, is assessed to tax:

22 Explanation 3, to my mind, supports this approach, which emerges upon a plain reading of the said provision, along with the main part of section 147 of the Act. The emphasis in this behalf is on the expression "and also bring to tax" appearing in the main part of section 147 in relation to the right of the Revenue to assess taxable income discovered during reassessment proceedings. In my view, Explanation 3, clearly, expounds that the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment and such other issue, that comes to his notice subsequently, albeit, in the course of proceedings held under section 147 of the Act. In other words, if, notice for reopening of the assessment was issued on one aspect, and in the

course of reassessment proceedings another aspect was discovered, the reassessment order would be valid, only if, the aspect, which led to the reopening of assessment continues to form part of the reassessed income.

23. This view, as has been correctly submitted by the learned counsel for the petitioner-assessee, has found resonance with at least three (3) High Courts, is, the Bombay High Court, the Gujarat High Court and the Delhi High Court in the following cases:

- i) CIT v. Jet Airways (1) Ltd. [2011] 331 ITR 236 (Bom):
- ii) CIT v. Mohmed Juned Dadani [2013] 355 ITR 172 (Guj); Manu/GJ/006142013
- (iii) Oriental Bank CIT Manu/DE/1935/2014 of Commerce v. Addl. CIT Manu/DE/1935/2014

23.1 The only High Court, which has taken a contrary view, as it were, is the Punjab and Haryana High Court in the matter of Majinder Singh Kang v. CIT [2012] 344 ITR 358 (P&H); (2012) 25 taxmann.com 124 (P&H)

23.2. In my opinion, with respect, the court, in rendering the judgment in Majinder Singh Kang's case, ignored the fact that the provisions of Explanation 3 had to be read in conjunction with the

main provision, and that, they said Explanation cannot override the main provision.

23.3. This aspect of the matter has also been brought to fore by the Bombay High Court in: CIT Jet Airways (D) Ltd. (2011) 331 ITR 236 (Bom).

23.4. The relevant observations made in this behalf are extracted hereafter (page 247):

"However, Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Section 147 has this effect that the Assessing Officer has to assess or reassess the income (such income) which escaped assessment, and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which, comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a

fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee."

(Emphasis is mine)

[See CIT v. Mohmed Juned Dadani [2013] 30 taxmann.com 1/214 Taxman 38/[2014] 355 ITR 172 (Guj); CIT v. Jet Airways (1) Ltd. [2010] 195 Taxman 117/[2011] 331 ITR 236 (Bom); and Oriental Bank of Commerce v. Addl. CIT [2014] 49 taxmann.com 485/[2015] 228 Taxman 25 (Delhi) (Mag.)/Manu/DE/1935/2014]

14. Given the aforesaid position, we are not inclined to interfere with the impugned order."

xv. Thus, from the above decision it is evident that when in reopened assessment proceedings, the addition is not made on the issue for which the reopening was made, the AO himself is precluded from making any other addition, and therefore, your office is also not authorized to make any other addition by considering the time limit of reassessment order. May I request your honour to kindly drop proceedings under section 263 of the act on this count itself. I would not like to burden record of your honour by submitting further judicial precedents, if your honour wishes, I would be pleased to. Please kindly convey.

xvi. Further as the return of income filed by me the accepted without passing any order under any of the provisions of sections of the income tax act. My return is accepted as it is without even issuing any notice on even

the intimation. Therefore, there is no order passed in my case. Thus, only the order passed by the assessing officer can be revised under section 263 of the income tax act. Therefore, the assumption of jurisdiction by your honour is not in accordance with the law.

In view of above facts may I request your honour to kindly be drawn notice issued under section 263 of the Income-tax Act. In case, if your honour, still wishes to continue with the same kindly grant me an opportunity of making submission on the merits of the case. I hope, you will kindly accede to my request."

5. The ld. DR argued mainly on the line taken by the ld. PCIT in his order passed u/s 263 of the Act.

6. We have gone through the order of the ld. PCIT, Chandigarh-1, the relevant part of which are as under:-

"7. In consequence having considered the facts and circumstances of the instant-case, I am of the considered opinion that the assessment order u/s 147 r.w.s 144B of the Act dated 29.03.2022 passed by the Assessing Officer is erroneous as well as prejudicial to the interests of revenue in accordance with the Explanation 2(a) below section 263(1) of the Act. This is because the order has been passed without making proper and requisite inquiries or verifications which should have been made, thus making the assessment order passed not only erroneous but also prejudicial to the interests of revenue inter alia, in the matter of proper, detailed, satisfactory and complete inquiries

into the matter of assessment and taxation of the impugned interest income. If the said error persists, this interest income of Rs.. 8,75,726/- would remain unassessed in violation of the statutory position applicable which position is therefore to be and is sought to be corrected through this order. The assessee is at liberty to adduce the facts as deemed relevant before the Assessing Officer at the time of the assessment proceedings in consequence to this order. The Assessing Officer shall allow the assessee adequate opportunity of being heard and to make relevant submissions. It may be ensured that the fresh assessment order is passed within the prescribed time as stipulated under section 153(3) of the Act.”

7. We have considered the findings of the ld. PCIT, Chandigarh-1 and we have also considered the submissions made by the ld. counsel of the Assessee during the proceedings before us. We have also considered the submissions of the ld. DR during the proceedings before us. We find that in this case Assessee's return of income was processed u/s 143(1) of the Act and the declared income in return of income was accepted. Thereafter, on the basis of an information that the Assessee had purchased an immovable property of Rs. 5,40,19,380/-, this case was reopened u/s 147 by issuing the notice u/s 148 of the Act. It was the only ground on account of which the assessment was reopened. The Assessee complied with all the requisites sought by the Assessing Officer in various notices issued from time to time and finally the Assessee's explanation regarding the amount of Rs. 5,40,19,380/-, spent on purchasing of immovable

property, has been accepted by the Assessing Officer and the order u/s 143(3) read with section 147 of the Act was passed. Later on, the ld. PCIT found that interest of Rs. 8,75,826/- was not verified by the Assessing Officer during the proceedings before 147 / 148 and therefore, the ld. PCIT issued a notice u/s 263 and passed an order accordingly. During the proceedings before us, the ld. Counsel of the ae has brought it on record that the purported income discovered subsequently during the course of re-assessment proceedings, can be brought to tax only, if escaped income, which caused, in the first instance, the issuance of notice u/s 148 of the Act is assessed to tax. The ld. Counsel has also filed a number of case laws on this issue which have been considered.

8. We are of the considered view that in an order passed u/s 143(3) / 147 of the Act, if on an issue on which the assessment was reopened, no addition is made / Assessee's explanations are accepted, then, additions on other issues which were not part of 147 / 148 cannot be made. Here, in this case, the ld. PCIT has passed an order u/s 263 revising the order passed u/s 143(3) / 147 read with section 144B of the I.T. Act, 1961. It is important to note that in this order, the Assessing Officer did not make any addition on the single point on which the case was reopened u/s 147. Since the issue on which the assessment was reopened has been accepted by the

Assessing Officer and no addition was made on that, therefore, it is not open to make any further addition on any other issue which was not a part of original notice issue u/s 148 of the Act. In this case also, the issue of interest income of Rs. 8,75,726/- was not raised in the notice issued u/s 148 of the Act for revision of the assessment u/s 147, therefore, it is not open to ld. PCIT Chandigarh-1 to order for making inquiry and addition of interest income. Therefore, it is not possible to confirm the action of the ld. PCIT, Chandigarh-1. Accordingly, Assessee's appeal on this issue is allowed.

9. In the result, the appeal is allowed.

Order pronounced on 18.09.2024.

Sd/-
(A. D. JAIN)
Vice President

Sd/-
(KRINWANT SAHAY)
Accountant Member

“आर.के.”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar