

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
MISS. PADMAVATHY S., ACCOUNTANT MEMBER

I.T.A. 1377/Mum/2024
(Assessment Year 2018-19)

M/s Magan Mercantile Pvt Ltd R.No.13, Daulat Nagar, Road No.7, Near Jain Mandir, Borivali East, Mumbai-400 066 PAN : AAGCM2167D	vs	PCIT-4, Mumbai Room No.629, 6 th Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai-400 020
APPELLANT		RESPONDENT

Assessee by : Shri Neeraj Mangla
Respondent by : Shri Vivek Perampurna CIT-DR

Date of hearing : 24/09/2024
Date of pronouncement : 25/09/2024

ORDER

PER ANIKESH BANERJEE, J.M:

An instant appeal of the assessee was filed against the order of the Id.PCIT, Mumbai-4, order passed under section 263 of the Income-tax, 1961 for A.Y. 2018-19, date of order 15/03/2024. The impugned order was emanated from the order of the Learned National e-Assessment Centre, Delhi, (in brevity the "FAO"), order passed under section 143(3) read with section 144B of the Act, date of order 23/04/2021.

2. The assessee has taken the following grounds:-

“1. That the order u/s 263 of the Act passed by Ld. PCIT is bad in law and is passed in contravention of prevailing law as well as facts of the case, therefore liable to be annulled.

2. The Ld. Pr. CIT, Mumbai erred in law as well as on the facts of the case in assuming jurisdiction u/s 263 of the Act by wrongly and incorrectly holding that the AO failed to initiate penalty proceedings u/s 271AAC(1) of the Act hence, the assessment order passed by the AO on dated 23.04.2021 u/s 143(3), was erroneous and prejudicial to the interest of revenue.

3. The Ld. Pr. CIT, Mumbai erred in law as well as on the facts of the case in assuming jurisdiction u/s 263 of the Act by wrongly and incorrectly holding that the AO failed to levy tax as per provisions of Sec. 115BBE of the Act hence, the assessment order passed by the

AO on dated 23.04.2021 u/s 143(3), was erroneous and prejudicial to the interest of revenue.

4. That the assessee company seeks leave to add, alter, modify or delete any ground of appeal during the course of appellate proceedings.”

3. The brief facts of the case are that the assessment was framed by the Faceless Assessing Officer (in short, the 'Id.FAO') under section 143(3) read with section 144B of the Act after making an addition amount to Rs.65,96,040/- on account of unexplained loans and advances under section 68 of the Act. On perusal of the assessment order, the Id.PCIT found that the tax is levied under normal rate on the said addition. The Id.PCIT, by invoking jurisdiction under section 263, treated the assessment order as erroneous and prejudicial to the interest of the revenue for non implementation of section 115BBE related addition U/s 68 of the Act during the impugned assessment year. The Id.PCIT observed that the Id.FAO levied tax at lower rate which is prejudicial to the interest of the revenue. The assessment order was set aside and the revisional

order under section 263 was passed. Being aggrieved on the revisional order, the assessee filed an appeal before us.

4. The Ld.AR argued and filed a written submission which is kept in the record. The Id.AR first invited our attention in impugned assessment order para 3 which is reproduced as below: -

“3 On verification of the statement of loans and advances submitted by the assessee, it has been found that the assessee advanced loan aggregating to Rs 65.96,040/-to various companies / parties during the year under consideration.

A letter was issued to the assessee on 02-04-2021 requesting to explain the sources of the above amount of loans and advances of Rs.65,96,040/- given to different companies/ parties with documentary evidences.

In compliance, the assessee submitted a letter on 05-04-2021 explaining the sources. But no documentary evidences were furnished by the assessee to substantiate such sources.

Thereafter, show cause notices dated 19-04-2021 & 22-04-2021 were issued to the assessee requesting to specifically disclose the identity of the lenders and creditworthiness of such loans and advances given.

In compliance to the show cause notice dated 19-04-2021 & 22-04-2021, the assessee just explained the sources of loans and advances given to different parties / concerns amounting to Rs.65,96,040/-. But no supporting documentary evidences have been submitted by the assessee to substantiate the claim. Hence, the entire amount of Rs.65,96,040/- is added to the total income of the assessee as income from undisclosed sources.”

The Id.AR argued that the Id.FAO wrongly made the addition under section 68 for taking loan from parties, amount to Rs.65,96,040/-. But considering the fact, the assessee had not taken the loan, but advanced the loan to different parties. Before completion of the assessment, the notice was issued by the Id. FAO dated 02/04/2021 where the explanation was asked for invoking provisions of section

68 for addition of Rs.65,96,040/-. The queries of the Id.FAO in said notice is reproduced as below, which is annexed in APB page 33:-

"In the balance sheet you have shown opening balance of Reserve & Surplus of a negative amount of Rs. 16,76,62,174/-

Under the above circumstances, you are requested to explain the source of the above amount of loans and advances of Rs.65,96,040/- given to different companies/parties with documentary evidences.

You are also requested to specifically disclose the identity of the lenders and creditworthiness of such loans and advances given.

Your reply should reach to the undersigned on or before 5 (five) days on receipt of this letter positively, since this is a time barring matter."

The Id.AR stated that the Id.FAO, by a notice dated 19/04/2021 sought the explanation for implementation of section 115BBE in relation to the addition of Rs.65,96,040/- and the assessee on dated 22/04/2021 complied the notice and explained the issue before the Id. FAO. The assessee requested not to implement section 115BBE for levying the tax on the impugned addition. The Id.AR argued that the issue was squarely discussed by the Id.FAO and applied his mind fully for implementation of tax at normal rate. Further, he stated that the entire addition was made under wrong assumption by the Id. FAO. So, the addition is completely erroneous. So, implementation of higher rate of tax is unjustified. The Id.PCIT has acted beyond jurisdiction by invoking section 263 of the Act.

5. The Id.DR argued vehemently and invited our attention in revisional order, paragraphs 5.6 to 6, which are reproduced as below: -

"5.6 Further, in Commissioner of Income Tax vs. Mis. Paville Projects Pvt Ltd [2023] 453 ITR 447 (SC), the Hon'ble Apex Court observed that, as laid down in the decision of the Apex Court in Malabar Industrial Co. Ltd. vs. CIT (2000), the

scheme of the Income Tax Act is to levy and collect tax in accordance with the provisions of the Act, and this task is entrusted to the Revenue. If due to an erroneous order of the Income Tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue, the Court reckoned. The bench thus concluded: "In the facts and circumstances of the case, it cannot be said that the Commissioner exercised the jurisdiction under Section 263 not vested in it. The erroneous assessment order has resulted into loss of the Revenue in the form of tax. Under the Circumstances and in the facts and circumstances of the case narrated hereinabove, the High Court has committed a very serious error in setting aside the order passed by the Commissioner passed in exercise of powers under Section 263 of the Income Tax Act." The Supreme Court thus allowed the appeal, set aside the judgment and order passed by the High Court, and restored the order passed by the CIT under Section 263

5.7 The above referred judgments are now explicit in the section itself and therefore from the explanation it is clear that the present case of the assessee is clearly covered under Explanation 2(c) of Section 263 of the Act inserted we.f. 01-06-2015

6 In view of the above, the Assessment Order dated 23.04.2021 passed u/s. 143(3) read with sections 1448 of the Act, for AY 2018-19 is set aside and restored to the file of the Assessing Officer for initiation of penalty proceedings appropriately under the relevant section. The Assessing Officer is further directed to compute the tax payable under clause (i) of sub-section (1) of section 115BBE of the Act on the addition made u/s. 68 of the Act amounting to Rs.65,96,040/-."

6. We heard the rival submission and considered the documents available in the record. The Id.AR focused his argument on the wrong assumption of addition by the Id.FAO whereas the assessee advanced the loan to the parties. On perusal of the record, we find that the Id. FAO asked the question to the assessee by a letter dated 02/04/2021 and dated 19/04 /2021 where the reserves and surplus if negative balance amount of Rs.16,76,62,174/-, so the source of advancing of the loan given to different companies / parties is asked for. But during observation in the assessment order. On perusal of the revisional order, we find that section 263

is only restricted to application of section 115BBE against the addition. In the notices the Id.FAO correctly assumed the source of the investment advance by the assessee. On the other hand, the Id.PCIT correctly invoked section 263 of the Act for levying a higher rate of tax as applicable section 115BBE of the Act instead of the normal rate of tax. Main objective of Section 263 is to rectify orders that are not only erroneous but also have the potential to adversely affect the revenue's interests. It provides a mechanism for the PCIT to ensure correctness of orders passed by subordinate officers. The PCIT's role extends beyond mere oversight; they serve as custodians of revenue. When an order is deemed "erroneous" and "prejudicial to the interests of the revenue," the PCIT's revisionary power comes into play. "Erroneous" signifies a departure from the legal framework, while "prejudicial" pertains to circumstances that could diminish revenue rightfully owed to the Government. The Id. PCIT assumed its charge to minimize the revenue loss.

We find that the assessment order itself is erroneous and prejudicial to the interest of the revenue related to levy of tax in lower rate. We find no perversity in the order passed by the Id.PCIT passed under section 263 of the Act. Accordingly, the grounds of the assessee are dismissed.

7. In the result, the appeal of the assessee bearing **ITA No.1377/Mum/2024** is dismissed.

Order pronounced in the open court on 25th day of September, 2024.

sd/-

(PADMAVATHY S)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 25/09/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai