

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD**

**BEFORE DR. BRR KUMAR, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.824/Ahd/2024
(Assessment Year: 2018-19)

Ashok Kumar, C/o. J. N. Goyal & Company, C-162, Ranjeet Nagar, Bharatpur, Rajasthan-321001	Vs.	Principal Commissioner of Income Tax, Vadodara-1
[PAN No.BMBPS7736P]		
(Appellant)	..	(Respondent)

Appellant by :	None
Respondent by:	Shri Prothviraj Meena, CIT DR

Date of Hearing	16.10.2024
Date of Pronouncement	16.10.2024

ORDER

PER DR. BRR KUMAR - ACCOUNTANT MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Principal Commissioner of Income Tax, (in short “Ld. PCIT”), Vadodara-1, vide order dated 22.02.2024 passed for A.Y. 2018-19.

2. The Assessee has taken the following grounds of appeal:-

“1. The Ld. Pr. CIT, seriously erred in law as well as on the facts of the case in invoking the provisions of Sec. 22.02.2024 u/s 263 of the Act kindly be quashed 263 of the Act and therefore, the impugned order dated.

2. The ld. Pr. CIT seriously 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 this renders the order erroneous in so far as prejudicial to the interest of revenue as exemptions have wrongly been allowed in respect of salary income contrary to provisions of income tax law and without conducting any inquiry in the matter.

3. The ld. Pr. CIT erred in law as well as on the facts of the case in wrongly setting aside the assessment order dated 17.04.2021 despite there being complete application of mind by the AO on the subjected issues and it was nothing but a case of

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change of opinion, based on which, assumption of jurisdiction u/s 263 is not permissible. The impugned order dt. 22.02.2024 therefore, lacks valid jurisdiction u/s 263 of the Act and hence, the same kindly be quashed.

4. *The Id. Pr. CIT erred in law as well as on the facts of the case in wrongly setting aside the assessment order dated 17.04.2021 relying on the various judgements that are not subject matter of assessment.”*

3. At the time of hearing none appeared on behalf of the assessee.

4. The issue involved in this case is taxing all the amounts received under VRS Scheme by the assessee towards an employee of M/s. GE Power Ltd.

5. At the outset, the Ld. D.R. submitted that the issue involved in this appeal stands covered by the order of the Tribunal in a number of cases in ITA Nos. 463/Ahd/2023, 464/Ahd/2023 and 465/Ahd/2023 viz. in the case of Mafatbhai Bhikhabhai Parmar, Jitendra Kumar Shimpi & Mahendra Ambalal Patel & ors. For the sake of ready reference, the operative portion of the said order is reproduced as under:

“11. The provision of section 263 of the Act stipulates that the PCIT can make or cause enquiry before passing the order. The Ld. PCIT had exercised this power to make enquiry from the employer. It is crystal clear from the reply of the employer that the annuity amount paid to LIC was not made by the employer rather this payment was made on the request of the employees out of the VRS amount and was part of their taxable income. Therefore, this was shown as part of salary in Form No. 16. It also revealed from the enquiry made by the Ld. PCIT that the exemption of Rs.4,50,000/- claimed u/s 10(10CC) of the Act and of Rs.4,51,900/- u/s 10(10B) of the Act was not correct and not in accordance with the provisions of law. The deduction u/s 10(10CC) of the Act is available in respect of tax paid by employer for a non-monetary perquisite derived u/s 17(2) of the Act. The employer can't claim any deduction for such perquisite and the same is liable to be disallowed u/s 40(a)(v) of the Act. The AO didn't make any enquiry from the employer about payment of perquisite of Rs.4,50,000/- which was claimed exempt u/s 10(10CC) of the Act and had allowed the claim of the assessee. The enquiry made by the PCIT from the employer revealed that neither any perquisite was paid to the assessee nor the employer had made any disallowance u/s 40(a)(v) of the Act. Therefore, the claim of exemption u/s 10(10CC) of the Act made by the assessee was wrong and incorrect. Similarly, the claim for exemption u/s 10(10BB) of the Act was also allowed by the AO without making any enquiry from the employer.

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12. *It is thus evident from the above facts, that the AO had not conducted proper inquiries in respect of the claims as made in the return of income and, therefore, the order was rightly treated as erroneous and pre-judicial to the interest of revenue by the Ld. PCIT. As pointed out by the Ld. CIT-DR, it was held by the Hon'ble Supreme Court in the case of Navnit Lal Sakar Lal (supra) that the amount utilized by the employer for obtaining deferred annuity policy would form part of remuneration payable to the assessee and was chargeable under the head "salaries". Therefore, the annuity amount of Rs. 15 lakh paid to LIC by the employer was remuneration of the assessee and taxable as salary. As the order of the AO was not in accordance with the decision of the Apex Court the order of the AO was erroneous and pre-judicial to the interest of revenue for this reason as well.*

13. *The decisions relied upon by the Ld. AR are all found different on facts and not applicable to the peculiar facts of this case. It is a trite law and a well settled position that non application of mind or wrong assumption of facts or incorrect application of law by the A.O. will make the order erroneous and pre-judicial to the interest of Revenue. Therefore, we do not find anything wrong with the assumption of jurisdiction u/s 263 of the Act by the Ld. PCIT as the order of the AO was erroneous and pre-judicial to the interest of Revenue for the reasons as already discussed above. We, therefore, upheld the order of the Ld. PCIT. The grounds of appeals taken by the assessee are dismissed.*

14. *In the result, the appeal filed by the assessee is dismissed."*

6. In the absence of any change in the factual matrix and in the legal proposition, we held that no interference is called for in the order of the Ld. PCIT passed under Section 263 of the Act.

7. In the result, the appeal of the assessee is dismissed.

The order is pronounced in the open Court on 16.10.2024

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad; Dated 16/10/2024
TANMAY, Sr. PS

Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT,
Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad