

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

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.1019/Ahd/2024
(Assessment Year: 2013-14)

Income Tax Officer, Ward-6(1)(1), Ahmedabad	Vs.	Parulben Rajubhai Trivedi, 301, Amulya Apartment, 17, Prakashnagar Society, Maninagar, Ahmedabad-380008
[PAN No.ADOPT3852E]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Rignesh Das, Sr. DR
Respondent by:	Shri Biren Shah & Shri Gulab Thakor, A.Rs.

Date of Hearing	07.10.2024
Date of Pronouncement	23.10.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Revenue against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre, (in short “NFAC”), Delhi vide order dated 15.03.2024 passed for A.Y. 2013-14.

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

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 4,37,06,334/- made u/s. 68 of the Act.

2. The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.

3. It is, therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored.”

3. The brief facts of the case are that the assessee filed a return of income for the Assessment Year 2013-14, declaring a total income of Rs. 1,61,461/-, which was processed and assessed at the same amount.

However, Principal CIT later discovered that the assessee had purchased land for which her claimed share was Rs. 4,37,06,334/-, financed through unsecured loans. The assessment was therefore set aside by Principal CIT on the ground that it was erroneous and prejudicial to the interest of the Revenue, due to the lack of verification regarding the creditworthiness of the loan providers. Following the directions of Principal CIT in the 263 order, the Assessing Officer asked the assessee to provide details regarding the loans, but the assessee failed to respond adequately. Inquiries by AO revealed that the primary source of the funds for the land purchase was a loan from Smt. Kirtiben Patel, who, in turn, claimed to have sourced the funds from another party. Investigations into Kirtiben Patel's financial background indicated she lacked the creditworthiness to extend such a substantial loan. The assessee's response, which included supporting documents and judicial citations, was found unconvincing to the Assessing Officer. Accordingly, the Assessing Officer added the loan amount of Rs. 4,37,06,334/- to the income under Section 68 of the Income Tax Act, with separate penalty proceedings being initiated for providing inaccurate particulars of income.

4. In appeal, Ld. CIT(Appeals) gave relief to the assessee on the ground that since the 263 order, which formed the basis of passing of the present assessment order (which is the subject matter of appeal before CIT(A)) was quashed by ITAT vide order dated 28.03.2019, then the assessment proceedings/ order had no legs to stand on and hence assessment order was liable to be set aside. While passing the order, Ld. CIT(Appeals) made the following observations:

“5. I have carefully considered the relevant and material facts on record, in respect of these grounds of appeal, as brought out in the assessment order and submissions made during appeal proceedings. The assessment order dated 26.12.2018, which is subject matter of this appeal, was passed in pursuance to the revisional order dated 26.03.2018 passed under section 263 by the Pr. CIT, Ahmedabad-6. The appellant had preferred an appeal against the said revisional order under section 263 before Hon'ble ITAT, Ahmedabad. The Hon'ble ITAT, Ahmedabad vide order dated 28.03.2019 passed in ITA No. 1308/Ahd/2018 in appellant's own case for Assessment Year 2013-14 has quashed the revisional order and allowed the appeal of assessee. The operating part of the judgment is reproduced as under, -

"8.7 In the context of the issue involved, we a/so take note of the decision rendered by Hon'ble Bombay High Court in the case of CIT vs. Nirav Modi 390 ITR 292 (Bom.) where in somewhat similar circumstances, the decision of the Tribunal to cancel the order passed under section 263 of the Act was upheld. Thus, driven by the precedent, where the inquiry of 'source of source' is not found to be the requirement of law, the alleged inadequacy in this respect should not be fastened on the assessee. Notwithstanding, any doubt in the capacity of the lender would ordinarily invite action against the lender who is shown to have received money through banking channel from other source prior to its lending and is also a regular tax assessee. Therefore, the prejudice contemplated under section 263 of the Act, if any, is qua the lender and not the assessee.

9. We are also alive to clause (a) of Explanation (2) to Section 263 of the Act inserted by Finance Act, 2015 w.e.f. 01.06.2015 which seeks to clarify that the order passed by the lower authorities to be erroneous in so far as prejudicial to the interest of the Revenue in the event of absence of inquiry which should have been made. The aforesaid clause only provides for situation where inquiries or verifications should be made by reasonable and prudent officer in the context of the case. Such clause cannot be read to authorize or give unfettered powers to the Revisional Commissioner to revise each and every type of mistake in an order. The applicability of the clause is thus essentially contextual. As observed in the preceding paras, even if inquiry with regard to source of source is omitted to be carried out, the provisions of Section 68 of the Act cannot be automatically fastened on the assessee. No objective material has been brought on record to implicate the assessee per se. Thus, seen from any angle, the assessment order passed under section 143(3) of the Act cannot be frustrated in the circumstances. Revisional order thus requires to be quashed and set aside."

5.1 In view of the above, there remains no basis to sustain the additions made by the AO in the fresh assessment order, which is subject matter of this appeal; as the revisional order under section 263 itself stands quashed by the Hon'ble ITAT, Ahmedabad vide order dated 28.03.2019 (Supra). Therefore, the Jurisdictional Assessing Officer (JAO) is hereby directed to delete all the additions made in the fresh assessment order dated 26.12.2018.

6. In the result, the appeal of the assessee is **allowed.**”

5. The Department is in appeal before us against the order passed by Ld. CIT(Appeals) setting aside the assessment order. On going through the facts of the instant case, we observe that since the order passed under section 263 of the Act, which formed the basis of fresh assessment, itself has been set aside by ITAT, vide order dated 28.03.2019, then the consequential assessment order is also liable to be aside. Accordingly, we find no infirmity in the order of Ld. CIT(Appeals), so as to call for any interference.

6. In the result, the appeal of the Department is dismissed.

This Order pronounced in Open Court on	23/10/2024
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 23/10/2024

TANMAY, Sr. PS

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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.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

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