आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT
AND
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.928 & 929/PUN/2024
निर्धारण वर्ष / Assessment Years : 2017-18 & 2018-19

Nihilent Limited, 403 404 4th Floor D Block, Weikfield IT City Info Park, Nagar Road, Viman Nagar, Pune – 411014 PAN : AABCN0867G	**Vs.**	PCIT, Pune
अपीलार्थी / Appellant		**प्रत्यर्थी / Respondent**

Assessee by :	Shri Nikhil S. Pathak
Department by :	Shri Ravi Prakash
Date of hearing :	14-10-2024
Date of Pronouncement :	25-10-2024

आदेश / ORDER

PER SATBEER SINGH GODARA, JM :

These assessee's twin appeals ITA Nos.928 & 929/PUN/2024 for assessment years 2017-18 and 2018-19, arise against the Principal Commissioner of Income Tax-2, Pune [in short the "PCIT)'s as many DIN & Order Nos. ITBA/REV/F/REV5/2023-24/1062275788(1) and ITBA/REV /F/REV5/2023-24/1062276036(1), both dated 08.03.2024, involving proceedings u/s. 263 of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties at length. Case files perused.

2. We advert the assessee's lead appeal ITA No. 928/PUN/2024 for A.Y. 2017-18 challenging the correctness of the learned PCIT's impugned section 263 revision directions terming the regular assessment dated 25.10.2021 framed by the Assessing Officer as an erroneous one causing prejudice to the interest of the Revenue as follows :

"6. In consideration of the facts of this case and after going through the provisions of Income Tax Rule 128, my comments are as under:-(a) The Income Tax Rule 128 was inserted in the Income Tax Rules, 1962 w.e.f. 01.04.2017 vide CBDT Notification No. 54/2016 dated 27th June 2016. As per this Rule, an assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India, in the manner and to the extent as specified in this rule.

As per sub-rule 8 of Rule 128 of Income Tax Act, credit of any foreign tax shall be allowed on furnishing the following documents by the assessee, namely:-

(i) a statement of income from the country or specified territory outside India offered for tax for the previous year and of foreign tax deducted or paid on such income in Form No.67 and verified in the manner specified therein;

(ii) certificate or statement specifying the nature of income and the amount of tax deducted therefrom or paid by the assessee.-

(a) from the tax authority of the country or specified territory outside India; or

(b) from the person responsible for deduction of such tax, or

(c) signed by the assessee.

Provided that the statement furnished by the assessee in clause (c) shall be valid if it is accompanied by-

(A) an acknowledgement of online payment or bank counter foil or challan for payment of tax where the payment has been made by the assessee;

(B) proof of deduction where the tax has been deducted.

Further, as per sub-rule 9 of Rule 128, the statement in Form no. 67 referred to in clause (1) of sub-rule (8) and the certificate or the statement referred to in clause (ii) of sub-rule (8) shall be furnished on or before the end of the assessment year relevant to the previous year in which the income referred to in sub-rule (1) has been offered to tax or assessed to tax in India and the return for such assessment year has been furnished within the time specified under sub- section (1) or sub-section (4) of section 139.

(b) In the present case, the assessee company had filed its return of income for A.Y. 2017-18 on 30.11.2017. It had submitted Form no. 67 on 30.11.2017. However, complete set of the necessary documents as required by Rule 128 was not submitted by it along with Form no. 67.

Since this case was selected for complete scrutiny with one of the reasons for selection being the verification of Double Taxation relief u/s 90/91, it was incumbent upon the FAO to examine all the conditions stipulated for that purpose. Failure to do so and consequential allowance of the said relief in full on the part of the FAO renders the assessment order erroneous as well as prejudicial to the interests of the revenue.

(b) As regards the assessee's submission before me that "credit of any foreign tax can be allowed on furnishing proof of deduction (where tax has been deducted) in support of claim of Foreign Tax Credit under section 90/91", it is observed that this contention is not backed by any provision of law or the IT Rule 128. Specific requirement about the nature of supporting documents and time limitation have been stipulated in the sub rules 8 and 9 of IT Rule 128 of the Income Tax Rules, 1962, which cannot be superseded. Had the legislature intended to allow any such relief to the tax payer in respect of FTC, there would not have been any need for formulating IT Rule 128.

(c) As per Form No. 67 filed by the assessee on 30.11.2017, the claim of FTC is related to 10 countries/specified territories and out of it as much as Rs. 2,36,25,230/- has been claimed under section 90/90A of the Income Tax Act, 1961 while the remaining pertaining to 8 countries/ specified territories amounting to Rs.1,56,72,202/- has been claimed by it under section 91.

It is observed that no supporting of any kind has been furnished by the assessee with Form no. 67 in respect of six of the 10 countries listed in Form no. 67 namely Botswana, Benin, Cameroon, Congo, Ghana and Liberia.

(d) During the revision proceedings, the assessee has reiterated its claim of Rs.3,92,97,432/- under section 90/91 in respect of transactions in 10 countries. However, during the revision proceedings it has admitted its claim of Rs.95,32,362/- out of the total claim of FTC remains to be supported by the withholding tax certificates.

(e) Therefore, it becomes evident that a large part of the relief of Rs.3,92,97,432/- out of the total claim under section 90/91 has been allowed by the FAO in contravention to the Income Tax Rule 128. Hence, I am convinced that the assessment order passed by the FAO in this case is erroneous in so far as it is prejudicial to the interests of revenue and is liable to be subjected to the provisions of section 263 of the Income Tax Act, 1961.

7. My finding that the assessment order under consideration in the present proceedings falls within the ambit of the provisions of section 263 is supported by many judicial precedents. Hon'ble Allahabad High Court in the case of Bhagvandas [(2005) 272 ITR 367(ALL)) and also in the case of P.T. Lashkari Ram [(2005) 272 ITR 309(ALL)] and the Hon'ble Madras High Court in the case of Ashok Leyland Ltd.((2003) 260 ITR 599(MAD)] have held that action under section 263 is valid where the assessment order is passed without application of mind and without conducting proper inquiry. Reliance is also placed on the decision of Hon'ble Supreme Court in the case of Malabar Industrial Co.Ltd. [(2000)243 ITR 83(SC)], wherein it was clearly held that the Commissioner of Income tax is within his jurisdiction to set aside the assessment order if it is passed without examination of the relevant details or without application of mind.

Directions

8. In view of the above facts, I am of the considered opinion that the order passed under section 143(3) on 05.04.2021 by the FAO is erroneous in so far as it is prejudicial to the interests of revenue and the same is set aside for framing fresh assessment in respect of the issues discussed above in light of the observations made in this order. The assessment is to be completed within the stipulated time- frame after conducting the necessary enquiries and giving due opportunity of being heard to the assessee. Further, wherever applicable, the Assessing Officer is also directed the initiate penalty proceedings as per the provisions of the Income Tax Act, 1961."

This leaves the assessee aggrieved.

3. Learned counsel vehemently argues during the course of hearing that the Assessing Officer's impugned regular assessment had rightly accepted the assessee's Form No. 67 claiming the prescribed Foreign Tax Credit and therefore, the revision directions in question are not sustainable in law since based on total non-application of mind and without

appreciating the relevant facts on record and more particularly, the law settled regarding interpretation of Rule 128 of the Income Tax Rules being directory then mandatory in nature, has not been considered. Learned counsel further quotes D. Kumaraswami Vs. PCIT (2024) 460 ITR 615 (Mad.) that the issue is already settled against the department to this clinching fact.

4. Learned CIT-DR on the other hand had draws strong support from the PCIT impugned revision directions on the ground that it has come on record that the assessee's claim of Rs.95,32,362/- hereinabove (supra) was neither considered nor examined in the Assessing Officer's regular assessment. He invited our attention to Rule 128(8)(ii)(c) Proviso that the assessee had not filed any prove of the TDS deduction regarding the foregoing component of Rs.95,32,362/- which made the learned PCIT to assume his section 263 revision jurisdiction.

5. We have given our thoughtful consideration to the forgoing rival stands and do not find merit in the assessee's arguments as it has come on record that it had failed to ensure compliance to Rule 128(8)(ii)(c) r.w. Proviso thereto in filing all the relevant particulars of the TDS deducted/withheld qua its claim of Rs.95,32,362/- is concerned. This clinching fact has gone unrebutted from the assessee's side. This is indeed coupled with the fact that we do not see any detailed enquiry or investigation carried out by the learned Assessing Officer during the scrutiny to this effect which could ensure compliance to the foregoing statutory provisions.

Mr. Pathak at this stage submits that the assessee filed all the said requisite details in revision proceedings which have never been disputed.

6. We hardly see any reason to express our concurrence with the assessee's foregoing argument as it was indeed incumbent for the learned assessing authority to ask for the very details during scrutiny followed by the necessary enquiries. We further wish to clarify here that although there are some apparent inconsistencies in the learned PCIT revision directions wherein he has treated only a portion of the assessee's total claim of Rs.3.92 crores (supra) as large part but the same does not ipso-facto invalidate the revision action once the Assessing Officer had not carried out the requisite enquiries in preceding term.

7. So far as assessee's argument that compliance to Rule 128 is only directory in nature (supra), we are of the considered view that the said interpretation is only regarding submission of Form No. 67 then that of compliance to Rule 128(8)(ii)(c) in above terms. We accordingly reject the assessee's instant lead appeal ITA No. 928/PUN/2024 and uphold the PCIT's impugned section 263 revision directions.

8. Same order to follow in assessee latter appeal ITA No. 929/PUN/2024 as the learned PCIT has assumed his revision jurisdiction on identical set of facts only.

9. These assessee's twin appeals ITA Nos. 928 & 929/PUN/2024 are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 25th October, 2024.

Sd/-	Sd/-
(Rama Kanta Panda)	(Satbeer Singh Godara)
VICE PRESIDENT	**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 25th October, 2024.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune