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IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / **ITA No.604/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Shri Venkata Krishna Tatineni, Secunderabad. PAN:AAWPT6003G	Vs.	Asst. Commissioner of Income Tax, Circle-3(4), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri S. Rama Rao, Advocate	
राजस्व द्वारा / Revenue by::	Shri Jeevan Lal Lavidiya, CIT-DR	
सुनवाई की तारीख / Date of hearing:	24 / 10 / 2024	
घोषणा की तारीख / Pronouncement:	06 / 11 / 2024	

आदेश/ORDER

PER SHRI MADHUSUDAN SAWDIA, A.M. :

This appeal is filed by Shri Venkata Krishna Tatineni, Secunderabad ("the assessee"), feeling aggrieved by the order passed by the Learned Principal Commissioner of Income Tax (Central), Hyderabad ("Ld. PCIT(C)"), dated 05.10.2023 for the A.Y. 2017-18.

2. The grounds of appeal filed by the assessee are as under :

“1. The order of the learned Principal Commissioner of Income- Tax is erroneous both on facts and in law.

2. The learned Principal Commissioner of Income-Tax erred in holding that the tax payable in respect of Rs.28,20,100/- is as per the provisions of Sec. 115BBE of the I.T. Act and whereas the said amount is taxable only as a professional receipt.

3. The learned Principal Commissioner of Income-Tax ought to have observed the fact that the income of Rs.28,20,000/- represents the receipt against the professional services rendered and was admitted as such in the return of income filed.

4. The learned Principal Commissioner of Income-Tax ought to have seen that the Assessing officer rightly assessed the income at normal rates as the provisions of Sec.69A have no application to the facts of the case.

5. The order learned Principal Commissioner of Income-Tax is erroneous as there is neither an error in the assessment order nor any prejudice is caused to the department and, therefore, the order u/s 263 passed is unjust and uncalled for and not legally valid.

6. Any other ground that may be urged at the time of hearing.”

3. The brief facts of the case are that the assessee is an individual and Managing Director of M/s. Athena Chhattisgarh Power Ltd. (“company”). A survey was carried out u/s.133A of the Income Tax Act, 1961 (“the Act”) in the case of company on 28.07.2016 and during the survey cash of Rs.28,20,100/- was seized (seized cash). Thereafter the seized cash was credited by the revenue in favour of the company into P.D. Account of Ld. PCIT(C) on 04.08.2016. During the PO operation on

24.09.2016, the assessee during his statement u/s.132(4) of the Act admitted that the seized cash belongs to him and it was pulled from his earnings and savings. After the survey, the assessee filed his Return of Income ("ROI") u/s.139(1) of the Act on 31.10.2017 admitting a total income of Rs.1,56,91,722/-. Later on the assessee revised his ROI u/s.139(5) of the Act on 01.11.2017 showing a total income of Rs.1,58,85,846/-. In the ROI, the assessee had declared the seized cash as his income from other sources. Subsequently, the Learned Assessing Officer ("Ld. AO") after recording satisfaction that the undisclosed income in the form of seized cash belongs to the assessee, a notice u/s.153C of the Act was issued to the assessee on 29.03.2021. In response to the said notice, the assessee filed ROI on 09.04.2021 declaring a total income of Rs.1,57,17,600/- which includes the income declared towards cash seized under the head 'income from other sources'. The case of the assessee was selected for scrutiny and notice u/s.143(2) of the Act was issued by Ld. AO on 21.10.2021. After considering the submission of the assessee, the Ld. AO completed the assessment u/s.143(3) r.w.s. 153C of the Act on 30.12.2021 accepting the returned income of the assessee. Thereafter the

Ld. PCIT(C) invoked section 263 of the Act, against the order passed by the Ld. AO u/s.143(3) on 30.12.2021 by issuing show cause notice on 15.09.2023. After considering the submission of the assessee, the Ld. PCIT(C) set aside the order to the file of Ld. AO for limited purpose of assessing income of Rs.28,20,100/- u/s.69A r.w.s 115BBE of the Act treating the same as unexplained cash and also made a direction for invoking relevant penal provisions of the Act.

4. Aggrieved by the order of Ld. PCIT(C), the assessee is in appeal before us. Learned Authorised Representative ("Ld. AR") submitted that ground nos.1 & 6 are general in nature and no separate adjudication is required on the same. With regard to ground nos.2 to 4, the Ld. AR submitted that the assessee had already shown the income of Rs.28,20,100/- in his ROI under 'income from other sources' and had already explained the sources of the same before the Ld. AO. Relying on the submission of the assessee, the Ld. AO completed the assessment by charging income tax at normal rate of taxes. However, the Ld. PCIT(C) invoked the revision proceedings u/s.263 of the Act and treated the income of Rs.28,20,100/- as unexplained u/s.69A r.w.s. 115BBE of the Act. The Ld. AR

further submitted that the assessee is a qualified M. Tech Civil Engineer and the seized cash was explained before both the revenue authorities as “income from services provided to friends and relatives for their residential and commercial real estate projects”. Therefore, the Ld. AR finally submitted that as the assessee had already explained properly the sources of seized cash, the same cannot be treated as unexplained income u/s.69A r.w.s. 115BBE of the Act. Therefore, he prayed before the bench to quash the order passed by Ld. PCIT(C).

5. Per contra, the Learned Department Representative (“Ld. DR”) relied on the order of Ld. PCIT(C) and reiterated to uphold the same.

6. We have heard the rival contentions and also gone through the record in the light of the submissions made on either side. The main dispute before us is whether the seized cash shown by the assessee under the head ‘income from other sources’ will be treated as unexplained income u/s.69A r.w.s. 115BBE of the Act or not. As submitted by the Ld. AR that the assessee has already offered the seized cash as income in his ROI and explained the sources during the assessment proceedings before the Ld. AO as well as before the Ld. PCIT(C) as “income from services provided

to his friends and relatives for their residential and commercial real estate projects”. Therefore, the assessee claimed that under such a situation the income of the assessee is not liable to be treated as unexplained income u/s.69A r.w.s. 115BBE. However, the Ld. DR contended that the claim of the assessee was not supported by any contemporaneous demonstrable evidences. Further the assessee did not provide neither before the Ld. AO nor before the Ld. PCIT(C) the list of persons from whom he received the income and to whom he provided the said services. Hence the assessee failed to discharge the initial onus cast upon him under the provisions of section 69A of the Act. There is no dispute about the fact that the claim of the assessee was not supported by any contemporaneous demonstrable evidences. Further there is also no dispute that the assessee did not provide neither before the Ld. AO nor before the Ld. PCIT(C) the list of persons from whom he received the income and to whom he provided the said services. Therefore, we did not find any irregularity in the order of Ld.PCIT(C). Hence we uphold the order of Ld. PCIT(C).

7. With regard to ground no.5, the Ld. AR submitted that the invocation of proceedings u/s.263 of the Act is bad in law and is

liable to be quashed. He submitted that the seized cash had already been explained to Ld. AO during the assessment proceedings and after verification of the same, the Ld. AO had taken one of the possible view. He further submitted that if two views are possible and the Ld. AO had adopted one of the view, the order of the Ld. AO cannot be treated as erroneous causing prejudicial to the interest of revenue and therefore in that case section 263 of the Act cannot be invoked. Finally, the Ld. AR prayed before the bench that the invocation of section 263 by Ld. PCIT(C) is bad in law and is therefore required to be quashed.

8. Per contra, the Learned Department Representative (“Ld. DR”) relied on the order of Ld. PCIT(C) and reiterated to uphold the same.

9. We have heard the rival contentions and also gone through the record in the light of the submissions made on either side. To decide whether the invocation of section 263 by the Ld. PCIT(C) is as per law or not, it is crucial to go through the provisions of section 263 of the Act, we reproduce the same as under :

“ Revision of orders prejudicial to revenue.

263. (1) *The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer [81a](#)[or the Transfer Pricing Officer, as the case may be,] is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, [81b](#)[including,—*

(i) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or

(ii) an order modifying the order under [section 92CA](#); or

(iii) an order cancelling the order under [section 92CA](#) and directing a fresh order under the said section.]

Explanation 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

(a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer [82](#)[or the Transfer Pricing Officer, as the case may be,] shall include—

(i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under [section 144A](#);

(ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer [82](#)[or the Transfer Pricing Officer, as the case may be,] conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under [section 120](#);

[82](#)[(iii) an order under [section 92CA](#) by the Transfer Pricing Officer;]

(b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner;

(c) where any order referred to in this sub-section and passed by the Assessing Officer [82](#)[or the Transfer Pricing Officer, as the case may be,] had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer [82](#)[or the Transfer Pricing Officer, as the case may be,] shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,—

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under [section 119](#); or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

⁸³[Explanation 3.—For the purposes of this section, "Transfer Pricing Officer" shall have the same meaning as assigned to it in the Explanation to [section 92CA](#).]

(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court.

Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to [section 129](#) and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.”

On perusal of section 263, it is abundantly clear that for invoking section 263 of the Act, the order of the Ld.AO should be erroneous and should be prejudicial to the interest of revenue. As per Expln.2(a) of section 263 of the Act, any order shall be deemed to be erroneous in so far as it is prejudicial to the interest of revenue, if the order is passed without making enquiry or verification which should had been made. In the instant case, as submitted by Ld. DR the claim of the assessee was not supported by any contemporaneous demonstrable evidences. Further the assessee did not provide the list of persons from

whom he received the income and to whom he provided the services. The Ld. AO failed to verify the same. Therefore we are of the considered view that, there was failure on the part of the Ld. AO to make necessary enquiry / verification, hence the order of the Ld. AO is erroneous in so far as it is prejudicial to the interest of revenue. Therefore, in our opinion the invocation of section 263 of the Act by the Ld. PCIT(C) is as per law. Accordingly, we dismiss this ground of appeal of the assessee.

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

Order pronounced in the open Court on 06th Nov., 2024.

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad.

Dated: 06.11.2024.

* *Reddy gp*

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. Shri Venkata Krishna Tatineni, Plot No.151,
Krishna Gunrock Enclave, Phase-2,
Secunderabad-500009
2. ACIT, Circle 3(4), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,