

आयकर अपीलिय अधिकरण , चण्डीगढ न्यायपीठ , चण्डीगढ
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

BEFORE: SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND SHRI PARESH M. JOSHI, JUDICIAL MEMBER,

आयकर अपील सं. /ITA No. 37/CHD/2021
निर्धारण वर्ष /Assessment Year : 2010-11

Shri Randhir Singh, S/o Daljit Singh, Near KheraMandir, Village Landran, Mohali.	बनाम VS	The Pr. CIT, Chandigarh-I.
स्थायीलेखासं./PAN /TAN No:BRBPS7224P		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/Assessee by : Shri Neeraj Jain, CA
राजस्व की ओर से/Revenue by : Smt. Kusum Bansal, CIT DR

तारीख/Date of Hearing : 10.09.2024
उदघोषणा की तारीख/Date of Pronouncement : 12.11.2024

PHYSICAL HEARING

आदेश/ORDER

PER PARESH M. JOSHI, JM

This is an appeal filed by the assessee for the assessment year 2010-11 corresponding to the previous year period from 01.04.2009 to 31.03.2010. The present appeal is filed in terms of Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the Act). The assessee is aggrieved by the order passed under Section 263 of the Act bearing order No. ITBA/Rev/F/REV-5/2020-21/1031827224 dated 27.03.2021 which is hereinafter referred to as "**the impugned order**". The impugned order has revised the Id. AO order No.NIL dated 06.12.2017 which was passed under Section 144 r.w.s. 147 of the

Act which is hereinafter referred to as the “original assessment order” for sake of convenience, ease and brevity.

Factual Matrix

2. That as per NMS (Non Filer Management System) data of the Department, it was learned by the Department that the assessee had deposited **cash of Rs.36,50,000/-** in the bank account of State Co-operative Bank Ltd. Chandigarh and that he had earned **interest income of Rs.3,18,783/-** with the same bank during the Financial Year 2009-10 relevant to the assessment year 2010-11.

3. That since the assessee had not responded to the NMS letter and the source of cash deposits remained unexplained and interest income remained to be assessed to tax, in the absence of Income Tax Return and non compliance to NMS letter for the period under reference, the proceedings under Section 147 of the Income Tax Act, 1961 were initiated and notice under Section 148 of the Act was issued to the assessee on 27.03.2017.

4. That in compliance to the aforesaid notice Shri Raj Kukreja Advocate attended the proceedings and submitted as return declaring an income of Rs.3,18,780/- **which was filed manually on 24.04.2017.**

5. That subsequently, notice under Section 142(1) of the Act was issued and the assessee submitted relevant information/documents in relation to

cash deposit during the year. The same were **examined** and placed on record.

6. That from the perusal of information/documents submitted during the course of the assessment proceedings, it was noticed that the assessee was maintaining following bank accounts :

<i>A/c No.4141-Central Coop Bank Ltd. Hallomajra, U.T. Chandigarh</i>		
<i>Sr.No.</i>	<i>Date of deposit</i>	<i>Amount of deposit (Rs.)</i>
<i>1</i>	<i>01.05.2009</i>	<i>2000000</i>
<i>2</i>	<i>03.11.2009</i>	<i>900000</i>
<i>3</i>	<i>27.01.2010</i>	<i>750000</i>
<i>A/c maintained with S.B.I., Banur (11836)</i>		
<i>4</i>	<i>09.10.2009</i>	<i>150000</i>
<i>5</i>	<i>11.11.2009</i>	<i>100000</i>
	<i>Total Deposits</i>	<i>3900000</i>

7. That during the course of assessment proceedings the AR of the assessee was asked to explain the **source** of the above mentioned **cash deposits** in bank accounts.

8. That with reference to deposit of Rs.20.00 lakhs on 01.05.2009, the AR of the assessee submitted before Id. AO that the aforesaid amount was received as the Advance Money for Rural Agriculture land at village Saidpur; since the deal was not materialized, consequently the same was returned. However, when Id. AR was asked to show corroborative evidence in support of claim, the Id. AR of the assessee expressed his inability to furnish the same. He, however, sought an adjournment which was granted for 28.11.2017.

However, on 28.11.2017 nobody attended the proceedings nor the required information/document was furnished. That it is recorded in the original assessment order that no information/document was furnished as was sought by Department and since time barring assessment was involved, the Id. AO was left with no other alternative but to pass an appropriate order so as to finalize the assessment on basis of information available on record.

9. That the Id. AO in the "original Assessment order" computed total taxable income as at Rs.42,18,780/- i.e., returned income of Rs.3,18,780/- plus addition of Rs.39,00,000/-. Income Tax Computation Chart shows net tax payable as **Rs.31,61,510/-**.

10. That the aforesaid original assessment order dated **06.12.2017** passed in terms of Section 144 r.w.s. 147 of the Act was made subject of revisionary proceedings under Section 263 of the Act by Id. PCIT Chandigarh-1 wherein she noticed certain discrepancies in the original assessment order dated **06.12.2017**. She found that non filing of return attracts the interest under Section 234A of the Act and to that extent original order of assessment is prejudicial to the interest of revenue.

11. That accordingly, a Show Cause Notice bearing No.ITBA/Rev/F/REV 1/2020-21 / 103505367(1) under Section 263 came to be issued to the assessee which read as under :

"Your attention is invited to the assessment order u/s 144 r.w.s. 147 of Income Tax Act, 1961 dated 06.12.2017 framed in your case for the A. Y. 2010-11.

2. From perusal of the assessment record, it has been observed that your case for A. Y. 2010-11 was selected for Scrutiny and the assessment was completed at an income of Rs. 42,18,780/-.

3. Perusal of the assessment records reveals that during the assessment proceedings no return u/s 148 was filed by you. On 10.10.2017, a letter dated 09.10.2017 was submitted by your counsel in which it is clearly mentioned that no return for A. Y. 2010-11 was filed by you. As an enclosure, a copy of unsigned ITR-2 dated 24.04.2017 for A.Y. 2010-11 was attached by your counsel. The ITR-2 dated 24.04.2017 submitted by your counsel is unsigned, the same cannot be treated as a valid return of income. The AO, in the order stated that return was filed manually on 24.04.2017. As the return enclosed with the letter was unsigned, the same was invalid and thus the observations of the assessing officer that return was filed is factually erroneous. Non-filing of return attracts interest u/s 234A and thus the order passed by the AO is prejudicial to the interest of revenue.

4. In view of the above facts, the order passed u/s 143(3) of the Income Tax Act, 1961 in your case is erroneous and prejudicial to the interest of the Revenue. You are therefore requested to show cause as to why the aforesaid order of assessment may not be revised under the provisions of Section 263 of the Income Tax Act, 1961.

5. In this connection, your case is fixed for hearing before the undersigned on 22.03.2021 at 11:00 AM. In case of failure on your part to comply with this notice, an order u/s 263 of the Income Tax Act, 1961 shall be passed on the basis of the facts as are presently available on record.

12. That there was no response by the assessee to the aforesaid notice and that no one even appeared and no adjournment was even sought. However, a fresh notice dated 13.03.2021 for 17.03.2021 was issued to the assessee, to which the assessee submitted as under by a letter:

The facts of the case are that the notice u/s 148 was issued to the assessee on 27.03.2017. In response to which the assessee filed return of income declaring income of Rs. 3,18,780/- on 24.04.2017. The assessment U/S 144 r.w.s 147 of the Act was made vide order dated 06.12.2017 at total taxable income of Rs. 42,18,780/- by making additions Rs. 39,00,000/-. In the said order the interest u/s 234A, 234B. & 234C of the Income Tax Act has also been charged.

Now the assessee has received the notice of hearing in respect of revision proceedings u/s 263 mentioning therein that "The ITR-2 dated 24.04.2017 submitted by your counsel is unsigned, the same cannot be treated as a valid return of income. The AO, in the order stated that return was filed manually on 24.04.2017. As the return enclosed with the letter was unsigned, same was invalid and thus the observation of the assessing officer that return was filed is factually erroneous. Non-filing of return attracts Interest u/s 234A and thus the order passed by the AO is prejudicial to the interest of revenue."

In this regard it is submitted that where the return was not signed, it is only a irregularity and the same has been accepted by the Ld. AO, taking the view as valid return. The unsigned return will not mean the invalid return. Thus the return filed but the assessee is valid. In this regard, it is also submitted that where two views are possible and the Ld. AO has taken a possible view in such the revision proceedings cannot be invoked as the assessment is not erroneous and also not prejudicial to the interest of revenue.

Without prejudice to the above submissions, it is submitted that if the return of income is treated as invalid, in such case the assessed income as per assessment order will be reduced to the extent of returned income being to be taken as NIL instead of Rs. 3,18,780/- as filed by the assessee. Thus the proceeding/s 263/- will result into reduction of assessed income. Further the Ld. AO has also charged the interest u/s 234A, 234B & 234C of the Act also.

The term "prejudice" contemplated under section 263 is prejudice to the income-tax administration as a whole. Every loss of revenue as a consequence of the order of the Assessing Officer cannot be treated as prejudicial to the Interest of revenue as has been held in the case of Hero Briggs & Stratton Auto Ltd. v. CIT [2007]161 Taxman 127 (Delhi) (Trib.).

Further the provisions of section 263 cannot be invoked on the issue of non charging/less charging of interest u/s 234A, because on the basis of this issue the assessment does not become erroneous at all.

Keeping in view the above said facts, circumstances and legal position of the case, it is very clear that the assessment is not erroneous and also not prejudicial to the interest of the revenue rather it will amount to reduction in total assessed income and it is requested that the proceedings u/s 263 be filed. It is further requested that if any contrary view is to taken, in such case a personal hearing be given before disposal of the case.

13. After receiving the aforesaid reply the Id. PCIT has passed the impugned order wherein following is held:

"5. I have carefully considered the submissions filed by the assessee during the proceedings u/s 263 of the Act. The assessee has challenged the assumption of jurisdiction by the undersigned u/s 263 of the Act and objected to the maintainability of the notice u/s 263. In this regard, it would suffice to say that the presumptions of the assessee are not based upon any empirical observations. The view taken by the undersigned is based upon an independent perception of the assessment record.

The other objection, with regard to the difference of opinion between the Assessing Officer and the Commissioner of Income Tax, the position of law stands substantially altered with the insertion of Explanation 2 in section 263, by the Finance Act, 2015. As the deeming provision in that section has been specifically invoked, the decisions relied upon by the assessee, pertaining to the pre-amended provisions of section 263, would no longer hold good.

5.1 The facts of the case are that the assessee has deposited cash of Rs. 36,50,000/- in the bank account maintained with State Co-op. Bank Ltd. Chandigarh and earned interest income of Rs. 3,18,783/- with the same bank during the financial year 2009-10 relevant to the Assessment Year 2010-11. Since the assessee had not responded to the NMS letter and the source of cash deposits remained unexplained and interest income remained to be assessed to tax in the absence of Income Tax return & non-compliance to NMS letter for the period under reference, Proceedings u/s 147 of the Income Tax Act, 1961 were initiated and notice u/s 148 of the Income Tax Act, 1961 was issued to the assessee on 27.03.2017. Return declaring income of Rs.3,18,780/- was filed manually by the assessee on 24.04.2017. Assessment under section 144 r.w.s 143(3) of the Income Tax Act, 1961 was completed on 06.12.2017 and income was assessed at Rs. 42,18,780/- by making an addition of Rs. 39,00,000/-.

During appellate proceedings it has been claimed that the assessment framed by the Assessing Officer is erroneous in that notice u/s 143(2) has not been issued to the assessee. However perusal of the manual return filed by the assessee in response to notice u/s 148 shows that the return has not been verified/signed. The return claimed to be filed by the assessee is thus an invalid return and therefore there was no prerequisite to issue notice u/s 143(2) when assessment was being made under Section 148. A snapshot of the verification page of the return is enclosed for ready reference. The assessee in his reply has questioned the invalidation of the return and has claimed that this is a removable defect. But that's not as per law. In this case the return is not defective under section 139(9) which is a correctable defect but invalid as it has not been verified and signed. It's just a paper and not a return filed. The claim of the assessee that in that case that the assessment framed by the AO is thus bad and he should therefore be reimbursed the tax and interest paid by him is not acceptable as the assessment has been framed under 148 and not on the basis of the return and that too being prejudicial to the interest of revenue is set aside for deciding afresh."

In para 5.1 it is further held as under :

As the return is invalid therefore, no notice u/s 143(2) was required to be issued by the Assessing Officer. The AO while framing order u/s 147 has not examined this issue and has not discussed this in the order issued by him. Further the interest charged under section 234A and 234B has been short levied as it has been levied at Rs. 9,96,370/- but should have been levied for 93 months at Rs. 10,90,232/-. The assessment made by the assessing officer is therefore erroneous in so far as it is prejudicial to the interest of revenue.

In para 7 of the impugned order, it is further held as under:

7. In view of the above facts and discussions, I am satisfied that the assessment order passed by the Assessing Officer on 06.12.2017 is not only erroneous it is also prejudicial to the interests of the revenue and has been issued without making proper enquiries either from the assessee or from third parties to confirm the realities of the additions made in capital and income shown by the assessee. Therefore, the said order passed on 06.12.2017 is set aside to the files of the assessing officer to pass fresh order after making necessary enquiries/investigations

in the light of the discussions made above and after giving due opportunity to the assessee of being heard.

14. The assessee being aggrieved of aforesaid impugned order of Id. PCIT has raised following grounds of appeal in Form No.36 before us:

1. *That the Ld. PCIT is not justified in not giving the proper opportunity of hearing, which is against the natural justice and the order of Ld. PCIT be quashed.*
2. *That the Ld. PCIT is not justified in issuing notice and passing order for u/s 263 of Income Tax Act, 1961.*
3. *That the Ld. PCIT is not justified in passing the order on issues which were not mentioned in the notice u/s 263.*
4. *That the Ld. PCIT is not justified in holding the order of Ld. AO as erroneous and prejudicial to the interest of the revenue.*
5. *That the Ld. PCIT is not justified in deciding the issue which is pending before Ld. CIT(A), thus the order u/s 263 be quashed.*
6. *That the appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before the disposal of the same.*

Record of Hearing

15. The hearing in the matter before this Tribunal took place on 10.09.2024 when both the Id. AR and Id. DR were heard on merits of their respective submissions. The Id. AR has placed on record of this Tribunal a Paper Book containing pages from page 1 to 58. It is certified at the end of Paper Book Index that documents from Sr.No. 1 to 5 of Index to the Paper Book from pages 1 to 16 were alone before Id. AO. A separate compilation of judgement is also placed on record from pages 1 to 33. During the course of the hearing, it was contended by Id. AR that impugned order of Id. PCIT under Section 263 is illegal, not proper and is bad in law. It ought to be set aside as Assessment Order dt. 06.12.2017 is not erroneous nor prejudicial to the Revenue. The core issue raised in proceedings under Section 263 were

that upon perusal of the assessment records (original assessment order dated 06.12.2017) no valid return under Section 148 was filed by the assessee and that on 24.04.2017 what is enclosed by Id. AR of the assessee is unsigned ITR-2 dated 24.04.2017 for assessment year 2010-11 which cannot be treated as a valid return of income in law. Further, the Id. AO in the original assessment order dated 06.12.2017 has stated that return of income was filed manually on 24.04.2017. The return of income which was enclosed with letter are both unsigned (page 3 of Paper Book is letter which is unsigned by the assessee and page 4 of ITR the column 'verification' does not bear signature of the assessee). Consequently return of income was invalid and observation of Id. AO that return was filed is thus factually erroneous. Further non filing of return attracts interest under Section 234A. Thus order of Id. AO dated 06.12.2017 is prejudicial to the interest of revenue. The Id. **AR basis above** allegation contended that Id. AO in the original assessment proceedings has observed that the return of income was filed manually on 24.04.2017. The AR contended that even if return of income is not signed as alleged, it is only an irregularity and in any case same was accepted by Id. AO during the assessment proceedings as a valid return, otherwise he would have not accepted it. The fact that it is accepted means it is a valid return. The unsigned return would not mean an invalid return. Thus return filed by assessee is valid one. The Id. AR further contended that in such a situation these are two view one to treat ROI as invalid or valid. The Id. AO has chosen it be a valid return. Merely, because two views are possible and if Id. AO has

learned towards one view; his original Assessment Order cannot be said to be erroneous and prejudicial. It was further contended that in the original assessment proceeding addition is sustained hence there is no loss of Revenue consequently non prejudicial order towards revenue. It was also contended that even if ROI is invalid then income would be NIL instead of Rs.3,18,780/- as filed by the assessee. Thus, the proceedings now and intimes to come would lead to absurdity. Be that as it may interest is charged u/s 234A, 234B, 234C of the Act also. Per contra the Id. DR has supported the impugned order of Id. PCIT by stating that there are no legal infirmities in the impugned order. The due process of law within the meaning of section 263 is followed. The impugned order has correctly held original assessment order dated 06.12.2017 as erroneous and prejudicial to the interest of revenue. The Id. DR has brought to our attention to the provision of section 139(1) of the Act to say that verification of return in prescribed manner is mandatory requirement of law. Statute is clear. Our attention was invited to the provisions of section 139(9) to state that return is invalid and not valid. The Id. DR also contended that return of income is required to be filed under Section 140 of the Act and it should be verified.

Observations, findings and conclusions

16. We now have to decide legality, validity and propriety of the impugned order in the light of facts and circumstances as aforesaid.

17. We at the outset and threshold observe that original assessment order dated 06.12.2017 wherein there is quantification of total taxable income is of Rs.42,18,780/- [returned income Rs.3,18,780/- +39,00,000/- (unexplained income u/s 68)] there is net tax payable of Rs.31,61,510/- including interest components and as on 06.12.2017 [note:- interest under Section 234B is of Rs.9,96,370/- and interest under Section 234C is of Rs.43,369/-]. The original assessment order dated 06.12.2017 is under challenge by the assessee before CIT(A) and its fate is not known to us. Copy of Form No. 35 before CIT(A) , copy of additional ground of appeal before CIT(A), copy of remand report, copy of rejoinder before CIT(A), copy of written submissions before CIT(A) from pages 17-51 of PB have been filed before this Tribunal which we by law cannot look into it as we have no jurisdiction while examining the legality, validity and propriety of impugned order passed by PCIT under Section 263 of the Act. **We have to confine ourselves to the records of the original assessment order only. In law we cannot add or delete the records of the original assessment order/proceedings if we do it our Act would be one of without jurisdiction.** Be that as it may we observe that in the impugned order a prior show cause notice was issued to the assessee which do not contain any reference either directly or indirectly to the finding in the impugned order "As the return is invalid therefore, no notice u/s 143(2) was required to be issued by the Assessing Officer, the AO while framing order under Section 147 has not examined this issue and has not discussed this in the order issued by him". "Further the interest charged under Section 234A and 234B has been

short levied as it has been levied at Rs.9,96,370/- but should have been levied for 93 months at Rs.10,90,232/-." We hold that in respect of these material things, no show cause notice was ever issued to the assessee nor any opportunity was given to meet them was ever given. We therefore, hold that on this limited grounds itself impugned order deserves to be set aside as it is settled law that any impugned order cannot travel beyond the scope of the show cause notice.

18. We hold that return of income filed on 24.04.2017 [page 3 to 12 of PB] during the course of assessment proceedings in physical form as valid return of income as the same was acknowledged by Dept [page 4 of Paper Book] without any remarks whatsoever. Further each page of return from page 4 to 12 bears signature and seal of one Chandresh Kumar ITO, Ward 6(3) Chandigarh. There is no endorsement on ROI as invalid or defective. Both the parties i.e. the assessee acquiescence as well as the Dept. have acquiescence and hence they are each estopped from speaking contrary. On page 4 left hand side there is an endorsement "submitted in response to the notice received already under Section 148". The Dept. of income tax before giving acknowledgement of ITR on page 4 of PB should have verified the fact that on page 5 there is no signature of the assessee in column verification. What is the nature of prejudice caused to Dept by non affixing of signature of assessee is not spell out in this peculiar facts and circumstances of the case. Further, by virtue of section 139(9) of the Act, it is upto assessing office to consider ROI as defective. By virtue of said section upon defect

being noticed by Id. AO in RoI; it is his duty to intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of 15 days from date of such intimation or within such further period which on an application made in this behalf the Assessing Officer may, in his discretion allow and if the defect is not rectified within the said period of 15 days or as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, the return shall be treated as an invalid return. In the present case, even after submission of return of income physically no curable defects were pointed out by the Id. AO. We therefore hold that assessee cannot be subjected to the rigorous of assessment once again on trivial issue of filling RoI physically, no signature in verification clause. We hold that both the parties i.e. Dept of income tax and the assessee have acted on said RoI and the exercise power of revision under Section 263 of the Act by Id. PCIT is erroneous and prejudicial to the interest of the assessee. We, thus find fault with the impugned order of PCIT by ordering reassessment by treating order in original assessment proceedings as 'erroneous' and 'prejudicial to the interest of revenue'. We hold that Id. AO has accepted the RoI in physical form and has signed on each page of RoI which runs into 9 pages [page 3 to 13 of Paper Book].

19. We hold that even otherwise by virtue of provision contained in section 292B return of income is not invalid. We reproduce section 292B of the Act which is as under:

“292B. Return of income, etc., not to be invalid on certain grounds.

- No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.]”

20. We also hold that in income tax computation form attached with original assessment order dated 06.12.2017 against assessed income of Rs.42,18,780/- the amount of tax thereon of Rs.11,69,634/- is shown. Interest under Section 234A is of Rs.9,49,482/-, interest under Section 234C is of Rs.43,369/- are all shown. Net tax payable calculation is correctly made as it appears. Prepaid tax of Rs.32,430/- is minused from gross demand of Rs.31,93,944/-. Thus, net tax payable comes to Rs.31,61,510/-. We do not see in the original assessment proceedings/order any defect either in terms of non fixing of signature in Rol and interest charged is short; as a sustainable ground to revise the original assessment order on ground of that it is erroneous and prejudicial within the meaning of section 263. Further, the High Court of Kerala in the case of CIT v/s Masoneilan (India) Ltd. reported in (2000) 242 ITR 569 (Kerala) has held that in light of and 292B defect in return on account if it unsigned will not invalidate the return. SLP was dismissed by Hon'ble SC on 21/07/2000 in SLP No. 100170 of 2000 reported in (2000) 245 ITR (SC) 71.

21. We therefore in final analysis set aside the impugned order and allow the appeal of the assessee. Our observation are confined to proceedings

under Section 263 and our view would not in any way prejudice both parties as appeal before CIT(A) is pending.

ORDER

22. In result, appeal of assessee is allowed.

Order pronounced on 12.11.2024.

Sd/-
(VIKRAM SINGH YADAV)
ACCOUNTANTMEMBER

Sd/-
(PARESH M. JOSHI)
JUDICIAL MEMBER

"Poonam"

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar