

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B' CHANDIGARH**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 729/CHD/2019

निर्धारण वर्ष / Assessment Year: 2014-15

M/s Span Motels Pvt. Ltd., Vijaya 1 st Floor, 17, Barakhamba Road, New Delhi-110001.	Vs	The Pr. CIT, Shimla.
स्थायी लेखा सं./PAN NO: AAHCS5745C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Assessee by : Shri M.R.Sahu, C.A.
Revenue by : Smt. Kusum Bansal, CIT, DR

Date of Hearing : 14.11.2024
Date of Pronouncement : 08.01.2025

PHYSICAL HEARING

ORDER

PER RAJ PAL YADAV, VP

The present appeal is directed at the instance of the assessee against the order of the Commissioner of Income Tax (in short 'the CIT') dated 13.03.2019 passed under Section 263 of the Income Tax Act, 1961 in assessment year 2014-15.

2. The grounds of appeal taken by the assessee are not in consonance with Rule 8 of ITAT Rules, they are descriptive and argumentative in nature. In brief, the assessee has taken three grounds of appeal but under Ground No.2, it has taken five sub-grounds. However, a perusal of the record would show that first preliminary jurisdiction at issue involved in this appeal is :

“Whether the ld. CIT can take action under Section 263 and revise an assessment order which in itself is without jurisdiction”.

3. The brief facts of the case are that assessee has filed its return of income on 30.09.2014 declaring ‘nil’ income. The copy of the return is available on the record at page 2 of the Paper Book wherein a loss of Rs.52,75,311/- has been declared. The case of the assessee was selected for scrutiny assessment and a notice under Section 143(2) was issued by DCIT (Circle) Mandi (HP) and copy of this notice dated 21.09.2015 is available at page 2 of the Paper Book.

4. The ld. Counsel for the assessee while imputing the order of the CIT contended that vide order dated

15.11.2014 the ld. JCIT has divided the jurisdiction amongst various DCIT/AO. The ld. JCIT puts two Caveat in this order, we deem it appropriate to take note of relevant part of this note which read as under :

“In pursuance of the Notification No. 50 dated 22nd October, 2014 published in the Gazette of India : Extraordinary [S.O. 2752(E)] issued by the Central Board of Direct Taxes, New Delhi under sub-section (1) and (2) of section 120 of the Income Tax Act, 1961 & Notification No. 64/2014 in F. No. 187/40/2014(ITA.I) dated 13th November, 2014 & order of CIT, Shimla in F. No. CIT/HP/Jurisdiction/2014-15/2173-2188, dated 15th November,2014 & in supersession of all earlier orders on the subject except as respects things done or omitted to be done before such supersession, I, the Joint Commissioner of Income Tax Mandi Range, Mandi in exercise of powers vested in me under section 120 of the Income Tax Act,1961 hereby order that the Deputy /Assistant Commissioners of Income Tax and Income Tax Officers specified in column (2) of the Schedule below, having their headquarters at the station specified in the corresponding entries in column (3) shall exercise powers and perform the functions in respect of such cases or classes of cases of cases specified in the corresponding entries in column (6) of the said Schedule, of such persons or classes of persons being residents or not ordinarily residents in India as per section 6 of the Income Tax Act, 1961 and as specified in corresponding entries in column (5) of the said schedule, and residing in such territorial areas as specified in the corresponding entries in column (4) of the said schedule in respect of all incomes or classes of income thereof.

Explanation:

For the purpose of this order,

(i) "residing" means,-

(a) in the case of an individual, place of residence, unless otherwise provided in this order;

(b) in the case of an Hindu undivided family, place of residence of the Karta- and

(c) in the case of a firm or an association of persons or a body of individuals or a local authority and all other artificial juridical person other than complaints, the place where the head office is located.

(d) In appropriate cases, "income" includes "loss"

This order shall come into force with effect from 15.11.2014.

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Notes :

- 1. The Deputy Assistant Commissioner of Income Tax shall exercise jurisdiction over a case in which the income before exemptions under Chapter III and Deductions under Chapter VI-A for an assessment year preceding the current assessment year or the returned income for any assessment year for which scrutiny assessment is pending exceeds Rs.35 lacs.*

5. Accordingly, the jurisdiction of the assessee was transferred from DCIT to ITO, Kullu. The assessment order has been passed by Shri Amarjeet Singh, ITO Kullu (HP). The ld. Counsel for the assessee further contended that as per the order of the JCIT, the income exceeding Rs.35 lacs will be assessed by the DCIT and not by ITO. He further clarified that income include loss, therefore, it is to be construed that a declared loss of Rs.52,75,311/- by the AO is to be treated equivalent to an income exceeding Rs.35 lacs and jurisdiction over the assessee would vest in DCIT who has issued notice under Section 143(2). He further emphasized that the assessment order passed by the ITO, Kullu is without jurisdiction and if this

assessment order is without jurisdiction, then ld. Commissioner cannot revise that order to make it legal. It is not a clerical illegality which can be cured by the higher officer by exercising revisional powers.

6. The ld. CIT DR was unable to controvert this legal submission.

7. We have duly considered the rival contentions and gone through the order of the JCIT, Mandi dated 15.11.2014. We have extracted the relevant part of this order above and perusal of this would indicate that under the Explanation-D, ld. JCIT has specified that in appropriate cases, 'Income' includes "loss". In the present case, assessee has declared a loss of Rs.52,75,311/-. Therefore, it be treated equivalent to an income declared by the assessee. In other words, loss has also its own bearing on computation of a business income because it will be forwarded for future years for set off against the future year income. It cannot be just ignored and if this was the situation, then by virtue of this order of JCIT, jurisdiction over the assessee cannot be transferred to ITO,

Kullu. It ought to be vested in DCIT Circle, Mandi. The ld. CIT, Circle Mandi has rightly issued notice under Section 143(2) but it has erroneously transferred jurisdiction to the ITO, Kullu for passing the assessment order against an assessee which is without jurisdiction, no revisional power can be undertaken by the CIT under Section 263 of the Act because there is no legal foundation for assumption of jurisdiction, therefore, we allow this appeal and quash the order of the CIT dated 13.03.2019 passed under Section 263 of the Act in assessment year 2014-15.

8. In result, appeal is allowed.

Order pronounced on 08.01.2025.

Sd/-
(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

Sd/-
(RAJ PAL YADAV)
VICE PRESIDENT

“Poonam”

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar