

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

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 333/CHD/2023

निर्धारण वर्ष / Assessment Year : 2018-19

Tarun Mathur 764, Sector 8-B, Chandigarh	बनाम	The PCIT-1, Chandigarh
स्थायी लेखा सं./PAN NO: AMTPM7113P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

( Virtual Hearing )

निर्धारिती की ओर से/Assessee by : Shri A.K. Jindal, CA

राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT DR and  
Shri K Mehboob Ali Khan, CIT DR

सुनवाई की तारीख/Date of Hearing : 27.11.2024

उदघोषणा की तारीख/Date of Pronouncement : 31.12.2024

**आदेश/Order**

**Per Krinwant Sahay, AM:**

Appeal in this case has been filed by the Assessee against the order dated 28.03.2023 passed by Principal Commissioner of Income Tax, Chandigarh-1 (herein referred to as 'PCIT' ] u/s 263 for A.Y. 2018-19.

2. Grounds of appeal are as under:-

1. *That the order passed by PCIT u/s 263 is barred by limitation which is highly unjustified, uncalled for and needs to be quashed.*

2. *That the Ld. PCIT has erred in law and facts of the case in holding that the order passed u/s 154 r.w.s 143(1) is erroneous and prejudicial to the interest of revenue which is highly unjustified and uncalled for.*

3. *That the Ld. PCIT has erred in law & facts of the case in passing order u/s 263 ignoring that no assessment order sought to be revised have been passed which is highly unjustified and uncalled for.*

4. *That the PCIT has erred in law & facts of the case in passing order u/s 263 ignoring that it would amount to double taxation which is highly unjustified, uncalled for and needs to be quashed.*

5. *That the appellant craves leave to add, amend or modify any grounds of appeal on or before the disposal of the same*

3. Brief facts of the case, as per the order passed by the ld. PCIT u/s 263 are as under:-

*“2.1 A perusal of the Form 26AS for the assessment year 2018-19 reveals that you had received an amount of Rs. 55,65,798/- on which TDS amounting to Rs. 5,54,100/- was deducted. It is pertinent to mention here that you are also a partner in family firm M/s Architect Yatinder Mathur having PAN AABFA957B which is in the business of*

*providing professional services of civil and architectural consultancy. The professional assignments are executed under the banner of partnership firm and accordingly income amounting to Rs. 55,65,798/- was received by you. Also, the TDS is deducted by clients on individual PAN AMTPM7113P i.e. TARUN MATHUR. Thereafter, you claimed the TDS deducted on income received through the clients in your personal ITR and claimed the refund. Further, the order u/s 154 of the Income Tax Act, 1961 was passed on 05.01.2021 by allowing the TDS credit as claimed by you. The income amounting to Rs. 55,65,798/- as per business policy had been booked by the Firm in its ITR. However, the same should have been disclosed by you in your ITR for the relevant year. It is pertinent to mention that TDS is one of the modes of recovery of tax, so that tax to that extent has been paid on a particular income, and the liability to tax of the assessee-deductee on the corresponding income abates to that extent. Now, it cannot be that while the tax deduction at source, which is only a manner or mode of payment or recovery of tax, is on income 'A', the credit there of is allowed against income 'B'. In this regard, reference to section 199 of the Income Tax Act, 1961 is made which makes things abundantly clear, eliminating scope of any doubt.*

*Credit for tax deducted.”*

4. During the proceedings u/s 263, the Assessee alongwith his Chartered Accountant appeared before the ls PCIT and filed his written submissions on the issue bringing it on record that the order passed by

the Assessing Officer u/s 154 was not prejudicial to the interest of Revenue. But the ld. PCIT did not accept the submissions made by the Assessee. He gave his findings u/s 263 as under: -

*“5. However, the position taken by the assessee that the total impugned receipts of Rs. 55,67,798/- that had already been offered to tax in the hands of the partnership firm in which the assessee was a partner, is held to be a matter that needs to be factually verified. This verification needs to be carried out against the legal position that a partnership firm and its partners are one and the same in the eyes of Income-tax Department as also provided u/s 10(2A) of the Act. The AO may examine the matter and take an appropriate decision both to avoid double taxation of the same amount (viz both in the hands of the partner and the firm) as also to bring to tax all assessable amounts in the appropriate hands.”*

5. During the proceedings before us, ld. Counsel for the Assessee has resubmitted his written submissions which was already filed before the ld. PCIT. The Counsel of the Assessee has submitted as under:-

*“In the case of assessee, there is no loss of revenue as the income of the assessee amounting to Rs.55,47,705/- has been included in the partnership firm as per consistent business policy of the assessee namely Architect Yatinder Mathur PAN AABFA5957B. These facts are on the records. The order U/s 143(3) was passed for the Ay 2012-13 dt. 05.08.2016 (Copy attached as per Annexure-4) and also accepted by the Hon'ble CIT appeals in its*

*order dt 30.12.2022 for the AY 2017-18 whereby the facts of the assessee's business were accepted on similar grounds. Copy of order passed by Hon'ble CIT Appeal attached as per Annexure-5.*

*The order of Hon'ble CIT is reproduced as under:*

*The assessee submitted that the same receipts have been taxed twice. He also submitted that he follows consistent policy of declaring his taxable income (shown in 26AS) through professional assignment in his partnership firm M/s Architect Yatinder Mathur (AABFA59578) and same have been accepted by the assessing officer in the previous assessment years u/s 143(3) and 154 of the Income Tax Act, 1961. The assessee submitted order u/s 143(3) dt. 05.08.2016 for AY 2012-13 and order u/s 154 dt. 05.01.2021 for A.Y. 2018-19, which were perused and found that the claim of the assessee is correct.*

*The Appellant has also submitted the details as under:-*

Name of Assessee	PAN	Interest Income AY		Professional Income /business Income		Total TDS claimed	
		As per 26AS	As per ITR filed	As per 26AS	As per ITR filed	As per 26AS	As per ITR filed
Tarun Mathur	AMTPM7113P	20979	24616	554705	18,00,000	554100	554100
M/s Architect Yatinder Mathur	AABFA5957B	253717	253717	7802329	18552981	766751	766751

*The 26AS & return of income of the assessee and partnership were examined and found that the receipts shown in 26AS of*

*assessee have been declared in the return of income of the partnership firm. In view of these facts, the addition made of Rs.78,49,940/- in case of Appellant is hereby deleted and accordingly, this ground of appeal is allowed.*

*As such the powers of under section 263 of the Act are to be invoked on satisfaction of twin conditions of the order being both erroneous and prejudicial to the interests of the Revenue. Where the tax effect because of an order passed by the Assessing Officer is nil, such order even if erroneous being not prejudicial to the interests of the Revenue, is not open to revision under section 263 of the Act. Punjab Wool Syndicate v. ITO [2012] 17 ITR 439 (Chandigarh) (Trib.)”*

6. The ld. DR relied on the order of the ld. PCIT.
7. We have considered the findings given by the ld. PCIT in his order passed u/s 263 and the arguments of the ld. DR on the order of the ld. PCIT. We have also considered the written submissions filed by the Counsel of the Assessee before us (which was also filed before the ld. PCIT during 263 proceedings) and we have also considered his arguments made before us. We find that the order given by the CIT(A) dated 30.12.2022, is for A.Y. 2017-18, is very clear. It categorically brings on record that the Assessee has been following the system of declaring his taxable income shown in 26AS through professional assessment in his partnership firm M/s Architect Yatinder Mathur and the same has been accepted by the

Assessing Officer in previous assessment years. During the year under consideration also, the Assessee has done the same thing. On this basis, the Id. Counsel for the Assessee submitted that since the Assessee has already declared its professional income in the hands of M/s Architect Yatinder Mathur, as the Assessee has been doing in the last so many years, and the Department has accepted the same, therefore, by declaring again professional income of the Assessee in its professional firm's hand does not make any loss to Revenue as the taxes have already been paid thereon. The Id. Counsel for the Assessee also argued that for invoking the provisions of section 263, both limbs of the sections i.e. (i) erroneous and; (ii) prejudicial to the interest of Revenue, should be fulfilled together. In this case, even if the order of the A.O. is erroneous but there is absolutely no loss of Revenue or nothing as such is there which may be treated as prejudicial to the interest of Revenue, therefore, invoking of section 263 and passing of an order under this section by the Id. PCIT is not justified.

8. We have considered the findings given by the Assessing Officer and his order and we have also considered the above submissions brought on record as well as the arguments made by the Counsel of the Assessee. We have also seen findings given by the Id. PCIT in his order passed u/s 263

and we find that as the Assessee has already brought on record that all the professional income of the Assessee has been declared in professional firms M/s Architect Yatinder Mathur in earlier years ( which was accepted by the Revenue) so, in our view, there is no loss of Revenue in this case. Therefore, the second limb required of section 263, i.e., prejudicial to the interest of Revenue is not getting fulfilled here. Therefore, order of the ld. PCIT u/s 263 cannot be sustained. In the result, the Assessee's appeals on this issue is allowed.

9. In the result, appeal is allowed.

Sd/-  
( **SANJAY GARG** )  
**Judicial Member**

Sd/-  
( **KRINWANT SAHAY** )  
**Accountant Member**

“आर.के.” 3`1.12.2024

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