



।आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE MS.ASTHA CHANDRA, JUDICIAL
MEMBER AND
DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.491/PUN/2024

निर्धारण वर्ष / Assessment Year: 2018-19

Ujwal Fine Homes, High Bliss, S No.23, Dhayri Narhe Road, Pune – 411041. PAN; AABFU7293E	V s	The Principal Commissioner of Income Tax, Pune -3, Pune.
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri C.H.Naniwadekar – AR
Revenue by	Shri Ajay Kumar Keshari – CIT(DR)
Date of hearing	21/11/2024
Date of pronouncement	28/11/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the assessee directed against the order of
ld.Principal commissioner of Income Tax, Pune-3, Pune u/sec.263
of the Income Tax Act, 1961; dated 09.02.2024 for the A.Y.2018-
19. The Assessee has raised the following grounds of appeal :

*“1. In issuing the notice u/s 263 of the Income-tax Act, 1961 for AY
2018-19*

*2. In holding that the assessment order passed u/s 143(3) r.w.s.
144B of the Income-tax Act dated 17/04/2021 for AY 2018-19 is*



erroneous and prejudicial to the interest of the Revenue and consequently setting aside partly the assessment order to the file of AO for the purpose of examining two relevant issues

3. *In not appreciating the submissions made during the course of proceeding u/s 263 in respect of the issues raised and discussed in the notice u/s 263 and the order passed u/s 263*

4. *In not accepting the detailed submissions made during the course of proceedings u/s 263, supported with the documents, and not holding that the relevant deductions in respect of GST and VAT are allowable deductions as claimed by the assessee under the provisions of Income-tax Act and allowed in the original assessment order and not dropping the revision proceedings u/s 263*

5. *The appellant craves leave to add to, modify or withdraw any of the grounds of appeal at the time of hearing.”*

Submission of Ld.AR :

2. Ld.AR filed paper book. Ld.AR submitted that the Pr.CIT has passed order u/sec.263 wrt two issues GST input tax credit Rs.20,83,321/- and VAT written off Rs.1,44,79,408/-. Ld.AR submitted that GST input was claimed at the time of deposit to Government. Government directed to pass the input credit to customers. The Chartered Accountant submitted his opinion that total liability as per the provision of section 171 of GST Act input Tax Credit to be passed on to customers comes to Rs.20,83,321/-. The assessee debited the said amount to P&L account. The



assessee paid these amounts to individual customers after 17/10/2019.

2.1 Assessee paid VAT liability. The said amount was debited. The amount which could not be collected from the customers was written off.

2.2 On a specific question from the Bench, Ld.AR admitted that the AO had not verified these issues during the assessment. On specific question from the Bench, the Ld.AR admitted that the Assessment Order was erroneous and prejudicial to the interest of the Revenue. However, Ld.AR submitted the thePr.CIT has not given any findings on the impugned issue in the order u/s 263 though the assessee had made elaborate submission on the impugned issues, hence the Order u/s 263 may be set aside to the Pr.CIT with direction to give specific findings on these issues.

Submission of Ld.DR :

3. Mr.Ajaykumar Keshari Commissioner of Income Tax appeared on behalf of the revenue. He filed a paper book. Mr.Keshari invited our attention to the Assessment Order dated 17/04/2021 and explained that the AO has not discussed these



impugned issues in the assessment order. Mr.Keshari invited our attention to the Notice issued by the AO and submitted that no specific enquiry conducted by the AO regarding these two issues. He submitted that the Pr.CIT has invoked the explanation of Section 263. As per the explanation 2 of Section 263, the assessment order shall be erroneous and prejudicial to the interest of revenue if the Assessment Order is passed without making inquiries which should have been made. In this case it is admitted by Ld.AR that no inquiry was made by the AO. It is crystal clear from the Notice u/s 142 issued by the AO that he had not asked any question on these two issues , means no inquiry by the AO.

Ld.DR relied on following case laws :

- *Malbar Industrial CO Ltd vs CIT 243 ITR 83 (SC)*
- *Deniel Merchants P Ltd vs ITO SLP 23976/2017 order dt.29/11/2017*
- *Paville Projects (P.) Ltd. v. Commissioner of Income-tax, (Supreme Court of India)*
- *Commissioner of Income-tax, Mumbai v. Amitabh Bachchan (SC)*
- *RamanbhaiBholidas Patel v. Principal Commissioner of Income-tax, (In the ITAT Ahmedabad Bench 'B')*
- *Virbhadra Singh (HUF) v. Principal Commissioner of Income-tax, (High Court of Himachal Pradesh)*
- *Vedanta Ltd vs CIT (Bombay HC)*
- *Commissioner of Income-tax-II, Ludhiana v. Raja Industries, (High Court of Punjab and Haryana)*



- *Commissioner of Income-tax v. Jawahar Bhattacharjee, (High Court of Gauhati)*
- *Kishan Cold Storage v. Principal Commissioner of Income-tax, (In the ITAT Rajkot Bench)*
- *Gandevi Taluka Khedut Sahakari Sangh Ltd. v. Commissioner of Income-tax, (High Court of Gujarat)*

3.1 Ld.DR rebutted the submission of the Ld.AR regarding the contention of the Ld.AR that specific findings on the issues must have been given by the Pr.CIT. He submitted that Section 263 has not casted any such duty on the Pr.CIT. Hence, Pr.CIT had rightly directed the AO to make necessary inquiries on the issue and decide it a fresh. He further submitted that it is the duty of the AO to make investigation and decide the issue. The Pr. CIT need not have to investigate impugned issues. He vehemently supported the order u/s 263.

Findings and Analysis :

4. We have heard both the parties at length, studied the records. The assessee firm is a promoter and builder. It constructed housing project called Ujwal Paradise. Assessment Order for A.Y.2018-19 was passed on 17/04/2021, accepting the returned income of Rs.11,32,63,182/-.



4.1 The relevant paragraphs of the assessment order are reproduced here as under :

“3. It e-filed its return of income on 10-10-2018 admitting a total income of Rs.11,32,63,182/- vide acknowledgement no 330005791101018. Subsequently the case was selected for 'complete scrutiny' through CASS.

3.1 Notice u/s 143(2) dated 21-09-2019 was issued and served on the assessee through the ITBA system. Further, notice u/s 142(1) alongwith a detailed questionnaire was issued on 24-11-2020. In response the assessee uploaded the details through the ITBA on 10-01-2019 and 09-12-2020.

3.2 This case was assigned to this office as per Faceless assessment Scheme, 2020, notification 13th August 2020.

4. Subject to the submission made by the assessee the returned income of the assessee is accepted!

5. Order u/s 143(3) rws 144B of the I T Act 1961 is passed on an assessed income of Rs.11,32,63,182/-. Copy of the order, demand notice and computation sheet generated from the system is being issued to the assessee.”

4.2 It can be seen that there is no discussion regarding the impugned issues of GST Input Credit and VAT written off in the impugned Assessment Order. We have studied the Notice u/s 142 which is at page 61-68 of the paper book filed by the assessee. It is observed that no specific questions have been asked by the AO on



these two issues. Thus, the AO has not made any inquiry qua the impugned issues. This, fact has been accepted by the Ld.AR of the assessee. Thus, there was no inquiry by the AO on these two issues. It is also observed that Pr.CIT has specifically invoked explanation 2 to Section 263. As per the Explanation 2 of Section 263, the assessment order shall be deemed to be erroneous in so far as it is prejudicial to the interest of revenue if in the opinion of the ld.Pr.CIT the assessment order is passed without making any inquiry which should have been done or the order is passed allowing any relief without inquiring into the claim.

4.3 In this case the Assessee has claimed VAT written off as Bad Debts. We have observed that the AO had not inquired into the issue.

4.3.1 We have studied the Paper Book filed by the Assessee, at page 116 of the Paper Book is the copy of the Bad Debts accounts. It is observed that the Assessee had not Written Off the impugned Bad Debts in its Ledger , thus without writing off the impugned amount the assessee has claimed it as Bad Debt written off which



isbad in law and not allowable as deduction. The screen shot of the copy filed by the Assessee is reproduced here as under :

***UJWAL FINE HOMES S.NO.101,102, HIGBLISS, S.NO.23 DHAYARI NARHE ROAD, PUNE-411041				Page 1
BAD DEBTS Ledger Account				Credit
1-Apr-2017 to 31-Mar-2018				
Date	Particulars	Vch Type	Debit	
		Journal	1,44,79,408.00	
31-3-2018	Cr VAT PAID AMOUNT APPEARING IN CURRENT ASSETS & ADVANCES A/C NOW TRANSFERED TO BAD DEBTS A/C-NOT RECOVERABLE			
			1,44,79,408.00	1,44,79,408.00
	Dr Closing Balance		1,44,79,408.00	1,44,79,408.00

4.3.2 As per Section 36(1)(vii) and Section 36(2) of the Act the Amount needs to be written Off as irrecoverable in the accounts of the assessee. Also, as per section 36(2) of the Act such Debts should have been taken into account in computing the income of the assessee of the previous year in which such debt is written off. Both these conditions must to be satisfied conjointly. However, in the case of the assessee, as seen from the Bad Debt Account reproduced above, the amount has not actually been written off in the books. Thus, the First condition of Section 36 is not satisfied. Also, admittedly, the impugned Ledger Account was not filed by



the assessee before the Assessing Officer during the Assessment Proceedings.

4.3.3 As far as second condition of Section 36 regarding writing off debt is concern that is the impugned amount should have been taken into account while computing income of the assessee, the Assessee has not demonstrated before us that the impugned amount was considered as income . Assessee has not filed any document to prove the same. The assessee had not filed any document during assessment proceeding to prove that the impugned amount was considered as income.

4.3.4 In these facts and circumstances of the case, the Assessment Order is erroneous and prejudicial to the interest of the revenue.

4.4 As per the submission of the Assessee, GST was introduced on sale of Flats from 01/07/2017. The assessee collected GST from Customers from 01/07/2017. Assessee deposited the GST with Government after claiming Input Credit. However, no details about the Input Tax Credit availed by the assessee have been filed before the AO or Before the ITAT.



4.4.1 The Section 171 of GST Act is reproduced here as under :

Section 171. Antipro fiteering measure.-

(1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

4.4.2 Thus as per Section 171 of the GST Act it was mandatory for the assessee to refund the amounts to the Extent of Input Credit availed.

4.5 Assessee claimed that subsequently to the extent of Input Credit claimed by the assessee, the assessee has refunded some amount to flat purchasers. However, the assessee has not filed copies of ledger accounts to explain the amount of input tax credit availed by the assessee, and how assessee has worked out the quantum. These details have not been filed before the AO or even before the ITAT. However, it is observed that during the assessment proceedings the assessee has not made any submission on this issue. The AO has not carried out any inquiry. The AO has not carried any inquiry regarding the Assessee's claim that assessee has refunded the amounts to the Customers. Thus, we are of the opinion that no inquiry was conducted by the AO.



4.6 The Finance Act, 2015 introduced Explanation-2 to Section 263. The discussion in the Finance Bill, 2015 on this issue is reproduced here as under :

Quote, “Revision of order that is erroneous in so far as it is prejudicial to the interests of revenue [Clause 56]

The existing provisions contained in sub-section (1) of section 263 of the Income-tax Act provides that if the Principal Commissioner or Commissioner considers that any order passed by the assessing officer 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 an enquiry pass an order modifying the assessment made by the assessing officer or cancelling the assessment and directing fresh assessment.

The interpretation of expression “erroneous in so far as it is prejudicial to the interests of the revenue” has been a contentious one.

In order to provide clarity on the issue it is proposed to provide that an order passed by the Assessing Officer 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 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, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person. This amendment will take effect from 1st day of June, 2015.”Unquote

4.7 Thus, Finance Act, 2015 introduced a deeming fiction through explanation 2 to section 263 in order to provide clarity. As per the said deeming Fiction introduced by Explanation 2 to Section 263, the Assessment Order shall be Erroneous and



Prejudicial to the interest of Revenue if in the opinion of the Commissioner the Order is passed without making inquiries or verification which should have been made. After the introduction of explanation 2 to section 263 the Commissioner needs to establish only one thing that there was no proper inquiry before passing the order by the AO. Once the Commissioner establishes that there was no proper inquiry by the AO before passing the order, the Order automatically by deeming fiction becomes Erroneous and Prejudicial to the interest of the revenue.

4.8 We have already observed that there was no inquiry by the AO with reference to the two issues. Rather the Bad Debt claimed is bad in law as Assessee has claimed it without actually Writing Off the amounts in the book. Therefore, in these facts and circumstances of the case the Assessment Order is erroneous and prejudicial to the interest of the revenue.

4.9 Therefore, the Ld.Pr.CIT was right in invoking the jurisdiction u/s 263 of the Act.

4.10 Ld.AR has submitted that it was mandatory for the Pr.CIT to discuss the submission made by the assessee and arrive at a



conclusion. Ld.Pr.CIT has considered the submission of the Assessee as seen from the order u/s 263 of the Act. However, we do not agree with the arguments of the Ld.AR regarding the proposition that the Pr.CIT has to form an opinion and arrive at conclusion. There is no such stipulation in Section 263 of the Act. If we consider the argument of the Ld.AR then it will be adding words to the Section 263 of the Act. We cannot add any words to the Section 263 when plain reading of Section 263 makes the meaning clear and unambiguous. As per Section 263 the Pr.CIT can pass an order enhancing or modifying the assessment order or cancelling the assessment order and directing a fresh assessment order. Thus, the Section 263 gives choice to the Pr.CIT. In this case the Pr.CIT in his wisdom has directed the AO to pass a fresh assessment order qua issues identified by him.

4.11 The Hon'ble Jurisdictional High Court in the case of Vedanta Ltd Vs.CIT 279 Taxman 358 (Bombay)[27-11- 2020] has held as under :

Quote, "20. The ITAT has quite correctly held that since the CIT's order dated 9/1/2015 had merely directed the AO to pass fresh assessment order, the issues as to whether the facts and circumstances for the Assessment Year 2009-10 were identical to the issues for the



Assessment Year 2008-09 can always be gone into by the AO after granting full opportunity to all concerned

.....

23. The CIT, in exercising its revisional jurisdiction, has satisfied the twin requirements as prescribed in Section 263 of the ITAT Act. There was material before the ITAT to at least prima facie infer that there was under-invoicing and that this aspect of under-invoicing was not considered by the AO in making his assessment order. The CIT, in exercising its revisional jurisdiction, has not shut out any of the defences open SB to the Assessee, but has directed the AO to pass a fresh assessment order after verifying and examining all the relevant facts of the case, legal position and giving adequate opportunity of being heard to the Assessee.”Unquote.

4.11 The Hon’ble Delhi High Court in the case of M.R Apparels (P.) Ltd. Vs. Pr.CIT [2024] 168 taxmann.com 197 (Delhi) has held as under :

Quote, “2. The learned CIT concluded that the AO had not verified the necessary relevant facts relating to the taxability of sale of certain immovable property.

3. The controversy essentially, relates to the sale of immovable property during the relevant previous year (Financial Year 2014-15) for a sum of Rs.6,50,00,000/-. Admittedly, the sale deed in respect to the said immovable property was executed by the appellant on 17.03.2015 and the stamp duty of Rs.32,50,000/- was also paid by the purchaser (M/s VTS IT Solutions). TDS at the rate of 1%, amounting to 6,50,000/- was also deducted on the total sale consideration paid by the purchaser on 18.03.2015. Admittedly, a sum of 5,05,00,000/-



was received by the appellant. However, the appellant claims that he did not receive the balance amount of 1,45,00,000/-, as the cheques for the said amount were dishonoured. According to the appellant, the transaction of sale and purchase of the immovable property remained inchoate. The appellant claims that notwithstanding that a conveyance deed was executed, the sale of the property in question was not consummated. The appellant did not reflect the sale of his immovable property, during the relevant Assessment Year and did not offer the capital gains to tax.

4. The learned CIT found that the AO did not examine the details regarding the dishonour of cheques. The learned CIT noted that the two cheques aggregating to Rs.1,45,00,000/- issued by the purchaser were postdated cheques as they were dated 15.09.2015 and 15.03.2016 respectively. The audit report furnished by the appellant is dated 04.09.2015. Therefore, the Auditors could not have commented upon the dishonour of the cheques, as the report was prior to the dates of the cheques.

.....

11. We find no merit in the appellant's contention. Concededly, the audit report could not have commented upon the dishonour of cheques, as the report was issued prior to the date of the cheques aggregating Rs.1,45,00,000/-. The AO had accepted the said report. The assessment order does not indicate any enquiries in this regard. The learned CIT has rightly held that the Assessment Order was passed without making the necessary inquiries and verification. Thus, in terms of clause (a) of Explanation 2 to Section 263 of the Act, the assessment order is deemed to be erroneous in so far as it is prejudicial to the interests of the revenue. "Unquote.



4.12 In the case of the Vedanta Ltd(supra) the CIT had directed the AO to verify all the issues and pass appropriate order. The Order of the Id.CIT has been upheld by the Hon'ble High Court. In the case of the Assessee also the Pr.CIT has directed the AO to inquire into the issues and pass appropriate order. Hence the decision of Hon'ble Jurisdictional High Court(supra) and Hon'ble Delhi High Court are squarely applicable in the case of the assessee. We have considered the case laws relied by the Ld.AR and it is observed that they are distinguishable on facts.

5. In these facts and circumstances of the case for the elaborate discussion made by us in earlier paragraphs, we uphold the Order u/s 263 of the Act. Accordingly, the grounds of appeal raised by the Assessee are dismissed. The assessee has raised 4 grounds of appeal and all are with reference to the order u/s 263, we have considered all the grounds of appeal raised by the assessee in the above discussion, and accordingly we have upheld the Order u/s 263, hence all the grounds raised by the Assessee have been considered and dismissed.



6. The Ground Number 5 is about modifying, amending grounds, the assessee has not amended modified the grounds. Hence the Ground number 5 is dismissed.

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

Order pronounced in the open Court on 28th November, 2024.

Sd/-
(MS.ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 28th Nov, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.