

IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH (Virtual) JODHPUR

BEFORE DR. MITHA LAL MEENA, HON'BLE ACCOUNTANT MEMBER
AND SHRI UDAYAN DAS GUPTA, HON'BLE JUDICIAL MEMBER

ITA No. 373/Jodh/2024
(Assessment Year 2018-19)

Dinesh Bohra Unit 517, OPTION PRIMO, Andheri East, Mumbai-400093 PAN No. AANPB4468Q	Vs.	Pr. Commissioner of Income Tax-1, Jodhpur.
Assessee by	Shri Gautam Chand Baid, C.A. and Shri Mayank Taparia, Advocate.	
Revenue by	Shri Manoj Kumar Mahar (CIT- D.R.)	
Date of Hearing	20.02.2025.	
Date of Pronouncement	25 .03.2025.	

ORDER

DR. MITHA LAL MEENA, A.M.:

This appeal by the assessee is directed against the revisionary order dated 13.03.2024, passed u/s. 263 of the Income Tax Act, 1961 (in short 'the Act') by the Principal Commissioner of Income Tax-1, Jodhpur (hereinafter referred to as the "learned PCIT") for Assessment Year 2018-19 where the assessee has challenged the revisionary order passed u/s. 263 of the Act by the Learned PCIT in directing the AO to reframe the assessment examining applicability of deduction 69A of the Act, to the addition made by him on

account of agricultural income not found genuine and thus subjecting the addition to correct rate of tax u/s 115BBE.

2. The assessee has taken the following grounds of appeal:

1. On the facts and in the circumstances of the case, Ld. Pr. CIT erred in declaring the assessment order framed by the Ld. AO u/s 143(3) as erroneous in so far as it is prejudicial to the interest of revenue for invoking the provisions of section 263 of I.T. Act, 1961 without providing a fair opportunity of being heard to the assessee as in the show cause notice no specific deficiency in the enquiry made by Ld. AO has been identified and only vague allegation that claim of agricultural income of Rs.58,17,777/- has not been verified properly was made. Order so framed may kindly be declared as void ab initio as contrary to the statutory provision.

2. On the facts and in the circumstances of the case, Ld. Pr. CIT erred in invoking the provisions of section 263 of Income Tax Act, 1961 without providing fair opportunity of being heard to appellant even though it was specifically submitted in response to show cause notice that "In case your good self has identified any specific mistake or deficiency in the efforts of Ld. AO, it is respectfully requested to communicate same so that specific submission on that point can be made. In absence of identified deficiency in the assessment order/ assessment proceeding, hearing opportunity is not to comply with the statutory provisions of section 263.". Order so framed may kindly be declared as void ab initio as contrary to the statutory provision.

3. On the facts and in the circumstances of the case, Ld. Pr. CIT erred in holding the assessment order framed by the Ld. AO u/s 143(3) after detailed investigation and application of mind as erroneous in so far as it is prejudicial to the interest of revenue on the finding that the assessment order has been passed by the Assessing Officer in a routine and perfunctory manner.

4. On the facts and in the circumstances of the case, Ld. Pr. CIT erred in holding that "the Assessing Officer has not at all gone into the genuineness of agricultural activities". Such finding being contrary to the material on record cannot be basis to hold the assessment order as erroneous in so far as it is prejudicial to the interest of revenue.

5. On the facts and in the circumstances of the case, Ld. Pr. CIT erred in ignoring the judicial pronouncements referred by the appellant on the finding that "Being distinguishable on facts, the case laws relied upon by Assessee are,



therefore, not applicable to the facts of the case.”, without identifying any such difference.

6. On the facts and in the circumstances of the case, if the judicial pronouncements referred by Ld. Pr. CIT applied with judicious approach the assessment order cannot be declared as erroneous in so far as it is prejudicial to the interest of revenue.

7. The appellant crave liberty to add, amend, alter, modify, or delete any of the ground of appeal on or before its hearing before your honour.

3. The main issue involved in this appeal of the assessee is whether the PCIT can exercise his power u/s. 263 while appeal is pending on that issue before the CIT(A).

4. Briefly the facts as per record are that the return of income was e-filed by the assessee on 14.10.2014 declaring total income of Rs. 73,29,980/- and the case was selected for limited scrutiny assessment under the E-assessment Scheme, 2019 for Assessment Year under consideration on the issue of 'Agricultural Income'. The AO issued notice u/s. 143(2) of the Act and passed the assessment order u/s. 143(3) read with section 143(3A) and 143(3B) of the Act on 20.04.2021 determining the assessee's total income at Rs. 1,25,68,514/- by making an addition on account of disallowance of agriculture income of Rs.58,79,649/-.

4.1 The assessment order for the year under consideration was picked up for proceedings u/s. 263 of the Act by the PCIT-1, Jodhpur and a show cause notice was issued as under:-



"On perusal of the assessment record it was found that the addition on account of disallowance of agriculture income of Rs.58,79,649/- should have been treated as unexplained money u/s 69A of the IT Act & to be taxed at special rate u/s 115BBE of the IT Act, 1961. However, the same has been added as income from other sources, it was not taxed at special tax rate u/s 69A r.w.s 115BBE of the IT Act which resulted in under charge of tax and interest having total tax effect of Rs.31,38,311/-."

On examination of assessment record, the Id. PCIT found that the addition on account of disallowance of agriculture income of Rs.58,79,649/- should have been treated as unexplained money u/s 69A of the IT Act and to be taxed at special rate u/s 115BBE of the IT Act, 1961.

4.2 The Id. PCIT-1, Jodhpur, who having not satisfied with the assessee's reply filed before him, passed the order u/s. 263 of the Act on 13.03.2024, holding that the assessment order passed u/s. 143(3) of the Act on 20.04.2021 was erroneous in so far as it is prejudicial to the interest of revenue as the said order was passed by the Assessing Officer without taxing income of Rs. 58,79,649/- in correct section.

5. The learned Authorized Representative vehemently objected to the observation and finding given by the Ld. PCIT with support of facts placed before us, in his oral arguments with the support of a paper book containing show cause

notice u/s. 263 of the Act, submissions, documentary evidences, Form 35 and various judicial precedents. The learned counsel for the assessee submitted that the AO made the detailed enquiries relating to the agricultural income shown in the returned income as the case was selected for limited scrutiny on that parameter only. The AR contended that the AO having been not satisfied, framed the assessment under s. 143(3) of the Act and made the addition of Rs. 58,79,649/-. It was further contended that the addition of agriculture income has been made and the Assessee has filed appeal u/s 246A disputing the addition of agriculture income being treated as income from other sources. The Assessee has further contended that since the issue of agriculture income has already been dealt with in the assessment order, which is subject matter of an appeal before the Ld. CIT(A), the action u/s 263 cannot be taken for the same subject matter. He placed reliance on judicial precedents which are gone through and filed on record. He prayed that the impugned order passed u/s 263 may be declared as void ab initio being passed in contrary to the statutory provision.

6. Per contra, the learned CIT (DR) supported the order of learned PCIT stating that order under section 263 is a speaking order passed after providing proper opportunity to the assessee and the AO has not applied his mind as he failed to make addition in correct section. However, he did not file any contrary judgment.



7. We have heard both the sides and perused the materials available on record including the paper book and case laws filed by the assessee. It is admitted fact on record that while framing the assessment order u/s. 143(3) of the Act, the AO was not satisfied with the assessee's explanation and documentary evidences furnished during th assessment proceedings regarding his claim of agricultural income of Rs. 58,79,649/-. Accordingly, the AO made the addition of Rs. 58,79,649/- on account of disallowance of agriculture income in the assessment order passed u/s 143(3) on 20-04-2021.
8. From the record, it is evident that the assessee has challenged this assessment on legal grounds as well as on merits before first appellate authority which is stated to be pending on the date of proposed revision. Meanwhile, the Id. PCIT-1, Jodhpur passed revision order u/s. 263 directing the AO to apply correct sections.
9. On perusal of Form 35 and grounds of appeal, it is seen that the assessee has challenged the merits of addition of Rs. 58,76,649/- made by way of treating agricultural income as "income from other sources" before the first appellate authority. Therefore the order passed by Ld. AO, in our considered opinion, could not be subjected to revision u/s 263 of the Act because the assessee's case, in such a situation, would be covered under Clause (c) of Explanation-1 to Sec. 263



which puts a bar on initiation of revision u/s 263 when an appeal is pending before Ld. CIT(A). Even otherwise also, the powers of Ld. CIT(A) are co-terminus with those of the AO and he can do what AO could do, and can also direct the later to do what the later has failed to do so.

10. On the given set of facts, the ratio of decision of Hon'ble Madras High Court in the case of Smt. Renuka Philip vs. ITO (409 ITR 567) would apply wherein the Hon'ble Court held as under: -

22. The above explanation makes it clear that when the appeal is pending before the Commissioner, the exercise of jurisdiction under Section 263 of the Act is barred. The Commissioner in the order dated 14.03.2012 states that the appeal pertains to the claim made by the assessee under Section 54 of the Act and it has got nothing to do with the order passed by the Assessing Officer under Section 54F of the Act. The said finding rendered by the Commissioner is wholly unsustainable, since the assessee went on appeal against the re-assessment order dated 31.12.2009 stating that his claim for deduction under Section 54 of the Act should be accepted.

23. Therefore, in the process of considering as to what relief the assessee is entitled to, the Assessing Officer held that the assessee is entitled to claim deduction under Section 54F of the Act and assigned certain reasons for that. Therefore, the larger issue was pending before the Commissioner of Appeals, and in such circumstances, the Commissioner could not exercise power under Section 263 of the Act on account of the statutory bar. Therefore, on this ground also, the assumption of jurisdiction under Section 263 of the Act was wholly erroneous.


24. As noticed above, the Assessing Officer while completing the re-assessment proceedings has assigned certain reasons for coming to a conclusion that the assessee is entitled for deduction under Section 54F and not under Section 54 of the Act. This reason assigned by the Assessing Officer has been found by us to show due application of mind. As observed, we cannot expect an Assessing Officer to write a judgment. In such circumstances, the view taken by the Commissioner in his order under Section 263 of the Act has to be termed as a change of opinion, or in other words, the Assessing Officer adopted one of the two views possible and in such circumstances, it cannot be stated that the order is prejudicial to the interest of the Revenue as well as erroneous. For the purpose of exercise of jurisdiction under Section 263 of the Act, the twin tests are to be satisfied and even assuming, the re-assessment order is to be held as erroneous, it cannot be stated to be prejudicial to the interest of Revenue as every erroneous

order cannot be subject matter of Revision under Section 263 of the Act. Further more, if the order passed by the Commissioner under Section 263 of the Act as confirmed by the Tribunal is allowed to stand, then the very purpose of the remand order against the original re-assessment proceedings would become a fait accompli.

25. Thus, for the above reasons we are fully satisfied that the assumption of jurisdiction by the Commissioner under Section 263 of the Act was wholly without jurisdiction as the twin tests have not been satisfied and consequently, the order dated 14.03.2012 as confirmed by the Tribunal by order dated 13.07.2012 calls for interference.

26. In the result, the appeal filed by the assessee is allowed and the order passed by the Commissioner dated 14.03.2012, under Section 263 of the Act as confirmed by the Tribunal by order dated 13.07.2012 are set aside, and it is left open to the assessee to pursue her claim before the Assessing Officer. Accordingly, the Substantial Questions of Law are answered in favour of the assessee. Since, the matter has been pending for a quite long number of years and there has been repeated orders of assessment, we direct the Assessing Officer to give effect to the re-assessment order dated 31.12.2009, wherein the Assessing Officer had granted the benefit of Section 54F of the Act to the assessee. No costs."

11. The Hon'ble Court in the judgement delivered in the case of 'Smt. Renuka Philip vs. ITO supra', (Supra) thus held that when larger issue was pending before CIT(A), the revisionary authority could not exercise jurisdiction u/s 263. It may also be noted that the revisional order u/s. 263 of the Act, was passed to apply correct section but since matter of eligibility of deduction was itself pending in appeal before the CIT(A), therefore, the Hon'ble Madras High Court held that assumption of jurisdiction by the Commissioner under Section 263 of the Act was wholly without jurisdiction as the twin tests have not been satisfied. Following this decision, similar ratio has been laid down by Hon'ble Allahabad High Court in CIT vs. VAM Resorts and Hotels Pvt. Ltd. (418 ITR 723). The cited decision of Chennai Tribunal is also on similar lines and supports the case of the assessee.



12. During the proceedings u/s. 263, the assessee relied on these judgments, however, the Id. PCIT observed that these decisions are not applicable to the facts of the case by merely stating that the issue was application of wrong section and addition under the wrong head. However, this observation of the Id. PCIT is in contravention to the ratio laid down by the Hon'ble Madras High Court in the case of Smt. Renuka Philip (supra).

13. Without prejudice to the above, with regard to the exercise of powers under Section 263 of the Act is concerned, the decision of the Hon'ble Apex Court in Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83/109 Taxman 66 and CIT v. Max India Ltd. [2007] 295 ITR 282/[2008] 166 Taxman 188 (SC) are landmark judgments. The clarification was with regard to paragraph 10 of the judgment in the case of Malabar Industrial Co. Ltd. (supra) and it was held that every loss of Revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the Revenue. By way of illustration, it was stated that when the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss of Revenue; or where two views are possible and the Assessing Officer has taken one view with which the CIT(A) does not agree, it cannot be treated as an erroneous order prejudicial to



the interest of Revenue, unless the view taken by the Assessing Officer is unsustainable in law. Applying the same analogy, it can be said in the present case, that there are different views possible regarding taxing agricultural income.

14. Before conclusion, it is pertinent to mention here that the assessee's case was picked up for limited scrutiny to examine only the issue of genuineness of "agricultural income" declared by the assessee in the returned income. The AO in the assessment order dated 20-04-2021 examined this issue and called for various details from the assessee which only goes to establish the issue for which the assessee's case was selected for scrutiny and it was examined thoroughly by the AO and thereafter, he reached at a conclusion that the same is to be taxed under the head "income from other sources" and as it is not a case of unexplained money in terms of section 69A of I.T Act, 1961. Meaning thereby, that it cannot be said that the AO did not apply his mind before making addition of Rs. 58,79,469/- on account of treating agricultural income as "income from other sources". Considering the factual matrix of the case and the judicial precedents cited supra, we are of the considered view that the assessment order dated 20-04-2021 is passed after considering material facts, documentary evidence and following all due process of law.



15. Respectfully, following the binding Judgement of Hon'ble Madras High Court (Supra), we hold that the impugned revision u/s 263 is bad-in-law and as such, it is quashed.

7. In the result, appeal filed by the assessee is allowed.

Order pronounced on..25.. / 03 /2025 under Rule 34(4) of

Income Tax (Appellate Tribunal) Rules 1963.

Sd

(UDAYAN DAS GUPTA)
JUDICIAL MEMBER

Sd

(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER

Dated :25./03./2025

Copies to :

- (1) The appellant.
- (2) The respondent.
- (3) CIT
- (4) CIT(A)
- (5) Departmental Representative
- (6) Guard File

By Oder
Assistant Registrar,
Income Tax Appellate Tribunal,
Jodhpur Bench,
Jodhpur.