

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचन्द, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 373/JP/2016
निर्धारण वर्ष/Assessment Year : 2007-08.

M/s Adinath Buildcon Pvt. Ltd, Jaipur.	बनाम Vs.	Pr. Commissioner of Income-Tax (Central), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AADCA2574P		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : S.R. Sharma & R.K. Bhatra (CA)
राजस्व की ओर से/ Revenue by: Shri D.S. Kothari (CIT)

सुनवाई की तारीख/ Date of Hearing : 05.04.2017.
घोषणा की तारीख/ Date of Pronouncement : 17 /04/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, JM.

This appeal by the assessee is directed against the order of Pr. CIT (Central), Jaipur, dated 14.03.2016 pertaining to assessment year 2007-08. The assessee has raised the following grounds of appeal :-

- "1. That the Id. Pr. CIT (central), Jaipur is wrong and has erred in law in invoking the provisions of section 263 of IT Act, 1961 in cae of aseee in as much as the assessment order passed by Id. AO is neither nor prejudicial to the interest of revenue. The impugned order passed by Id. Pr. CIT (central), Jaipur is without jurisdictional.
2. That the Id. Pr. CIT (central) is wrong and has erred in law in not considering the contention of the aseee that no disallowance can be made u/s 40(a)(ia) of the IT Act, 1961 on account of non deduction of TDS on interest of Rs. 39,65,510/- credited in the account of Sunny Developers Pvt. Ltd. in view of second proviso to said section and payment of due tax thereon by the recipient company. The assessing officer rightly allowed deduction of said interest.

3. That the appellant craves the permission to add to or amend to any of the above grounds of appeal or to withdraw any of them.”

2. Only effective ground is against invocation of jurisdiction u/s 263 of the Act. Thereby, revising the assessment order dated 28/03/2014 passed u/s 143(3) read with section 153A of the Income Tax Act, 1961 (hereinafter referred to as the Act). The Id. Counsel for the assessee submitted that, Id. CIT is not justified in invoking the provisions of section 263 of the Act. Ld. Counsel submitted that for exercising jurisdictional u/s 263 of the Act twin conditions are required to be satisfied. In the present case, the Revenue has not placed any material suggesting that the order is passed is erroneous so far it is prejudicial to the interest of the Revenue. He submitted that the interest of the revenue is protected when the payee declared the amount in its return of income and pays Income Tax thereon. In the present case, the assessee has demonstrated that the payee has included the interest income received from the assessee and paid due taxes thereon. He submitted that this fact is not controverted by the revenue. Ld. AR further reiterated the submissions as made in the written submissions filed during the course of hearing.

3. On the contrary, Id. CIT (DR) vehemently opposed the submissions and contended that there is no legality into the order of the Id. CIT. He submitted that AO has grossly failed to verify the facts. He submitted that, there is no dispute with regard to the fact that the assessee was required to deduct the tax on source, in respect of the payment of the interest. He further submitted that it is an undisputed position of law that non-deduction of tax by the assessee would attract disallowance of interest expenditure under section 40(ia) of the Act. He submitted that this

requirement is mandated by the provisions of the Act in vogue. He submitted that the AO has failed to verify the interest expenditure and whether the tax has been deducted on such expenditure or not. He pointed out that from the assessment order, it is evident that the Assessing Officer has merely accepted the returned income. In rejoinder, Id. A.R. submitted that this is not the case, where the Assessing Officer has not made enquiry. In fact, the Assessing Officer has raised query in this respect.

4. We have heard the rival contentions, and perused the material available on record and gone through the order of the authorities below. The basis of revising the order as per the Id. CIT is that the Assessing Officer failed to verify the payment of TDS on the sum of Rs. 39,65,510/- credited in the account of M/s Sunny Developers Pvt. Ltd. being the interest, hence the assessment order is erroneous and prejudicial to the interest of the revenue.

As per section 263 of the Act, the Principal CIT is empowered to call for examine the record of any proceedings under the Income Tax Act and if he considers that any order passed thereon by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the revenue. He after giving opportunity for being heard may pass such order thereon, as the circumstances of the case justifies, including an order enhancing or modifying the order.

Therefore, the condition which requires to be satisfied for the purpose of jurisdiction u/s 263 are that the order of the Assessing Officer should be erroneous and prejudicial to the interest of revenue. Merely because the order is erroneous would not meet the requirement of law for invoking the provisions of section 263. In the case in hand, it is stated by the Id. Counsel for the assessee that the payee has

included the interest income into the return of income and paid tax thereon. This fact is not controverted by the revenue by placing any contrary material on record. Under these facts, we are of the considered view, that it is not the fit case for invoking the provisions of section 263. Therefore, we set aside the order of the Id. CIT and restore the assessment order. This ground of the assessee's appeal is allowed.

5. Ground no. 3 is in general in nature and needs no separate adjudication.

6. In the result appeal of the assessee in ITA No. 373/JP/2016 is allowed.

Order pronounced in the open court on Monday, the 17th day of April 2017.

Sd/-
(भागचन्द)
(BHAGCHAND)
लेखा सदस्य / Accountant Member

Sd/-
(कुल भारत)
(KUL BHARAT)
न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 17 /04/2017.

Pooja/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s Adinath Buildcon Pvt. Ltd., Jaipur.
2. The Respondent- Pr. Commissioner of Income-Tax (Central), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 373/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

