

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Tax Appeal No. 10 of 2020

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The Principal Commissioner of Income Tax, Jamshedpur having its office at 47, Circuit Huse Area, P.O & P.S. Bistupur, Town Jamshedpur, District- Singhbhum East. Appellant

Versus

Roshan Maheshwari, Proprietor of M/s Maheshwari Minerals, H. No.35, Aastha Krishna Tower, S.N.P Area, Sakchi, P.O & P.S.- Sakchi, Jamshedpur, District-Singhbhum East. Respondent

CORAM: Hon'ble Mr. Justice Aparesk Kumar Singh
Hon'ble Mr. Justice Deepak Roshan

For the Appellant :Mr. Ratnesh Nandan Sahay, Sr. S.C.
 For the Respondent : Mr. Rahul Kumar, Adv.
 Mr. Apoorva Singh, Adv.

15/29.9.2022 The instant appeal is directed against the order dated 27.08.2019 passed by learned Income Tax Appellate Tribunal, Ranchi Bench, Ranchi (hereinafter to be referred as ITAT) in appeal being I.T.A No. 118/Ran/2019 preferred by the respondent herein whereby the learned ITAT has allowed the appeal of the respondent.

2. The brief facts of the case are that the respondent had filed the return of its income for A.Y 2010-11 on 30.08.2010 declaring total income as Rs.12,06,047/- before claiming deduction of Rs.1,00,000/- under Chapter VI A of the Income Tax Act, 1961 (herein after referred to as the Act). Subsequently, the case of the respondent-assessee was reopened under Section 147 of the Act. The said case of the respondent was reopened after taking approval from the Additional Commissioner of Income Tax, Range-3, Jamshedpur vide his letter dated 30.10.2015. Subsequently, the assessment order dated 31.03.2016 was passed by the Assessing Officer in the case of the respondent herein and the total income of the respondent assessee was assessed at Rs.15,16,650/-.

Consequently, the case of the respondent-assessee was again reopened for the assessment year 2010-11 by taking the approval from

the Principal Commissioner of Income Tax, Jamshedpur vide his letter dated 02.02.2017. The said approval was as required under Section 151 of the Act. Thereafter, notice dated 06.03.2017 under Section 148 of the Act was issued to the respondent and the assessment proceedings were undertaken by the Assessing Officer and after following due procedure of law, the reassessment order was passed on 15.12.2017 in the case of the respondent herein by the Assessing Officer for the Assessment Year 2010-11, whereby the total income of the respondent was assessed at Rs.3,06,25,357/-.

The said reassessment order dated 15.12.2017 was passed under Section 143(3), 147 and 144 of the Act. The respondent preferred an appeal against the said reassessment order dated 15.12.2017 before the Commissioner of Income Tax (Appeals) (hereinafter referred to as the "CIT (Appeals)"). The said appeal was registered as Appeal No.504/JSR/2017-18. The CIT (Appeals) vide its order dated 14.12.2018 dismissed the appeal preferred by the respondent.

Being aggrieved by the order passed by CIT (Appeals), the respondent preferred appeal before the learned ITAT, who allowed the appeal and set aside the reassessment order dated 15.12.2017 and appellate order dated 14.12.2018.

3. The instant appeal has been admitted by this Court vide its order dated 26.04.2022 on following substantial questions of law: -

(i) Whether on the facts and circumstances of the case and in law, the Ld. ITAT is justified in allowing the appeal preferred by the respondent herein when the said appeal was against the CIT (Appeals) order dated 14.12.2018, which order was passed in an appeal against the reassessment order, dated 15.12.2017, passed under Section 143(3), 147 and/or 144 of the Income Tax Act, 1961, and when the said reassessment proceeding was initiated after obtaining prior approval from the Principal Commissioner of Income Tax on 02.02.2017 ?

(ii) Whether the impugned order passed by the Ld. ITAT is perverse and has been passed without due application of mind for the reason that it allowed the appeal of the respondent herein without considering the facts and legality of the reassessment order dated 15.12.2017 passed in the case of the respondent ?

(iii) Whether in the facts and circumstances of the case the Ld. ITAT was justified in allowing the appeal preferred by the respondent which has the effect of quashing the reassessment order dated 15.12.2017 passed under Section 143(3), 147 and 144 of the Income Tax Act, 1961 for which prior approval for re-opening of the case was taken from the Principal Commissioner of Income Tax on 02.02.2017 in accordance with Section 151 of the Income Tax Act, 1961 ?

4. Mr. Ratnesh Nandan Sahay, learned counsel for the appellant submits that the appeal preferred by the respondent was registered as ITA No.118/Ran/2019. The learned ITAT vide its order dated 27.08.2019 has allowed the said appeal of the respondent. In the impugned order the learned ITAT has expressly quashed the assessment order dated 31.03.2016 passed in the case of the respondent but the learned ITAT in the entire order has neither dealt with the reassessment order dated 15.12.2017 nor has the learned ITAT expressly quashed the said reassessment order.

Thus, learned ITAT has committed a gross error in setting aside the reassessment order which was initiated after taking proper approval of the competent authority; and thus, the order passed by the ITAT is fit to be quashed and the order passed by the AO and the CIT (Appeal) needs to be restored.

5. Mr. Rahul Kumar, learned counsel appearing for the respondent-assessee fairly submits that admittedly; the learned Tribunal has not discussed the fact of the reassessment order dated 15.12.2017. However, at best the case can be remanded back to the learned ITAT for passing a fresh order on merit after discussing the facts of reassessment order dated

15.12.2017.

6. Having heard learned counsel for the parties and after going through the records, it appears that the case of respondent-assessee was reopened under Section 147 of the Act after taking approval from Additional Commissioner of Income Tax, Rang-3, Jamshepur vide his letter dated 30.10.2015 and thereafter an assessment order dated 31.3.2016 was passed.

However, the case of respondent-assessee was again reopened for the assessment year 2010-11 by taking approval from the Principal Commissioner of Income Tax, Jamshedpur vide his letter dated 02.02.2017 (Annexure-2). Perhaps the Tribunal while deciding two appeals being ITA Nos.117 & 118/Ran/2019 for the assessment years 2009-10 & 2010-11 described the facts of first assessment order dated 31.03.2016 wherein the approval was taken from Additional Commissioner of Income Tax, Range-3 Jamshedpur.

The ITAT has failed to consider the facts on record that the case of the assessee was again reopened for the A.Y 2010-11 by taking approval from competent authority i.e. Principal Commissioner of Income Tax. However, the learned ITAT gave its finding that the Assessing Officer was required to obtain approval from Principal CCIT or PCIT, as the case may be. However, the learned Tribunal has failed to see that the order under challenge was order dated 15.12.2017 and the learned Tribunal has discussed the fact of the initial assessment order dated 31.3.2016, which makes the order perverse.

7. For brevity paragraph Nos.9 and 10 of the impugned order are quoted herein below:-

“9. We have heard the rival submissions and perused the relevant materials placed on the record of the Tribunal. It is an admitted fact that before issuing notice u/S 148 of the Act,

the Assessing Officer was required to obtain approval from the Pr. CCIT or PCIT, as the case may be. However, the Assessing Officer has initiated the reassessment proceedings after taking approval from the Addl. CIT, Range-3, Jamshedpur. Before us, ld A.R. of the assessee produced a copy of decision of co-ordinate Bench of this Tribunal in the case of Kamendra Mishra vs ITO in ITA Nos.201 & 202/Ran/2017 for the assessment years 2009-10 & 2010-2011 order dated 30.11.2018 and submitted that the issue at hand is covered in favour of the assessee. We have perused the order of the Tribunal, wherein, on similar facts, it has been observed as under:-

10. *The facts under consideration are identical to the facts in the case of Kamendra (supra). We find that the Assessing Officer has not taken approval from the Pr. CCIT or PCIT for initiating reassessment proceedings and issuing notice u/s. 148 of the Act. Therefore, respectfully following the decision of the Tribunal in the case of Kamendra Mishra (supra), we quash the reassessment order passed on 31.3.2016 and allow the grounds of appeal of the assessee for both the assessment years under appeal.*

By perusing the aforesaid finding, it clearly transpires that the learned Tribunal misdirected itself by going into the facts of assessment order dated 31.3.2016; however, the appeal before the Tribunal arises out of reassessment order dated 15.12.2017. As a matter of fact, the learned Tribunal in the entire order-sheet has neither dealt with the reassessment order dated 15.12.2017 nor has expressly quashed the reassessment order. However, since the Tribunal has allowed the appeal which appeal was preferred against the order dated 14.12.2018 of CIT (Appeals) and the said order of CIT (Appeals) was passed against the reassessment order dated 15.12.2017, the learned Tribunal has created a situation where the legality and validity of the said reassessment order dated 15.12.2017 has also been adversely affected.

8. At the cost of repetition, since the Tribunal has not discussed even a single line with respect to facts of reassessment order dated

15.12.2017 and set aside the order passed by the tax authorities [AO & CIT (Appeal)] on technical grounds relying upon an identical judgment passed in another case has committed a gross error and thus making the order perverse.

As such, interest of justice demands that the impugned order passed by the learned Tribunal be quashed and the matter be remitted back to the Tribunal to pass a fresh order on merit after verifying the records of the case.

9. Consequently, the question of law as framed is decided in favour of the revenue and the impugned order dated 27.08.2019, is hereby, quashed and set aside and the matter is remitted back to the learned Tribunal to pass a fresh order on merit after verifying each and every aspect of the matter in accordance with law, preferably within a period of Six months from the date of receipt of copy of this judgment.

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)

Fahim/-