



ITA No.3740/Mum/2019
Smt. Bhavna B. Kothari
Assessment Year :2014-15

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ I.T.A. No.3740/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

Smt. Bhavna B. Kothari Flat No.13, 2 nd Floor Pankaj Building, Vakola Bridge Santacruz (East), Mumbai- 400 055	बनाम/ Vs.	Income tax Officer-22(1)(3) Room No.409, 4 th Floor Piramal Chambers, Lalbaug Parel, Mumbai- 400 012.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AQWPK-7454-L		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Shashi Tulsiyan-Ld.AR
Revenue by	:	Shri Rahul Raman-Ld. CIT-DR

सुनवाई की तारीख/ Date of Hearing	:	19/08/2020
घोषणा की तारीख / Date of Pronouncement	:	11/09/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee contest correctness of revisional jurisdiction u/s 263 as exercised by Ld. Pr. Commissioner of Income Tax-22, Mumbai, for Assessment Year 2014-15, vide order dated 26/03/2019. The grounds raised by the assessee read as under: -

A. REVISIONARY PROCEEDINGS AND ORDER UNDER SECTION 263 ARE VOID AB INITIO, INVALID, BEYOND THE AUTHORITY OF LAW AND DEVOID OF ANY LEGAL FORCE:



1. On the facts and in the circumstances of the case and in law, the Honorable Principal Commissioner of Income Tax-22 ('the learned CIT') failed to appreciate that the proceedings under section 263 of the Income Tax Act, 1961 ('the Act') were beyond the jurisdiction, void and of no legal effect in the Appellants case.
2. On the facts and in the circumstances of the case and in law, the learned CIT erred in setting aside the Order passed under Section 143(3) of the Act by the learned Income Tax Officer-22(l)(3), Mumbai ('the AO') under section 263 of the Act by holding it to be erroneous and prejudicial to the interest of revenue.
3. The learned CIT failed to appreciate that the Appellant has disclosed fully and truly all the material facts necessary for the assessment and that the original assessment was made by the then AO under section 143(3) of the Act after due and proper consideration of the same; which is evident from the Assessment Order u/s.143(3) of the Act.
4. The learned CIT failed to appreciate that there was no failure on part of the Appellant to disclose fully and truly all material facts necessary for the assessment and all the material evidences were already on the record of department. Hence the issue of Notice under section 263 of the Act is bad in law being void ab-initio, invalid, beyond the authority of law and devoid of legal force.
5. In the view of above, the Order of the learned CIT be quashed, by holding it to be bad in law.

B. REASONS FOR REVISION ARE FOR REVIEWING AND RE-EXAMINING FACTS ALREADY EXAMINED AND ON RECORD OF DEPARTMENT:

6. On the facts and in the circumstances of the case and in law, the learned CIT erred in invoking jurisdiction under Section 263 and setting aside the Assessment Order u/s.143(3) of the Act for reviewing and re-examining the facts, details, documents, evidences already examined by the AO, who had already made judgment based on the same and had passed the order of Assessment under section 143(3) of the Act. It is well settled that revision cannot be undertaken for re-examining and directing fresh inquiry due to change of opinion.
7. The learned CIT failed to appreciate the fact that the details, documents, evidences for which he has issued Notice under section 263 of the Act were already on the records of the Department. Further, the Order of learned CIT u/s.263 specifies that *'it was explained to the AR of that the AO had never examined the details furnished regarding Capital Gains claimed on SRK shares and the issue was side stepped because of the information of the Assessee filing under IDS'*; which clearly conveys that the initiation of revision proceedings by the learned CIT is **merely for the review and re-examination** of the material already on the record, which is not permissible as per the provisions of section 263 of the Act.
8. In the view of above, the Order of the learned CIT be quashed, by holding it to be bad in law.

C. REVISION OF ASSESSMENT NOT JUSTIFIED ON THE BASIS THAT THERE IS NO DISCUSSION IN ORIGINAL ASSESSMENT ORDER REGARDING A PARTICULAR CLAIM:

9. On the facts and in the circumstances of the case and in law, the learned CIT erred in invoking Section 263 in respect of claim of Long Term Capital Gain exemption on shares of SRK Industries Ltd. on the ground that the same was not discussed in the Assessment Order u/s.143(3) of the Act.



ITA No.3740/Mum/2019
Smt. Bhavna B. Kothari
Assessment Year :2014-15

10. In doing so, the learned CIT failed to appreciate that the complete facts, details, documents, evidences related to the claim of Long Term Capital Gain exemption on shares of SRK Industries Ltd. were on record of the AO, who after examining and satisfying himself had passed the order of Assessment under section 143(3) of the Act; and hence the proceedings under Section 263 are not legally valid.

11. In view of the above, the Order of the CIT (A) be quashed, by holding it to be bad in law.

D. REVISIONARY ORDER PASSED WITHOUT DISPOSING THE OBJECTIONS RAISED BY APPELLANT:

12. On the facts and in the circumstances of the case and in law, the learned CIT erred in passing the Order u/s.263 of the Act, without dealing with and disposing the objections raised by the Appellant to the revisionary proceedings vide letter 19th March 2019.

13. In view of the above, the Order of the learned CIT be quashed, by holding it to be bad in law.

E. REVISIONARY ORDER PASSED WITHOUT CONSIDERING THE FACTS AND CONTENTIONS RAISED BY APPELLANT:

14. On the facts and in the circumstances of the case and in law, the learned CIT erred in passing the Order u/s.263 of the Act, without dealing with or considering all the facts, details and documents furnished and contentions raised by the Appellant in the proceedings.

15. On the facts and in the circumstances of the case and in law, the learned CIT has failed to bring on record as to how after examining the complete details submitted by the Appellant pertaining to the claim of long term capital gain exemption on sale of shares of SRK Industries Ltd; he has reached a conclusion that Order u/s.143(3) accepting the Appellants returned income is erroneous and the same required revision.

16. In doing so, the learned CIT has erred in ignoring the Appellants submissions dated 19th March 2019 and 25th March 2019 before passing the Order u/s.263 of the Act dated 26th March 2019.

17. In view of the above, the Order of the learned CIT be quashed, by holding it to be bad in law.

F. NO APPLICATION OF MIND WHETHER APPELLANT'S CASE IS FIT CASE FOR REVISION U/S.263 OF THE ACT:

18. On the facts and in the circumstances of the case and in law, the learned CIT erred in passing the Order u/s.263 of the Act holding that Order u/s.143(3) is erroneous and prejudicial to the interest of revenue, without proper application of mind to as regards the facts, details and documents furnished and contentions raised by the Appellant in the proceedings.

19. On the facts and in the circumstances of the case and in law, the learned CIT erred in initiating proceedings u/s.263 of the Act on the ground that Appellant's case was selected for scrutiny to verify TDS on immovable property u/s.194IA and no detail or explanation in this regard was available on the file. However, there is no purchase of property by the Appellant in the captioned year; and hence the entire basis of initiating proceedings u/s.263 of the Act in Appellant's case is incorrect, without application of mind and examination of details.

20. In the communications of proceedings u/s.263, the following inconsistencies/ discrepancies are evident:



ITA No.3740/Mum/2019
Smt. Bhavna B. Kothari
Assessment Year :2014-15

- i. The Quantity of shares of SRK Industries Ltd. is stated at 44,000/- whereas the correct figure is 44,400;
 - ii. Appellants replies dated 19th March 2019 and 25th March 2019 not considered before passing the Order u/s.263 of the Act dated 26th March 2019;
 - iii. Despite submitting complete, details on merits regarding the Appellant's claim of Long Term Capital Gain on shares of SRK Industries Ltd.; nothing is borne out in the Order u/s.263 as to how after examining all the details, submitted, the learned CIT concludes that there is any error in the Order u/s.143(3) of the Act.
21. In view of the above, the Order of the learned CIT be quashed, by holding it to be bad in law.

G. FAIR AND PROPER OPPORTUNITY OF BEING HEARD NOT GRANTED:

22. On the facts and in the circumstances of the case and in law, the learned CIT erred in invoking Section 263 of the Act to set aside the Assessment Order u/s. 143(3) passed by the AO without giving the Appellant fair and proper opportunity of being heard and without following the principles and rules of natural justice.
23. The learned CIT failed to provide the Appellants copy of the following documents, on the basis of which he considers the Order u/s.143(3) of the Act to be erroneous and prejudicial to the interest of revenue, despite several requests:
- i. The copy of the proceeding sheet to enable us to respond appropriately;
 - ii. The copy of the Affidavit referred in the notice and Order u/s.263;
 - iii. The documents to establish that the Capital Gain as claimed by the Appellant is not proper.
24. In view of the above, the Order of the learned CIT be quashed, by holding it to be bad in law.

H. GENERAL:

25. All the above Grounds of Appeal are independent of and without prejudice to each other.
26. The learned CIT's Order being contrary to the law, evidence and facts of the case, should be set aside, quashed or modified on the grounds deduced above,
27. The Appellant craves leave to add, modify or delete any ground at, during or before the hearings.

2. The Ld. Authorized representative for Assessee (AR) advanced arguments supporting the grounds of appeal and assailed the revisional jurisdiction. Our attention has been drawn to the quantum assessment order framed by Ld. AO and various queries raised during the course of regular assessment proceedings. The relevant documents, in this regard, has been placed in the paper-book which we have considered. The Ld. CIT-DR supported the exercise of revisional jurisdiction u/s 263. The judicial pronouncement as cited during the course of hearing as well



as clarification has been deliberated upon. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3.1 Upon perusal of material on record, it is found that the quantum assessment for year under consideration was framed by Ld. AO u/s 143(3) on 06/12/2016 accepting returned income of Rs.10.09 Lacs e-filed by the assessee on 15/12/2014. It is apparent from assessment order that notice u/s 142(1) was issued along with questionnaire dated 10/05/2016. Various details were called which were duly submitted and placed on record. These details include notes and explanations on the issues that came up for discussion during the course of hearing. Finally, no additions / disallowances were proposed by Ld. AO in the quantum assessment order. The assessee being resident individual derived income from salary and other sources. In its computation of income, it reflected Long Term Capital Gains (LTCG) of Rs.79.05 Lacs on sale of certain shares, which were claimed exempt u/s 10(38).

3.2 During the course of regular assessment proceedings, the assessee, vide submissions dated 28/11/2016, filed complete details of computation of LTCG. The chronology of the events which gave rise to LTCG were enumerated in the said submissions. The copies of purchase bills, bank passbook evidencing purchase of shares through banking channels, copies of allotment letters pursuant to scheme of amalgamation, copy of demat statements, sale contract notes, brokers' bill, transaction wise computation of LTCG was placed on record. The assessee earned LTCG on sale of certain shares of single entity namely M/s SRK Industries Ltd. It is evident that after appreciating the same and



being satisfied with assessee's claim, the assessment was framed wherein Ld. AO chose not to alter the returned income of the assessee.

3.3 Subsequently, Ld. Pr. CIT, after perusal of case records, noted that the reason for selection of case under scrutiny was *suspicious long-term capital gain on shares*. It was seen that there was an information by DGIT (inv.) related to trade by assessee in penny stock. As per the information, the assessee sold 44000 shares of M/s SRK Industries for Rs.80.41 Lacs. Although Ld.AO, vide notice u/s 142(1), required the assessee to furnish the details of share transactions, however, in the assessment order there was no discussion with regard to claim of LTCG on sale of penny stock share of M/s SRK Industries Ltd. Therefore, a show-cause notice was issued on 25/02/2019, a copy of which is on record. In the notice, it was stated that assessment order contained assessee's affidavit that the aforesaid income was declared under Income Declaration Scheme, 2016. But no such proof of disclosure was on record. Further, the record showed that there was no such disclosure by the assessee.

3.4 The assessee, vide response dated 04/03/2019 demanded copy of office note containing said facts. Consequently, another notice was issued on 06/03/2019 wherein it was stated that there was no need to furnish the office note. The assessee may affirm or deny such statement made to AO. The assessee, vide submissions dated 19/03/2019, *inter-alia*, submitted that issue of LTCG was duly examined by Ld.AO during the course of regular assessment proceedings. The assessee again demanded the details of office note and requested for the copies of proceedings sheets, copy of affidavit stated to be filed by the assessee



and other documents which would establish that LTCG claim was not proper. In other submissions dated 25/03/2019, the assessee reiterated that the issue of LTCG was duly examined by Ld.AO during the course of regular assessment proceedings. The assessee also denied having made any affidavit or commitment to declare income under the Income Declaration Scheme, 2016. Therefore, the assessee pleaded for dropping of proceedings u/s 263.

3.5 However, not convinced with assessee's submissions, the assessment order was termed as erroneous and prejudicial to revenue in terms of Explanation-2 to Sec. 263. Finally, the order was set-aside and Ld.AO was directed to redo the assessment after giving opportunity of hearing to the assessee. Aggrieved as aforesaid, the assessee is under further appeal before us.

4. Upon careful consideration of factual matrix as enumerated in preceding paragraphs, it is quite evident that there was proper disclosure of exempt LTCG in assessee's computation of income. The transactions were duly explained by the assessee with requisite documentary evidences during the course of regular assessment proceedings. The assessment order takes note of the fact that various details were called from assessee which were duly submitted and placed on record. These details include notes and explanations on the issues that came up for discussion during the course of hearing. Therefore, it could be concluded that there was due application of mind by Ld. AO on the stated issue and the claim was admitted after due verification. Merely because the issue was not elaborately discussed in the quantum assessment could not be



a ground to invoke revisional jurisdiction u/s 263 particularly when the details called for by Ld. AO were submitted and placed on record.

5. Another fact to be noted that the copies of documents / office note which formed the basis of invocation of jurisdiction was never supplied to the assessee. The assessee all along denied having made any such affidavit that aforesaid income was declared under Income Declaration Scheme, 2016. However, the copy of the affidavit, stated to be in assessment records, was never confronted to the assessee to controvert his submissions. Mere suspicion could not be a ground to invoke jurisdiction u/s 263. It was obligatory on the part of revisional authority to demonstrate that the order was erroneous as well as prejudicial to the interest of the revenue. We find that there is no adequate material on record which would demonstrate the fulfillment of both these conditions. Therefore, the revisional jurisdiction u/s 263 could not be sustained in the eyes of law. By quashing the same, we allow the appeal.

6. Resultantly, the appeal stands allowed in terms of our above order.

Order pronounced on 11th September, 2020.

Sd/-
(Mahavir Singh)
उपाध्यक्ष / **Vice President**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 11/09/2020
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File



ITA No.3740/Mum/2019
Smt. Bhavna B. Kothari
Assessment Year :2014-15

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**