

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

IT(IT)A No.57/Bang/2021
Assessment Year : 2015-16

Shri. Zakaria Bajpe, 22-11-1464/1, Noor Mahal, Chamber Garden, Bolar, Mangaluru – 575 001. PAN : AMYPB 0788 L	Vs.	The Commissioner of Income Tax (International Taxation), 4 th Floor, BMTC Building, 80 Feet Road, 6 th Block, Koramangala, Bengaluru – 560 095.
APPELLANT		RESPONDENT

Appellant by	:	Shri. Nitish Ranjan, CA
Respondent by	:	Shri. Rajesh Kumar Jha, CIT(DR)(ITAT), Bengaluru

Date of hearing	:	21.09.2021
Date of Pronouncement	:	23.09.2021

ORDER

Per N. V. Vasudevan, Vice President:

This is an appeal by the assessee against the order passed by the CIT (International Taxation), Bengaluru, u/s.263 of the Income Tax Act, 1961 (Act), in relation to Assessment Year 2015-16.

2. The assessee is an individual. He was a non-resident during the relevant previous year. The assessee filed return of income for Assessment Year 2015-16 on 13.08.2015 declaring total income of Rs.50,72,900/-. The case of the assessee was picked up for limited scrutiny viz., for the purpose of verifying large cash deposits in savings bank account and with regard to transfer of property during the previous year. The AO issued a notice dated 29.07.2016 under section 143(2) of

the Act wherein he called for details with regard to the return of income filed by the assessee. The assessee in a letter dated 21.07.2017 submitted a reply with regard to properties purchased by the Assessee pointing out that during the FY 2014-15, assessee had purchased land measuring 107.65 cents bearing Sy. No. 59/11, 59/17 & 59/29 situated at Udyavara Village of Udupi Taluka & District, for a consideration of Rs.81,00,000/- as per sale deed dated 09.06.2014. All the payments in respect to the purchase of the said property were made in the FY 2013-14. With regard to the cash deposits in the bank account, the assessee gave the following details:

21-05-2014	IDBI Bank	1,69,800	Out of earlier cash withdrawal dated 03-04-2014 and rent received
39-06-2014	IDBI Bank	1,80,000	Out of cash withdrawal made dated 05-06-2014
03-07-2014	IDBI Bank	20,000	Out of cash withdrawal made dated 05-06-2014
22-07-2014	IDBI Bank	20,000	Out of cash withdrawal made dated 03-07-2014
22-07-2014	IDBI Bank	2,00,000	Out of cash withdrawal made dated 05-06-2014
31-07-2014	Vijaya Bank	1,50,000	Out of cash withdrawal made dated 05-06-2014
18-08-2014	Vijaya Bank	5,50,000	Out of cash withdrawal made dated 05-06-2014
18-08-2014	Vijaya Bank	3,00,000	Out of cash withdrawal made dated 05-06-2014
25-08-2014	IDBI Bank	87,000	Out of rent received and cash withdrawals
04-09-2014	Vijaya Bank	8,00,000	Out of cash withdrawal made dated 05-06-2014 & 06-06-2014
25-09-2014	Vijaya Bank	3,00,000	Out of cash withdrawal made dated 05-06-2014 & 06-06-2014
26-09-2014	Vijaya Bank	3,00,000	Out of cash in hand
01-10-2014	IDBI Bank	93,500	Out of rent received and cash withdrawals
27-10-2014	IDBI Bank	1,00,000	Out of cash withdrawal made dated 09-10-2014
29-10-2014	Vijaya Bank	50,000	Out of rent received
24-12-2014	IDBI Bank	1,00,000	Out of cash withdrawal made dated 09-10-2014
31-12-2014	Vijaya Bank	13,500	Out of rent received
02-01-2015	IDBI Bank	97,000	Out of rent received and cash withdrawal dated 30-12-2014
31-01-2015	Vijaya Bank	30,000	Out of rent received
12-02-2015	IDBI Bank	1,00,000	Out of rent received and cash withdrawal
31-03-2015	IDBI Bank	1,00,000	Out of rent received and cash in hand
TOTAL		37,60,800	

3. The AO passed an Order of Assessment under section 143(3) of the Act dated 04.08.2017 in which he made the following observations and accepted the return of income filed by the assessee.

“Subsequently notices u/s 142(1) were issued on various dates calling for certain details. In response to said notices, Shri Ramanagowda, ITP and authorized representative, of the assessee appeared on various dates and furnished the required details. CASS were looked into. After verification and discussion the assessment is completed as under:

<u>Returned Income</u>	-	<u>Rs.50,72,900/-</u>
Tax thereon		Rs. 13,46,870/-
Add: Education Cess		<u>Rs. 40,406/-</u>
		Rs. 13,87,276/-
Add: Interest u/s 234B and C-		<u>Rs. 18,545/-</u>
	Payable	Rs. 14,05,821/-
	Less: TDS	Rs. 6,05,741/-
	Advance Tax	Rs. 6,18,000/-
	Self Asst. Tax	<u>Rs. 1,82,080/-</u>
Balance tax payable		<u>NIL</u>

4. The CIT, in exercise of his powers under section 263 of the Act, issued a show cause notice to the assessee pointing out that the order of the AO was erroneous and prejudicial to the interest of the Revenue for the reason that the claim of the assessee on the queries raised by the AO in the notice u/s.143(2) of the Act have not been analysed in detail, with regard to the documents furnished before the AO. Further, the cash withdrawals as on 03.04.2014 and 05.06.2014 are cheque payments issued in the names of Mr. A K Karanth/Krishna

Karant/Krishnamurthy Karant. If the cash withdrawals were through cash cheques, circumstances in which cash cheques were issued to third parties, and further such sums will not be available for further deposit in the bank account are not dealt in detail in the Assessment order. In short, the sources for cash deposits in savings bank account has not been subjected to thorough verification and hence CASS has not been examined properly. Further, the statement of affairs as on 31.03.2014 and 31.03.2015 were not obtained and analysed to verify the availability of funds for the purchase of property purchased on 09.06.2014.

5. By letter dated 12.11.2018, the Assessee submitted that during the course of assessment proceedings, upon submission of the details, documents, information and clarifications called upon by the AO, we were asked to explain how the cash cheques were to be regarded as cash withdrawals from bank and hence, it was clarified that the cash withdrawals as on 03.04.2014 and 05.06.2014 are in fact bearer cheques issued in the name of A K Karant (alias Krishnamurthy Karant alias Krishna Karant), who manages the affairs of the assessee, for the purpose of Investment , which have been subsequently deposited on the direction of the assessee as the purposes for which the cheques were issued were not served. With regard to verification of sources for investments made for property purchased vide Sale deed dated 09.06.2014, the details called for had been submitted from time to time. Further, sources have been explained and the relevant bank extracts showing sources and payments pertaining to the period 2013 and 2014 were submitted. It was submitted that the AO has duly verified the details and upon satisfaction of the explanations given for Large cash deposits and

sources for investments in property and has passed on order accepting the returned income.

6. The CIT, after making reference to further notice dated 3.10.2018, issued by her and the reply of the assessee dated 12.11.2018, arrived at the following findings:

“14. **FINDINGS:**

.....

15. *The assessee’s main contention that the Order passed by A.O was after due verification is not found to be correct. The submissions of the assessee were accepted by AO without making necessary inquiry and without application of mind. A.O has not given any reason in his Order on this issue as to why he accepted the claim of the assessee. Reliance is placed on the jurisdictional High Court Order in the case of Infosys Technologies Limited [17 Taxmann.com 283(Karnataka)] for the proposition that every conclusion and finding by the assessing authority should be supported by reason however brief it may be. Thus an Order passed without making necessary inquiries or verifications, is erroneous and prejudicial to the interest of the Revenue in terms of Sec.263 of the IT Act.”*

7. The CIT finally gave the following directions :

“18. *in view of the above facts, I hold that the Assessment Order u/s. 143(3) of the Income Tax Act 1961, dated 04.08.2017 is erroneous in so far as it is prejudicial to the Revenue. The AO is accordingly directed to revise the Assessment after making necessary inquiries regarding the cash deposits in bank and regarding the availability of funds for purchase of property, in accordance with the provisions of law and after affording adequate opportunity to the assessee.*

8. Aggrieved by the aforesaid order of the CIT, the assessee is in appeal before the Tribunal. The submissions of the learned Counsel for

the assessee was that the AO made the required enquiries and in the course of assessment proceedings and satisfied with the explanation offered by the assessee, has completed the assessment after due application of mind and therefore the order passed under section 263 of the Act cannot be regarded as erroneous and prejudicial to the interest of the Revenue. It was submitted that the AO had made proper and adequate enquiries and therefore the order under section 263 of the Act should be held to be bad in law. Learned DR relied on the order of the CIT.

9. We have considered the rival submissions. The order passed by the AO accepting the return of income does not make any reference to any of the arguments put forward on behalf of the assessee and has merely accepted the return of income filed by the assessee. The learned Counsel for the assessee that the mere fact that the Assessing Officer did not make any reference to the facts that transpired in the course of assessment proceedings and make a reference to those facts in the assessment order cannot make the order erroneous when the issues were indeed looked into. The entire details were filed and the order itself indicates that it can be inferred that the Assessing Officer not only made enquiries, but satisfied himself with the assessee's replies furnished from time to time in support of its stand. However, we find that the Hon'ble Karnataka High Court in the case of CIT Vs. Infosys Technologies Ltd., in ITA No.588/2006 judgment dated 04.01.2012 referred by the CIT in the impugned order, had to deal with the following question of law:

"1. Whether the Tribunal was correct in holding that the commissioner exercising Jurisdiction under Section 263 of the Act by holding that the Assessing Officer should rework the credit in respect of Canadian and Thailand Tax claimed under Double Taxation Avoidance Agreement (DTAA) without specifying the error in the original order sought to be revised and how it was erroneous and prejudicial to the interest of the revenue.

2. *Whether the Tribunal committed an error in failing to appreciate that in accordance with the DTAA Clause 23 entered into by the Indian Government with the Canadian Government as well as the Thailand Government the income which fall part of total turnover and the consequential TDS claimed in Canada and Thailand cannot be allowed in India when computing the total deduction.*

3. *Whether the Tribunal committed an error in holding that the judgment of the Hon'ble Supreme Court in the case of Hind Wire Industrial Ltd cannot be made applicable when jurisdiction under Section 263 of the Act is invoked."*

10. The Hon'ble Court held as follows:

"26. We are also not in a position to accept the submission that the materials had been placed before the assessing authority and therefore there should be a conclusion that the authority has applied his mind to the same and there was no question of the commissioner interfering by taking a different view etc.

27. Assessing authority performs a quasi-judicial function and the reasons for his conclusions and findings should be forthcoming in the assessment order. Though it is urged on behalf of the assessee by its learned counsel that reasons should be spelt out only in a situation where the assessing authority passes an order against the assessee or adverse to the interest of the assessee and no need for the assessing authority to spell out reasons when the order is accepting the claim of the assessee and the learned counsel submit that this is the legal position on authority, we are afraid that to accept a submission of this nature would be to give a free hand to the assessing authority, just to pass orders without reasoning and to spell out reasons only in a situation where the finding is to be against the assessee or any claim put forth by the assessee is denied.

28. We are of the clear opinion that there cannot be any dichotomy of this nature, as every conclusion and finding by the assessing authority should be supported by reasons, however brief it may be, and in a situation where it is only a question of computation in accordance with relevant articles of a double taxation avoidance agreements and that should be clearly indicated in the order of the assessing authority, whether or not

the assessee had given particulars or details of it. It is the duty of the assessing authority to do that and if the assessing authority had failed in that, more so in extending a tax relief to the assessee, the order definitely constitutes an order not merely erroneous but also prejudicial to the interest of the revenue and therefore while the commissioner was justified in exercising the jurisdiction under Section 263 of the Act, the tribunal was definitely not justified in interfering with this order of the commissioner in its appellate jurisdiction.

29. Therefore, we answer the question posed for our answer in the negative and against the assessee. Both appeal are allowed. Parties to bear their respective cost."

11. In short, the Hon'ble Karnataka High Court took the view that if the order of the AO does not disclose the basis of his conclusion, then jurisdiction u/s 263 of the Act can be ignored. In the present case, the order of the AO is silent on his conclusions on issues raised by him in the notice u/s.143(2) of the Act and merely accepted the returned income. Therefore, the CIT was justified in directing the AO to examine the issues that were set out for limited scrutiny under CASS afresh. The assessee is always at liberty to show as to how no adverse inference or addition is called for. We, therefore, confirm the order of the CIT.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(N. V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated : 23.09.2021.
/NS/*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.