

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No. 396 of 2019

Date of decision: February 19,2020

Sh. Ramesh Kumar

.. Appellant

v.

Commissioner of Income Tax

.. Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

**Present: Mr. B. M. Monga and Mr. Rohit Kaura, Advocates
for the appellant.**

...

AVNEESH JHINGAN, J.

The assessee is in appeal under Section 260A of the Income Tax Act, 1961 (for short, 'the Act') against the order dated 25.1.2019 passed by the Income Tax Appellate Tribunal, New Delhi (for short, 'the Tribunal') claiming following substantial questions of law:

“A. Whether the Ld. Income Tax Appellate Tribunal is justified in confirming the order passed by CIT u/s 263 thereby setting aside the order u/s 143(3) which is against the well settled law and out of the purview of Section 263?

B. Whether the Ld. ITAT was justified in upholding the order passed by the CIT u/s 263 specifically when the original order u/s 143(3) was not at all erroneous order and reasonable, plausible and correct view was expressed by passing an order after taking into consideration reply, evidences and other relevant documents?”

The relevant facts are that return filed for the assessment year 2014-15 declaring income of ₹16,36,340/- was processed under Section 143(1) of the Act. Subsequently, there being an information from the Investigation Wing about suspicious long term capital gain on shares, the case was selected for scrutiny. Notice along with questionnaire was issued, information/documents and evidence were taken on record and order dated 24.2.2016 was passed. It would be relevant to produce the assessment order in toto:

“Return declaring total income amounting to Rs.16,36,340/- was e-filed by the assessee on 29.9.2014, which was processed u/s 143(1) of the Income Tax Act, 1961 on the returned income. The assessee is a partner in a Firm dealing in Petroleum Products and derives income from rent, share trading and interest during the year under consideration. Later on, the case of the assessee was selected for scrutiny assessment u/s 143(3) of the Income Tax Act, 1961 through CASS system of ITD for verification of suspicious long term capital gain on shares (inputs from investigation Wing). Statutory notice u/s 143(2) of the Income Tax Act, 1961 dated 18.9.2015 was issued and served upon the assessee. Subsequent notices u/s 143(2) and 142(1) of the Income Tax Act, 1961 alongwith questionnaire were issued and served upon the assessee. Sh. Ashok Kumar Goyal & Sh. Satish Kumar Goyal, Chartered Accountants, counsels for the assessee furnished Power of Attorney duly signed by the assessee and accepted by them and attended the assessment

proceedings from time to time and furnished the requisite information/documents/evidence. The requisite details/information/documents/evidence filed by the counsel have been placed on record. The books of a/c alongwith original vouchers and other documents were produced by the assessee, which were examined.

2. The case was discussed with the counsel for the assessee, and after discussion the following additions are made in the taxable income of the assessee on agreed basis subject to no penal action:

- i) An amount of Rs. 44,148/- on a/c of interest paid on car loan (being inadmissible expense) is added in the taxable income of the assessee.

Total Addition - Rs. 44,148/-

3. The taxable income of the assessee is recomputed is as under:

Income returned by the assessee	Rs.16,36,340/-
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ADD:-

Addition as discussed in para 2 above:	Rs. 44,148/-
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Total Income assessed:	Rs.16,80,490/-
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Assessed. Issue requisite documents.”

The proceedings were initiated under Section 263 of the Act and notice was issued on 13.12.2017. There was long term capital gain of ₹10,99,599/-, claimed by the assessee as exempt under Section 10(38) of the Act. The assessee took a stand before the Principal Commissioner of Income Tax (for short, 'PCIT') that the Assessing Officer had conducted the enquiries and passed the assessment order, therefore invoking of Section

263 of the Act is bad. The contention was rejected. Vide order dated 28.2.2018, the order of assessment was set aside and the matter remitted back to the Assessing Officer to pass fresh order after providing opportunity of hearing to the assessee. Aggrieved, the appeal was filed, the Tribunal dismissed the appeal on 25.1.2019, hence the present appeal.

Learned counsel for the assessee argued that the pre-requisite twin conditions of Section 263 of the Act are not fulfilled. It is contended that revision cannot be done on mere change of opinion, the PCIT erred in re-opening the matter as at the most it was a case of inadequate enquiry and the same cannot be a reason for revision.

The contentions raised lack merit. Section 263 of the Act gives a supervisory power to PCIT and the two requirements are that the order passed by the Assessing Officer is erroneous and is prejudicial to the interest of the revenue. Explanation 2 to Section 263 of the Act was added by Finance Act, 2015 w.e.f. 1.6.2015. As per the added explanation, in following four situations, the order of the Assessing Officer shall be deemed to be erroneous:

- “(a) the order is passed without making inquiries or verification which should have been made;
- (b) the order is passed allowing any relief without inquiring into the claim;
- (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
- (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered

by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.”

In the present case, a cursory look at the assessment order is good enough to hold the same to be erroneous. There was a specific information provided to the Assessing Officer about suspicious long term capital gain. Without going by the length of the order, there is not even a whisper that an enquiry was held with regard to the long term capital gain what to say about recording of satisfaction.

The contention of learned counsel for the assessee that it was a case of change of opinion or case of inadequate enquiry is not well founded. There is no enquiry at all by the Assessing Officer, there is no question of change of opinion. The information which was with the Assessing Officer from the Investigation Wing was not examined and the transaction was not verified. There was material on record before the PCIT that the tax leviable was not imposed as the Assessing Officer had not applied his mind while allowing exemption of long term capital gain.

Supreme Court in **M/s Malabar Industrial Co. Ltd. v. Commissioner of Income-tax, Kerala State, 2000(2) SCC 718** held as under:

“11, In the instant case, the Commissioner noted that the Income-tax Officer passed the order of nil assessment without application of mind. Indeed, the High Court recorded the finding that the Income-tax Officer failed to apply his mind to the case in all perspective and the order passed by him was erroneous. It appears that the resolution passed by the board of the appellant-company was not

placed before the Assessing Officer. Thus, there was no material to support the claim of the appellant that the said amount represented compensation for loss of agricultural income. He accepted the entry in the statement of the account filed by the appellant in the absence of any supporting material and without making any inquiry. On these facts the conclusion that the order of the Income-tax Officer was erroneous is irresistible. We are, therefore, of the opinion that the High Court has rightly held that the exercise of the jurisdiction by the Commissioner under Section 263(1) was justified.”

It would be worth mentioning that the present case is squarely covered within the four corners of explanation 2 to Section 263 of the Act. Be that as it may, even otherwise for the reasons mentioned above, the order of the Assessing Officer is erroneous.

The appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

February 19,2020
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No