Neutral Citation:2023:PHHC:117542-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Income Tax Appeal No.69 of 2023 (O&M)
Date of Decision: 25.07.2023

Pr. Commissioner of Income Tax-1, Jalandhar ... Appellant

Versus

Sh. Sham Sunder Aggarwal ... Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Argued by: Ms. Gauri Neo Rampal Opal, Senior Standing Counsel, for the appellant.

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RITU BAHRI, J.

1. Challenge in this appeal is to the order dated 24.08.2022 passed by Income Tax Appellate Tribunal, Amritsar (For short "Tribunal") in ITA No.410/Asr/2019 whereby the order dated 29.03.2019 passed by the Principal Commissioner of Income Tax-2, Jalandhar (its acronym "PCIT") i.e. the present appellant under Section 263 of the Income Tax Act, 1961 (For short "Act") had been set aside and the appeal filed by the respondent-assessee was allowed.

2. The factual matrix of the case is that the respondent is proprietor of firm M/s P.K. & Company which was engaged in the business of trading of paddy husk and transportation of goods from the premises of vendors to the premises of the buyers. The assessee had filed his return for the assessment year (A.Y.) 2009-10 on 23.09.2011 at an income of Rs.8,26,715/-. On 30.03.2016, a notice under Section 148 of the Act was issued by the assessing officer (AO) after seeking approval from the concerned Principal Commissioner of Income Tax and

assessment for the relevant A.Y. was re-opened. The same was completed vide order dated 29.12.2016 by the AO at the same income. Subsequently, the PCIT while exercising his revisional powers under Section 263 of the Act and on the basis of an information received from the investigation wing of the Income Tax Department, initiated proceedings against the assessee on the allegations that he had made bogus purchases of husk and other allied products generated out of milling process of the rice, from the dealers who were suspicious and whose registration had been cancelled. Accordingly, a show cause notice was issued against the assessee calling upon him to explain the mismatch of purchases worth Rs.4,05,57,304/- which was intimated by the Excise and Taxation Department also. Action was proposed to be taken against the assessee on the ground that the order passed by the AO was erroneous and prejudicial to the interest of the revenue as the AO had not made any independent inquiry while conducting re-assessment proceedings.

3. It has further come on record that the respondent-assessee had filed reply to the show cause notice issued by PCIT. The explanation rendered by him was not found to be satisfactory and resultantly the PCIT set aside the order dated 29.12.2016 passed by the AO by passing an order on 29.03.2019 and the matter was remitted to the AO to pass a fresh order after making necessary inquiry/verification. Feeling aggrieved from the order dated 29.03.2019, the respondent-assessee filed appeal before the Tribunal which was allowed vide order dated 24.08.2022 and the proceedings conducted by the PCIT under Section 263 of the Act and order dated 29.03.2019 were ordered to be quashed. Dissatisfied by the same, the revenue has preferred this appeal on the grounds that the order dated

24.08.2022 as passed by the Tribunal is not sustainable in the eyes of law as the Tribunal acted into a mechanical manner while passing this order and failed to appreciate the case on merits by proper appreciation of the relevant evidence available on record and without considering the substantial questions of law which had arisen in the case and, therefore, it was prayed that the impugned order dated 24.08.2022 was liable to be set aside.

4. It was argued by learned counsel for the appellant-revenue that it was incumbent upon the Tribunal to examine the entire relevant evidence which was very much available on record and which had a direct bearing on the issue to arrive at the conclusion that there was mismatch in the documents which were relied upon by the respondent-assessee to show sales/purchases made by him and the documents which had been sent by the Excise and Taxation Commissioner. Only a cursory examination of such documents was, however, done. The discrepancies in the figures of purchases as reported by the respondent-assessee and as shown by the Excise Department were not considered. The well reasoned detailed order passed by the PCIT thereby pointing out the discrepancies in the figures of purchases had not been properly interpreted. The order passed by the PCIT proved that the assessment as made by the AO was erroneous as well prejudicial to the interest of the revenue and the Tribunal had materially erred in setting aside the same and allowing the appeal. With these broad submissions, it was urged that the appeal deserved to be allowed and the impugned order dated 24.08.2022 was liable to be quashed.

5. We have heard learned counsel for the appellant-revenue and have carefully gone through the record.

6. Section 263 of the Act empowers the Commissioner to call for

and examine the record of any proceeding under the Act and if he considers that any order passed by the AO/Income Tax Officer is erroneous and prejudicial to the interest of the revenue, he may, after complying with the principles of natural justice, pass such order thereon as the circumstances of the case require including the order enhancing or modifying the assessment or cancelling the same and directing fresh one. The well settled proposition of law is that revisional powers conferred on the Commissioner under Section 263 are of wide amplitude and it empowers the Commissioner to make or cause to be made such inquiry as he deems necessary in order to find out, if the order passed by the ITO was erroneous in so far as it was prejudicial to the interest of the revenue. Reference in this regard can be made to **Malabar Industrial Company Limited v. CIT**, (2000) 2 SCC 718 wherein the Hon'ble Supreme Court had observed that in order to exercise jurisdiction under Section 263 (1) of the Act, the Commissioner has to be satisfied on twin conditions, namely, (i) the order of the AO sought to be revised is erroneous; and (ii) it is pre-judicial to the interests of the revenue and if one of them is absent, recourse cannot be had to Section 263 (1) of the Act. It was further observed in this case that the phrase "prejudicial to the interest of the revenue" has to be understood in its ordinary meaning which was of wide import and was not confined to loss of tax.

7. Now taking into consideration the above discussed position of law, it is to be seen as to whether the order passed by the Tribunal is liable to be interfered with or not? At the cost of repetition, it may be mentioned that pursuant to his filing return for the A.Y. 2009-10, the AO had passed an order under Section 143 (3) of the Act on 23.09.2011 and had assessed the income of assessee as Rs.8,26,715/-. However, subsequently notice under

Section 148 of the Act was issued against the assessee on 30.03.2016 and the assessment was ordered to be re-opened after obtaining approval from the PCIT and after supplying the reasons recorded for the purpose of re-opening. A notice under Section 142 (1) of the Act was served upon the assessee. The AO re-assessed the income at the same rate as it was previously assessed while passing order dated 29.12.2016 (Annexure A-1). The appellant while exercising his revisional jurisdiction under Section 263 of the Act had issued show cause notice to the assessee and after considering his reply, had set aside the order of AO and vide his order dated 29.03.2019 (Annexure A-2) and had given direction to the AO to pass fresh order after making necessary inquiries by observing that the Designated Officer of the Excise Department had passed order dated 25.10.2012 to the effect that the purchases shown to be made by the respondent to the tune of Rs.4,05,57,304/- were bogus ones and had further observed that the appeal filed by the respondent against the order of Designated Officer had also been dismissed and, therefore, the mismatch between the entries qua sale/purchase as recorded in the books of account of the respondent-assessee and the material available with the Excise and Taxation Department was proved. The Tribunal had set aside the order passed by the present appellant by observing that the same could not be held to be erroneous or pre-judicial to the interest of the revenue as the AO had made proper verification during the assessment proceedings and the question of bogus purchases could not be enquired multiple times. It was further observed that the re-assessment order had been passed by the AO in pursuance of notice under Section 148 of the Act after seeking approval from PCIT, Jalandhar and the same could not be revised by the appellant being an officer of the same rank.

8. On assessment of the record, it emerges that so far as the observation to the effect that the appellant who was the revisional authority could not revise the order of AO as it was approved by an officer of the same rank concerned, the same cannot be held to be correct in view of the fact that infact there is no bar for the Principal Commissioner to invoke powers under Section 263 of the Act to examine an assessment order passed by the AO by issuing notice after seeking approval from Principal Commissioner and such power can certainly be exercised by the revisional authority. However, so far as an argument as raised by the appellant that the AO had failed to make proper verification of the record during assessment proceedings concerned and the Tribunal had wrongly held so is concerned, we are unable to accept the same. The AO had framed assessment after re-opening of the same pursuant to notice issued under Section 148 of the Act on the ground that there was escapement of income as information had been received from the Excise and Taxation Department regarding bogus purchases of husk being made by the respondent. The AO in his order Annexure A-1 had clearly mentioned that the books of accounts, vouchers, audit report along with audited Trading, Profit and Loss account along with balance sheet of the respondent-assessee had been examined. The order as passed by the AO might not be a detailed one but it stands revealed from the same that he had conducted due inquiry in the matter. It is well settled proposition of law that if there was an inquiry, even inadequate, that would not by itself give occasion to the Commissioner to pass an order under Section 263 of the Act merely because he had different opinion in the matter. Reliance in this regard can be placed upon **CIT v. Sunbeam Auto Limited**, (2011) 332 ITR 167 (Delhi), wherein the High Court of Delhi had

observed that if any AO, by acting in accordance with law, makes a certain assessment, the same cannot be branded as erroneous simply because according to the revisional authority, the order should have been written more elaborately. Reliance can also be placed upon **ITO v. DG Housing Projects Limited**, (2012) 74 DTR (Delhi) 153 wherein it was observed by High Court of Delhi that the cases where no inquiry or verification at all had been conducted by the AO, were to be distinguished from the cases where there was inquiry but the findings were incorrect, erroneous or incomplete. In the instant case, the order (Annexure A-1) as passed by the AO might not be a detailed order, however, it cannot be stated that he had not verified the documents with books of account of assessee and had not applied his mind on the question of bogus purchases. The learned Tribunal while passing the impugned order had observed that a office note which was prepared by the AO while conducting re-assessment proceedings revealed that he had duly verified the documents and had applied his mind on the question of bogus purchases also. The learned Tribunal had observed that since the authorities of Excise Department had reported before the AO that no purchases alleged to have been made by the assessee from eight bogus firms, were infact made by the assessee, therefore, there was no escapement of income. In our considered opinion, the re-assessment proceedings were concluded by the AO by taking into consideration the material available on record and it could not be stated that the same had not been appreciated and examined by him. The same issue was again sought to be inquired into by the appellant-revisional authority which could not be allowed to be inquired multiple times. The order passed by the AO as such could not be stated to be erroneous and since as per the re-assessment, no income was held to have escaped assessment by the AO and as appellant also could not bring any such material on record, therefore, the assessment order cannot be held to be pre-judicial to the interest of revenue as well within the meaning of Section 263 of the Act. As such, we are inclined to hold that the findings as given by the Tribunal do not warrant any interference. Accordingly, while upholding the same, we see no reason to allow the appeal and dismiss the same. No order as to costs.

9. All miscellaneous application(s), if any, also stand disposed of.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

25.07.2023
manju

Whether speaking/reasoned Yes/No
Whether reportable Yes/No