IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3349 OF 2022

Sarda Paper Ltd. ….Petitioner

V/s.

Principal Commissioner of Income Tax -5,
Mumbai and Ors. …Respondents

Mr. Vasudev Ginde i/b Mr. Kumar Kale for Petitioner.
Mr. Akhileshwar Sharm for Respondents-Revenue.
Mr. Devinder Kumar Gupta, PCIT – 5, Mumbai present.

CORAM : K.R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED : 27th MARCH 2024

P.C. :

1. Petitioner is impugning an order dated 25th March 2022 passed by the Principal Commissioner of Income Tax -5 (PCIT– 5), i.e., Respondent No.1 under Section 264 of the Income Tax Act, 1961 (the Act).

2. Petitioner had filed its return of income for Assessment Year 2016-17 on 17th October 2016 declaring total income at Rs.2,33,44,585/-. Thereafter assessee filed its revised return of income on 31st August 2017 declaring total income at Rs.2,33,44,585/-. Subsequently, the return of income was processed under Section 143(1) of the Act on 29th March 2019 assessing total income of Rs.4,53,21,056/-. The difference in returned income and assessed income was mainly due to denial of set off of unabsorbed business loss of Rs.2,19,76,471/- against long term capital gain declared by assessee in the return of income.

3. Assessee thereafter filed Rectification Application under Section 154 of the Act against the intimation under Section 143(1) of the Act requesting to allow set off of unabsorbed business loss against long term capital gain. It is stated in the impugned order that the Centralized Processing Center (CPC), vide an order dated 27th July 2020 did not make any change in the income computed under Section 143(1) of the Act.

4. Petitioner thereafter filed an application under Section 264 of the Act on 26th March 2021. This application came to be rejected by PCIT – 5, Mumbai on the ground that Deputy Commissioner of Income Tax (DCIT), CPC is not reporting to the PCIT – 1, Mumbai. According to PCIT – 5, PCIT – 1, Mumbai can neither exercise any kind of monitoring of the work of DCIT, CPC nor can issue any directions to him. Therefore, he cannot be treated as subordinate to PCIT – 1, Mumbai and rejected the application. PCIT – 5 has not mentioned in the order which will be the PCIT in that case who can hear petitioner's application under Section 264 of the Act. Least we would have expected from the PCIT is to forward the application under advise to assessee to the concerned PCIT who would be able to hear the matter. Atleast make a reference in the order than simply reject the same.

5. Mr. Ginde submitted, and rightly so, that under Section 143(1)(A) of the Act, the Board has formulated a scheme for centralised processing of returns with a view to expeditiously determining the tax payable by, or a

refund due to, assessee as required under Sub Section (1) of the Act. The Central Board of Direct Taxes (CBDT) had also notified a scheme on 4th January 2012 in exercise of the powers conferred by Sub Section 1(A) of Section 143 of the Act.

6. We agree with Mr. Ginde that the CPC only acts as a facilitator to the Jurisdictional Assessing Officer (JAO) who holds jurisdiction over assessee under Section 120 of the Act. Merely because the return is processed by CPC, the regular jurisdiction of the JAO is not curtailed and he continues to hold the same jurisdiction. This is evident from the fact that a demand resulting from the processing of a return under Section 143(1) of the Act by CPC is also enforced by the JAO. It is JAO who issues a notice under Section 143 (2) of the Act if the return is to be selected for scrutiny and frames the assessment. We would also add that even under the faceless regime, once the assessment has been framed by the Faceless Assessing Officer (FAO), all records are transferred to the JAO for recovery of demand and other incidental matters. In fact in many matters before us PCIT have exercised jurisdiction in identical situation.

7. Therefore, for Respondent No.1 to say that he will have no jurisdiction to entertain petitioner’s application under Section 264 of the Act because the DCIT, CPC is not reporting to him is not correct.

8. An affidavit has been filed by one Mr. Devinder Kumar Gupta

who is the present PCIT – 5 affirmed on 22nd March 2024 justifying the stand taken by PCIT - 1 Mr. Naresh Kumar Balodia in the impugned order. Our repeated queries to Mr. Sharma, then which will be the PCIT who will have jurisdiction according to Mr. Gupta was met with total silence. Of course, Mr. Sharma informed the court that Mr. Gupta has sought opinion on 22nd March 2024 of the CBDT to advise him as to which PCIT will have jurisdiction. In fact, it is rather strange that only when a counter affidavit is directed to file when the concerned PCIT thinks it is necessary to seek the opinion of CBDT when the petition itself has been served on or about 7th July 2022. It reflects the sorry state of affairs and how much the officers are serious about attending to the issues pertaining to assessees. We also hope CBDT would sensitize its officers and educate them as to how they should deal with assessees.

Moreover, the CBDT has issued directions on 18th September 2020 (F No.187/3/2020-ITA-1) in which it is noted that the power under Section 263 and 264 of the Act will be exercised by the Jurisdictional Principal Commissioners of Income Tax concerned. Therefore, certainly if the powers can be exercised by the Jurisdictional Principal Commissioners of Income Tax and the faceless regime, certainly it only confirms our view expressed above that CPC only acts as a facilitator to the JAO and merely because the return is processed by CPC the regular jurisdiction of the JAO is not curtailed and he continues to hold the jurisdiction.

9. At this stage, Mr. Sharma on instructions from Mr. Devinder Kumar Gupta, PCIT – 5, who was present in the court, states that it was uncertain whether he could exercise jurisdiction but if the court directs he shall certainly exercise jurisdiction. His reluctance should not be construed as a reluctance to exercise jurisdiction.

10. Since we have already expressed our view that the JAO will have jurisdiction, we hereby quash and set aside the impugned order dated 25th March 2022. Respondent No.1 – PCIT – 5 is directed to dispose petitioner's application under Section 264 of the Act in accordance with law. Before passing order on merits petitioner shall be given personal hearing, notice whereof shall be communicated atleast five working days in advance. The issue of jurisdiction shall not be raised by Respondent No.1.

11. Mr. Sharma on instructions states that in view of the explanation given in ground (a) for delay if any, the issue of delay also will not be raised and the matter will be decided on merits. Section 264 application shall be disposed on merits by 31st May 2024.

12. Petition disposed.

(DR. NEELA GOKHALE, J.) **(K.R. SHRIRAM, J.)**