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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 26.09.2024

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ITA 287/2024 & CM APPL. 29090/2024 (Stay)**M.R APPARELS PRIVATE LIMITED****.....Appellant**

Through: Mr. Rajeev Ahuja, Advocate.

versus

PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX - 6**.....Respondent**

Through: Mr. Shlok Chandra, Senior Standing Counsel with Ms. Naincy Jain, Junior Standing Counsel, Ms. Madhavi Shukla, Junior Standing Counsel & Mr. Sushant Pandey, Advocates.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****VIBHU BAKHRU, J. (ORAL)**

1. The appellant has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*) impugning an order dated 06.02.2024 (hereafter *the impugned order*) passed by the learned Income Tax Appellate Tribunal (hereafter *the Tribunal*), in ITA No. 198/DEL/2020, for the Assessment Year 2015-16. The appellant (assessee) had preferred the said appeal impugning an order dated 18.11.2019 passed by the learned Principal Commissioner of Income Tax (hereafter *the CIT*) under Section 263 of the Act holding that the Assessment Order dated 04.05.2017 passed



by the learned Assessing Officer (hereafter *the AO*) under Section 143(3) of the Act in respect of the assessment year 2015-16, is erroneous, in so far as it is prejudicial to the interest of the Revenue.

2. The learned CIT concluded that the AO had not verified the necessary relevant facts relating to the taxability of sale of certain immovable property.

3. The controversy essentially, relates to the sale of immovable property during the relevant previous year (Financial Year 2014-15) for a sum of ₹6,50,00,000/-. Admittedly, the sale deed in respect to the said immovable property was executed by the appellant on 17.03.2015 and the stamp duty of ₹ 32,50,000/- was also paid by the purchaser (M/s VTS IT Solutions). TDS at the rate of 1%, amounting to ₹6,50,000/- was also deducted on the total sale consideration paid by the purchaser on 18.03.2015. Admittedly, a sum of ₹5,05,00,000/- was received by the appellant. However, the appellant claims that he did not receive the balance amount of ₹1,45,00,000/-, as the cheques for the said amount were dishonoured. According to the appellant, the transaction of sale and purchase of the immovable property remained inchoate. The appellant claims that notwithstanding that a conveyance deed was executed, the sale of the property in question was not consummated. The appellant did not reflect the sale of his immovable property, during the relevant Assessment Year and did not offer the capital gains to tax.

4. The learned CIT found that the AO did not examine the details regarding the dishonour of cheques. The learned CIT noted that the two cheques aggregating to ₹1,45,00,000/- issued by the purchaser were post-dated cheques as they were dated 15.09.2015 and 15.03.2016 respectively.



The audit report furnished by the appellant is dated 04.09.2015. Therefore, the Auditors could not have commented upon the dishonour of the cheques, as the report was prior to the dates of the cheques.

5. Pursuant to the order passed by the learned CIT, the AO passed an order dated 24.09.2021 under Section 144 read with Section 263 and 144 B of the Act. The learned AO assessed the appellant's income for the assessment year 2015-16 at ₹1,86,11,320/- and raised a demand of ₹44,19,500/-. In the meanwhile, on 10.01.2020, the appellant preferred an appeal before the Tribunal against the order dated 18.11.2019 passed by the learned CIT under Section 263 of the Act.

6. On 20.10.2021, the appellant also filed an appeal against the assessment order dated 24.09.2021 before the learned Commissioner of Income Tax (Appeals), which is pending.

7. The Tribunal rejected the appellant's appeal against the order dated 18.11.2023 passed by the CIT under Section 263 of the Act, in terms of the impugned order.

8. The learned Tribunal considered the appellant's contentions and found no fault with the CIT's order dated 18.11.2018.

9. The learned counsel for the appellant contends that all material and documents were available with the AO and he had made full enquiries. Therefore, the explanation no. 2 to Section 263 of the Act was not satisfied.

10. Section 263 of the Act is set out below:



“Revision of orders prejudicial to revenue.

(1) The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer or the Transfer Pricing Officer, as the case may be, is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including,—

- (i) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or
- (ii) an order modifying the order under section 92CA; or
- (iii) an order cancelling the order under section 92CA and directing a fresh order under the said section.

Explanation 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

(a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer [or the Transfer Pricing Officer, as the case may be, shall include—

- (i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;
- (ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer [or the Transfer Pricing Officer, as the case may be,] conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under section 120;
- (iii) an order under section 92CA by the Transfer Pricing Officer;

(b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Chief



Commissioner or Chief Commissioner or Principal Commissioner or Commissioner;

(c) where any order referred to in this sub-section and passed by the Assessing Officer 92[or the Transfer Pricing Officer, as the case may be,] had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the* Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer or the Transfer Pricing Officer, as the case may be, shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,—

(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.

Explanation 3.—For the purposes of this section, "Transfer Pricing Officer" shall have the same meaning as assigned to it in the Explanation to section 92CA.

(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.

Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under



this section is stayed by an order or injunction of any court shall be excluded.”

[Emphasis added]

11. We find no merit in the appellant’s contention. Concededly, the audit report could not have commented upon the dishonour of cheques, as the report was issued prior to the date of the cheques aggregating ₹1,45,00,000/- . The AO had accepted the said report. The assessment order does not indicate any enquiries in this regard. The learned CIT has rightly held that the Assessment Order was passed without making the necessary inquiries and verification. Thus, in terms of clause (a) of Explanation 2 to Section 263 of the Act, the assessment order is deemed to be erroneous in so far as it is prejudicial to the interests of the revenue.

12. We find that no question of law arises in the present case.

13. The appeal is, accordingly, dismissed.

14. Pending application is also dismissed.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

SEPTEMBER 26, 2024

at

[Click here to check corrigendum, if any](#)