

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI R.S.SYAL, VP AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 562/PUN/2019

निर्धारण वर्ष / Assessment Year : 2014-15

Hindumal Balmukund Investment  
Co. Pvt. Ltd.  
2<sup>nd</sup> Floor, Lohia Jain House,  
Bhandarkar Road,  
Pune-411 004  
PAN : AAACH4226Q

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Pr. Commissioner of Income Tax-1,  
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri V.L. Jain

Revenue by : Smt. Kesang V. Sherpa

सुनवाई की तारीख / Date of Hearing : 30.07.2020

घोषणा की तारीख / Date of Pronouncement : 03.08.2020

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM:**

This appeal preferred by the assessee emanates from the order of the Ld. Pr. Commissioner of Income Tax-1, Pune dated 26.03.2019 for the assessment year 2014-15 passed u/s. 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') as per the grounds of appeal on record.

2. Though the assessee has raised multiple grounds of appeal as per the appeal memo, the crux of the grievance of the assessee is against the revisionary jurisdiction assumed by the Ld. Pr. Commissioner of Income Tax-1, Pune u/s.263 of the Act.

3. The brief facts of the case are that the assessee company filed return of income on 23.09.2014 for assessment year 2014-15 declaring income of Rs. Nil after claiming deduction u/s.80IA of the Act amounting to Rs.7,64,02,294/-. During the course of assessment proceedings, the assessee company had filed revised computation of its income at Rs. Nil after claiming deduction u/s.80IA of the Act amounting to Rs.4,44,39,344/-. The assessment u/s.143(3) of the Act was completed on 30.12.2016 assessing total income at Rs.5,82,73,571/- after disallowance of claim of deduction u/s.80IA(4) of the Act of Rs.4,44,39,344/- and other disallowances.

3.1. On subsequent examination of case records, it was observed by the Ld. Pr. CIT that the company was deriving income from letting out of property as well as construction activity. In the year under consideration, the company had offered an income of Rs.2,93,68,495/- on account of letting out of house properties of Business centre and Kothrud properties. The same was revised to Rs.75,28,744/- before finalization of the assessment by filing revised computation.

3.2. On perusal of the same, it was evident that the revised computation, gross total income before Chapter-VI deduction was Rs.4,44,39,344/- as against Rs.7,64,02,293/-. Thus, the total income was shown less by Rs.3,19,62,949/-. One of the main heads where income was reduced was house property. In the revised computation, income from house property was

offered to the extent of Rs.75,28,744/- as against Rs.2,19,05,841/- which is less by Rs.1,43,77,079/-. No explanation nor any valid reason for drastic fall in returned income has been offered by the assessee company.

3.3. A show-cause notice was issued to the assessee on 11.03.2019 as to why the assessment order dated 30.12.2016 cannot be set aside u/s.263 of the Act. In response to the said show cause notice, the Ld. AR of the assessee filed written submissions which are on record.

4. The Ld. Pr. Commissioner of Income Tax-1, Pune on analyzing the facts and circumstances of the case vis-à-vis assessment order held that relevant facts in this case were not at all examined by the Assessing Officer and he has simply accepted the submissions of the Ld. AR and reproduced/extracted the same without any application of mind. There is no discussion which fortifies that he has applied his mind. Since no reasons were provided for his decision in the assessment order and therefore, the assessment order was set aside being held to be erroneous in so far as it is prejudicial to the interest of the Revenue.

5. Before us, the Ld. AR of the assessee filed detailed written submissions and for ready reference, the same are extracted herein below:

*"1. A show cause notice u/s.263 dated 11.03.2019 was issued which is at Page 1 & 2 of the paper book.*

*2. The appellant is a real estate developer deriving income from developing and operating an IT Park, property development and rentals. The original return was filed declaring Nil income and a revised computation filed during the course of assessment proceedings also reflected Nil income. Both the computations are a part of the assessment order at Para 8.1 and Para 8.1.1 of the order.*

*3. The revised computation mainly rectified the erroneous inclusion of income from house property which was already considered under the head Income from Business and vice versa. As a sequel, the claim u/s*

80IA(4) of Rs.7,64,02,294/- was corrected to Rs.4,44,39,344/- in the revised computation.

4. The AO, after considering the revised computation which reflected Gross Total Income at Rs.4,44,39,344/- (See Para 8.1.1 of assessment order) adopted the same figure in his own computation of income in the concluding Para 11 on Page 23 of the assessment order. It was patently a mistake in the original computation which was rectified in the revised computation, considered and accepted by the AO after verification.

5. A perusal of the notice u/s 263 reveals that at the end of Para 2, the Hon. PCIT observed that "no explanation nor any valid reason has been offered for the drastic fall in returned income. The issue has not been examined by the AO".

6. Both the aforesaid observations are factually incorrect. Attention is invited to submissions dated 14.11.2016 (Page 12 to 13 of Paper Book) and dated 23.12.2016 (Page 14 of Paper B9ok) where this issue has been brought out and explained on a query by the AO.

7. The notice further concludes in Para 3 that the "order appears to be erroneous in so far as it is prejudicial to the interests of the Revenue as the AO has not made verification and proper application of mind".

8. This observation about the AO's application of mind is totally incorrect as is evident from the submissions made before the AO as also from Para 8, 8.1 and 8.1.1 of the assessment order where he has considered the revised computation.

9. Further, the Hon. PCIT points out no error in the order and no prejudice, as the computation in both the cases results in Nil income.

10. Para 3 (unnumbered) of the order u/s.263 reads thus - "On perusal of the same it is seen that the revised computation, gross total income before Chp. VI deduction was Rs.4,44,39,344/- as against Rs. 7,64,02,293/-. Thus, the total income was shown less by Rs.3,19,62,949/-". This is an incorrect observation as both the computations result in Nil total income.

11. Para 5 (unnumbered) of the order u/s.263 concludes thus - "Though the AR claimed that these facts were examined & accepted by AO, there is no record of the same in the assessment folder".

12. Your Honour's attention is invited to the submissions dated 15/03/2019 made in response to notice u/s. 263 (Pages 3 to 6 of Paper Book) which also contains Annexures 1 to 3 (Page 7 to 10 of Paper Book) which Annexures were also before the AO. The AO, himself, has extracted both the computations in the assessment order. In the face of this fact, it is not appreciated as to how the Hon. PCIT remarks that - "there is no record of the same in the assessment folder".

13. The ultimate Para of the order u/s.263 reads thus - "Therefore, the assessment order is hereby set aside u/s. 263 of the I.T.Act with directions to the A.O to verify the list of properties owned by the assessee and how many are on lease/rent and the rental income derived from the parties after verification of the

*rental agreements, bank entries and books of accounts etc. and pass order as per the facts of the case.”*

*14. It is obvious that the order u/s. 263 does not infer any error or prejudice in the assessment order, but wants the AO to embark on an exercise of verification. Thus, the order u/s 263 lacks the satisfaction of the Hon. PCIT on any error which is causing prejudice to the Revenue.*

*15. The Hon. PCIT does not even refute the elaborate submissions made in response to the notice u/s 263 and by not referring to the submissions also gives the impression that the same have not been considered.*

*16. It is therefore contended that –*

- a) The Hon. PCIT has wrongly exercised the jurisdiction u/s 263 as the AO's order cannot be held to be erroneous as well as prejudicial to the interest of the revenue (Ground No.1)*
- b) The Hon. PCIT's order u/s 263 does not deal with and pass a speaking order on the contentions raised in 263 proceedings but cryptically concludes - "Though the AR claimed that these facts were examined & accepted by AO, that there is no record of the same in the Assessment folder". (Ground No.2)*
- c) The Hon. PCIT's order u/s 263 suffers from a legal infirmity in as much as it sets aside the order for being framed de-novo after considering issues which issues have already been examined by the AO as also brought out in the assessment order and as such amounts only to a difference of opinion. (Ground No.3)*
- d) The Hon. PCIT's order does not exhibit any satisfaction or conclusion on the assessment order being erroneous and prejudicial to the interests of the revenue. (Ground No.4)*
- e) Reliance is placed on the following decisions which are a part of the Case Law Compilation (CLC):*
  - a) Bodhisattva Chattopadhyay v. CIT (ITA No. 1314/Kol/2019) [Para 29 to 31 at Pages 29 & 30 of CLC]*
  - b) Latur District Central Co-op Bank Ltd. V. PCIT (ITA No. 164&628/PUN/2019) [Refer Para 10 at page 37 & Para 21 at Page 42 of CLC]*
  - c) CIT v. Ashish Rajpal (320 ITR 0674) (Del) [Refer Para 15 & 16 at pages 56-57 of CLC]*
  - d) DIT v. Jyoti Foundation (357 ITR 0388) (Del) [Refer Para 5 at Page 66 of CLC read with Para 4 at Page 63 of CLC]*
  - e) CIT v. Vikas Polymers (341 ITR 0537) (Del) [Refer Para 18 at Page 75 of CLC]*

*f) CIT v. M/s. S.R. Corporation (ITA No.289/SRT/2018) [Refer Para 20 & 21 at Page 91 of CLC].”*

6. Per contra, the Ld. DR for the Revenue has placed strong reliance on the findings of the Ld. Pr. Commissioner of Income Tax u/s.263 of the Act stating that though in the original return, income from Kothrud property has been shown amounting to Rs.3,15,50,560/-, however, it was drastically reduced to Rs.3,71,160/- for which there is no discussion in the assessment order by the Assessing Officer nor any reasons has been put in as to why the Assessing Officer has accepted such difference in offering of income for taxation purposes. The Ld. DR further submitted that there is loss of the Revenue by the action of the Assessing Officer for which the order of the assessment is erroneous in so far as prejudicial to the interest of the Revenue. The strong contention of the Ld. DR is that the order passed u/s.263 of the Act by the Ld. Pr. Commissioner of Income Tax should be upheld.

7. We have perused the case records and heard the rival contentions. We have also analyzed the facts and circumstances in this case and also considered the judicial pronouncements placed before us. We have also considered all the arguments placed before us by the Ld. AR. The Ld. AR has repeatedly argued that since his original return, revised return, his submission are extracted by the Assessing Officer, therefore, the Assessing Officer has applied his mind while framing the assessment. The Ld. AR of the assessee failed to demonstrate before us, the nexus of the decision arrived at by the Assessing Officer vis-à-vis facts of the case and anomaly appearing in the revised computation than what was offered for taxation in the original return. The Ld. AR also failed to demonstrate any portion in the assessment

order where the Assessing Officer has discussed the reasons why he has accepted the difference arising in the revised return at Rs.3,71,160/- so far as Kothrud property is concerned which was drastically brought down since in the original return, the amount offered for taxation was Rs.3,15,50,560/-.

7.1 When we peruse the order of assessment, we find there is no discussion at all as rightly pointed out by the Ld. DR on this very fact regarding the difference in figures in the original return and corrected computation. In the entire order of the Assessing Officer, he has only extracted the submissions of the Ld. AR, extracted the original return and revised computation and finally accepted them without any application of his mind. The case laws relied on by the Ld. AR has been considered by us and in these decisions, the legal principle common is that whenever the Quasi-Judicial Authority is making any decision on the given facts, there must be nexus between the reasons given by the Quasi-Judicial Authority with regard to the documents on record for which finally he arrives at that decision. The decision must reflect the reasoning of the Officer. By plain reading of the decision one should understand how the author has arrived at a particular conclusion. The thought process should be reflected therein. In this case in the assessment order, the entire exercise is missing. Merely extraction of submissions cannot justify that the Assessing Officer has applied his mind.

7.2 The Hon'ble Supreme Court in the case of **Malabar Industrial Co. Ltd. Vs. CIT, Kerala State, 243 ITR 83 (SC)** has held that where Assessing Officer had accepted the entry in the statement of account in the absence of supporting material, without making any inquiry, the exercise of jurisdiction

by CIT under section 263(1) was justified. The operative part of decision is as under.

*“In the instant case, the Commissioner noted that the ITO passed the order of nil assessment without application of mind. **Indeed, the High Court recorded the finding that the ITO failed to apply his mind to the case in all perspective and the order passed by him was erroneous.** It appeared 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 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 ITO was erroneous was irresistible. Therefore, the High Court had rightly held that the exercise of the jurisdiction by the Commissioner under section 263(1) was justified.”*

7.3 Further, the Supreme Court in the case of **Rampyari Devi Sarogi vs. CIT (1968) 67 ITR 84 (SC)** and **Tara Devi Aggarwal v. CIT (1973) 88 ITR 323 (SC)** has been held that where Assessing Officer has accepted a particular contention/issue without any enquiry or evidence whatsoever, the order is erroneous and prejudicial to the interest of the Revenue.

8. We also find that the Assessing Officer while accepting the documents submitted by the Ld. AR, has not conducted any specific enquiry as to the facts of the case. There is no iota of evidence brought on record by the Assessing Officer justifying that there was mistake committed by the assessee vis-à-vis his filing of original as well as revised return of income. The Ld. AR of the assessee also argued that the view taken by the Assessing Officer may not be a proper one as per the Ld. Pr. Commissioner of Income Tax is concerned nonetheless, it is definitely an appropriate view. We do not agree with the contention of the Ld. AR since taking a view should be backed by reasons and that reasons should be demonstrated in the order itself with evidences brought on record and independent enquiry conducted. In this



case, the Assessing Officer has only done the work of extraction of submissions of the Ld. AR and nothing else and therefore, in fact the Assessing Officer has not formed any view. When no view has been taken, no enquiry has been conducted, when no reasons on facts has been placed on record, the order of assessment is bound to be erroneous in so far as prejudicial to the interest of the revenue.

Taking the totality of facts and circumstances into consideration and aforesaid case laws, we uphold the order passed u/s.263 of the Act by the Ld. Pr. Commissioner of Income Tax.

**9. In the result, appeal of the assessee is dismissed.**

Order pronounced on 03<sup>rd</sup> day of August, 2020.

Sd/-  
**R.S.SYAL**  
**VICE PRESIDENT**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 03<sup>rd</sup> August, 2020.

SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Pune.
4. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	30.07.2020	Sr.PS/PS
2	Draft placed before author	03.08.2020	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		