

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./ I.T.A.No.979/Chny/2020

(निर्धारणवर्ष / Assessment Year: 2013-14)

M/s. Seyad Shariat Finance Ltd., 54B/8A, Kangadhara Building S N High Road, Tirunelveli-627 001.	Vs	The Principal Commissioner of Income Tax, Central-2, Chennai.
PAN: AADCS 9042E		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. B.Ramakrishnan, FCA
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. Abani Kanta Nayak, CIT

सुनवाईकीतारीख/Date of hearing	:	26.08.2021
घोषणाकीतारीख /Date of Pronouncement	:	17.09.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against order of the PCIT., Central, Chennai-2, dated 09.12.2020 passed u/s.263 of the Income Tax Act, 1961 and pertains to assessment year 2013-14.

2. Brief facts of the case are that the assessee is engaged in the business of financial activities filed its return of income for assessment year 2013-14 on 27.09.2013 admitting total income of Rs.5,89,30,600/-. The assessment for the impugned assessment year has been completed u/s.143(3) of the Income Tax Act, 1961 on 28.03.2016 and determined total income at

Rs.6,17,53,051/-, after allowing deduction of Rs.7,63,323/- u/s.80IA of the Income Tax Act, 1961. Thereafter, a search action u/s.132 of the Income Tax Act, 1961 was conducted in the case of Seyadu group of concerns, Tirunelveli on 28.06.2017. Consequent to search, assessment has been completed u/s.143(3) r.w.s 153C of the Income Tax Act, 1961 on 24.12.2019 and determined total income at Rs.8,39,57,050/-, after making additions towards unexplained cash credit u/s.68 of the Act for Rs.2,22,04,000/-.

3. The case has been, subsequently taken up for revision proceedings u/s.263 of the Income Tax Act, 1961, on the ground that assessment order passed by the Assessing Officer is erroneous insofar as it is prejudicial to the interests of revenue on account of allowing deduction u/s.80IA of the Act to the tune of Rs.7,63,323/- without examining case with reference to relevant provisions of the Act to ascertain whether assessee has satisfied conditions prescribed therein. The learned PCIT has proposed to revise assessment order on the ground that the Assessing Officer has allowed deduction u/s.80IA of the Act, without examining fact of furnishing audit report required to be filed in Form No.10CCB, as required under 18BBB of the

Income Tax Rules, 1962, which rendered assessment order erroneous insofar as it is prejudicial to the interests of revenue. In response, the assessee vide its letter dated 17.11.2020 opposed revision proceedings taken up by learned PCIT and argued that assessment order passed by the Assessing Officer is neither erroneous nor prejudicial to the interests of revenue, because issue of claim of deduction u/s.80IA of the Act was allowed by the Assessing Officer in the original assessment order passed u/s.143(3) dated 28.03.2016 and thus, proposed revision of assessment order dated 24.12.2019 is clearly barred by limitation. The assessee has also relied upon certain judicial precedents including decision of the Hon'ble Kerala High Court in the case of M/s. Skyline Builders Ltd. Vs. CIT (2019) 105 taxmann.com 207.

4. The learned PCIT, after considering relevant submissions of the assessee and also taken note of various facts, including assessment order passed u/s.143(3) dated 28.03.2016 and subsequent assessment order pursuant to search proceedings passed u/s.143(3) r.w.s 153C of the Act dated 24.12.2019, observed that proposed revision of assessment order is taken up for revising assessment order dated 24.12.2019 passed

u/s.143(3) r.w.s.153C of the Act, but not assessment order passed u/s.143(3) dated 28.03.2016 and thus, proposed revision proceedings is well within prescribed time limit provided u/s.263 of the Income Tax Act, 1961. The learned PCIT also discussed issue in light of provisions of section 153A and held that once search action took place, then assessment for six assessment years immediately preceding assessment year in which search took place gets reopened and Assessing Officer shall have power to assess / reassess total income including undisclosed income, if any found as a result of search and thus, once search took place, original assessment order passed u/s.143(3) of the Act gets wiped out. Therefore, he opined that there is no merit in the arguments of the assessee that revision proceedings is beyond limitation. The learned PCIT further referring to Explanation 2 to section 263 of the Act, opined that an order shall be deemed to be erroneous, if it has been passed without making inquiries /verification which should have been made. Since, the Assessing Officer has not examined issue of deduction u/s.80IA of the Act, assessment order passed by the Assessing Officer becomes erroneous insofar as it is prejudicial to the interests of revenue. Hence, set aside

assessment order passed by the Assessing Officer and directed the Assessing Officer to verify the assessee's claim of deduction u/s.80IA of the Act in accordance with law.

5. The learned A.R for the assessee submitted that the learned PCIT has erred in revision of assessment order on the issue of deduction u/s.80IA of the Income Tax Act, 1961, beyond prescribed time limit provided under sub-section (2) of section 263 of the Act, without appreciating fact that issue of deduction u/s.80IA was not subject matter of verification during the reassessment proceedings passed pursuant to search action u/s.143(3) r.w.s. 153C of the Income Tax Act, 1961. The learned A.R referring to the provisions of section 263 of the Act, submitted that as per provisions any order can be revised within two years from the end of financial year in which original assessment order was passed. In this case, original assessment order was passed on 28.03.2016 and the issue of deduction u/s.80IA was examined by the Assessing Officer. Further, said issue was neither subject matter of reassessment nor was examined by the Assessing Officer and hence, question of revision of assessment order passed

u/s.143(3) r.w.s 153C of the Act, dated 24.12.2019 does not arise. Therefore, if original assessment order dated 28.03.2016 is considered, then revision order passed by learned PCIT dated 09.12.2020 is clearly barred by limitation and liable to be quashed.

6. The learned DR, on the other hand, submitted that once search takes place, original assessment gets wiped out and the Assessing Officer shall have powers to assess or reassess total income including undisclosed income, if any found during the course of search. Therefore, when assessment is framed pursuant to search u/s.143(3) r.w.s 153C, it is deemed that the Assessing Officer has considered all the issues including income declared in the return of income and any other income comes to the notice on the basis of search materials. The DR further submitted that since the assessment order has been reframed pursuant to search, issue of deduction u/s.80IA also emanates from new assessment order passed pursuant to search u/s.143(3) r.w.s 153C of the Act, and thus, revision order passed by learned PCIT is well within time limit prescribed under the Act. The learned DR further referring to decision of the Hon'ble Karnataka High Court in the case of M/s.Canara

Housing Development Co. Ltd. Vs. DCIT (2014) 49 taxmann.com 98, submitted that although the decision was in favour of the assessee, but ratio laid down by the Hon'ble High Court clearly indicates that once search takes place earlier assessment, if any passed u/s.143(3) gets wiped out and new assessment order passed in pursuant to search u/s.143(3) r.w.s 153A/153C only persists and hence, if such assessment order date is considered, revision order passed by learned PCIT is well within two years from the end of relevant financial year and hence, there is no merit in the arguments of the assessee that revision order passed by learned PCIT is barred by limitation.

7. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The provisions of section 263 of the Income Tax Act, 1961 empowers Pr.CIT / CIT to revise assessment order passed by the Assessing Officer, if PCIT satisfies that assessment order passed by the Assessing Officer is erroneous insofar as it is prejudicial to the interests of revenue. Sub-section (2) of section 263 prescribes time limit for passing revision order, as per which no order shall be made

under sub-section (1) after expiry of two years from the end of financial year in which order sought to be revised was passed. If a combined reading of sub-section (1) and (2) of section 263 of the Act, it is very clear from the provisions of the Act that if the PCIT wants to exercise his powers u/s.263 of the Act, then he should be satisfied himself about assessment order passed by the Assessing Officer and observed that assessment order passed by the Assessing Officer is erroneous insofar as it is prejudicial to the interests of revenue and further, such powers can be exercised within two years from the end of the financial year in which order sought to be revised was passed.

8. In light of above legal position, if you examine present case one has to see whether revisional order passed by the learned PCIT is within the time limit prescribed under the Act or barred by limitation. Admittedly, original assessment order was passed u/s. 143(3) of the Act on 28.03.2016 . In the said order, the Assessing Officer has allowed claim of deduction u/s.80IA of the Income Tax Act, 1961. Further, subsequent assessment order was passed in pursuant to search action u/s. 132 of the Act on 24.12.2019. In the said assessment order, except issue of additions towards unexplained cash

credit u/s.68 of the Act, no other issue was discussed by the Assessing Officer including deduction claimed u/s.80IA of the Income Tax Act, 1961. The proposed revision proceedings was taken up to examine issue of deduction claimed u/s.80IA of the Act, and said issue was first time examined in original assessment proceedings u/s.143(3) of the Act on 28.03.2016. It is a well settled principles of law by various courts that PCIT/CIT can exercise his revisional powers on the issue which was subject matter of assessment proceedings whether or not said issue was discussed by the Assessing Officer. In this case, the learned PCIT has taken up revision proceedings on the issue of deduction claimed u/s.80IA of the Act, and said issue was not a subject matter of assessment in pursuant to search action u/s.143(3) r.w.s. 153C of the Income Tax Act, 1961. Once issue was not a subject matter of assessment proceedings pursuant to search, then date of assessment goes back to original assessment passed u/s.143(3) of the Act and if you go by said assessment order, then date shall be reckoned from 28.03.2016. If you go by that date, revision order passed by the PCIT dated 09.12.2020 is clearly beyond two years from the end of financial year in which order sought to be revised

was passed. This legal position is fortified by the decision of the Hon'ble Kerala High Court in the case of M/s.Skyline Builders Vs. CIT (supra), where under identical set of facts, the Hon'ble High Court held that where no revisional order was passed by CIT at the time of completion of original assessment, limitation period for passing order u/s.263 had to commence from first order of assessment. The Hon'ble Madras High Court in the case of Indira Industries Vs. PCIT (2018) 95 taxmann.com 103 (Mad), had considered an identical issue and held that when a notice u/s.263 raises new issues, which are not subject matter of reassessment proceedings, then two years period contemplated under sub-section (2) of section 263 would begin to run from date of original assessment. The Hon'ble Madras High Court while considering the issue had followed decision of the Hon'ble Supreme Court in the case of CIT Vs.Alagendran Finance Ltd. (293 ITR 1) (SC), where a similar view had been taken by the Hon'ble Supreme Court. As regards case law relied upon by the learned DR in the case of M/s.Canara Housing Development Co. Ltd. Vs. DCIT (supra) and other case law, we find that those case laws rendered under different set of facts and has no application to the facts

of the present case and hence, case laws relied upon by the learned DR are not considered.

9. In this view of the matter and considering facts and circumstance of the case and also by following ratio of various case laws discussed herein above, we are of the considered view that revision order passed by the learned PCIT dated 09.12.2020 is barred by limitation because, said order was passed after expiry of two years from the end of financial year in which order sought to be revised was passed. Hence, we quash revision order passed by the learned PCIT u/s.263 of the Income Tax Act, 1961.

10. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 17th September, 2021

Sd/-
(वी.दुर्गा राव)
 (V.Durga Rao)
 न्यायिक सदस्य /Judicial Member
 चेन्नई/Chennai,
 दिनांक/Dated 17th September, 2021
 DS

Sd/-
(जी.मंजुनाथ)
 (G.Manjunatha)
 लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अद्येषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.