॥ आयकर अपीलीय न्यायाधिकरण, पुणे "बी" न्यायपीठ, पुणे में ॥

IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE "B" BENCH, PUNE

BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 123/PUN/2021

निर्धारण वर्ष / Assessment Year : 2015-2016

Smt. Sangeeta Ganpati Jadhav
D-406, Neha Co-op. Society,
Sus, Pune-411045.
PAN : AEFPJ8933A **. . . . . अपीलार्थी / Appellant**

बनाम / V/s.

Chief Commissioner of Income Tax,
Pune. **. . . . . प्रत्यर्थी / Respondent**

द्वारा / Appearances

Assessee by : Shri Dhananjay Barve
Revenue by : Shri Sardar Singh Meena.

सुनवाई की तारीख / Date of conclusive Hearing : 08/09/2022
घोषणा की तारीख / Date of Pronouncement : 14/10/2022

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

The present appeal of the assessee is agitated against the order of Chief Commissioner of Income Tax-(PR-CIT-2), Pune [for short **"CCIT"**] dt. 17/02/2021 passed u/s 263 of the Income-tax Act, 1961 [for short "**the Act"**], which dove out of the order assessment passed u/s 143(3) by Asstt. CIT, Circle-4 Pune [for short **"AO"**] vide order dt. 21/12/2017, for assessment year [for short **"AY"**] 2015-16.

2. The subject matter of present litigation is twofold, it assailed firstly against assumption of revisionary jurisdiction as time-barred and secondly against non-satisfaction of necessary twin conditions laid in section 263 of the Act.

3. Tersely stated the facts of the case are; the assessee is an individual deriving income from salaries, house property, capital gains and other sources etc., has for AY 2015-16 e-filed her return of income [for short **"ITR"**] on 26/08/2015 declaring total income of ₹20,76,520/- after a claim of chapter VI-A deduction for ₹1,60,000/-. The case of the assessee was subjected to scrutiny under CASS by service of notice u/s 143(2) of the Act, wherein the valuation adopted for computation of capital gain was revised and assessment was culminated u/s 143(3) of the Act determining the total income at ₹67,58,100/- upon recomputation of long term capital gain arisen on transfer of land, and after allowing a claim of exemption u/s 54F thereagainst for ₹54,22,646/- for investment into new residential house. The same is not the subject matter of appeal before first appellate authority [for short **"FAA"**]

4. The Ld. CCIT perusing the order of his lower tax authority, contending one as erroneous and prejudicial to the interest of revenues for allowing the assessee a claim of exemption u/s 54F by turning blind eye to the disqualification envisaged in proviso to section 54F(1) of the Act and further picturing the absence of inquiries into source of investment made in new asset, has assumed the revisionary jurisdiction and by service of show cause notice [for short **"SCN"**] dt. 11/01/2021 called upon the assessee to showcase the entitlement for 54F claim and explain nature & source of investment made. As a result the assessee chosen to remain silent during the entire revisionary proceedings, the Ld. CCIT by an order u/s 263, set-aside the 143(3) assessment for de-nova adjudication on the issue dealt by revisionary action, after providing necessary and reasonable opportunity of being heard to the assessee.

5. Pending the proceedings before the Ld. AO, the assessee aggrieved by the aforesaid revisionary order is before this Tribunal with the grounds of appeal challenged as under;

1) ***The Ld. CIT erred in passing the order u/s 263 beyond a period of 2 years from the financial year in which assessment u/s 143(3) was completed. The order passed by the learned CIT is beyond the period of limitation and therefore void and bad in law.***

2) ***The Ld. CIT was not justified in passing the order ex-parte without allowing proper opportunity of being heard in the appellant. The request for adjournment made was not considered.***

3) ***The Ld. CIT erred in disallowing the claim made by the appellant u/s 54 without allowing sufficient time to the appellant or her AR to submit her say.***

4) ***The Assessee says & submits that the Ld. CIT fell in error of law in not appreciating that the disqualification for the exemption u/s 54F for an assessee holding more than one residential house(s), applies only if the assessee is a sole /full-fledged owner of the houses(s) and not if an assessee is a joint second/holder of such house(s).***

5) ***The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal and/or lay the additional evidence at the time of hearing.***

6. During the course of physical hearing, the Ld. representative for the assesse [for short **"AR"**] adverting to provisions of section 263 and the copy of release-deed placed at page 14-19 of paper book, submitted that, the

action of Ld. AO is neither erroneous nor prejudicial to the interest of the revenue so has to activate 263 action. It is also contended that, the action of Ld. CCIT is bad is law for twofold legal grounds, first on the count of limitation and second on the count of violation of principle of natural justice. ***Au contraire*** the learned departmental representative [for short **"DR"**] in support of action of Ld. CCIT, has placed on record a copy of '**The Taxation and Other Laws (Relaxation and Amendment of Certain Provision) Act, 2020**' [for short **"Relaxation Act"**] & a notification dt. 31/12/2020 and adverting to suo-moto order of Hon'ble Supreme Court on limitation (MA-21/2022) submitted that, the revisionary proceedings including the final order u/s 263 of the Act is well within the extended period of limitation. Further adverting to explanation 2 to section 263(1), the Ld. DR argued that, ostensibly the order of assessment suffers from blatant error in allowing the claim of exemption u/s 54F in violation of proviso to section 54F(1), and in the event, nothing more is required to demonstrate erroneousness of the order and hence 263 order needs to be sustained.

7. After hearing to the rival contentions of both the parties; and subject to the provisions of rule 18 of Income Tax Appellate Tribunal Rules, 1963 [for short **"ITAT, Rules"**] perused the material placed on records till the date of conclusive hearing and duly considered the facts of the case in the light of settled legal position and case laws relied upon by the appellant as well the respondent.

8. As it transpired that, the primary issue in the present controversy is threefold;

a. Firstly, as to whether the revisionary proceedings suffered from **limitation** as contemplated in s/s (2) of section 263 of the Act?

b. Secondly as to whether there was violation of principle of '***Audi Alteram Partem***' in the course of revisionary proceedings?

c. Finally as to whether the order passed by the assessing officer u/s 143(3) can be said to be **erroneous and prejudicial** to the interest of the revenue within the preview of section 263 of the Act?

9. Before we proceed for adjudication, let us first reproduce the text of 263 revisionary proceedings such as;

"263. Revision of orders prejudicial to revenue –

(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that <u>any order passed</u> therein by the Assessing Officer is erroneous insofar 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 an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."

[Explanation 1] . . . . . .

[Explanation 2] —For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer 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 Commissioner or Commissioner,—

(a) the order is passed <u>without making inquiries or verification</u> which should have been made;

(b) the order is passed <u>allowing any relief without inquiring into the claim;</u>

(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.

(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) . . . . . ” *(Emphasis supplied)*

10. First ground first, s/s (2) of section 263 prescribes time limit within which the order u/s 263 can be revised i.e. two years from the end of financial year in which order sought to be revised was passed. In the present case, the order of assessment which was subjected to revision was passed u/s 143(3) of the Act on 21/12/2017, which falls in the financial 2017-2018. Whereas the proceedings u/s 263 of the Act was initiated by SCN dt. 11/01/2021 and completed on 17/02/2021. Prima facie, the time limit of two years therefrom seems to have ended on the last date i.e. 31/03/2020 within which aforestated assessment could be

subjected to revision. However due to nation-wide lockdown imposed, the Central Govt of India through **Relaxation Act, 2020**' r.w. notification dt. 31/12/2020, has extended the period of limitation upto 31/03/2021 for completion of **any proceedings** or **passing any order** or **issuance of any notice**, intimation, notification, sanction or approval or such other action by whatever name called by any authority, commission or tribunal by whatever name called under the provisions of specified Act which inter-alia includes Income Tax Act, 1961. In the light of provisions of section 3(1)(a) of Relaxation Act, 2020 & notification dt. 31/12/2020 r.w. press release, we witnessed that, the time limit within which revision action ought to have completed was extended upto 31/03/2021, thus, initiation of revisionary proceedings by issue of SCN and completion by passing an order of revision is saved of limitation, consequently ground number 1 remains with no ***locus-standi***, hence stands dismissed.

11. We shall now deal with **ground number 2 & 3** which alleged the violation of principal of natural justice for passing ex-parte order and without according sufficient

opportunity to represent before the conclusion of revisionary proceedings. In the evince of records, it remained an undisputed fact that, the assumption of revisionary jurisdiction was initiated by issue of SCN dt. 11/01/2021 and the absence of reply or response thereto, the assesse was put to further notice dt. 01/02/2021, however same were futile. Following the principle of natural justice, the proceeding were adjourned and re-fixed on 16/02/2021, nonetheless the assesse continued to opt out from making any representation which resulted into ex-parte culmination. Thus, due service of SCN to the appellant, and reasonable opportunity of fair hearing against proposition and prima-facie unbiased approach while dealing with revisionary proceedings apparently stands established and in ***fortiori***, the Ld. AR did not controvert the factual plexus, in the event we disapprove the contention of any such violation, resultantly **ground number 2 & 3 of the appeal also stands dismissed.**

12. Ground number 5 is general, hence now we turn to adjudicate ground number 4, which challenged the revisionary action claiming eligibility for exemption u/s 54F

of the Act, and thereby challenging the evince of twin preconditions necessary for triggering 263 revisionary proceedings. For the purpose, let's consider the provisions once again; a plain perusal of s/s (1) of section 263 envisages four phases in exercising revisionary powers;

a. **Firstly calling and examining of records** of any proceedings under this Act without requiring him to showcase any reason as it is a part of his administrative control.

b. In **second phase,** revisionary authority would evaluate the order passed by tax authorities below for **forming an opinion** thereon to the effect that, whether such order is erroneous in so far as it is prejudicial to the interests of the Revenue or not and if this phase concludes the satisfaction of twin conditions, then it triggers further phases otherwise jurisdiction fails.

c. In **third stage,** the assessee is **put to show cause notice** pointing out the reasons for the formation of belief that action u/s 263 is required and reasonable

but sufficient opportunity is accorded to the assessee to rebute the belief and jurisdiction by producing evidential material in support.

d. In **fourth phase,** the authority conducts **necessary inquiry into** material placed before & after hearing the assessee, concludes the revisionary proceedings by **express order** either dropping the proceedings or directing the assessing officer for modification or for de-nova adjudication as the case may be.

13. It pertinent to take note of the fundamental tests propounded to judge the revisionary action in various judicial precedents including the landmark decision of Hon'ble Supreme Court in **"Malabar Industries Vs CIT" reported in 243 ITR 83** and two of such test are;

a. An **incorrect assumption of facts or an incorrect application of law** will suffice the requirement as to order being erroneous.

b. If the order is passed **without application of mind,** will fall under the category of erroneous order.

14. In the light of aforestated ratio laid down by Hon'ble Supreme Court of India on the subject matter, we have the audacity to summarise the inferential but harmonious analysis of revisionary provision of section 263 of the Act, into a five steps of "***Quein Principle***", [for short **"Queen"**] where the affirmative compliance thereof shall debar the tax authorities from assuming revisionary jurisdiction and these steps are;

a. There must be an explicit ***query*** from the adjudicating tax authority as regards to any claim made including information supplied in the return of income filed or to be filed, and

b. There must be direct, clear and an ***unreserved submission*** from the assessee in reply to aforesaid query, and

c. The submission must be followed by detailed ***inquiry*** (and not enquiry) by the tax authorities into assessee's eligibility of claim, basis of claim and compliance of pre as well post conditions as may be attached to the claim under scrutiny, and

d. There should be ***even-handed application*** of mind by the adjudicating authority in reaching out the allowability or dis-allowability of claim under consideration,

e. And finally, the adjudication must ensure the correct application of law as regards to aforesaid upholding the principle of ***natural justice***.

15. In the extant appeal, considering the facts of the case ***extenso***, we find from para 3 & 4 of the assessment order that, an explicit queries about the long term capital gain and exemption claim were raised and pursuant thereto an unreserved submissions were made by the appellant, thereupon a consequential inquiry into entitlement was carried out and on finding no cavilling evidence thereagainst, a claim of exemption was allowed. However, the Ld. CCIT doubting the action of lower tax authority merely redid the exercise and formed adverse opinion on the same facts & circumstances, without any fresh and deprecative material brought on record to demonstrate

fulfilment of twin conditions pre-requisite for assumption of revisionary jurisdiction.

16. In this context it is apt to quote that, Hon'ble Bombay High Court while adjudicating the similar issue in the case of **"CIT Vs Gabriel India Ltd"** reported at 203 ITR 108, referring to the ration laid down by Hon'ble Justice Raghuveer in "Sirpur Paper Mills Ltd Vs ITO", tumbledown the revisionary action in para 10 thereof which reads as;

> ***"10. As observed in Sirpur Paper Mills Ltd. v. ITO by Raghuveer J. (as his Lordship then was), the Department cannot be permitted to begin fresh litigation because of new views they entertain on facts or new versions which they present as to what should be the inference or proper inference either of the facts disclosed or the weight of the circumstances. If this is permitted, litigation would have no end, "except when legal ingenuity is exhausted". To do so, is ". . . to divide one argument into two and to multiply the litigation".***
>
> ***(Emphasis supplied)***

17. ***Nota bene,*** since the Ld. AO in this case had made inquiries with regard to appellant's entitlement for claim of exemption u/s 54F and after considering the written

submission duly supported by release deed, corporation tax challans, utility bills, property card etc., and explanation offered by the appellant as regard to entitlement, the same was on being satisfied, accepted by the Ld. AO, such conclusion of the assessing Officer cannot be held as "erroneous" simply because the order did not make an elaborate discussion on the subject matter. As it is a well settled law that, an inquiry and/or fresh determination can be directed by the revisionary authority only after coming to the conclusion that the finding of the Ld. AO is erroneous and prejudicial to the interests of the Revenue on the basis of evidential material and without doing so, the authority turns powerless to disturb the completed assessment, hence for the reason in our considered opinion, the conclusion drawn by the Ld. CCIT is untenable in law. We ***de integro*** and applying the dictum form CIT Vs Gabriel India Ltd (Supra) are of the strong view that, the action of Ld. CCIT could not be sustainable in eyes of law, ergo we finding no infirmity with the order of assessment, quash the revisionary order, thus the ground number 4 of the appeal stands allowed.

18. **Resultantly, the appeal of the appellant assessee is allowed in aforestated terms.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Friday 14th day of October, 2022.

-S/d-	-S/d-
SS VISWANETHRA RAVI	**G. D. PADMAHSHALI**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / PUNE ; दिनांक / Dated : 14th day of October, 2022.

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

1.अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CCIT, Pune (Mh-India)
4. The Pr. CIT, Pune (Mh-India)
5. विभागीय प्रतिनिधि,आयकर अपीलीय न्यायाधिकरण, पुणे **"बी"** बेंच, पुणे / DR, ITAT, Pune "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY RDER,
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.