

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA-PATNA 'e-COURT', KOLKATA  
[Virtual Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)  
&  
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 23/PAT/2016  
Assessment Year: 2011-2012**

***Madhya Bihar Gramin Bank,..... Appellant  
C/o. Nirmal & Associates,  
Chartered Accountants,  
Nepali Kothi, Opp. Gasoline Petrol Pump,  
Boring Road, Patna-800001  
[PAN:AAAAM7216M]***

**-Vs.-**

***Principal Commissioner of Income Tax-1,..Respondent  
Patna***

**Appearances by:**

*Shri Nishant Maitin, CA, appeared on behalf of the  
assessee*

*Smt. Rinku Singh, CIT, D.R., appeared on behalf of the  
Revenue*

Date of concluding the hearing : May 31, 2023

Date of pronouncing the order : June 02, 2023

**O R D E R**

**Per Rajpal Yadav, Vice-President (KZ):-**

The assessee is in appeal before the Tribunal against the order of ld. Principal Commissioner of Income

Tax-1, Patna dated 01.02.2016 passed under section 263 of the Income Tax Act for Assessment Year 2011-12.

2. Though the assessee has taken four grounds of appeal, but its main grievance is that the ld. Pr. CIT has erred in taking cognizance under section 263 of the Income Tax Act and thereby setting aside the assessment order.

3. The assessee has filed its return of income on 30.06.2011 declaring total income of Rs.1,60,000/-. The case of the assessee was selected for scrutiny assessment and an assessment order under section 143(3) was passed on 26.03.2014. The ld. Assessing Officer has made four additions/disallowances.

4. The ld. Pr. Commissioner perused the assessment order and thereafter formed an opinion that assessment order is erroneous and caused prejudice to the interest of Revenue. The ld. Pr. Commissioner took cognizance under section 263 and issued a show-cause notice on 30.03.2015. The show-cause notice has been reproduced on pages no. 1 & 2 of the impugned order.

5. In brief, the ld. Pr. Commissioner was of the view that the ld. ACIT has determined the taxable income of the assessee at Rs.6,42,97,860/- as against returned

income of Rs.1,60,000/-. A perusal of the record would suggest that the assessee had paid interest on deposits of Rs.162.28 crores. There are no details of TDS found on the record. In other words, whether the assessee has deducted the TDS paid on the interest to its customers. According to the ld. Pr. Commissioner, the ld. Assessing Officer has not conducted any inquiry on this aspect and, therefore, this action of the ld. Assessing Officer caused prejudice to the interest of revenue. He accordingly issued a show-cause notice.

6. In response to the show-cause notice under section 263, the assessee has filed written submissions. Those written submissions have been noticed by the ld. Pr. Commissioner from paragraph no. 2 on pages 2 to 7 of the impugned order. A perusal of this written submission would reveal that it has been divided in two compartments. On one compartment, the assessee has put reliance upon the judicial precedence namely –

(i) CIT -vs.- Sunbean Auto Limited (2009)  
227 CTR (Del.)133;

(ii) Russell Properties Pvt. Limited (109 ITR  
229) (Cal.);

(iii)CIT -vs.- Max India Limited (2007) 295  
ITR 282 (SC).

On the strength of these decisions, it was submitted that it is not a case of no enquiry. At the most, it can be termed as a case of lack of enquire.

7. In the second-fold, it was contended that ld. Commissioner has just expressed apprehension of non-consideration of this issue at the end of the ld. Assessing Officer in the show-cause notice but in fact, ld. Assessing Officer has applied his mind. He has considered the specific items on which TDS was not deducted in paragraph 4. The assessee thereafter gave the break-up of the interest payment on FDR, Recurring Deposit and SF. The ld. Commissioner considered all these aspects and thereafter held that no inquiry was conducted by the ld. Assessing Officer on the item of interest paid by the assessee.

8. The ld. Counsel for the assessee while impugning the order of the ld. CIT relied upon his submissions and the case laws presented before the ld. CIT. He further submitted that these aspects have been enquired into by the ld. Assessing Officer. He also relied upon the CBDT Circular bearing No. 3/2010 issued on 02.03.2010.

9. The ld. CIT(DR), on the other hand, contended that neither before the ld. Assessing Officer nor before the ld. CIT(Appeals), the assessee has ever demonstrated the

components of TDS deducted on the interest payment to its customers. In the alleged paragraph 4 of the assessment order there are four items on which no TDS was deducted. These items are Advertisement and Publicity, Auditor Fees, Law Charges, Generator Rent. Apart from these items, no other issue had been taken up by the ld. Assessing Officer. Therefore, it is a case of no inquiry on this particular item and ld. Pr. Commissioner has rightly exercised the powers.

10. We have heard the ld. Representatives and with their assistance gone through the record carefully. Before we embark upon an enquiry on the facts and issues agitated before us to find out whether the action u/s 263 of the Act, deserves to be taken against the assessee or not, it is pertinent to take note of this section. It reads as under:-

*“263(1) The 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 is erroneous in so far as it is prejudicial to the interest 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.- 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 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 conferred on, or assigned to, him under the orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorized by the Board in this behalf under section 120;*

*(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 Commissioner;*

*(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the 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.*

*(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.”*

11. A bare perusal of the sub section-1 would reveal that powers of revision granted by section 263 to the learned Commissioner have four compartments. In the first place, the learned Commissioner may call for and examine the records of any proceedings under this Act. For calling of the record and examination, the learned Commissioner was not required to show any reason. It is a part of his administrative control to call for the records and examine them. The second feature would come when he will judge an order passed by an Assessing Officer on culmination of any proceedings or during the pendency

of those proceedings. On an analysis of the record and of the order passed by the Assessing Officer, he formed an opinion that such an order is erroneous in so far as it is prejudicial to the interests of the Revenue. By this stage the learned Commissioner was not required the assistance of the assessee. Thereafter the third stage would come. The learned Commissioner would issue a show-cause notice pointing out the reasons for the formation of his belief that action u/s 263 is required on a particular order of the Assessing Officer. At this stage the opportunity to the assessee would be given. The learned Commissioner has to conduct an inquiry as he may deem fit. After hearing the assessee, he will pass the order. This is the 4th compartment of this section. The learned Commissioner may annul the order of the Assessing Officer. He may enhance the assessed income by modifying the order. He may set aside the order and direct the Assessing Officer to pass a fresh order. At this stage, before considering the multi-fold contentions of the ld. Representatives, we deem it pertinent to take note of the fundamental tests propounded in various judgments relevant for judging the action of the CIT taken u/s 263. The ITAT in the case of Mrs. Khatiza S. Oomerbhoy Vs. ITO, Mumbai, 101 TTJ 1095, analyzed in detail various authoritative pronouncements including the decision of Hon'ble Supreme Court in the case of Malabar Industries 243 ITR 83 and has propounded the



following broader principle to judge the action of CIT taken under section 263.

(i) The CIT must record satisfaction that the order of the AO is erroneous and prejudicial to the interest of the Revenue. Both the conditions must be fulfilled.

(ii) Sec. 263 cannot be invoked to correct each and every type of mistake or error committed by the AO and it was only when an order is erroneous that the section will be attracted.

(iii) An incorrect assumption of facts or an incorrect application of law will suffice the requirement of order being erroneous.

(iv) If the order is passed without application of mind, such order will fall under the category of erroneous order.

(v) Every loss of revenue cannot be treated as prejudicial to the interests of the Revenue and if the AO has adopted one of the courses permissible under law or where two views are possible and the AO has taken one view with which the CIT does not agree. It cannot be

treated as an erroneous order, unless the view taken by the AO is unsustainable under law.

(vi) If while making the assessment, the AO examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determine the income, the CIT, while exercising his power under s 263 is not permitted to substitute his estimate of income in place of the income estimated by the AO.

(vii) The AO exercises quasi-judicial power vested in him and if he exercises such power in accordance with law and arrive at a conclusion, such conclusion cannot be termed to be erroneous simply because the CIT does not fee stratified with the conclusion.

(viii) The CIT, before exercising his jurisdiction under s. 263 must have material on record to arrive at a satisfaction.

(ix) If the AO has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the AO allows the claim on being satisfied with the

explanation of the assessee, the decision of the AO cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard.

12. In the light of above, if we examine the record carefully, then it would reveal that ld. Assessing Officer has not made any discussion on the point, whether TDS on the interest payment to the customer was made by the assessee or not. In the absence of such discussion, the other alternative is to verify from the questionnaires issued by the ld. Assessing Officer. In case, specific questions are asked and assessee has submitted complete details including the details of TDS, if any, then, it can be construed that inquiry was made and ld. Assessing Officer has applied his mind to this fact. But these details were neither brought to the notice of the ld. CIT nor discernable from 143(3) order. The assessee has not filed any details in the paper book containing the questionnaires and replies submitted by the assessee during the scrutiny assessment. The submissions made before us are in consonance with the written submissions filed before the ld. Commissioner and reproduced on pages no. 2 to 5. However, a perusal of these submissions would reveal that these are theoretical and peripheral without hitting to the central point. The assessee ought to have submitted tabulated details of the

customers including collection of particular forms from the customer for not deducting the TDS. No such steps were taken by the assessee either before the Id. CIT or before us. As far as the CBDT Circular referred by the Id. Counsel for the assessee is concerned, this take cares the condition, where constructive credit of interest is being given on the depositor's money without specific repayment. In other words, if the customer taken FDR and interest is being paid on its maturity, then annual computation of interest for making the TDS is not to be undertaken by the Bank on notional basis. This Circular has nothing to do with the enquiry required to be conducted by the Id. Assessing Officer. Therefore, Id. Pr. Commissioner has not committed any error in exercising the powers under section 263 of the Income Tax Act. We do not find any merit in this appeal of the assessee. It is dismissed.

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

Order pronounced in the open Court on 02.06.2023.

**Sd/-  
(Manish Borad)  
Accountant Member**

**Sd/-  
(Rajpal Yadav)  
Vice-President**

***Kolkata, the 2<sup>nd</sup> day of June, 2023***

*Copies to :(1) Madhya Bihar Gramin Bank,  
C/o. Nirmal & Associates,*

*Chartered Accountants,  
Nepali Kothi, Opp. Gasoline Petrol Pump,  
Boring Road, Patna-800001*

*(2) Principal Commissioner of Income Tax-1,  
Patna*

*(3) Commissioner of Income Tax- ,*

*(4) The Departmental Representative*

*(5) Guard File*

*TRUE COPY*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**