

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: E: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.516/Del/2021
Assessment Year: 2016-17

Navneet Bhardwaj, 8, South Bhopa Road, New Mandi, Muzaffarnagar-21001 PAN AHYPB 2313 C	vs.	The PCIT, Dehradun, Uttarakhand 248001
(Appellant)		(Respondent)

For Assessee :	Shri Ramit Kakkar, Adv.
For Revenue :	Ms. Sarita Kumari, CIT- DR

Date of Hearing :	15.05.2023
Date of Pronouncement :	25.07.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of PCIT, Dehradun dated 27.03.2021 for AY 2016-17.

2. The grounds raised by the assessee are as under:-

(1) The L'd Assessing Officer has duly applied his mind to the issue raised in the notice U/S 263 and after having been satisfied on the same, took a possible view based on the facts of the case and thereby passed the impugned assessment order.

(2) That the assessment order U/S 143(3) dated 19-12-2018 as passed by the L'd Assessing Officer is neither erroneous nor prejudicial to the interests of the revenue.

(3) Observations made, inferences drawn and findings recorded by the Worthy Principal Commissioner of Income Tax in her order passed U/S 263 are incorrect, unreasonable and are untenable in law.

3. The Id. counsel of assessee submitted that The L'd Assessing Officer has duly applied his mind to the issue raised in the notice U/S 263 and after having been satisfied on the same, took a possible view based on the facts of the case and thereby passed the impugned assessment order. He further contended that the assessment order U/S 143(3) dated 19-12-2018 as passed by the L'd Assessing Officer is neither erroneous nor prejudicial to the interests of the revenue and Observations made,

inferences drawn and findings recorded by the Worthy Principal Commissioner of Income Tax in her order passed U/S 263 are incorrect, unreasonable and are untenable in law.

4. Drawing our attention towards original limited scrutiny assessment order u/s. 143(3) of the Act, dated 19.12.2018 for AY 2016-17, the Id. counsel submitted that the case was selected for limited scrutiny for the sole reason of large cash deposit in the saving bank account as per AIR, total turnover and other income in part a of income tax return of assessee for which the Assessing Officer issue notices u/s. 142(1) of the Act along with questionnaire dated 10.10.2018 and 10.12.2018 through ITBA system to the assessee's account in e-filing website. The assessee was required to explain source of cash of Rs. 66,87,000/- along with documentary evidences. He further submitted that in response to said notices assessee filed his reply along with necessary details/documents and other relevant information wherein the assessee stated that he was carrying on a school during the year under consideration and up to 27.07.2018 under the name and style Mount Litera School, Muzafarnagar and the assessee was settler/president of the Shri Ram Educational Trust, under which said school was running the Id. counsel submitted that the Assessing Officer made sufficient and adequate enquiry in accepting the explanation of assessee regarding source of cash deposit in the assessment order para 3, which cannot be alleged as erroneous and prejudicial interest of revenue.

5. The assessee has placed reliance on various judgements to submit that the Id. PCIT was not correct in re-agitating the issue which was dealt and adjudicating by the Assessing Officer in detail by issuing notices along with questionnaire to the assessee and which were properly replied by the assessee and after taking on record reply and documentary evidences the Assessing Officer by way of detail discussion in para 3 of order allowed and accepted the claim of assessee towards source of cash deposit to his bank account. Therefore the Id. PCIT was not validly empowered to invoke provision of section 263 of the Act.

6. Replying to the above the Id. CIT(DR) supported the revisionary order u/s. 263 of the Act and submitted that as per explanation 2 to section 263 of the Act in a case of insufficient enquiry the assessment order has to be held as erroneous and prejudicial to the interest of revenue and the same can be revised u/s. 263 of the Act.

7. On careful consideration of above submission first of all, from pages 1 to 12 of assessee paper book we note that during limited scrutiny proceedings on the sole issue of source of cash deposit to the bank account of assessee, the Assessing Officer issued to notices along with questionnaire which were duly replied by the assessee along with relevant documentary evidences and thereafter the Assessing Officer considered and adjudicated the issue in para 3 of assessment order and concluded and allowed the claim of assessee regarding source of cash deposit that the deposits were made out of

receipt of fees from students in cash as the bank account of trust was opened letter and in the mean time for running the trust existing saving bank account in the name of assessee was opened and the cash fees was deposited to the bank account. The Id. counsel has also submitted copies of trust deed dated 28.07.2015 and copy of the minutes of the meeting dated 29.07.2015 wherein it was resolve that the bank account in the name of assessee in ICICI Bank will remain continue and till the bank account of trust is opened the fees received will be deposited in the said personal saving account of assessee. The copy of trust deed dated 28.07.2015 revealed that the assessee was settler of trust and was having position of president therein.

8. In view of findings recorded by the Assessing Officer in para 3 of assessment order and foregoing factual matrix about the required enquiry conducted by the Assessing Officer in the limited scrutiny proceedings on the sole issue of source of cash deposit to the bank account of assessee, we are of the view that the Assessing Officer has made all necessary efforts and inquiry about the source of cash deposit to the bank account of assessee and thereafter accepted the claim of assessee explaining the source of cash deposit as fees received in cash from the students of Mount Litera School, which was run and owned by the trust in which assessee was top office bearer. The resolution dated 29.07.2015 reveals that the trustees agreed and resolved that till the bank account of trust is opened the amount of cash received as fees will be deposited to the personal saving account of the assessee. From copy of income and expenditure account for the year ended on 31.03.2016 it is clear that the trust has shown fee receipt amounting to Rs. 75,74,700/- during the year and said amount includes the cash deposit to the bank account of assessee with ICICI bank. Therefore when the impugned amount was included and shown in the income and expenditure account of trust then the factual position clearly reveals the source of cash deposited to the bank account of assessee.

9. Therefore we are unable to see any valid reason to allege the assessment order as erroneous and prejudicial to the interest of revenue and hence we are inclined to hold that the Id. PCIT was not validly empowered to invoke revisionary provision of sec 263 of the Act. Hence revisionary order u/s. 263 dated 27.03.2021 for AY 2016-17 is set aside and assessment order dated 19.12.2018 is restored.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 25.07.2023.
Sd/- Sd/-
(M.BALAGANESH) (CHANDRA MOHAN GARG)
ACCOUNTANT MEMBER JUDICIAL MEMBER
Dated: 25th July, 2023.

NV/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi