



**IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE “B” BENCH, PUNE
BEFORE HON’BLE SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER
AND**

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 627/PUN/2019

निर्धारण वर्ष / Assessment Year : 2014-15

Shree Samastha Gujarathi Samaj,
C/o S.M.Jain, First Floor,
Maharaja Complex, Main Road, Shirpur, Dhule.
PAN : AAETS 6392 M

..... अपीलार्थी / *Appellant*

बनाम / V/s.

The CIT (Exemption), Pune

.....प्रत्यर्थी / *Respondent*

द्वारा / Appearances

Assessee by : Shri Pramod Shingte, CA

Revenue by : Shri Ajay Kumar Kesari, DR

सुनवाई की तारीख / Date of conclusive Hearing : 24/07/2023

घोषणा की तारीख / Date of Pronouncement : 01/09/2023

आदेश / ORDER

PER G. D. PADMAHSHALI, AM:

This appeal of the assessee is directed against the revisionary order of Commissioner of Income Tax (Exemption), Pune [‘CIT(E)’ hereinafter] dt. 30/03/2019 passed u/s 263(1) of the Income-tax Act, 1961 [‘the Act’ hereinafter] for the assessment year 2014-15 [‘AY’ hereinafter].

2. Pithily stated the facts borne out of case records are;

The assessee is a public charitable trust engaged in running & maintaining marriage hall etc., had filed its return of income [‘ITR’ hereinafter] declaring NIL income for the AY. The case of the assessee was subjected to limited scrutiny by service of notice u/s 143(2) of the Act specifically to verify the claim of deduction made while computing the income under the head ‘*Income From Other Source*’.



2.1 After verification of relevant books of account, supporting bills and vouchers, the Ld. AO culminated the assessment proceedings by disallowing 15% of cleaning and washing expenses owing to self-made vouchers in the absence of third party evidences and further brought to tax the donation of ₹8,40,526/- received towards building fund thus determined the taxable income to ₹6,98,991/- u/s 143(3) of the Act vide its order dt. 20/09/2016

2.2 Subsequently, case records were called & perused and pointing out the failure on the part of Ld. AO in bringing to tax deemed rental income and interest etc., u/s 56 of the Act, the Ld. PCIT assumed his revisionary jurisdiction u/s 263 of the Act. Failure of assessee to attend show case notice [‘SCN’ hereinafter] and other notice issued granting an opportunity of being heard, has resulted into passing of *ex-parte* order u/s 263 of the Act.

2.3 By the impugned revisionary order, the Ld. PCIT held the assessment order erroneous and prejudicial to the interest of the Revenue for the aforestated failure on the part of assessing officer and thus directed the Ld. AO to reframe the assessment by brining to tax escaped deemed rent of ₹48,37,592/-; disallow proportionate depreciation of ₹31,914/- on account of reduced value of assets consequent to disallowance of sundry creditors; and to assess interest on refund of ₹7,607/- earned but remained unrecorded in the books of account of the assessee trust.

2.4 Assessee aggrieved of aforestated impugned order has set-up the present appeal alleging the action of Ld. PCIT is *extra-territorial* in the light of limited scope of assessment.



3. During the course of physical hearing, the Ld.AR contended that, the assessment order is neither erroneous nor prejudicial to the interest of the Revenue. The Ld. AO framed the assessment in consequence to a limited scrutiny under CASS, where his jurisdiction was only to verify '*deduction from income from other sources*', therefore, enlargement of scrutiny was neither sighted to him nor was available without obtaining prior approval of higher authorities. When the subject matter fell outside the jurisdiction of scrutiny, by no means same can be pulled to enlarge the scope of assessment in 263 proceedings, such action is impermissible in of law, and therefore the direction of Ld. CIT (E) being *contra legem* deserves to be quashed. To drive this contention the Ld. AR placed strong reliance on various decisions such as; '*PCIT Vs Naga Dhunseri Group Ltd.*' Reported in 146 taxmann.com 424 (Calcutta), '*PCIT Vs Shark Mines And Minerals*' reported in 151 taxmann.com 71 (Orissa) and also the decisions of co-ordinate bench rendered in '*Sagar Uttam Murhe Vs DIT (ITA No. 1615/Pun/2018)*', and '*M/s Organica Vs PCIT (ITA no. 465/PUN/2021).*'

4. *Per contra*, the Ld. DR Mr Kesari referring to page 71 of paper book submitted that, the very purpose of scrutiny in the present case was to verify the correctness of deductions claimed by the assessee u/s 57 of the Act and while doing so the Ld. AO was duty bond to verify interwoven figures from which such deductions were claimed so has ensure the correctness of taxation, i.e. more precisely the sums falling u/s 56 of the Act remained to be verified and was amiss. Consequently assessment rendered erroneous and prejudicial to the interest of the Revenue, hence the action of Ld. CIT(E) in directing to verify connected income chargeable u/s 56 of the Act was well within jurisdiction



5. We have heard the rival contentions of both parties; subject to provisions of rule 18 of Income Tax Appellate Rules, 1963 [‘ITAT Rules’ hereinafter] perused material placed on records, case laws relied upon by both the parties and duly considered facts of the case in light of settled legal position, which are forewarned to rival parties for appropriate rebuttal.

6. *In the extant case, the issue of adjudication seeks to answer a bullet question, as to whether scope of verification of income chargeable u/s 56 of the Act is embedded within the scope of limited scrutiny notice set in motion for examining solitary item of ‘Deduction from income from Other Sources’ i.e. examination in context of section 57 of the Act.*

7. In the present case, we note that, the return of the appellant was subjected to limited scrutiny to examine the correctness of ‘deduction claimed under the head income from other sources’ and more precisely the jurisdiction of scrutiny assessment was directed towards examination of deduction of expenditure claimed u/s 57 of the Act as against income chargeable u/s 56 of the Act and while vouching so the Ld. AO did neither noticed any probable escapement of income so as to set in motion a process for converting the scope of limited scrutiny into complete scrutiny, nor could such observation is emanating from the body of assessment. In the absence of any finding of potential escapement while vouching the correctness of expenditure claimed u/s 57 of the Act, the Ld. AO culminated the assessment proceedings strictly in tune with the scope of 143(2) notice. Whereas the Ld. CIT(E) held the assessment as erroneous and prejudicial to the interest of the Revenue for assessing officer’s failure to examine certain income chargeable to tax u/s 56 of the Act that has escaped assessment.



8. In our view, the jurisdiction of the Ld. AO was restrictive to examine all such transaction vis-à-vis expenditure relating to claim for deductions u/s 57 of the Act, therefore examination of an item outside the provisions of section 57 of the Act was *extra-territorial* to the Ld. AO unless authorised by necessary prior approval. The issue of examination of transaction of income falling u/s 56 of the Act remained outside the scope of assessment proceeding for the buckshot reasons that no potential escapement came to the notice of Ld. AO, thus triggered no approval process for extending the scope. Had this potential escapement come to knowledge of Ld. AO, then the culmination of proceedings without first converting the same into complete scrutiny would have rendered the assessment erroneous and not otherwise. During the revisionary exercise, the potential escapement of deemed rent, interest on refund and incorrect allowance of depreciation etc., come to the notice of the Ld. CIT (E), however at this stage the revisionary authority cannot substitute his view sitting into the chair of Ld. AO for not extending the scope of limited scrutiny into complete scrutiny and hold the order of assessment erroneous. If this is permitted now, then it shall amount to travelling beyond the scope of limited scrutiny which is forbidden by law and we find this view has been fortified in '*PCIT Vs Shark Mines and Minerals*' (supra).

9. In view of ratio laid by Hon'ble Madras High Court in '*CIT Vs Padmavati*' reported in 120 taxmann.com 187, an assessment could not exceed prescribed scope of 'Limited Scrutiny' except following due process of law, therefore the Revenue has missed the bus in original proceedings in extending the scope, which unfortunately cannot be done invoking revisionary jurisdiction u/s 263 of the Act.



10. We further hold that when the assessment is taken up for limited scrutiny; Ld. CIT(E) cannot hold the assessment order as erroneous and prejudicial to the interest of revenue in respect of issue which was not a reason for selection of the case for limited scrutiny and we observed that similar view also found in the decision of co-ordinate benches in ‘*Deccan Paper Mills Co. Ltd. Vs CIT vide ITA No. 1013/Pun/2014*’, ‘*Aggarwal Promoters Vs PCIT vide ITA No. 1708/Chd/2017*’, ‘*Sanjeev Khemka Vs PCIT vide ITA No. 1361/Kol/2016*’, and ‘*R & H Property Developer Pvt.Ltd. Vs PCIT vide ITA No. 1906/Mum/2019*’.

11. In view of the aforesaid discussion and judicial precedents, we see the invocation of revisionary jurisdiction failed satisfy the first and foremost of twin condition laid in s/s (1) of section 263 of the Act, thus unsustainable in law, therefore quashed.

12. In result, the appeal of the assessee is ALLOWED.

U/r 34 of ITAT Rules, order pronounced in open court on this Friday, 01st day of September, 2023.

-S/d-

S. S. VISWANETHRA RAVI
JUDICIAL MEMBER

पुणे / PUNE ; दिनांक / Dated : 01st day of September, 2023.

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

- | | |
|---|---------------------------------|
| 1. अपीलार्थी / The Appellant. | 2. प्रत्यर्थी / The Respondent. |
| 4. The Pr. CIT, (concerned), Pune
<i>Ashwini</i> | 5. DR, ITAT, ‘B’ Bench, Pune |

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

- | |
|----------------------------|
| 3. The CIT(E), Concerned, |
| 6. गार्डफाइल / Guard File. |

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