

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "H", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER

ITA NO. 1504/Del/2023		
A.YR. : 2018-19		
VEENA RANI, (LEGAL HEIR OF LATE SH. MAHENDER PAL NARANG), HOUSE NO. 221, WARD NO. 9, SHIV CHOWK, NEAR GURDWARA, FARIDABAD, HARYANA-125050 (PAN: ALZPR5949K)	VS.	PRINCIPAL COMMISSIONER OF INCOME TAX, ROHTAK, AAYAKAR BHAWAN, OP. MANSAROVER PARK, ROHTAK, HARYANA-124001
(APPELLANT)		(RESPONDENT)

Appellant by : Sh. Salil Kapoor, Adv. & Sh. Anil Chachra, Adv.
Respondent by : Shri Sanjay Pandey, CIT(DR)
Date of hearing : 14.11.2024
Date of pronouncement : 19.11.2024

ORDER

PER SHAMIM YAHYA, AM :

The Assessee has filed the instant Appeal against the Order of the Ld. Principal Commissioner of Income Tax, Rohtak dated 28.03.2023, relating to assessment year 2018-19 on the following grounds:-

1. *That, the notice dated 17.01.2023 issued under Section 263 of the Income Tax Act, 1961 ('Act'), and the order dated 28.03.2023 passed under said Section are illegal, bad in law, time barred and without jurisdiction.*

2. *That, the notice under Section 263 and impugned order under Section 263 of the Act are issued/passed in the name of dead person and as such the notice issued and order passed under Section 263 of the Act is illegal, without jurisdiction and cannot be sustained in the eyes of law. It is a legal and jurisdictional infirmity.*
3. *That, the unsigned notice dated 17.01.2023 issued under Section 263 of the Act is non-est and cannot be treated as valid notice in eyes of law for purpose of Section 263 of the Act and as such order passed under Section 263 of the Act based on said notice is also not a valid order.*
4. *That, the order passed under Section 143(3)r.w.s 143(3A) and 143(3B) of the Act by the Assessing Officer is neither erroneous nor prejudicial to the interest of Revenue and as such the order passed by the PCIT order under Section 263 of the Act in cancelling the assessment is illegal and bad in law.*
5. *That, the PCIT has failed to appreciate that the issue referred in his order under Section 263 of the Act has been duly considered and the view taken by the Assessing Officer is a plausible view. All necessary enquires/investigations, /verification relating to the issue referred in the order of the PCIT under Section 263 of the Act were made by the AO while framing the assessment under 143(3) of the Act. Thus, the notice issued and the impugned order are beyond the preview of Section 263 of the Act and hence, the order passed under Section 263 is liable to be quashed.*
6. *That, the PCIT has not understood the Assessment order correctly as the PCIT has treated the Assessment order passed on limited scrutiny whereas the Assessment order recognizes the same as case of full/complete scrutiny and as such the order passed under Section 263 of the Act is passed without application of mind and the same is liable to be quashed.*
7. *That, the PCIT has erred in law and on facts in not accepting that the interest received on enhanced compensation under Section 28 of the Land Acquisition Act is exempt in the hands of the Appellant and as such the order of PCIT is erroneous, illegal, and bad in law.*
8. *That the order passed by the PCIT under section 263 of the Act is clearly without application of mind. Hence, the notice and order passed under section 263 of the Act are liable to be quashed.*
9. *That, in view of the facts and circumstances of the case, the proceedings initiated U/s 263 at the instance of AO are illegal and bad in law and the impugned order passed under Section 263 of the Act is liable to be quashed.*
10. *That, all the facts and the material available on record have not been properly considered by the PCIT while passing the order under Section 263 of the Act. The impugned order is illegal, arbitrary, and bad in law.*

11. That, in view of the facts and circumstances of the case, the observations made in the case of Appellant are unjust, illegal, arbitrary, bad in law, based 'on surmises and conjectures.

2. The brief facts of the case are that assessee is an individual. He filed his return of income on 21.12.2018 declaring income of Rs. 21,60,670/- which was processed u/s. 143(1) of the Act. The assessee has received Rs. 2,54,24,007/- as interest on enhanced compensation from HUDA after the compulsory acquisition of the agriculture land of the assessee, on which TDS @10% was also deducted. In the return of income in Schedule EI, the assessee has claimed interest income of Rs. 2,54,24,007/- as exempt. The case of the assessee was selected for scrutiny through CASS for verification of the issue of income from other sources and refund claim. AO completed the assessment u/s. 143(3) r.w.s. 143(3A) & 143(3B) of the Act on 09.03.2021 on the returned income.

3. The Pr. CIT exercises his powers u/s. 263 of the Act and was of the opinion that AO had completed the assessment without carrying out the necessary and proper enquiry in respect of tax treatment of interest received on compensation or enhanced compensation. After discussion of the facts and response of the assessee, Ld. Pr. CIT gave the following directions:-

“7. Keeping in view of the facts and circumstances of the case as discussed above, I am of the considered opinion that the AO had passed the order dated 09.03.2021 in a very casual manner without due diligence and without conducting proper enquiries & verification which should have been made with respect to amended

provisions of the Finance Act, 2015 & binding decision of Jurisdictional Hon'ble Punjab & Haryana High Court & Hon'ble Apex Court on the taxability of interest on enhanced compensation in the case of assessee himself. Therefore, the assessment completed u/s 143(3) r.w.s 143(3A) & 143(3B) of the Act is erroneous so far as it is prejudicial to the interest of the revenue in terms of Explanation 2 of section 263 of the Act. Accordingly, the assessment order passed by the AO on 09.03.2021 u/s 143(3) r.w.s 143(3A) & 143(3B) of the Act for the A.Y. 2018-19 is set aside with the direction to pass an order afresh, after due consideration of the facts and in accordance with law after making requisite enquiries & proper verification with regard to issues mentioned above. The assessee is at liberty to adduce the facts as relevant before the AO at the time of assessment proceedings in consequence to this order. The AO shall allow the assessee, adequate & reasonable opportunity of being heard & make relevant submissions. It may be ensured that assessment order is passed within the prescribed time limit as per Income Tax Act.”

4. Against this order, assessee is in appeal before us.
5. Ld. counsel for the assessee submitted that notice u/s. 263 of the Act was given in the name of the deceased person. The assessee informed the Ld. Pr. CIT and thereafter notice was given to the legal heir, but in the final order the PAN Number was mentioned of the deceased person. Ld. Counsel for the assessee submitted that on identical circumstances the Amritsar Bench of the Tribunal in ITA No. 165/Asr/2023 (AY 2018-19) in the case of Avtar Singh vs. PCIT-1, Jalandhar had concluded as under:-

“...In the light of these discussions and placing respectfully reliance on the decisions of the Hon’ble Supreme Court in the case of Maruti Suzuki India Ltd. (Supra), Hon’ble High Court in the case of eMudra (supra) & Savita Kapila legal heir of Late Shri Mohinder Paul Kapila, (supra) and Coordinate Bench of ITAT in the case of Lalita Agarwal, (supra) the Ld. PCIT has erred to mention the deceased PAN in the revisional order. This is not the curable mistake from the end of revenue and caused the order nullity. In our considered view, the Ld. PCIT is not justifying setting aside the order of the Ld. AO. The assessment order cannot be treated as erroneous. Accordingly, the order u/s. 263 of the Ld. PCIT is quashed.”

5. Per contra, Ld. DR submitted that merely mentioning of wrong PAN cannot reduce the order to be a nullity.

6. We have carefully considered the submissions and perused the records. It is noted that the Coordinate Bench of Amritsar on similar circumstances had held that if the person is deceased and legal heir has been brought on record, mentioning of PAN of the deceased person in the order will render the order a nullity. No contrary decision has been shown to us. Accordingly, respectfully following the precedent of the Amritsar Coordinate Bench, as aforesaid, we quash the order of the Pr. CIT u/s. 263 of the Act.

7. Since we have already quashed the order of the Pr. CIT u/s. 263 of the Act, the other grounds have become academic and need not be adjudicated.

8. In the result, the Appeal filed by the Assessee stands allowed.

Order pronounced on 19/11/2024.

Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRB

Copy forwarded to:-

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

Assistant Registrar