

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

**BEFORE SHRI R. K. PANDA ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 108/DEL/2018 (A.Y. 2015-16)
(THROUGH VIDEO CONFERENCING)**

Nirmal Gupta 5/5, East Punjabi Bagh, New Delhi PAN: AAGPG0462J (APPELLANT)	Vs	Pr. CIT-9 New Delhi (RESPONDENT)
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Appellant by	Ms. Rano Jain, Adv
Respondent by	Sh. Parmita M. Biswas, CIT, DR

Date of Hearing	03.06.2021
Date of Pronouncement	22.06.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against order dated 02.05.2017 passed by Pr. CIT, Delhi - 9 for assessment year 2015-16.

2. The grounds of appeal are as under:-

“1. That the order of the Learned Principal C.I.T., Delhi-9 in passing the Revision Order u/s 263 of the Income Tax Act, 1961 in respect of assessment order dated 01.05.2017 passed u/s 143(3) of the Income Tax Act, 1961 for A.Y. 2015-16 (whereas no order dated 01.05.2017 was passed) inspite of the fact that PCIT was himself not present on 13.10.2017 in his office is totally wrong, bad in law and needs to be quashed.

2. That the show cause notice has been issued to verify three issues (i) about salary income of Rs. 9.90 Lacs received by the assessee, (ii) genuineness about claim of exemption on long term capital gain of Rs. 49.28 Lacs on sale

of shares of Channel Nine (iii) the AO failed to inquire about the person who purchased shares at the rate of Rs. 439 per share and whether the same is properly accounted for in the books of accounts of the buyer. During assessment, the assessee filed complete details relating to above all three items. The PCIT in his order has mentioned that the main issue is of long term capital gain exemption. The PCIT has mentioned that Delhi based entry operators purchased the shares sold by the assessee. The PCIT failed to note that shares were sold at recognized stock exchange and neither the seller nor the buyer knows each other. Moreover, the assessee filed all the details relating to shares sold during the year under assessment. Every AO has different way of working and AO was fully satisfied with the papers filed and day to day discussion held during assessment proceedings. The assessee should not suffer for the negligence of a senior officer. It is against the principle of natural justice. Thus the order u/s 263 cancelling the assessment is totally wrong, bad in law and needs to be quashed.

3. That the above grounds of appeal are without prejudice to another.

4. That the assessee prays permission to add, delete or amend one or more grounds of appeal.

5. That the order u/s 263 is bad, illegal and unjustified on the merits of the case and must be quashed.

That the assessee assures unstinted co-operation in all proceedings before your goodself.

Additional Grounds

The applicant had raised six grounds in the original appeal. The following grounds may also be kindly admitted:

7(i). On the facts and circumstances of the case, Id. Pr.CIT has erred both on facts and in law in holding the order under section 143(3) to be erroneous as well as prejudicial to the interest of revenue, despite the order itself being bad in law and liable to be quashed

(ii). That the order passed under section 143(3) of the Act is bad in law, having been passed in pursuance of proceedings initiated by issue of statutory notice under section 143(2) of the Act, by an officer who did not

have jurisdiction on the case of the assessee.

(iii) That the statutory notice under section 143(2) issued by the jurisdiction Assessing Officer, who has also passed the assessment Order, is, otherwise, barred by limitation.

3. The return of income for Assessment Year 2015-16 was e-filed on 2/9/2015 declaring total income of Rs. 8,76,900/-. The case was selected for complete scrutiny under CASS. During the assessment proceedings the CA/AR of the assessee attended the proceedings from time and filed the submissions along with the relevant documents. The Assessing Officer after considering the submissions and the relevant documents passed the final assessment order u/s 143 (3) of the Income Tax Act on 1st May, 2017 and accepted the declared income by the assessee. The Principal CIT issued notice under Section 263(1) on 16/08/2017. The Principal CIT vide order dated 7/11/2017 set aside the original assessment order and directed the Assessing Officer to pass the assessment order afresh.

4. Being aggrieved by the order u/s 263 of the Income Tax Act, 1961 passed by the Principal CIT, the assessee is in appeal before us.

5. The Ld. AR submitted that the assessee filed appeal against the order of Principal CIT passed in his jurisdiction u/s 263 of the Act. The Principal CIT held that the order of the Assessing Officer dated 2/5/2017 passed u/s 143 (3) of the Act is erroneous to the extent it is prejudicial to the interest of the Revenue. During the proceedings u/s 143(3) of the Act, the notice u/s 143(2) dated 16/09/2016 was issued by the ITO, Ward 72(5), Delhi, while assessment proceedings u/s 143(3) for the preceding Assessment Year 2014-15 were still going on before DCIT, Circle 25(2), New Delhi. After an objection raised by the assessee vide letter dated 20/12/2016, the assessee received notice from DCIT, Circle 25(2) for the assessment proceedings for the relevant assessment year who finally passed the order. The first notice u/s 143(2) issued by the Jurisdictional Assessing Officer i.e. DCIT, Circle 25(2) was dated 10/3/2017.

Thus, the notice u/s 143(2) was not issued by Jurisdictional Assessing Officer i.e. DCIT, Circle 25(2) dated 10/3/2017 is barred by limitation. In this manner, the proceedings u/s 143(3) for the relevant assessment year as well as the order passed in consequence thereto are bad in law. Since, in the assessment order framed u/s 143(3) dated 2/5/2017, no additions were made the applicant did not have any occasion to raise this issue of lack of jurisdiction before any of the appellate authorities. Therefore, the Ld. AR relying on various decisions submitted that the additional ground should be admitted.

6. On merit, the Ld. AR submitted that the Principal CIT while issuing notice has given three aspects but overlooked the re-conciliation filed by the assessee in respect of long term capital gain and first issue was not at all discussed by the Principal CIT.

7. The Ld. DR objected to the admission of the additional grounds for the reason that the assessee has not challenged assessment order u/s 143(2) and, therefore, at this juncture cannot contest the validity of the assessment order. Besides that the Ld. DR submitted that since the filing of return was centralized and the assessee has also filed return of income before ITO Ward-72(5), the notice dated 01.08.2016 was rightly issued within the prescribed time limit. On merit, the Ld. DR submitted that the Principal CIT has rightly passed the order u/s 263 of the Act as no enquiry and verification was done related to long term capital gain. The Ld. DR also relied upon the following decisions:

- a) Deniel Merchants Pvt. Ltd. vs. ITO Special Leave to Appeal (C) No(s). 23976/2017 order dated 29.11.2017 (SC)
- b) BSES Rajdhani Power Ltd. vs. PCIT 399 ITR 228 (Del)
- c) Surya Financial Services Ltd. vs. PCIT (ITA No. 2158/Del/2017) ITAT Delhi

- d) Malabar Industrial Co. Ltd. 243 ITR 83 (SC)
- e) Rajmandir Estates (P.) Ltd. vs. PCIT 386 ITR 162 (Cal)
- f) Rajmandir Estates (P.) Ltd. vs. PCIT (2017) 77 taxmann.com 285 (SC)
- g) CIT vs. Amitabh Bachhan Civil Appeal 5009 of 2016 dated 11.05.2016 (SC).

8. We have heard both the parties and perused the material available on record. At the time of hearing the Ld. AR pointed out certain documents such as Return of Income filed by the assessee on 02.09.2015, Notice dated 01.08.2016 under Section 143(2) issued by ITO, Ward 72(5), Letter dated 20.12.2016 filed by the assessee pointing out the correct jurisdiction of the DCIT, Circle 25(2) and not that of ITO, Ward 72(5). Besides this, the Ld. AR also pointed out notice dated 10.03.2017 under Section 143(2) issued by DCIT, Circle 25(2) and the letters dated 27.03.2017, 13.04.2017 addressed by the assessee to DCIT, Circle 25(2). It is pertinent to note that the notice under Section 143(2) can be issued after an income tax return has been filed but within a period of six months from the end of the financial year in which the return was filed. Thus, the first notice under Section 143(2) was issued on 01.08.2016 which by the non-jurisdictional Assessing Officer and jurisdictional Assessing Officer issued the notice on 10.03.2017 which is beyond the limitation period as per the statutory provisions of the Act. Thus, the notice is time barred and hence, the assessment itself becomes void-ab-initio. Besides this, the proper jurisdiction of the Assessing Officer in the present case is that of DCIT, Circle 25(2) as the assessment for A.Y. 2014-15 was proceeded before the said Assessing Officer in assessee's case. There was no change of jurisdiction sought by the Revenue as per Section 124 read with Section 120 of the Income Tax Act, 1961. Thus, on the point of jurisdiction relating to issuance of notice also makes the notice under Section 143(2) void-ab-initio. These aspects were not challenged by the assessee as the Assessing Officer assessed the income of the assessee at Nil and the assessee therefore, never challenged the assessment order at any stage. As the assessment itself

becomes bad in law and therefore, the order of the Principal CIT under Section 263 of the Income Tax Act, 1961 itself becomes nullity as there is no assessment order in the eyes of law. Therefore, the additional grounds are allowed.

9. Despite the technical aspects wherein the assessee succeeds in her additional grounds, we have also looked into the merits of the case and it is found that letter dated 13.04.2017 filed by the assessee along with the documents pertaining to purchase and sale of shares, purchase of Euro Gold, Purchase of Channel Nine Shares, Copy of purchase bills & contract notes for Euro Gold, Statement of Accounts in Amrapali Trading and Investments Pvt. Ltd., Copy of Purchase Bill for Channel Nine Shares dated 22.03.2013 & Transaction Statement from Adroit Financial Services Pvt. Ltd. were produced before the Assessing Officer. Thus, the notice which was issued by the Principal CIT stating therein that the Assessing Officer failed to verify the genuineness of the exemption of Long Term Capital Gain claim of Rs. 49.28 lakhs approximately on the sale of shares of M/s Channel – Nine and also that of the Assessing Officer failed to enquire about the persons who have purchased the above mentioned shares at a high rate of Rs. 439 per share, appears to be incorrect. The Principal CIT has not at all taken into consideration the reconciliation in respect of Long term capital gain. The Assessing Officer in the instant case has verified all the aspects and therefore, the view taken by the Principal CIT is only a second view which is not permissible under Section 263 of the Act. It is the settled proposition of law that for invoking jurisdiction under Section 263, the twin conditions, namely, the order is erroneous and the order is prejudicial to the interest of the Revenue must be satisfied. In the instant case, since the Assessing Officer has called for various details and after verification of the same has passed the order, therefore, the same cannot be treated as erroneous, as held by Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. (supra). Hence, the Assessment order though does not sustain in eyes of law in light of the

defective notice under Section 143(2), the proceedings under Section 263 also does not survive on merit. Therefore, the appeal of the assessee is allowed.

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

Order pronounced in the Open Court on this 22nd Day of June, 2021.

**-Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER**

**-Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated : 22/06/2021

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI