Jurisdiction under section 263 cannot be assumed by the CIT for making roving enquiries on the issues that are already enquired by the TO, however not expressly discussed in the assessment order passed

January 27, 2017

In brief

In a recent case [1], the Bengaluru Bench of the Income-tax Appellate Tribunal (Tribunal) has held that jurisdiction under section 263 of the Income-tax Act, 1961 (the Act) could not be assumed by the Commissioner of Income-tax (CIT) on the issues, which were subject matter of inquiry by the tax officer (TO), and the TO has accepted the taxpayer's contentions and formed a possible view in light of judicial precedents referred by the taxpayer. Tribunal reiterated that the position was well settled in law, and that it could not be said that the TO has failed to apply his mind where the TO did not give any reason in the assessment order for accepting the taxpayer's contentions.

In detail

Facts

- The return of income filed by the taxpayer[1] for assessment year 2007-08 was selected for scrutiny assessment and thereafter, an order was passed by the TO under section 143(3) read with section 144C of the Act after making several disallowances.
- Thereafter, the CIT – LTU issued a show cause notice dated 16 January, 2013, exercising his powers of revision under section 263 of the Act, proposing to revise the assessment order on the ground that the TO did not examine certain issues during the assessment proceedings, thereby resulting in assessment order being erroneous and prejudicial to the interests of the Revenue.
- The above mentioned show cause notice was challenged by the taxpayer by way of a writ petition filed before the Jurisdictional High Court (HC). The HC quashed the aforementioned show cause notice issued by the CIT. It, however, granted liberty to Revenue to issue a fresh show cause notice giving reasons for initiating revision proceedings under section 263 of the Act.
- Pursuant to this, the CIT issued a fresh comprehensive show cause notice under section 263 of the Act to the taxpayer, and after rejecting the taxpayer's response to the

[1] TS-16-ITAT-2017(Bengaluru-Tribunal)

aforesaid show cause notice, restored the issues to the file of the TO for *de novo* examination after affording due opportunity to the taxpayer.

Being aggrieved by the above, the taxpayer filed an appeal before the Tribunal.

Taxpayer's contentions

- The CIT erred in not passing a speaking order bringing on record the reasons why the order passed by the TO was erroneous and prejudicial to the interest of the Revenue.
- Without prejudice to the above, with respect to the issues raised by the CIT in the show cause notice, t the TO has examined the issues by raising specific questions and the same has been duly replied by the taxpayer.
- Nonetheless, the issues detailed in the show cause notice are already covered by judicial precedents either in the taxpayer's own case for earlier years or in the judgement laid down by the jurisdictional Karnataka HC in the other taxpayer's case.
- Placing reliance on various rulings wherein it was held that once a possible view was framed by the TO, in light of jurisprudence laid down by the jurisdictional court, the order could not be said as erroneous and prejudicial to the interest of the Revenue.
- That provisions of section 263 of the Act could not be resorted to make roving enquiries. That the TO did not give any specific reason in the assessment order vis-à-vis acceptance of taxpayer's submission, the assessment order cannot be said to be erroneous and prejudicial to the interest of the Revenue.

Revenue's Contentions

- The TO did not enquire on the issues mentioned in the show cause notice issued by CIT.
- That in a situation where the TO fails to examine the claim/ issue, makes the order erroneous as well as prejudicial to the interest of the Revenue.
- That where the TO did not issue any questionnaire, the CIT was justified in assuming jurisdiction under section 263 of the Act. Tribunal's ruling
- Tribunal noted that the issues mentioned in the show cause notice issued by CIT has been examined by the TO during the course of assessment proceedings as substantiated by the taxpayer, and after considering the explanations provided by the taxpayer, the TO had decided not to make any additions.
- That even though the TO did not give any reasons in the assessment order for accepting the taxpayer's claims, it was a well settled position that it could not be said that there was no application of mind.
- Where the TO has applied his mind and made enquiries, CIT could not assume jurisdiction under section 263 of the Act.
- Accordingly, the CIT could not take recourse for making roving enquiries on the issues that were dealt with by the TO, and was not justified in assuming jurisdiction under section 263 of the Act.

The takeaways

The CIT has been conferred the powers to initiate proceedings for revision of assessment order in terms of provisions of section 263 of the Act. There has been a plethora of Court rulings on what constitutes valid reasons for invoking powers by the CIT to pass a revision order.

It has been historically noted that the taxpayers have mostly contested the revision proceedings invoked by the CIT under section 263 of the Act. This ruling would help the taxpayers in support of the principle that where the TO had passed an assessment order after considering the submissions/ facts placed by the taxpayers on a particular issue, it could not give the CIT sufficient reason to invoke proceedings under section 263 of the Act to make enquiries on the same issue again.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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