

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Income Tax Appeal No. 336/2018

Principal Commissioner Of Income Tax-I, New Central Revenue Building, Statue Circle, Jaipur (Raj.).

----Appellant

Versus

Shri Ram Das Maheshwai, 69, Sukh Sagar, Sardar Patel Marg, Dhuleshwar Garden, Jaipur.

----Respondent

For Appellant(s) : Mr. Nitin Jain

For Respondent(s) : Mr. Siddarth Ranka with Mr. N.K.Jain

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL

HON'BLE MR. JUSTICE BHUWAN GOYAL

Order

11/12/2025

1. This appeal is filed under Section 260A of the Income Tax Act, 1961 (hereinafter 'the Act') against the order dated 14.06.2018 passed by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (for short 'tribunal').

2. The brief facts are that on 18.07.2012 a search was conducted at Nuwal Group, Jaipur of which the assessee-respondent (hereinafter 'respondent') was a member. In pursuance to the search, proceedings were initiated and the respondent filed return declaring income of Rs.15,04,61,890/-. The return was accepted, assessment was finalized on 13.03.2015 and satisfaction for initiating the penalty proceedings under Section 271AAB was recorded in assessment order. Penalty was imposed vide order dated 20.08.2015. During the pendency of the appeal before the Commissioner of Income Tax (Appeal) (hereinafter 'CIT'), the petitioner applied under the amnesty scheme and was issued

certificate under the Direct Tax Dispute Resolution Scheme, 2016 (for short 'the scheme'). The appeal was withdrawn on 11.11.2016. On the basis of audit objection that the penalty should have been imposed under Section 271AB instead of 271AAB, notice was issued by the revisional authority which was responded to on 20.03.2018. The revisional order was passed on 27.03.2018 setting aside the penalty order dated 20.08.2015 directing that de novo order be passed. In appeal, the tribunal on 14.06.2018 set aside the revisional order, hence, the present appeal.

3. This appeal was admitted on 13.05.2019 on following substantial questions of law:-

"i) Whether on the facts and circumstances of the case and law the Tribunal was justified in quashing the order passed u/s 263 of the I.T. Act, 1961 by stating that the PCIT has no jurisdiction to invoke provisions of Section 263 of the I.T. Act when an assessee has been granted certificate under the Direct Tax Dispute Resolution Scheme, 2016?

ii) Whether on the facts and circumstances of the case and law the order of the ITAT was not perverse in quashing the order passed u/s 263 of the I.T. Act, 1961 as it is clearly stated in Sec. 208 of the DTDRS, Scheme 2016 that search cases were not eligible to avail the scheme and still the assessee chose to file application in DTDRS 2016 hiding the fact that search was carried out in his case for the A.Y. under consideration?

iii) Whether on the facts and circumstances of the case and law the order of the ITAT was not pervers in quashing the order passed u/s 263 of the I.T. Act, 1961 which was initiated as he penalty order was found to be erroneous and prejudicial to the interest of revenue?

iv) Whether on the facts and in circumstances of the case and in law the ITAT was justified in quashing the order passed u/s 263 of the I.T. Act, 1961 without appreciating the verdict passed by

the Hon'ble Supreme Court in *Malabar Industrial Co. Ltd., Vs. CIT* (2000) 243 ITR 831 that held that incorrect assumption of fact or an incorrect application of law would satisfy the requirement of the order being erroneous. An order passed in violation of the principles of natural justice or without application of mind, would be an order falling in this category?"

4. Learned counsel for the revenue submits that certificate granted under the scheme is void. After search, the respondent was not eligible to apply under the scheme. The argument is that the tribunal erred in setting aside the revisional order in view of the immunity granted to the respondent under the scheme.

5. Per contra, the petitioner was eligible to apply under the scheme as the bar was for the cases where the assessment was finalised under Section 153A or 153C of the Act, whereas the assessment of the respondent was finalised under Section 143(3) read with Section 153B of the Act. The contention is that the department till date, has not challenged the certificate issued under the amnesty scheme and it has attained finality.

6. The contention of the learned counsel for the revenue challenging the certificate issued under the scheme has a fallacy. No such challenge was made before the tribunal. It is arguable case as to whether respondent was eligible to apply under the scheme when assessment order was passed under Section 153B and scheme debarred the cases where assessment was finalized under Section 153A or 153C.

7. It is an undisputed fact that till date, the certificate dated 09.11.2016 issued under the scheme holds the field.

8. It would be relevant to reproduce the immunity granted in the certificate:

“b. Immunity is granted subject to the provisions contained in the Scheme, from instituting any proceeding for prosecution for any offence under the Income-tax Act/Wealth-tax Act or from the imposition of penalty under the said enactment (as per section 205 (b) (ii) of the Finance Act, 2016), in respect of the disputed tax as detailed in the table below:

Assessment Year	Appeal reference number	Amount disputed income	Amount disputed tax of
2013-14	247/15-16		1,49,78,202/-

Under Section 204(3) of the scheme, the order passed under Section 204(1) is conclusive and matter covered by such order shall not be reopened in any proceeding under the Act.

9. Once there is immunity granted to the respondent against penalty proceedings, the fact as to whether the penalty should have been imposed under Section 271AAB or under Section 271AB of the Act, would make no difference. The immunity is general against the penalty proceedings and not with regard to a particular provision. The revision on the basis of the audit objection for passing a de novo order, as the penalty should have been imposed under Section 271AB, cannot be sustained in view of the immunity granted to the respondent. The substantial questions of law framed do not arise from the order of the tribunal.

10. The appeal is dismissed.

(BHUWAN GOYAL),J

(MAHENDAR KUMAR GOYAL),J