

IN THE HIGH COURT OF JHARKHAND AT RANCHI**Tax Appeal No. 32 of 2020**

The Principal Commissioner of Income Tax, Ranchi,
Central Revenue Building, 5A, Main Road, Ranchi,
P.O.- G.P.O and P.S.-Kotwali, District- Ranchi Appellant

Versus

M/s Urmila RCP Projects Pvt. Ltd., RCP Complex,
Kadru, P.O. and P.S.- Kumhartoli Road,
District-Ranchi, PIN- 834002 Respondent

CORAM: **Hon'ble The Acting Chief Justice**
 Hon'ble Mr. Justice Deepak Roshan

For the Appellant : Mr. Ratnesh Nandan Sahay, Sr. Standing Counsel
For the Respondents : Mr. Biren Poddar, Sr. Advocate
 Mr. Mahendra Kr. Chowdhary, Advocate
 Ms. Rakhi Sharma, Advocate

12/ 14.02.2023 The instant appeal is directed against the common order dated 20.01.2020 passed by the learned Income Tax Appellate Tribunal, Ranchi (hereinafter to be referred as 'ITAT') in the case being ITA No. 341/RAN/2018 for the AY 2010-11, whereby the learned ITAT has allowed the appeal of the respondent assessee on merit by reversing the order of the CIT appeal.

2. The brief facts of the case lies in a narrow compass. On 15.10.2010 Assesse (Respondent) filed return of income showing total income of Rs.1,00,85,530/-. On 05.03.2013, assessment u/s 143 (3) was completed on total income of Rs.1,61,74,861/- making addition under 5 different heads total amounting to Rs. 60,89,335/-.

On 14.02.2014, a letter was issued by the Assistant Commissioner of Income Tax, circle-3, Ranchi wherein it was stated in the last para that the audit objection raised by the revenue audit is not acceptable (Annexure 3 of supplementary affidavit). On 28.07.2014, the learned CIT (A), allowed the appeal filed by the Assessee by which relief was allowed to the tune of Rs. 54,90,000/- out of the aforesaid addition of Rs.60,89,335/-. On 15.09.2014, appeal effect order u/s 143(3)/250 was passed by the assessing officer determining total income u/s 143(3) /250 at Rs.1,06,84,861/-.

However, on 09.01.2015, a review order u/s 263 was passed by CIT, Ranchi in respect of Security Deposit and Retention Money. Thereafter, on 30.03.2016, Re-Assessment Order u/s 143(3) read with section 263 was passed by the Assessing Officer, DCIT, Circle-1 Ranchi determining total assessed income at Rs.3,67,71,360/-, after making addition of Rs. 2,05,96,503/- on account of Security Deposit, Retention Money deposit etc. (Annexure-1).

Being aggrieved, Assessee filed an appeal before CIT(A). On

28.08.2018, the CIT (A) dismissed the appeal filed by the Assessee. Thereafter, the Respondent-Assessee filed appeal before the learned ITAT. The learned ITAT vide its order dated 20.01.2020 allowed the appeal of the Assessee and the aforesaid disallowance of Expenditure of Rs.2,05,96,503/- on account of Security Deposit, Retention Money deposit etc. was deleted.

On 26.08.2020, instant tax appeal No.32 of 2020 has been filed by the Revenue before this Court against the deletion of aforesaid amount of Rs.2,05,96,503/- on account of Security Deposit, Retention Money deposit etc.

3. During course of proceedings, the respondent Assessee has raised a preliminary objection with regard to maintainability of this appeal on the ground of tax effect as in view of circular no. 3/2018 dated 11.07.2018 the monetary limit for filing appeal under 260A of the Income Tax Act, 1961 shall be 1,00,00,000/- and above.

Pursuant to the aforesaid preliminary objection, learned counsel for the petitioner filed a supplementary affidavit stating therein that the instant appeal comes under exception as enumerated in the aforesaid circular vide Clause No.10(C) i.e. “where revenue audit objection in the case has been accepted by the department.”

4. Mr. R. N. Sahay, sr. standing counsel for the revenue submits that though the auditor’s objection of the revenue audit objection was not accepted by the then assessing officer, however, for approval of the same, the matter was sent to CIT, Ranchi. Thereafter, the CIT appeal after going through the records proceeded to decide the matter under Section 263 of the IT Act. Learned counsel contended that Assistant Commissioner of Income Tax was not empowered to decide about the audit objection and therefore the matter was sent to the CIT for approval and since the CIT has proceeded to decide the case under Section 263 of the Income Tax Act, it is presumed that audit objection was accepted.

5. Mr. Biren Poddar, learned senior counsel for the respondent assessee vehemently opposed the submission of learned counsel for the revenue and submits that audit objection was not accepted by the revenue and since the CIT has initiated the proceeding under Section 263 but never referred to the audit objection and passed the order on other grounds. As such, it will be incorrect to say that audit objection was accepted.

Learned senior counsel for the assessee contended that the instant appeal may be dismissed as not maintainable in view of the Board’s own circular fixing the monetary limit to file appeal under 260A to the Act before the High

Court.

6. In view of the preliminary objection we are deciding the instant appeal at the admission stage itself. The sole point for consideration in the instant appeal at this stage is ***“whether the appeal filed by the revenue comes under the exception clause as enumerated in circular no. 3/2018 dated 11.07.2018”***

7. Having heard learned counsel for the parties and after going through the documents available on record and the different circulars whereby monetary limit for filing appeal under 260A of the Income Tax Act, 1961 has been fixed; it appears that in exercise of powers conferred under section 268A of the Income Tax Act, 1961, the Central Board of Direct Taxes (CBDT), vide its Circular No.3/2018 dated 11.07.2018 read with Circular No. 17/2019 [F. No. 279/MISC. 142/2007-ITJ (PT.)], dated 08.08.2019 has fixed a monetary limit of tax effect of Rs.1,00,00,000/- for filing appeal u/s 260A of the Act by the Income tax department before the High Courts.

8. In the case at hand, the appeal filed by the Revenue in year 2020 against the impugned order dated 20.01.2020, for Assessment Year: 2010-11 appears to be not maintainable and liable to be dismissed *in limine*, as the amount of disputed issue in the aforesaid Tax Appeal is 2,05,96,503/- and the amount of tax in dispute on the said disputed issue is 68,64,814/- only (33.33% including Surcharge and Education cess) which is much below of Rs. 1,00,00,000/-. Therefore, in view of the aforesaid Circulars (Annexure-A & A/1 issued by CBDT) and also in view of the settled proposition of law in this regard, the instant appeal filed by the department is otherwise not maintainable and therefore liable to be dismissed *in limine*.

9. Clause (C) of para 10 of the aforesaid Circular No.3/2018 dated 11.07.2018 (Annexure-A) specifically provides that adverse judgment should be contested on merits notwithstanding with tax effect, where revenue audit objection in the case has been accepted by the department. The appellant Revenue has filed the supplementary affidavit stating therein at paragraph 6 thereof that the Audit Objection in the case has not been accepted by the CIT, Ranchi by Letter dated 14.02.2014 (Annexure-3 of supplementary affidavit) but a perusal of the said letter shows that the same was not issued by CIT, Ranchi, but was written by the Assessing Officer i.e. Asstt. Commissioner of Income Tax, Ranchi. The last paragraph of the aforesaid letter dated 14.02.2014 (Annexure-3) is as under:

“Since the security deposit has been taken by the assessee in his accounts appropriately, and there is no revenue loss in this regard,

the audit objection raised by the Revenue audit is not acceptable. But, since, tax effect in this case was more than Rs.2,00,000/-, hence as per para- 3.2(a) of the instruction No. 09 of 2006 and instruction No. 16 of 2013 of the CBDT, New Delhi, necessary direction from the Commissioner of the Income Tax was sought. The Commissioner of Income Tax, Ranchi directed the A.O to send the proposal for revision of assessment u/s 263 of the I.T. Act, 1961. As per direction of the Commissioner of Income Tax, Ranchi proposal for revision of assessment u/s 263 has been submitted.”

From bare perusal of the aforesaid paragraph it is clear that the Audit Objection was not accepted by the department. However, Commissioner of Income Tax, Ranchi directed the AO to send the proposal of Revision u/s 263 of the Act and accordingly such proposal was submitted by the AO i.e. Asstt. Commissioner of Income Tax, Ranchi for the reason that tax effect in the said case was more than Rs. 2,00,000/-.

It is not a case that the Revenue Audit Objection was accepted by the department on the issue of allowance of expenditure in respect of Retention Money and Security Deposit and the proposal for revision of the case u/s 263 was sent because of the reason that the tax effect was more than Rs.2,00,000/-. It has been clearly mentioned in the said letter by the Assessing Officer that- “since, the Security deposit has been taken by the assessee in his accounts appropriately, and there is no revenue loss in this regard, the audit objection raised by the revenue audit is not acceptable.”

10. Further, from perusal of the first paragraph of the Assessment order u/s 143(3) read with Section 263 passed on 30.03.2016 (Annexure-1) it would transpire that the assessment order in the instant appeal has been passed since an order u/s 263 dated 09.01.2015 was passed by the Commissioner of Income Tax, Ranchi setting aside the original Assessment Order passed earlier by the AO, on the grounds mentioned in the said Annexure-1. It is nowhere mentioned that the said Assessment Order u/s 143(3) read with Section 263 (Annexure-1) was passed due to any audit objection having been accepted by the department. On the contrary, the letter as contained in Annexure-3 annexed with the supplementary affidavit under reply, shows that the audit objection raised by the revenue audit against the Original Assessment Order was not accepted by the Assessing Officer.

As a matter of fact, there is no mention of any Audit Objection in any of the orders and/or communication issued by the department to the Respondent assessee and /or brought to the notice of ITAT by the department at the time of hearing before it which took place on 07.11.2019 as mentioned in the ITAT order itself at page 32 of the memo of appeal. Further the instant memo of

appeal was filed by the department on 26.08.2020 wherein also nothing has been mentioned about any Audit objection having been accepted by the department at any point of time, but in the supplementary affidavit under reply filed on 11.07.2022 for the first time the department has stated about Audit Objection.

11. It is reiterated that from perusal of Annexure-3 annexed with the supplementary affidavit under reply, it has been clearly stated that “Since the security deposit has been taken by the assessee in his accounts appropriately, and there is no revenue loss in this regard the audit objection raised by the Revenue audit is not acceptable.” Thus, it is clear from Annexure-3 to the supplementary affidavit filed by the appellant dated 11.07.2022 that the audit objection raised by revenue audit was not acceptable to the appellant. However, since the Assistant Commissioner of Income Tax was not empowered to decide on the audit objection the file was sent for approval to the Commissioner of Income Tax. It further transpires that the Commissioner of Income Tax instead of accepting the audit objection proceeded to initiate a proceeding under Section 263 and finally passed an order under the said section as according to him the original assessment order passed by the AO was erroneous in so far as it was prejudicial to the interest of revenue.

12. During the course of hearing, this Court also directed the appellant to file the order passed by the CIT under Section 263 to find out as to whether he has at all taken reference of audit objection or if at all he has accepted the same. However, after going through the entire order passed by the CIT under Section 263 which is annexed as Annexure-A to the supplementary affidavit dated 12.01.2023 passed by the appellant it appears that there is not even a whisper of the audit objection.

For brevity, paragraph 1 and 2 are quoted herein below:

“In case of M/s. Urmila RCP Projects Pvt. Ltd. Ranchi for the A.Y. 2010-11, an order u/s 143(3) of the Income-tax Act, 1961 was passed on 5/3/2013. On perusal of the assessment record, it was observed that the assessee company has debited an amount of Rs.1,20,77,109/- under the head “Retention Money Deposit” and Rs.29,57,942/- under the head “Security Deposit” in the Profit and Loss Account for the previous year 2009-10 relevant to A.Y. 2010-11. Since deposits are capital in nature, it should not have been allowed as Revenue Expenditure. In this case, the aforesaid expenditure had been debited in the P & L Account. The AO had wrongly allowed the above mentioned expenditure of Rs.1,20,77,109/- & Rs. 29,57,942/- under the head “Retention Money Deposit” & “Security Deposit” respectively. The AO had not looked into this vital aspect and has passed the assessment order without proper application of mind and without taking into account all the issues pertaining to facts and circumstances of the case. This omission has resulted in passing of an assessment

order by the AO, which is erroneous in so far as it is prejudicial to the interest of revenue.

2. In view of the above, a notice u/s 263 of the Income-tax Act, 1961 was issued on 30.06.2014 to the assessee company in which it was proposed to modify/ cancel/ enhance the assessment order for the A.Y. 2010-11.”

13. Thus, it is crystal clear that on the one hand the tax effect in the instant case is much below the monetary limit as enumerated in Circular No. 3/2018 read with Circular No. 17 of 2019 and on the other hand none of the exception clause much less the audit objection is involved in this case and as such, we are having no hesitation in dismissing this appeal on the question of maintainability itself. Consequently, the instant appeal is dismissed at the admission stage itself. However, there is no order as to costs.

(Aparesh Kumar Singh, A.C.J.)

(Deepak Roshan, J.)