Sec. 263 revision was valid if assessee failed to substantiate source of cash deposit with any evidence

Summary – The Chennai ITAT in a recent case of Avathan Marimuthu, (the Assessee) held that where assessee explained source of cash deposit in its savings account as received from closure of previous loans given by him but same was not substantiated with any record or evidence, Principal Commissioner was justified in making revision of assessment order under section 263

Facts

- The scrutiny under CASS was conducted in case of assessee to examine the source of cash deposit made in saving bank account of assessee. The source of cash deposited was explained as from closure of previous loans given. The assessee was not maintaining any books of account and was operating out of his memory only. The assessment was completed under section 143.
- The Principal Commissioner noted various replies furnished by the assessee in the course of the assessment proceedings. In respect of money lending business, which was stated to be the basis of the cash deposits in bank accounts, it was stated that the source of the deposits was the closure of the previous loans, and that the assessee had not claimed any credit from any person, in explanation of the source thereof. He held that the assessee's returns were not based on any books of account and the income returned, which had been accepted, was admittedly only on the basis of memory. Acceptance of the assessee's return without any enquiry/verification, which it was incumbent on the Assessing Officer to do, made his order *per se* erroneous and prejudicial to the interest of the revenue thus, the same was held to be liable for revision under section 263. He, accordingly, set aside the assessment's under section 263 and directed the Assessing Officer to redo the same by examining the aspects discussed by him in his order.
- On assessee's appeal to the Tribunal:

Held

- Even as admitted by the revenue during hearing, the mention of the 'books of account' of the assessment order/s is incorrect inasmuch as the assessee's is admittedly not maintaining any books of account and that only the bank account was produced. This, *qua* a critical aspect of the case, particularly considering the volume of the cash deposits in the bank account's, was for examine the loss, if any, of revenue, for which the assessments were selected for being subject to the verification procedure under the Act. Thus reflects the lackadaisical and casual approach of the Assessing Officer, who is even otherwise in law obliged to, where the circumstances warrant, make proper enquiry. This indicates a lack of application of mind in the matter. If the books of account, as stated, were produced, the same would itself explain the source of the cash deposited in bank account's, as well as the basis of the disclosed operational income, and if found to be a truthful account of the assessee's activities, no interference to the returned income would be called for.

- As explained in *Gee Vee Enterprises* v. *Addl. CIT* [1975] 99 ITR 375 (Delhi), an Income Tax Officer, in contradistinction to a civil court, which is neutral, is not only an adjudicator but also an investigator. He cannot, therefore, remain passive in the face of a return which is apparently in order but calls for further enquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as provoke an enquiry. It is because it is incumbent on him to further investigate the facts stated in the return when the circumstances would make such an enquiry prudent that the word 'erroneous' in section 263 includes a failure on his part to make such an enquiry. The order is erroneous because such an enquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct. In the present case, the assessment is not consistent even with what is stated in the return itself. No bills and vouchers, stated to be accompanying non-existing books of account, were admittedly produced. It is also incomprehensible that the assessee is, as stated, not maintaining any books of account (in respect of the money lending business) and, in any case, that there was a complete absence of any record in respect of the advances made and recovered, as well as qua the interest/commission earned in the process, and returned only on the basis of 'memory'.
- The cash deposits in the bank account's need to be satisfactorily explained, else these are liable to be added as unexplained income under sections 69/69A. There is no explanation as to the source of the deposit/s. Merely stating that the same is a return of the loans given earlier, without in any manner substantiating the same, *i.e.*, the loans given earlier and/or their return, would be of little consequence, both in law and in fact in-as-much as the law mandates the same to be satisfactorily explained, so that the same would require being reasonably established as a fact. There is nothing to indicate a running money lending business. Further, it needs to be borne in mind that the law deems the same as unexplained income for the year in which the asset (deposit) is found (made), *i.e.*, *the current year*. It is only for the current year that, by virtue of the information in the possession of the revenue of the cash deposits in the assessee's bank account's, leads to the inference of the assessee being the owner of the said sum/s, as the law deems (section 110 of the Indian Evidence Act) and, accordingly, is deemed as the assessee's income for the relevant year, where the assessee has not satisfactorily explained as to its nature and source. Sections 68, 69, *etc.* are only rules of evidence incorporating the principles of common law jurisprudence. There was further nothing adduced at any stage to show that the deposits, value of which remains unspecified, formed part of the disclosed assets or income for an earlier year, so that the disclosed capital becomes the explanation for the source of the deposits during the current year. In both cases, as shall be readily seen, there is no finding by the Assessing Officer - who merely records what the assessee's states per its communications, as to whether it is indeed so, *i.e.,* the cash deposits represent a receipt, along with interest, of the loans given earlier. Further, even going by the assessee's explanation, which could no doubt be true, or have a element of truth, so that the assessee's capital as invested in the said business, is rotated, the capital invested in the said business is liable to be estimated and brought to tax, *i.e.*, apart from the income by way of interest/commission from the financing business. What is

this capital? What is the amount of debtors (receivable) as at the year-end, or the balance's in the bank account's at the beginning as well as end of the year. All this is conspicuous by its absence. Again, as stated by the Principal Commissioner, there is nothing to show that the disclosure of interest/commission income is true and correct. An average lending period of 7 to 10 days, as stated, would imply an annual turnover ratio in the range of 36 to 52, and provide a basis for the estimation of both the capital invested as well as the interest income.

- It was already explained that a failure to make proper enquiry would make an order *per se* erroneous and prejudicial to the interest of the Revenue, and, thus, liable for revision. The same stands in fact made a part of the law by insertion of *Explanation* 2(a) to section 263, referred to earlier. The initiation of revision proceedings in both these cases, by issue of show cause notice's under section 263, is only after the amended law comes into force.
- In view of the foregoing, the impugned orders are to be upheld.