

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE
SHRI M BALAGANEH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 4079/DEL/2019

Assessment Year: 2014-15

M/s. Ved Parkash & Sons Lumbers Pvt. Ltd., Timber Market, Karnal (Hr.) PAN No:AACCN0304M (Appellant)	Vs.	Principal CIT, Karnal (Respondent)
--	-----	---

Assessee by	Shri Ved Jain, Adv. & Shri Aman Garg, CA
Department by	Shri P N Barnwal, CIT-DR
Date of Hearing	05.06.2024
Date of pronouncement	23.08.2024

ORDER

PER VIMAL KUMAR, JUDICIAL MEMBER:

The assessee's appeal is against order dated 25.03.2019 of Learned Principal Commissioner of Income-Tax, Karnal (herein after referred as 'the Ld. PCIT') under Section 263(1) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') arising out of assessment order dated 07.12.2016 of the Assessing Officer/ITO, Ward-5, Karnal (hereinafter referred as 'the Ld. AO') for the Assessment Year 2014-15.

2. Brief facts of the case are that the appellant/assessee e-filed return of income-tax on 30.10.2014 declaring income of Rs.18,19,390/- for the assessment year 2014-15. The case was selected for complete scrutiny assessment through CASS. Notice

under Section 143(2) of the Act dated 28.08.2015 was issued. On change of jurisdiction w.e.f. 16.05.2016, notice under Section 143(2) and 142(1) of the Act along with detailed questionnaire were issued on 14.06.2016 for 29.06.2016. On 29.06.2016, Shri. Viney Goel, CA for the appellant/assessee appeared and filed Power of Attorney and on request case was adjourned to 14.07.2016. On the said date, neither anybody appeared nor assessee filed reply. Notice under Section 142(1) of the Act dated 06.10.2016 was issued for 18.10.2016. But again on the said date neither anybody appeared nor assessee filed reply. Notice under Section 142(1) of the Act dated 15.11.2016 was issued. On 21.11.2016, Shri Viney Goel, FCA for the appellant/assessee appeared and filed reply to the questionnaire. The matter was partly discussed and adjourned to 25.11.2016, Sh. Viney Goel, CA was asked for complete reply on questionnaire, cash book, ledger, stock register and relevant bills/voucher of all expenses. The case was partly discussed and adjourned for 25.11.2016.

3. On culmination of assessment proceeding, Ld. A.O. passed assessment order dated 07.12.2016 making additions of Rs.2,50,000 and Rs.20,000/-.

4. Perusal of assessment order dated 07.12.2016 along with other records revealed, discrepancies and errors. A show-cause-notice under Section 263 dated 10.01.2018 was issued. Shri Viney Goel, FCA Learned Authorised Representative for the assessee attended proceedings on 15.02.2019 and submitted written submission. Learned Pr. CIT vide order dated 25.03.2019,

set aside the assessment order with the directions to the Assessing Officer to make assessment afresh.

5. Being aggrieved, appellant/assessee preferred present appeal.

6. Learned Authorised Representative for the appellant/assessee submitted that learned Pr. CIT erred in setting aside assessment order ignoring the fact that all issues raised under Section 263 of the Act were before the AO and as such jurisdiction under Section 263 of the Act could not be assumed. Learned Pr. CIT erred in rejecting the contention of the appellant/assessee that the issue of share application money/share premium was before the Assessing Officer in proceedings under Section 143(3) of the Act and was allowed after application of mind as such the same cannot be the matter for reassessment us 263 of the Act.

7. Learned Authorised Representative for appellant/assessee submitted that Ld. PCIT erred in not appreciating the fact that the issue of transactions with the related parties specified u/s 40A(2)(b) of the Act was before Ld. A.O. and was allowed as such same could not be a matter for revision u/s 263 of the Act.

8. Learned Authorised Representative for the appellant/assessee submitted that learned Pr. CIT has erred both on facts and in law in rejecting the contention of appellant/assessee that the issue of expenditure on account of freight and octroi/clearing and sawing were before the Learned Assessing Officer and were allowed by him after due application

of mind, as such the same could not be a matter of revision under Section 263 of the Act.

9. Learned Authorised Representative for appellant/assessee submitted that learned Pr. CIT has erred in rejecting contentions of appellant/assessee that the issue of security premium reserve was before Learned A.O. and was allowed as such same could not be for revision.

10. Learned Authorised Representative for the appellant/assessee submitted that learned Pr. CIT erred in rejecting the contention of the appellant/assessee that the issue of verification of sundry creditors/sundry debtors were before the Assessing Officer and allowed as such same could not be the subject matter for revision under Section 263 of the Act.

11. The Learned Authorised Representative for the appellant/assessee submitted that learned Pr. CIT erred in invoking the appellant/assessee's contention that proceedings under Section 263 cannot be used for substituting option of Ld. Assessing Officer by that of Learned Pr. CIT.

12. Learned Authorised Representative for the appellant/assessee submitted that learned Pr. CIT erred in invoking revisionary power under Section 263 of the Act that despite the fact that even after thorough examination, no specific findings had been given on the issue as to how the order of Assessing Officer was erroneous and prejudicial to the interest of the Revenue by the assessment order.

13. Learned Authorised Representative for the appellant/assessee submitted that Hon'ble Supreme Court in Malabar Industrial Co. Ltd. Vs. Commissioner of Income Tax, 2000 (2) TMI 10- Supreme Court, dated 10.02.2000 observed that:

"A bare reading of this provision makes it clear that the prerequisite to the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the income-tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous and (ii) it is prejudicial to the Interests of the Revenue. If one of them is absent-if the order of the Income-tax Officer is erroneous; but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue-recourse cannot be had to section 263(1) of the Act."

14. Learned Authorized Representative for appellant/assessee submitted that there is difference between 'no enquiry' and 'lack of enquiry'. The Ld. PCIT himself admitted that all the issues were examined by the AO. The assessee in its reply has submitted evidences to demonstrate that each of the issue was examined. In fact, assessee in its reply to show cause notice by Ld. PCIT also enclosed all the details. The Ld. PCIT thereafter has nowhere found any flaw in any of these documents. In case he was having any doubts or any apprehension, the least he could have done was to carry out some verification/ enquiry so as to make an allegation of order being prejudicial to the interest of the Revenue. The Ld. PCIT instead has just sent back the order to AO with direction to carry out verification. Hence, the important condition of assessment order being prejudicial to the interest of Revenue does not get fulfilled. It is a settled law that in case of 'inadequate enquiry' not a case of 'no enquiry', Ld. PCIT himself

has to carry out enquiry so as to demonstrate order being prejudicial to the interest of the Revenue, according to following judicial pronouncements:-

- (a) COMMISSIONER OF INCOME-TAX VERSUS SUNBEAM AUTO LTD., 2009 (9) TMI 633-DELHI HIGH COURT, Dated.- September 11, 2009
- (b) INCOME TAX OFFICER VERSUS DG HOUSING PROJECTS LTD, 2012 (3) TMI 227 - DELHI HIGH COURT, Dated.- March 1, 2012
- (3) PR. COMMISSIONER OF INCOME TAX -2, DELHI VERSUS M/S. CLIX FINANCE INDIA PVT. LTD, 2024 (3) TMI 157-DELHI HIGH COURT, Dated.- March 1, 2024
- (4) PRINCIPAL COMMISSIONER OF INCOME TAX-4 VERSUS KLAXON TRADING PVT. LTD, 2023 (12) TMI 36-DELHI HIGH COURT, Dated.- November 29, 2023

15. Learned Authorised Representative for appellant/assessee submitted that to exercise revisionary power under section 263 of the Act Ld. PCIT must undertake some minimal enquiry and give reasons for coming to the conclusion that assessment order was erroneous and prejudicial to the interest of the Revenue, as per by the following judicial pronouncements-

- (a) PR. COMMISSIONER OF INCOME TAX 3, NEW DELHI VERSUS DELHI AIRPORT METRO EXPRESS PVT. LTD., 2017 (9) TMI 529 DELHI HIGH COURT, Dated.- September 5, 2017
- (b) PR. COMMISSIONER OF INCOME TAX -6 VERSUS MODICARE LIMITED, 2017 (9) TMI 1238-DELHI HIGH COURT, Dated.- September 14, 2017.
- (c) Revenue filed an SLP against above mentioned Delhi High court order before the apex court and same was dismissed vide order PR. COMMISSIONER OF INCOME TAX 6 VERSUS MODICARE LIMITED, 2024 (2) TMI 347-SC ORDER, Dated.- January 30, 2024
- (d) DIT VERSUS JYOTI FOUNDATION, 2013 (7) TMI 483 DELHI HIGH COURT, Dated.- July 9, 2013

Learned PCIT in the present case has wrongly passed order u/s 263 of the Act without undertaking some minimal enquiry to the support his conclusion that assessment order was erroneous and prejudicial to the interest of the Revenue.

16. Learned Authorized Representative for appellant/assessee submitted that Ld. PCIT has not invoked the explanation 2 of section 263 of the Act by giving in the show cause notice. Therefore, the opportunity w.r.t. the explanation 2 of section 263 of the Act was not affordable to the assessee. It is settled position in law that where PCIT has not invoked the explanation 2 of section 263 of the Act in the show cause notice, then PCIT cannot take recourse of this provision while dealing issues against the assessee according to following judicial pronouncements-

- (a) PRINCIPAL COMMISSIONER INCOME TAX, SURAT-2 VERSUS M/S. SHREEJI PRINTS PVT. LTD., 2020 (2) TMI 102,1-GUJARAT HIGH COURT, Dated.- February 3, 2020
- (b) Revenue filed a SLP against the above mentioned order of Gujarat High Court and the same was dismissed by the Hon'ble Supreme Court in the case of PR.
- (c) COMMISSIONER OF INCOME TAX, SURAT-2 VERSUS M/S. SHREEJI PRINTS PVT. LTD., 2021 (9) TMI 108-SUPREME COURT, Dated.- August 27, 2021
- (d) MOHAK REAL ESTATE PRIVATE LIMITED, VERSUS PCIT-4, DELHI., 2023 (5) TMI 1292-ITAT DELHI, Dated.- May 25, 2023.

17. Learned Authorised Representative for appellant/assessee submitted that explanation 2 to section 263 of the Act does not authorize or give unfettered power to Ld. PCIT to revise each & every order to re-examine the issues already examined by the AO during the assessment proceedings as held following judicial pronouncements:

(a) SHRI NARAYAN TATU RANE VERSUS ITO WARD 27 (1) (1), MUMBAI, 2016 (5) TMI 1162-ITAT MUMBAI, Dated.- May 6, 2016

(b) NEENA DADWANI VERSUS PCIT-1, INDORE, 2023 (8) TMI 1255-ITAT INDORE, Dated.- August 24, 2023

(3) M/S OLYMPUS SUPPLIERS PVT LTD. VERSUS PCIT, CIRCLE-2, KOLKATA, 2024 (5) TMI 696-ITAT KOLKATA, Dated.- May 13, 2024

(4) SOURABH SHARMA JAIPUR VERSUS PCIT, JAIPUR-2, 2024 (2) TMI 660-ITAT JAIPUR, Dated.- November 22, 2023.

18. Learned Authorised Representative for the Revenue submitted that the Assessing Officer did not make proper inquiries during assessment proceeding. The order of learned Pr. CIT is well reasoned. Hon'ble Supreme Court of India in the case of Deniel Merchants (P) Ltd. vs. ITO reported in [2018] 95 taxmann.com 366 (SC) has held that Commissioner had passed an order under Section 263 with observations that Assessing Officer did not make any proper inquiry while making assessment and accepting explanation of assessee insofar as receipt of share application money was concerned – High Court upheld order of revision – Whether there was no reason to interfere with order of High Court and, thus, SLP was to be dismissed.

19. From the examination of record in light of aforesaid rival contentions, it is crystal clear that Ld. PCIT issued show cause notice dated 07/02/2019 u/s 263 which is at page 269 -274 of the PB. Regarding assessee's claim of receipt of application money/share premium from three companies. The three companies appeared to be shell companies. The assessee attended and in-death enquiry to verify the genuineness of the

transaction, show cause was issued regarding transaction with the person u/s 40A(2)(b) of the Act. Show cause notice mentioned that increase in expenditure on account of freight and octroi/clearing and showing appeared to be on higher side. Investigations were required regarding assessee's claim of securities premium of Rs.1,14,00,000/-, independent enquiry was required to be conducted regarding 22 sundry debtors. In pursuance to show cause, assessee had submitted copies of documents which were filed before Ld. AO. After examining the record, the Ld. PCIT in the impugned order pointed out specific points of failure of Ld. AO to re-examine the genuineness and veracity of receipt of application money/share premium from three companies, payment of remuneration to the Directors specified in terms of section 40A(2)(b) of the Act, increase in existence on account of freight and octroi clearing and sawing, non verification of claim of securities premium, non verification of assessee's claim of sundry debtor non ascertaining the nature of bank transaction giving rise to entity of Rs.1,50,000/- for heavy bank charges clearing bank cheque processing, non verification of genuineness of assessee's claim regarding heavy clearing charges, transport charges, custom charges and warehousing charges and earned for reassessment afresh by the Ld. AO.

20. Hon'ble Delhi High Court in the case of Principal Commissioner of Income Tax vs. M/s Clinks Finance Pvt. Ltd. [2012] (3) TMI 227 dated 01/03/2024 has held as under:-

"19. A bare reading of sub-Section (1) of Section 263 of the Act makes it abundantly clear that the said provision lays down a two pronged test to exercise the revisional authority i.e., firstly, the assessment order must be erroneous and secondly, it must be prejudicial to the interests

of the Revenue. Further, Explanation 2 to Section 263 of the Act delineates certain conditions and circumstances when the order passed by the AO can be said to be erroneous and prejudicial to the Revenue.

20. Clause (a) of Explanation 2 to Section 263 of the Act further stipulates that if an order is passed without making an enquiry or verification which should have been made, the same would bestow a revisional power upon the Commissioner. However, the said Clause or any other condition laid down in Explanation 2 does not warrant recording of the said enquiry or verification in its entirety in the assessment order.

21. Admittedly, in the instant case, the questionnaire dated 02.11.2004, which has been annexed and brought on record in the present appeal, would manifest that the AO had asked for the allowability of the claims with respect to the issues in question. Consequently, the respondent-assessee duly furnished explanations thereof vide replies dated 09.12.2004, 20.12.2004 and 06.01.2005. Thus, it is not a case where no enquiry whatsoever has been conducted by the AO with respect to the claims under consideration. However, this leads us to an ancillary question whether the mandate of law for invoking the powers under Section 263 of the Act includes the cases where either an adequate enquiry has not been made and the same has not been recorded in the order of assessment or the said authority is circumscribed to only consider the cases where no enquiry has been conducted at all.

22. Reliance can be placed on the decision of this Court in the case of *CIT v. Sunbeam Auto Ltd.* [2009] SCC OnLine Del 4237], wherein, it was held that if the AO has not provided detailed reasons with respect to each and every item of deduction etc. in the assessment order, that by itself would not reflect a non-application of mind by the AO. It was further held that merely inadequacy of enquiry would not confer the power of revision under Section 263 of the Act of the Act on the Commissioner. The relevant paragraph of the said decision reads as under:-

"17. We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income-tax under section 263 of the Income-tax Act. As noted above, the submission of learned counsel for the Revenue was that while passing the assessment order, the Assessing Officer did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order, which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the Assessing Officer had not applied his mind on the issue. There are judgments

galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate that would not by itself give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter. It is only in cases of "lack of inquiry" that such a course of action would be open, In *Gabriel India Ltd.* (1993) 203 ITR 108 (Bom), law on this aspect was discussed in the following manner (page 113)

.....

23. A similar view was taken by this Court in the case of *CIT v. Anil Kumar Sharma* [2010 SCC OnLine Del 838], wherein, it was held that once it is inferred from the record of assessment that AO has applied its mind, the proceedings under Section 263 of the Act would fall in the category of Commissioner having a different opinion. Paragraph 8 of the said decision reads as under.-

"8. In view of the above discussion, it is apparent that the Tribunal arrived at a conclusive finding that, though the assessment order does not patently indicate that the issue in question had been considered by the Assessing Officer, the record showed that the Assessing Officer had applied his mind. Once such application of mind is discernible from the record, the proceedings under section 263 would fall into the area of the Commissioner having a different opinion. We are of the view that the findings of facts arrived at by the Tribunal do not warrant interference of this court. That being the position, the present case would not be one of "lack of inquiry" and, even if the inquiry was termed inadequate, following the decision in *Sunbeam Auto Ltd.* (2011) 332 ITR 167 (Delhi) (page 180): "that would not by itself give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter." No substantial question of law arises for our consideration."

24. In *Ashish Rajpal* as well, this Court was of the view that the fact that a query was raised during the course of scrutiny which was satisfactorily answered by the assessee but did not get reflected in the assessment order, would not by itself lead to a conclusion that there was no enquiry with respect to transactions carried out by the assessee.

25. Further, the decision of the **Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd.**, enunciates the meaning and intont-of the phrase "prejudicial to the interests of the Revenue", in the following words:-

"8. The phrase "prejudicial to the interests of the Revenue" is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss 2024 (3) TMI 157-HC-Pr. Commissioner Of Income Tax-2 Delhi Versus Mis Clex Finance India of tax. The High Court of Calcutta in Dawjee Dadabhoy & Co. v. S.P. Jain ((1957) 31 ITR 87 (Cal)), the High Court of Karnataka in CIT v. T. Narayana Pai ((1975) 98 ITR 422 (Kant)), the 3/21/24, 6:32 PM High Court of Bombay in CIT v. Gabriel India Ltd. ((1993) 203 ITR 108(Bom)) and the High Court of Gujarat in CIT v. Minalben S. Parikh ((1995) 215 ITR 81 (Guj)) treated loss of tax as prejudicial to the interests of the Revenue.

9. Mr. Abraham relied on the judgment of the Division Bench of the High Court of Madras in Venkatakrishna Rice Co. v. CIT ((1987) 163 ITR 129 (Mad)) interpreting "prejudicial to the interests of the Revenue". The High Court held:

"In this context, (it must) be regarded as involving a conception of acts or orders which are subversive of the administration of revenue. There must be some grievous error in the order passed by the Income Tax Officer, which might set a bad trend or pattern for similar assessments, which on a broad reckoning, the Commissioner might think to be prejudicial to the interests of Revenue Administration."

In our view this interpretation is too narrow to merit acceptance. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income Tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue.

10. The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income Tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income Tax Officer is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue. (See Rampyari Devi Saraogi

v. CIT [(1968) 67 ITR 84 (SC)] and in Tara Devi Aggarwal v. CIT [(1973) 3 SCC 482: 1973 SCC (Tax) 318: (1973) 88 ITR 323J.]"

[Emphasis supplied]

26. *Recently, the Hon'ble Supreme Court in the case of CIT v. Paville Projects (P) Ltd. [2023 SCC OnLine SC 371], while relying upon Malabar Industrial Co. Ltd., has discussed the sanctity of twofold conditions for the purpose of invoking jurisdiction under Section 263 of the Act. The relevant paragraph of the said decision reads as under:-*

"27. Learned counsel appearing on behalf of the assessee has heavily relied upon the decision of this Court in the case of Malabar Industrial Co. Ltd. (supra). It is true that in the said decision and on interpretation of Section 263 of the Income Tax Act, it is observed and held that in order to exercise the jurisdiction under Section 263(1) of the Income-tax Act, the Commissioner has to be satisfied of twin conditions, namely,

(i) the order of the Assessing Officer sought to be revised is erroneous; and

(ii) it is prejudicial to the interests of the Revenue. It is further observed that if one of them is absent, recourse cannot be had to Section 263(1) of the Act.

27. Considering the aforesaid judicial pronouncements, it can be safely concluded that inadequacy 28 2024 (3) TMI 157-HC-Pr Commissioner Of Income Tax-2 Delhi Versus M/s Clix Finance India enquiry by the AO with respect to certain claims would not in itself be a reason to invoke the powers enshrined in Section 263 of the Act. The Revenue in the instant case has not been able to make out a sufficient case that the CIT has exercised the power in accordance with law. Rather, in our considered opinion, the facts of the case do not indicate that the twin conditions contained in Section 263 of the Act are fulfilled in its letter and spirit."

21. From perusal of the record in light of aforesaid well settled principle of law, it is apparent on record that all issues i.e.

- (a) share application money/share premium
- (b) transactions with related parties specified u/s 40A(2) of the Act.
- (c) expenditure on account of freight and octroy/clearing and sawing

- (d) security premium reserve
- (e) verification of sundry creditors/sundry debtors

were examined by Ld. AO and decided in favour of assessee in original assessment proceedings. Learned PCIT had no where found any flaw in the documents. Learned PCIT had not undertaken any enquiry or given reasons for coming to conclusion that assessment order was erroneous and prejudicial to interest of revenue. Explanation 2 to section 263 of the act does not give unfettered power to Ld. PCIT to revise each and every order to re-examine the issues already examined by the AO during assessment proceedings. Therefore, the impugned order is beyond jurisdiction, bad in law and void *ab initio*. Consequently, the impugned order deserves to be set aside.

22. In the result, the assessee's appeal is allowed.

Order pronounced on this 23rd day of August, 2024.

Sd/-

(M BALAGANEH)
ACCOUNTANT MEMBER

Dated: 23/08/2024

Mohan Lal/PK Sps

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

Sd/-

(VIMAL KUMAR)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI