

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH 'A', KOLKATA  
(Before Shri S.S.Viswanethra Ravi, J.M. &Dr.A.L.Saini, A.M.)**

**ITA No. 1504/Kol/2015 : Asstt. Year : 2012-13**

KrishiRasayan Export (P) Ltd., 29, LalaLajpatRaiSarani, Kolkata-700020 PAN: AACCK 4124G	Vs	Principal Commissioner of Income-Tax-4, AaykarBhawan, P-7, Chowringhee Square, Kolkata – 700 069
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

**Appellant by: Shri SanjeevKadel, FCA**

**Respondent by:Shri RajatSubhra Biswas, CIT**

**Date of Hearing : 05.09.2016**

**Date of Pronouncement :- 23/09/16**

**ORDER**

**Per Dr. A.L.Saini, A.M.:**

The captioned appeal filed by the assessee pertaining to assessment year 2012-13, is directed against the order passed by the Ld. Principal Commissioner of Income-Tax, Kolkata-4, Kolkata, under section 263 of the Income Tax Act, 1961 dated 19/11/2015, which in turn arises out of an order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short, 'the Act'), dated 31/03/2014.

2. The facts of the case are stated in brief. The assessee company filed its return of income on 26<sup>th</sup> September, 2012 for the assessment year under consideration declaring total income at Rs.30,27,62,094/-. The return was processed under section 143(1) on 24.05.2013. Later

on, the case was selected for scrutiny and the AO has completed the scrutiny assessment under section 143(3) on 31.03.2014.

3. The assessee has taken the following grounds of appeal:

*“1. That the notice issued by Ld. Principal Commissioner of Income Tax- 4, dt. 24.02.2015 issued u/s. 263 is bad, illegal & void ab-initio.*

*2. That the order passed by Principal Commissioner of Income Tax-4 u/s. 263 dt. 19.11.2015, ignoring the facts that original assessment order passed by Addl Commissioner of Income Tax- Range-12 has merged with the appeal order dt. 11.08.2014 passed in appeal case No 211/CIT(A)/-XII/R-12/14-15 by Commissioner of Income Tax (Appeal )-XII, as such, the order passed u/s. 263 is beyond jurisdiction of Ld. Commissioner of Income Tax -4, and amount to invalid order.*

*3. That the notice issued by Ld. Principal Commissioner of Income Tax-4 u/s. 263 was limited to "failure on the part of A.O for examination of international Transaction", whereas the ld. Principal Commissioner has set aside and directed A.O.to make fresh assessment de-novo. The action of Ld. Commissioner is arbitrary and illegal.”*

4. By this appeal, the assessee has challenged the validity of proceedings under section 263 of the Income-Tax Act, 1961. The Commissioner of Income-Tax observed that the assessee company is engaged in the business of manufacturing and trading of insecticides, pesticides and Agro Chemicals during the financial year 2011-12, the assessee has made international transaction of Rs.36,45,16,187/- with its associated enterprise. The same was not considered for verification during the assessment proceedings. The assessment order under section 143(3) of the I.T. Act, 1961 was passed without determining arm's length price of the international transaction.

4.1 In view of the above facts, the Commissioner of Income-Tax noticed that the order of the AO is erroneous in so far as prejudicial to the interest of revenue. Accordingly, a show cause notice under section 263 of the I.T.Act was issued to the assessee company on 24.02.2015. The Id. Commissioner of Income-Tax had directed the AO to pass a fresh order as per the I.T. Act, after giving proper opportunity of being heard to the assessee company, observing the following:

*“5. After going through the facts of the case, materials available on records and the submission dated 03.03.2015 of the assessee company, it is seen that the assessing officer has not examined Arm’s Length Price on International transaction of Rs.36,45,16,187/- made by the assessee company during the F.Y. 2011-12 and thereby did not determined the arm's length price. Therefore, the order dated 31.03.2014 passed u/s 143(3) of the I T Act, 1961 is erroneous in so far as prejudicial to the interest of revenue. The order passed u/s 143(3) of the I. T. Act, 1961 dated 31.03.2014 is Set Aside de novo with a direction to carryout proper examination on each and every issue relating to the case. The assessment is being set aside as no proper examination for relevant assessment year was made as held in the case of Jagadish Kumar Gulati vs Commissioner of Income Tax (High Court of Allababad) (2004)191 CTR (ALL)25 relevant part of the judgement is reproduced below applicable to this case.*

*"The office note indicated that proper enquiries were not made by the Assessing Officer as he himself admitted. There is no statutory bar in making an office note. There is also no statutory bar in relying upon the office note under section 263. By the said office note, the Assessing Officer had expressed his opinion that he was not able to make proper enquiries. When the Assessing Officer himself made that admission, it was not for the assessee to dispute it. Moreover, report of the inspectors indicated that assessee had not given the correct details about the valuation and income of the properties in question. [para 15].*

*Thus, in the present case the Commissioner after taking into consideration the assessment order and material on record came to the conclusion that the order of the Assessing Officer is erroneous, as much as it is prejudicial to the interest of revenue. Hence there was valid assumption of jurisdiction under section 263 of the Act by the Commissioner and the Tribunal has not committed any error of law in confirming the order of the CIT in setting aside the assessment order under section 263 and directing the Assessing officer to make fresh assessment [para 20].*

*Before parting with the case, we would like to mention that it is often found that assessments are being done in an improper manner without proper consideration and the explanation given is that it was done in a hurry as limitation was expiring. This is often a pretext for not doing a proper assessment, and it raises apprehensions that the Assessing Officer is hand in glove with the assessee. It is the practice of the department not to scrutinize every case in detail; but when a case is picked up for scrutiny, surely the duty of the Assessing Officer is to do a through investigation but he did not do it in this case, which is indeed lamentable. We are, therefore, of the opinion that the C.B.D.T should issue appropriate circulars to the income-tax authorities that at least in scrutiny cases there should be thorough enquiries by the Assessing Officer and in such cases his functioning should be monitored by a superior officer. The Plea that he did not have time and that he was making hurried assumption as the assessment was becoming time-barred should not be accepted in such cases [para 21]”*

5. The ld. AR for the assessee has submitted before us that the Commissioner of Income-Tax, in the case under consideration should not have directed the AO to make a fresh assessment because complete details of the property transaction including the details of international transaction were submitted during the course of assessment proceedings. The ld. AR has also submitted that it is the duty of the AO to consider the same. The ld. AR has relied on the following judgments:

*i) In the case of E I H Limited-vs- CIT in ITA No.529/Kol/2013 dated 19.02.2016 of the ITAT, “C” bench, Kolkata wherein the decision of Hon’ble Delhi High Court in the case of CIT vs Honda Siel power Products*

*Ltd. (2010) 333 ITR 547(Del) was relied on wherein it was held that mere absence of discussion of the provisions of section 80IB(13) read with section 80IA(9) of the Act would not mean that the AO has not applied his mind to the said provisions and there is no material to indicate that the AO has not applied his mind to the provisions of section 80IB(13) read with section 80IA(9) of the Act. The presumption that the assessment orders u/s 143(3) had been passed upon application of mind has not been rebutted by the revenue. We hold that the impugned issue is squarely covered by the decision of the Hon'ble Supreme Court (supra) and Hon'ble Rajasthan High Court (supra) among others and the circulars issued by CBDT in this regard and hence it can be safely concluded that the order has been passed by the Learned AO by taking one of the possible views and hence the order cannot be termed as erroneous warranting initiation of revision proceedings u/s 263 of the Act. We also find that the issue is accepted by the revenue in assessee's own case for the Asst Year 2011-12 pursuant to the directions of the Hon 'ble DRP. In these circumstances, we hold that the order passed by the Learned AO cannot be considered as erroneous. Hence the grounds raised by the assessee on the issue of allowability of lease rentals are allowed.”*

*ii) In the case of M/s. Maithan international –vs- ACIT in ITA No.559/Kol/2009 dated 24<sup>th</sup> June, 2011 of the ITAT, Kolkata “C” bench, Kolkata*

6. The ld. DR for the Revenue has primarily reiterated the stand taken by the AO and the ld. CIT(A). He submitted that in this case there is no two opinions as the ld. AR for the assessee has submitted, it is a matter where the assessee has submitted papers relating to international transaction but the AO did not consider

them at all. In case of international transaction it is the duty of the AO to examine whether there is an adjustment relating to arm`s length price or not. As per CIT there is an adjustment of arm`s length price of the international transaction and the Assessing Officer has failed to do so, therefore there is loss to revenue. Therefore, it is the order passed by the AO, which is prejudicial to the interest of the Revenue and hence, the Commissioner of Income-Tax has rightly invoked the provisions of section 263 of the Income-Tax Act, 1961.

7. Having heard the rival submissions, we noticed merit in the submissions of the Id. DR as his submissions are supported by the basic fact that the matter which has not been taken up by the assessee before the Commissioner of Income Tax (Appeals), on that matter, the Commissioner of Income-Tax has jurisdiction to pass the order under section 263 of the Income-Tax Act. We noticed that the assessee has not taken up this issue before the Id. CIT(A) at all. Therefore, this issue has not been merged with the order of the Commissioner of Income-Tax. Thus, the issue which is being argued, never taken up before the CIT(A).

The assessee also relied on the judgment of **GEE VEE ENTERPRISES vs. ADDITIONAL COMMISSIONER OF INCOME TAX & ORS-99 ITR 0375 (Del. HC)** , wherein the following principle have been laid down which are applicable to the case under consideration:

*" Page 386-The position and function of the Income Tax Officer is very different from that of a civil Court. The statements made in a pleading proved by the minimum amount of evidence may be accepted by a civil Court in the absence of any rebuttal. The civil Court is neutral. It simply gives decision on the basis of the pleading and evidence which comes before it. The ITO is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word "erroneous" in s. 263 emerges out of this context. It is because it is incumbent on the ITO to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in s. 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry 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.*

*The company and the partnership in this case were formed in the same year with many members common in both. The fact that the company purchased the land but handed over construction work to the partnership even though the object of the company was to make such construction should naturally provoke a query as to why this was done. The partnership was required to be in existence as a genuine firm in the previous year before it could be registered under s. 185 of the Act. Such registration gives a substantial advantage to it for the purpose of taxation. In the very first assessment of the company and the firm, the advantage of the registration was given to the firm. The question would naturally arise whether the firm was formed merely for the purpose of getting a tax advantage. Assessee argued that there is nothing wrong if a legitimate advantage is sought by these means. But it was precisely for that reason that the ITO had to be satisfied that the firm had existed in the previous year genuinely. It cannot be said that the CIT could not be reasonably of the opinion that the order of the ITO was erroneous because previous inquiries were not made by the ITO. Nor can it be said that it was necessary for the CIT himself to make such inquiry before cancelling the order of assessment. In view of the decisions of the Supreme Court in Rampyari Devi and Tara Devi Aggarwal, the challenge of the petitioners to the jurisdiction of the Commissioner exercised under section 263 fails and the writ petitions do not qualify for admission on the ground of the impugned orders being without jurisdiction"*

Hence, it is the issue not examined by the AO and which is never touched upon by the Id. Commissioner of Income Tax(Appeals) and therefore, the Commissioner of Income Tax under section 263 has rightly invoked his jurisdiction. Therefore, based on the above set of factual position and case law cited above, we dismiss the appeal filed by the assessee.

8. In the result, the appeal filed by the assessee is dismissed.

Order Pronounced in the Open Court on 23.09.2016

**Sd/-**  
**(S.S.Viswanethra Ravi)**  
**JudicialMember**

**Sd/-**  
**(Dr. A.L.Saini)**  
**Accountant Member**

**Dated: 23/09/2016**

Talukdar (Sr.PS)

Copy of the order forwarded to:

1. Revenue
2. Assessee
3. The CIT-I,
4. The CIT(A)-I,
5. DR, Kolkata Benches, Kolkata

True Copy,

By order,

Asst. Registrar, ITAT, Kolkata Benches