

**IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA 'D' BENCH,  
KOLKATA**

Before **Shri M.Balaganesh, Accountant Member** and  
**Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No.1107/KOL/ 2016**  
Assessment Year: 2011-12

**Bajaj Parivahan Pvt. Limited**

P-3, New CIT Road, 4<sup>th</sup> Floor,  
Kolkata-700 073  
[PAN : AABCB1031C]

Appellant

-Vs.-

**Commissioner of Income Tax,**

Kolkata-5, Aayakar Bhawan Poorva,  
110, Shantipally, EM By pass,  
Kolkata-700 107

Respondent

Appearances by:

Shri S.K.Kandai, FCA, for the assessee  
Shri G. Mallikarjuna, CIT, DR, for the Department

Date of hearing : 23-08-2016  
Date of pronouncement : 21 -10-2016

**Shri. S.S.VISWANETHRA RAVI, JM:**

This appeal by the Assessee against an order dt:31-03-2016 passed by the Prl. Commissioner of Income Tax-(Appeals) U/Sec 263 of the Act for the assessment year 2011-2012.

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2. In this appeal, the assessee has raised the following grounds of appeal:-

*1.0 That on the facts and in the circumstances of the case, the impugned order passed u/s 263 is grossly arbitrary and bad in law in relation to the issues raised and adjudicated therein and needs to be summarily quashed.*

*2.0 That on the facts and in the circumstances of the case, the Learned Pr. Commissioner of Income Tax - 5, Kolkata (here-in-after referred to as Ld. CIT was not justified in initiating proceedings u/ s 263 of the Income Tax Act, 1961 as the proceedings were prompted without application of mind and is therefore bad in law.*

*3.0 That on the facts and in the circumstances of the case, Ld. CIT has failed to appreciate that an order of assessment cannot be set aside to simply to make further enquiries and thereafter pass fresh order of assessment and as such the impugned order u/s 263 is contrary to law and unsustainable.*

*4.0 That on the facts and in the circumstances of the case, Ld. CIT erred in holding that the assessment order is erroneous and prejudicial to the interest of revenue on the conjecture that the certain expenditure might have been inflated.*

*5.0 That on the facts and in the circumstances of the case, the Ld. CIT was not justified and grossly erred in holding that AO had not applied his mind while making ad-hoc disallowance of 1 % of expenditure as 'claims'.*

*5.1 That on the facts and in the circumstances of the case, the Ld. CIT was not justified and erred in invoking the provisions of Sec. 263 since the A.O. has already considered the materials and explanations of the appellant filed during the assessment proceedings and completed the assessment after full application of mind .*

*6.0 That the appellant craves leave to add, amend, modify, rescind, supplement, or alter any of the grounds stated here-in-above, either before or at the time of hearing of this appeal.*

3. The sole issue to be decided in this appeal is as to whether the CIT is justified in initiating the proceedings u/sec 263 of the Act in the facts and circumstances of the case.

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4. The assessee is a company and engaged in the transport business. The Assessee declared its income at Rs. 18,43,384/- through return of income on 17.03.2012. Under scrutiny notice u/s 143(2), and, thereafter, a notice u/s 142(1) were issued, for which, the assessee, appeared and furnished details.

5. The AO found the assessee had debited Rs. 3,37,72,755/- on account of Claims. The AO was of the opinion that the assessee inflated expenses as the Assessee is in the business of transport owning thirteen heavy goods vehicles and branches in twenty six cities and maintaining fifty six bank accounts because of the nature and volume of the business. In explanation, the assessee submitted that it transport tea stocks on behalf of Tea estates to the consignees and that any loss in transit in respect of weight of consignments in handling such stocks borne by the assessee and produced evidences in the form of vouchers of such claims and according to AO that all such vouchers are self-made and the volume of transactions as in the vouchers were inflated. Further, according to AO, the assessee itself offered 1% of such expenses for taxation, basing on which a sum of Rs.3,37,727/- was disallowed and added the same to the income of the assessee.

6. As matter stood thus, the Prl.CIT found that the assessee derived income from 'truck hire charges' to the tune of Rs.69,17,19,199/- and the disallowance of Rs.3,37,727/- at 1% of claim on estimation is meager and the AO did not examine the issue in proper perspective and AO should have examined various details, like, (i). *Whether there was any agreement between the assessee and its client on this matter and if, so, whether its*

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*terms and condition specifically cover such claim, (ii) whether the claim was covered through insurance, if so whether the assessee has received /lodged any insurance claim in that regard and (iii) whether the clients have also made simultaneous claim under the same head. An explanation sought from the assessee and notice was issued u/s. 263 of the Act having exercising jurisdiction to the assessee as to why the assessment order be set aside as it was erroneous in so far as prejudicial to the interest of revenue to the extent to the objections as pointed out by him.*

7. In response, the assessee challenged the proceedings U/s 263, to that effect filed a written submission dt:28/03/16 which is reproduced herein below:

*" .. that assessee is mainly engaged in transportation of tea for various consignors/consignees. The entire responsibility of delivery of goods vests with the assessee. For your ready reference, we are enclosing sample contract which were also produced at the time of original assessment before the A.O.*

*Contract with Warren Tea Ltd. (Marked as Annexure C Pg. 5 to 12)  
Contract with Goodricke Group Ltd(Marked as Annexure 0 Pg. 13 to 27)  
Contract with Steward Holl India Ltd.(Marked as Annexure E Pg. 18 to 22)  
Contract with James Warren Tea Ltd.(Marked as Annexure F Pg. 23 to 27)*

*On perusal of the same, it is abundantly clear that claim on loss in transit of goods is to be borne by the assessee only.*

*For your ready reference, we are also enclosing one single bill for claim of Rs. 29,20,2001- from James Warren Tea Ltd. (Marked as Annexure G Pg. 28).*

*Thus, all the elements which are essentials of a valid contract as per "The Indian Contract Act, 1872" are seen to be present as under .-*

- (i)There is an intention to create legal obligation through offer and acceptance*
- (ii)Free consent of both the parties exists*
- (iii)Competency or capacity of parties to enter into contract exists*
- (iv) Lawful consideration was paid, and*

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(v) Agreement is not expressly declared void by any party

Entire payments for Claims were made by the assessee through account payee cheques or were deducted from freight bills by the parties.

All payments were made by account payee cheques or the clients customers at the time of making payments to assessee, deducted the loss on transit of goods and only net amount was received by the assessee. Therefore, to assume that assessee would be bearing such transit losses even though they are not attributable or entitled to be recovered from it would not be correct. The assessee is wholly responsible for any theft/pilferage/loss in transit of any goods at the time of transportation.

Under the circumstances, it would not be appropriate to assume that assessee would accept such adjusted payments from its clients in absence of any accountability. Further, it has already be substantiated before the AO during the assessment proceedings that such expenditure is indispensable in the business of the assessee. Complete details of total claims break up showing date wise/ party-wise already provided to AO, at the time of original assessment.

8. The Prl.CIT having considered the submissions above, opined that the AO failed to examine the claim in depth, thereby, set aside the assessment order and directed the AO conduct the issue *de novo* at length, of which observation is reproduced herein below:

*Hence, in view of the above facts and also relying on the ratio of judgment cited above I am of the considered view that this is a fit case for intervention u/s 263 of the Income-tax Act, 1961. Thus the objections raised by the assessee on the validity of the proceedings are not accepted.*

*5. In view of the above stated facts, I find that the assessment order dated 26.03.2014 is erroneous and prejudicial to the interest of revenue by disallowing only 1 % of total claims of expenses of Rs.3,37,72,755/- under the head ' Claims' without any proper verification and hence, the same is, therefore, directed to be set aside u/s. 263 of the Income Tax Act, 1961. As such, the assessment order under revision is hereby set aside with the direction to the AO to frame the assessment *de novo* after examining the issue at length. The AO is further directed that, while doing so, he shall provide a reasonable opportunity of being heard to the assessee.*

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9. Having aggrieved by the order of Prl.CIT, the Assessee filed this appeal before us by aforementioned grounds of appeal. Ld.AR submits that the assessee is a transporter of tea bags and stocks and delivers the same to consignees. Any damage or loss in the transit during such transportation lies on the assessee and accordingly claimed the expenses in the return of income and such claims made by the consignees for damage or loss that would cause to tea estates during transit and payment to that effect is in the nature of compensation. The Ld.AR submits that the facts relating to the issue are brought to the notice of the Prl.CIT by way of written submission and he did not consider the same and submitted that the entire responsibility of transport of goods lies on the assessee and referred to an agreement dated 30-04-2010, which is at page no. 52 of the paper book. He also drew our attention to page nos. 64 & 66 of the paper book to show that liability or risk lies with the assessee. The Ld.AR further referred to page no.10 of the paper book to show that all the details with regard to claim were filed before the AO in response to his notice dated 12/13-11-2013 issued u/s. 143(2) of the Act and pointed out page nos. 11-43 of the paper book, wherein such details of claim were filed. The Ld.AR submits that disallowance @ 1% of total claim was made for A.Y 2011-12 and that no addition was made by AO in this regard for AY 2010-11, AY 2012-13 & AY 2013-14 and all such assessments were completed under scrutiny and argued that all the details in respect of said claim were before the AO.

10. On the contrary, the Ld.DR submits that when the assessee is claiming the loss or damage as a warranty, according to Hon'ble Supreme Court the assessee should have a separate mechanism to make payment on such claims.

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He supported the order of Prl.CIT and urged to send the issue to the file of the AO in pursuance to the order of the Prl.CIT.

11. Heard rival submissions and perused the material available on record including the details available in the paper book. It is observed that the Prl.CIT initiated proceedings u/s. 263 of the Act on the ground that the AO disallowed @ 1% of total claims as expenses and accepted 99% of such claim without examining the details of such claim and agreement, if any, with the tea estate companies. In this regard, the Ld.AR submitted and drew our attention to page no.10 in which details of particulars of payments made on account of warehouse expenses, commissions and claims were furnished. On perusal of the same, it is noticed that the assessee submitted party wise details of payments, vehicle no., amount credited and TDS deducted on such claims. The said details were filed before the AO in response to the notice dated 12/13-11-2013 issued u/s. 143(2) of the Act, wherein the AO called for, to produce the accounts and documents and to furnish the same in writing. Therefore, the ground on which the Prl.CIT invoked his jurisdiction u/s. 263 of the Act is appears to be misconceived to the effect that the AO did not examine the details with regard to claim in respect of loss or damage in transit.

12. In support of the above, the Ld.AR drew our attention to the details of claims and payments made thereon to the parties, which are placed at page nos. 11 to 43 of the paper book, wherein it is observed that the assessee provided such details branch wise, date wise, name and address wise of

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claimants and amount claimed thereon. Therefore, it is clear that the assessee furnished all the details in scrutiny proceedings before the AO and that was in response to notice issued u/s. 143(2) of the Act, which is evidently prior to the impugned order as passed by the Prl.CIT.

13. With regard to the non examination of agreements as pointed out by the Prl.CIT, the Ld.AR filed three such agreements which were said to have been executed by the assessee with the consignees placed at page nos. 52 to 63 of the paper book, wherein at point no.3 (b) clearly mentioned that in the event of loss or damage of goods was entrusted to the carrier and the liability thereon lies with the carrier and claim in respect of such damage or loss will be recovered from the carrier i.e. the assessee herein in the manner prescribed therein. To support making claim and payment of such claim, the Ld. AR drew out attention to page nos. 64 to 67 of the paper book, wherein such documents goes to show that the goods booked at carriers' risk and payment on such claims paid by the assessee by raising respective bills. Therefore, taking into consideration the submissions of the assessee and material documents produced in support of the claim of the assessee before us, we are of the view that all details in respect of such claims i.e. damage or loss were furnished by the assessee in the assessment proceedings before the AO, and the AO after considering the same and taking into considering the earlier assessments, which said to have been completed under scrutiny, the AO has rightly adopted @ 1% of disallowance on such expenses. Thus, the impugned order of the Prl.CIT passed u/s. 263 in directing the AO to make de novo assessment is not justified. Accordingly, we set aside the same. Therefore, the grounds raised by the assessee are allowed.

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14. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 21<sup>st</sup> October, 2016.

Sd/-  
**M.Balaganesh**  
**Accountant Member**

Sd/-  
**S.S. Viswanethra Ravi**  
**Judicial Member**

**Date 21/10/2016**

Copies to :  
\*\*PP/SPS

- (1) **Bajaj Parivahan Pvt. Limited**, P-3, New CIT Road, 4<sup>th</sup> Floor,  
Kolkata-700 073
- (2) **The Pr.Commissioner of Income Tax, Kolkata-5**, Aayakar Bhawan  
P-7, Chowringhee Square, Kolkata-700069.
- (4) Commissioner of Income Tax, Kolkata
- (5) The Departmental Representative
- (6) Guard File

By order  
Assistant Registrar,  
Income Tax Appellate Tribunal  
Kolkata

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