

आयकरअपीलीयअधिकरण , 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 1044/Mds/2017

निर्धारण वर्ष/Assessment Year : 2009-10

M/s. Rentokil India Pvt. Ltd,
105, 4th Floor, Sreela Terrace,
1st Main Road,
Chennai – 600 020.

[PAN: AADCR 7629E]

The Deputy Commissioner of Income
Tax,
Corporate Circle -5,
Non. 121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri S. P. Chidambaram, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Shri Sailendra Mamidi, CIT

सुनवाईकीतारीख/Date of Hearing

: 14.09.2017

घोषणाकीतारीख/Date of Pronouncement

: 08.12.2017

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order passed by the Principal Commissioner of Income Tax-5, Chennai u/s. 263 in C. No. 2(33)/263/PCIT-5/CR-5/15-16 dated 20.02.2017.

2. M/s. Rentakil India Private Limited, the assessee, is engaged in the business of providing pest management and control services to various customers. For the assessment year 2009-10, it filed its return admitting the loss of Rs. 5,87,44,791/-. Subsequently, it revised the loss upward on 05.03.2011 at Rs. 5,99,05,481/-. The case was re-opened u/s. 148 and by an order u/s. 143(3) r.w.s. 148, the AO accepted the revised loss of Rs. 5,99,05,481/-. On verification of records, the PCIT found that the fixed assets included an intangible asset under the nomenclature "customer portfolio" and on which a depreciation @ 25% amounting to Rs.3,08,08,167/- has been claimed. As per S.32(1)(ii), depreciation is allowed on Knowhow, Patents, Copyrights, Trademarks, Licences, Franchisees or any other Business or Commercial Right of similar nature, treating them as Intangible Asset. A portfolio of customers is part and parcel of the business and there is not any special right attached to this list. An asset for the purpose of Income tax, can only be a property which can fetch a price in the open market. The Customer Portfolio is the Client Base of the assessee's business and unlike Patents, Copyrights, Trademarks etc., this list is of no use in the open market. It is evident that the same cannot be categorised as part of an asset akin to an intangible asset described in S. 32(1) (ii). Since granting depreciation allowance @ 25% on an asset which actually does not exist is incorrect, the AO has failed to examine the same and allowed depreciation claim without proper verification and application of mind, the PCIT considered that the order

passed u/s.143(3) r.w.s. 147 is erroneous and prejudicial to the interests of the revenue and accordingly issued a show cause notice to the assessee u/s. 263 and after considering the assessee's reply etc, held, inter alia, in her order that the order passed by the Assessing Officer u/s.143(3) r.w.s.147 dated 29.01.2015 for the a y 2009-10 is erroneous in so far as it is prejudicial to the interests of revenue and therefore , set-aside that order u/s. 263 and directed itto be done afresh as per provisions of law. Aggrieved , the assessee filed this appeal with the following grounds of appeal:

"1. The order passed by the learned Principal Commissioner of Income Tax is contrary to law, facts and circumstances of the case.

2.1. The learned Principal Commissioner of Income Tax erred in assuming jurisdiction under Section 263 of the Act to revise the reassessment order passed by the Assessing Officer.

2.2. The learned Principal Commissioner of Income Tax ought to have appreciated that provisions of section 263 of the Income Tax Act, 1961 ('the Act') can be initiated only if the order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of Revenue and if one of the two conditions is absent, the order of Assessing Officer cannot be revised u/s 263(I) of the Act.

2.3. The learned Principal Commissioner of Income tax has assumed jurisdiction under section 263 of the Act based Oil the rationale that there is no proper enquiry-made by "the assessing officer without appreciating the facts that the assessing officer has duly considered the submissions made by the appellant before completing the assessment and hence the proceedings is not valid.

2.4. The learned Principal Commissioner of Income tax ought to have appreciated that the issue which is sought to be revised is debatable and hence a revision is void abintio

3.1. The learned Principal Commissioner erred on the facts and in circumstances of the case and in law by stating that "Customer list" could not

be categorized as intangible asset and hence depreciation cannot be claimed u/s 32(1) (ii) of the Act.

3.2. The learned Principal Commissioner erred in concluding that customer portfolio is part of the business and self-generated without appreciating the fact that such list is acquired out of takeover of seven business on a going concern basis under a Business transfer Agreement.

3.3. The learned Principal Commissioner erred in concluding that customer list has no value and failed to appreciate that the customer list is identified and recognized as per the relevant accounting standards in the books of accounts and value is attributed based on the Business Transfer Agreement.

3.4. The learned Principal Commissioner failed to appreciate the fact that the Customer List is an intangible asset which would fall within the purview of "any other business or commercial rights of similar nature" and hence would be eligible for depreciation @ 25% under Section 32 of the Act.

3.5. The Appellant prays that directions be given to grant all such relief arising from the grounds of appeal mentioned supra as also all consequential relief thereto.

4. The Appellant craves leave to add, alter, amend and/or withdraw any of the above grounds of appeal and to submit such statements, documents and papers as maybe necessary either at or before the hearing of this appeal as per law."

4. The AR emphasized the same plea taken before the PCIT and on the lines of grounds of appeal. Relied on the decisions of Malabar Industrial Company Ltd., vs CIT 243 ITR 83 and the decision of High Court of Delhi in Areva T & D India Ltd. vs SCIT in ITA Nos. 315,1151 & 1152 of 2010, [2012] 20 taxmann.com 29 (Delhi) dated 30.03.2012. Per contra, the DR supported the order of the PCIT.

5. We heard the rival submissions. We have gone through the assessment order and it is extracted as under :

"M/s Rentokil India Pvt. Ltd. (The Assessee), filed the return of income for the A.Y. 2009-10 on 30.09.2009 admitting a loss of Rs. 5,87,44,791/-. Further a revised return was filed on 05.03.2011 admitting a loss of Rs. 5,99,05,481/-. Subsequently the case was reopened and notice u/s. 148 was issued on 14.06.2012. The assessee filed a letter dated 07.08.2013 requesting to take the revised return filed on 05.03.2011 as return filed in response to the notice u/s. 148. As requested by the assessee the reasons for reopening viz., "On verification of the Profit and Loss Account, it was found that the Assessee had debited a sum of Rs. 62,73,024/- as Doubtful debts and credit note provisions. In the absence of computation of total income it could not be verified whether the assessee has disallowed an amount of Rs. 62,73,024/-", was given on 03.09.2013. In response to this the assessee filed a letter dated 17.09.2013 objecting to the reopening of assessment, which was disposed of by this office order dated 31.10.2013. The case was referred to the Transfer Pricing Officer under Section 92CA of the Income-tax Act, 1961 as the International Transaction with its Associated Enterprises exceeded Rs. 15 Crore and the order u/s. 92CA dated 22.12.2014 is received without making any adjustments. As there is a change in incumbent notice u/s. 143(2) r.w.s. 129 was issued on 29.09.2014. In response to that ShriNitinSarda, Chartered Accountant and Authorized Representative of the Assessee appeared and filed the details called for.

Based on the discussions with the Authorised Representative and the submissions made during the course of proceedings, the Assessment is finalized as under:

<i>Total income (As Returned)</i>	<i>Rs.(-) 5,99,05,481</i>
<i>Total income (As Assessed)</i>	<i>Rs. (-) 5,99,05,481"</i>

5.1 From the above, it is clear that the assessment order is cryptic. The relevant portion of the order of the PCIT is extracted as under :

"7. The claim that the Assessing Officer has made proper verification before allowing the claim is also found incorrect. The contents of the assessment order, the order sheet entries and the records gathered at the time of reassessment proceedings do not exhibit that the issue has not been enquired into by the Assessing Officer. As per explanation (2) to the Sec.263, an order passed by an Assessing Officer shall be deemed to erroneous in so far as it is prejudicial to the interest of the revenue, if it is seen that the order is passed without making enquiries or verification which should have been made. As proper verification or appropriate enquiry which should have been made, have not been made by the Assessing Officer it renders the assessment order erroneous and also prejudicial to revenue. Therefore, the request of the assessee to drop the proceedings is rejected. "

5.2 It is clear from the assessment order of ay 2009-10 that the AO has without any discussion on the impugned issues determined the total income . Time and again the Courts have held that the need for delivering a reasoned order is a requirement of law which has to be complied with in all appealable orders. Any order devoid of such reasons suffers from non-application of mind. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx " is ordinarily incongruous with a judicial or quasi-judicial performance. The Delhi High Court in the case of CIT vs Toyota Motor Corporation in 306 ITR 49 held that

"There is no doubt that the proceedings before the AO are quasi judicial proceedings and a decision taken by the AO in this regard must be supported

by reasons. Otherwise, every order, such as the one passed by the AO, could result in a theoretical possibility that it may be revised by the CIT under Section 263 of the Act. Such a situation is clearly impermissible.

It is also necessary for the parties to know the reasons that have weighed with the adjudicating authority in coming to a conclusion. The order passed by the AO should be a self-contained order giving the relevant facts and reasons for coming to the conclusion based on those facts and law.

We find that the order passed by the AO is cryptic, to say the least, and it cannot be sustained. The Tribunal cannot substitute its own reasoning to justify the order passed by the AO when the AO himself did not give any reason in the order passed by him.

Under the circumstances, we answer the question in the affirmative, in favour of the Revenue and against the assessee and remand the matter back to the file of the AO to decide the issue afresh in terms of the order passed by the CIT under Section 263 of the Act."

5.3 The Supreme Court dismissed an appeal against the above order in M/S Toyota Motor Corporation vs Commr. Of Income Tax in Civil Appeal No. 5313 OF 2008 (Arising out of SLP(C) No.21772/2008 (CC No.11258/2008) on 25th August, 2008, inter alia, holding that " It goes without saying that when the matter be taken up by the Assessing Officer on remand, it shall be his duty to take into account all the relevant aspects including the materials, if any, already placed by the assessee, and pass a reasoned order. The appeal is dismissed with the aforesaid observations."

5.4 In this case also, the AO's order is cryptic. It is not a self-contained order giving the relevant facts and reasons for coming to the conclusion based on those facts and law. Thus, it does not reveal application of mind on the impugned issues and hence the PCIT has correctly invoked the jurisdiction u/s 263 . Since the PCIT has directed the AO to re-do the assessment, afresh, after verifying the assessee's claim as per law, after giving an opportunity to the assessee, we do not find any infirmity in the order and hence the assessee's appeal is dismissed .

6. In the result, the assessee's appeal is dismissed.

Order pronounced on Friday, the 08th day of December, 2017 at Chennai.

Sd/-
(एन.आर.एस .गणेशन)
(N.R.S. GANESAN)
न्यायिकसदस्य/Judicial Member

Sd/-
(एसजयरामन)
(S. JAYARAMAN)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 08th December, 2017

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent
4. आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR

3. आयकरआयुक्त) अपील(/CIT(A)
6. गार्डफाईल/GF