

Income Tax Act,1961 was passed on 28.12.2016 making an addition of Rs.1,50,000/- on account of low gross profit compared to the other traders in the similar line of business. The assessee has accepted the addition without contesting it further. The Ld. Pr. CIT, Patiala has set aside the order of the Assessing Officer for passing a fresh order vide order under section 263(1) of Income Tax Act,1961. The Ld. Pr. CIT held that the Assessing Officer has not examined the following expenses and also the credit worthiness of the creditors and the contribution of partners. To sum up the Ld. Pr. CIT held that,

1. The Assessing Officer has not verified the copy of accounts of 11 suppliers.
2. The Assessing Officer has failed to verify payment of freight and carriage of Rs. 2,76,560 /-.
3. The Assessing Officer has failed to verify the attendance register of 26 employees to whom salary paid was Rs. 15,15,978/-
4. The Assessing Officer has failed to examine the credit worthiness of Smt. Krishna Devi for the unsecured loan of Rs. 4,60,000/-.
5. The Assessing Officer has failed to examine the amount used for payment of license fee by 19 persons.
6. The Assessing Officer failed to reconcile the difference in the purchases of Rs. 3,40,958/-.
7. The Assessing Officer failed to examine the net profit and by the assessee at 0.022%.

4. The Ld. Pr. CIT relied on the decision of Hon'ble Supreme Court in the case of Malabar Industrial Company Ltd. (243 ITR 83) and Gee Vee Enterprises (99 ITR 375) (Delhi). The Ld. Pr. CIT has also derived strength from the Explanation 2 of Section 263 inserted with effect from 01/06/2015 which reads as under:

“ For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, if, in the opinion of the principal Commissioner or Commissioner,-

- a) *The order is passed without making inquiries or verification which should have been made;*
- b) *The order is passed allowing any relief without inquiring into the claim;*
- c) *The order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or*
- d) *The order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of assessee or any other person.”*

5. The order of the Ld. Pr. CIT setting aside the assessment order has been contested before us by the assessee on various grounds. It was argued that the assessee had duly provided the relevant information with respect to the above mentioned reasons of the Pr. CIT and the same had been duly verified and considered by the Ld. AO while concluding the case and passing the assessment order. It was argued that the issues taken up by the Pr. CIT were specifically asked in the questionnaire and all the compliances have been made.

i. **Regarding non verification of 11 suppliers** : It was argued that The assessee has duly filed the list of the persons from whom purchases above Rs.1 Lakhs has been made during the relevant assessment year, depicting their Name, Adresse, amount of purchase, in response to the Point 10 of the questionnaire. The assessee further, vide reply of Point 19 of the questionnaire, filed the copies of accounts of the 12 impugned suppliers, which were required by the Ld. AO. Thus, all the above documents which were filed alongwith the reply of the questionnaire were duly considered and verified as per the provisions of the Act by the Assessing Officer. Furthermore, it was argued that the assessee has also filed the sample copies of the purchase bills in order to verify the genuineness of the purchase and the copies of the same were submitted before us. We find the details were available to the Ld. AO and no adverse inference was drawn.

ii. **Verification of payment of freight and carriage:** It was argued before us that the assessee has duly provided the copy of account of freight and cartage which clearly shows the payment were made at regular intervals. The same is enclosed in the Paperbook at Page-117-123. Thus, these facts were available with the Assessing Officer while evaluating the copy of account during the assessment proceedings.

iii. **Salary Expenses:** It was argued by the Ld. AR that the Ld. Assessing Officer has sought the details in Question No. 16 vide their Questionnaire issued on 02/06/2016. The amounts paid were in the range of Rs. 38,500/- to 1,08,000/- per each employee. The employees are placed at 20 vends. It cannot be said that the vends are working without employment of any manpower who are paid an average of Rs. 8000/- to Rs. 10,000/- per month.

iv. **Unsecured loan received from Smt. Krishna Devi of Rs. 4,60,000/-:** It was argued that the assessee has received unsecured loan which has been duly reflected in the Balance Sheet and the details have been called for vide Point No. 6 of the Questionnaire issued. The details have been duly submitted before the Assessing Officer in compliance with the query raised. The copy of the ITR, bank statement have been duly submitted before the Assessing Officer. It was also brought to the notice of the Assessing Officer that while the loan was taken on 13/03/2014 Smt. Krishna Devi expired on 14/04/2015 i.e; even before the initiation of the assessment proceedings. It was argued since all the details have been provided to the Assessing Officer and the action of the Assessing Officer cannot be treated as either erroneous or prejudicial.

v. **Payment of License Fee:** It was submitted that this issue has been examined vide point no. 7 of the questionnaire. The assessee submitted the copies of accounts of the partners along with their sources of the credit in their capital accounts. The assessee in reply to the questionnaire filed the confirmed copies of accounts of all the partners along with the copies of ITR, computation of income of the majority of the partners during the assessment proceedings. The assessee has also filed the copies of J-Forms pertaining to the agricultural activity of a few of the partners justifying the sources of income. We find that all the partners are assessed to income tax. In case of any doubt about the source of their money, the department has recourse to examine the sources in their individual cases.

vi. **Reconciliation of the difference in the purchase:** It was argued that this issue has been enquired into specifically vide letter dt. 19/12/2016 by the Assessing Officer and the assessee has duly replied on 23/12/2016 and submitted the bills of the said parties evidencing the purchase of the difference amount. Thus the issue stands examined and differences are reconciled.

vii. **Net Profit declared by the assessee :** The Ld. AR argued that in the absence of the any other defect found out by the Revenue the net profit declared by the assessee needs to be accepted. It was submitted that, however the addition made by the Assessing Officer of Rs. 1,50,000/- was not contested and accepted by the assessee.

6. Against the argument of the Ld. AR, the Ld. CIT DR vehemently supported the order of the Ld. Pr. CIT. He argued that the disallowances under section

40A(3) ought to have been made by the Assessing Officer and the capital contribution by the partners has not been examined in detail by the Assessing Officer other than taking the documents on record. It was argued that no examination of the partners under section 131 has been undertaken by the Assessing Officer to prove the sources of the capital which makes the order erroneous and also prejudicial to the interest of the Revenue owing to the inadequate enquiries conducted by the Assessing Officer.

7. Rebutting the arguments of the Ld. DR, the Ld. AR argued that the capital contribution was pertaining to the fee to be paid upfront which is Rs. 1.38 Crores and the balance amount of Rs. 7.27 Crores was required to be paid out of the daily sale receipts of the assessee. Further, it was argued that the partnership firm came into existence in the starting of the relevant financial year itself and as the liquor license is valid for one year only, the firm was thus, created for the same period only and there was no other business of the assessee before that. The capital contributions have been made at the beginning of the assessment year only and not after that. Thus, even for the sake of argument also, the sources of the contribution is to be questioned, it should not be question in the hands of the assessee firm and no addition could have been made. Reliance in this regard is placed on the judgments of the Punjab and Haryana High Court in the following cases wherein it has been held that if the partners are not able to justify the sources of the capital contribution then, the same cannot be treated as income in the hands of the firm itself:-

- (i) CIT vs Burma Electro Corporation, P&H HC, 252 ITR 344
- (ii) CIT vs Rameshwar Dass Suresh Pal Cheeka, P&H HC 208 ITR 459
- (iii) CIT vs Metals and Metals of India P&H HC, 208 ITR 457.

8. We have heard Ld. Representatives of both the parties and perused the material placed before us. We find that the issues raised by the Ld. Pr. CIT have been duly examined by the Assessing Officer. The payment in cash amounting to Rs. 20,000/- do not attract the provisions of Section 40A(3) contrary to the arguments taken by the Revenue as no payment has been made above Rs. 20,000/- in any single day to one person and the same can be deciphered from the copies of the account of the parties. Similarly the freight and carriage expenses have been available before the Assessing Officer and it cannot be said that no expenses were incurred in transport of goods from the godowns to

vends. Further the payments to the employees at various vends already examined in the discussion mentioned supra. Regarding the unsecured loans of Smt. Krishna Devi all the primary details have been submitted and the onus has been discharged by the assessee. There is no tangible reason to suspect the genuinity of the loan by the Ld. Pr. CIT when all the documentary evidences are available before the Ld. Pr. CIT on record. Regarding the contribution of the partners to the capital, the argument of the assessee detailed in para no. 7 above clearly goes to prove the capital contributed by the partners and no further interference in the action of the Assessing Officer is called for. We also observe that the Ld. Pr. CIT has failed to examine the reconciliation available on the record, reconciling the difference in the purchases and the explanation given by the assessee.

9. Since all the issues raised by the Pr. CIT have been duly examined by the Assessing Officer, none of the four conditions mentioned in the Explanation -2 of Section 263 could have been invoked in the order of the Ld. Pr. CIT, and keeping in view the fact that the Ld. Pr. CIT has not undertaken any independent enquiry that can constitute the reasons required to be given by the Pr. CIT to justify the exercise of jurisdiction under section 263 of the Act, in the absence of any enquiry independently by the Ld. Pr. CIT to *prima-facie* prove the erroneous nature of the assessment order and since no material was brought on record to indicate or prove that the order of the Assessing officer is erroneous in so far as it is prejudicial to the interests of the revenue and since proper enquiries have been duly conducted by the Assessing Officer during the assessment proceedings, we hereby set aside the impugned order of the Pr. CIT passed under section 263 of the Income Tax Act, 1961.

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

Order pronounced in the open Court.

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER
Dated : 26/04/2018

AG

Sd/-

(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Copy to: 1.The Appellant, 2. The Respondent, 3. The CIT(A), 4. The CIT, 5. The DR