

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No. 2838/DEL/2018
[Assessment Year: 2013-14]

M/s Bajaj Resources Ltd
M/s MGB & Co. LLP, J 16,
Lal Kothi Yojna, Sahakar Marg
Behind IOC Petrol Pump, Jaipur

Vs.

The Pr.C.I.T
New Delhi

PAN : AAACD 8001 D

[Appellant]

[Respondent]

Date of Hearing : 27.08.2018
Date of Pronouncement : 29.08.2018

Assessee by : Shri Sandeep Jhanwar, CA
Revenue by : Shri Aparna Karan, CIT-DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

With this appeal, the assessee has challenged the validity of the order of the Principal Commissioner of Income Tax [Appeals] -2, New Delhi dated 30.03.2018 framed u/s 263 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'] pertaining to assessment year 2013-14.

2. The sole grievance of the assessee is that the Id. PCIT has grossly erred in assuming jurisdiction u/s 263 of the Act on the premise that the assessment order dated 14.03.2016 framed u/s 143(3) of the Act is not only erroneous but also prejudicial to the interest of the Revenue.

3. The representatives of both the sides were heard at length and the case records carefully perused.

4. Facts on record show that the return for the year under consideration was E-filed on 28.09.2013 declaring total income of Rs. 3,77,41,570/- under normal provisions and book profit of Rs. 3,58,11,523/- under the provisions of section 115JB of the Act.

5. The return was selected for scrutiny assessment and accordingly, statutory notices were issued and served upon the assessee. After perusing the relevant information filed, assessment was completed by accepting the returned income and book profit was also accepted as such.

6. Assuming powers vested upon him by the provisions of section 263 of the Act, the ld. PCIT issued notice u/s 263 of the Act, stating that the assessment order framed u/s 143(3) of the Act is erroneous and prejudicial to the interest of the Revenue. The contents of the notice read as under:

"(i) that dividend income amounting to Rs. 82,06,94,446/- was reduced from the income under the head 'Income from business or profession' and was claimed as exempt u/s 10 of the Act. It is seen from the balance sheet that the total non-current investments as on 31/03/2012 are Rs.38,840.24 lacs and are Rs.55,147.09 lacs on 31.03.2013 whereas the Reserves and Surplus as on 31/03/2012 are Rs. 19455.41 lacs only. It is further seen from Schedule-18 of the P&L A/c that the expenditure claim towards interest has shown an increase of Rs. 619.94 lacs in the relevant year in addition to administrative expenses by way of Employees Benefit Expenses, other expenses etc. as noted from Sch-17, Sch-19 and Sch-20 of the annual accounts, but no expenditure in relation to income not includible in total income was disallowed by the assessee itself under section 14A and added back in the computation of total income.

ii) As the assessee has apparently utilized borrowed funds for investment in subsidiary companies and earning exempt income, proportionate expenditure in relation to exempt income needs to be disallowed as per the provisions of section 14A read with Rule 8D and while computing the total income of the assessee for the year under consideration. However, no disallowance of expenditure in relation to exempt income was made by the AO under Rule 8D(ii) and (iii) in the assessment made for the subject year.

iii) It is further noticed from the 26AS that during the FY 2012-13, the assessee company received a refund of Rs.43,21,760/- for the A.Y 2011-12 electronically, which included interest component of Rs.4,28,285/-, but the said interest income was neither offered by the assessee nor added back by the AO in the order u/s 143(3)."

7. The assessee filed a detailed reply on 21.02.2018 explaining how the assessment is not erroneous and prejudicial to the interest of the Revenue. In its reply, the assessee emphasised that detailed enquiries were made by the Assessing Officer during the course of scrutiny assessment proceedings in relation to the exempt income vis a vis the provisions of section 18A of the Act r.w.r 8D of the Rules. In its reply,

the assessee specifically mentioned the replies filed during the course of assessment proceedings in relation to the exempt income vis a vis the provisions of section 14A r.w.r 8D of the Rules.

8. After considering the submissions of the assessee and drawing support from the findings given in the order for A.Y 2012-13 framed u/s 263 of the Act and invoking further support from Explanation 2 to section 263 of the Act, the PCIT came to the conclusion that the Assessing Officer framed the assessment without conducting proper enquiries in respect of the utilisation of borrowed funds for making investment in subsidiary companies and expenditure incurred in relation to exempt income. The PCIT, accordingly, set aside the assessment order with a direction to the Assessing Officer to frame the assessment afresh by examining the facts for diversion of the borrowed funds for earning exempt income and expenditure incurred in earning the dividend income.

9. Aggrieved by this, the assessee is before us.

10. The ld. AR for the assessee stated that in the immediately preceding A.Y, assessment framed u/s 143(3) of the Act was set aside by the PCIT u/s 263 of the Act which was upheld by the Tribunal only because in that year the Assessing Officer did not make any enquiry in respect of exempt income. It is the say of the ld. AR that during this year, the Assessing Officer has made a detailed enquiry and queries raised by the Assessing Officer were duly replied vide letter dated 02.03.2016 and 14.03.2016 which are exhibited at pages 14 to 32 of the paper book.

11. The ld. AR vehemently stated that the PCIT has wrongly assumed that the Assessing Officer has not made any enquiry and therefore, wrongly assumed that Explanation 2 to section 263 is applicable. The ld. AR continued by stating that neither the assessment is erroneous and prejudicial to the interest of the Revenue.

12. Per contra, the ld. DR strongly supported the findings of the PCIT. It is the say of the ld. DR that Explanation 2 to section 263 of the Act squarely apply on the facts.

13. We have given thoughtful consideration to the orders of the authorities below. At the very outset, let us consider Explanation 2 to section 263 of the Act which was inserted vide Finance Act 2015, w.e.f. 01.06.2015. Explanation 2 to section 263 reads as under:

"Explanation 2 is being inserted in section 263(1) w.e.f. 01.06.2015 to provide that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests 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, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person."

14. A perusal of the above shows that the order will be erroneous and prejudicial to the interest of the Revenue if it is passed without making enquiries or verification, which should have been made.

15. Facts on record show that vide reply dated 02.03.2016, which is exhibited at pages 14 to 25 of the paper book, the assessee has not only furnished details of investment made but also referred to the Circular No. 5 of 2014 of the CBDT and how that Circular is applicable to the assessee company. In the very same reply, the assessee had referred to various judicial decisions relating to provisions of section 14A and Rule 8D. The assessee had also explained the sources of own funds which were interest free and which were utilised for making investment.

16. We further find that vide reply dated 14.03.2016, the assessee had once again explained that why the disallowance u/s 14A should not be made. This reply is exhibited at pages 26 to 32 of the paper book.

17. Considering these facts in totality, it can be safely concluded that the Assessing Officer did raise queries which were complied by the assessee. It is a settled position of law that powers u/s 263 of the Act

can be exercised by the Commissioner on satisfaction of twin conditions, i.e., the assessment order should be erroneous and prejudicial to the interest of the Revenue. By 'erroneous' is meant contrary to law. Thus, this power cannot be exercised unless the Commissioner is able to establish that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Thus, where there are two possible views and the Assessing Officer has taken one of the possible views, no action to exercise powers of revision can arise, nor can revisional power be exercised for directing a fuller enquiry to find out if the view taken is erroneous. This power of revision can be exercised only where no enquiry, as required under the law, is done. It is not open to enquire in case of inadequate inquiry. Our view is fortified by the decision of Hon'ble High Court of Bombay in the case of CIT vs. Nirav Modi, [2016] 71 Taxmann.com 272 (Bombay)".

20. The Hon'ble Bombay High Court in the case of CIT vs. Gabriel India Ltd. 203 ITR 108 has held that:

“ the decision of the ITO cannot be held to be erroneous simply because in his order he did not made an elaborate discussion in this regard.....”.

21. The Hon'ble Gujarat High Court in the case of Micro Inks Ltd. 85 Taxmann.com 310 has held that:

“If the Assessing Officer has adopted a view which is a plausible one, the view would not be open to revision by the Commissioner.”

22. We find that in the immediately succeeding A.Y 2014-15, the Assessing Officer has made disallowance u/s 14A r.w.r. 8D vide order dated 30.12.2016 framed u/s 143(3) of the Act and disallowances made by the Assessing Officer were deleted by the CIT(A) vide order dated 18.12.2017. The first appellate authority has categorically held that there is no direct linkage between the loans taken and the investments.

23. The Hon'ble Delhi High Court in the case of Escorts Ltd 198 Taxman.com 324 has held that :

“The Commissioner can take recourse to revisional powers u/s 2634 of the Act on fundamental aspects of a transaction on which a view had been taken and accepted by the Revenue.”

24. Considering the facts of the case in the light of judicial decisions discussed hereinabove and on perusal of the facts, we have no hesitation in holding that the assessment was framed u/s 143(3) of the Act after detailed enquiries and verification and merely because the assessment order is silent, the same cannot be considered as erroneous and prejudicial to the interest of the Revenue as held by the Hon'ble Bombay High Court in the case of Gabriel India Ltd [supra].

25. The ld. DR has relied upon the decision of the co-ordinate bench in the case of Surya Financial Ltd 2018-TIOL-74-ITAT-DEL, but we find that in that case the Assessing Officer had failed to carry out the enquiry about the alleged accommodation entries and the PCIT rightly invoked the provisions of section 263 of the Act. Facts are clearly distinguishable as in the case in hand, as mentioned elsewhere, the Assessing Officer made detailed queries, which were duly replied by the assessee.

26. In another decision of the coordinate bench relied upon by the ld. DR in the case of Surya Jyoti Software Pvt Ltd ITA No. 2158/DEL/2017, the PCIT has amply demonstrated that this issue was neither enquired into nor was verified by the Assessing Officer. However, in the case in hand, the PCIT had all the replies filed by the assessee during the course of assessment proceedings before him. Therefore, it cannot be said that the Assessing Officer did not make any enquiries.

27. Similarly, the decision relied upon by the ld. DR in the case of Ashok Logani by the Hon'ble Delhi High Court 11 Taxmann.com, the facts are totally different from the facts of the case in hand.

28. In view of the above discussion, we set aside the order of the PCIT and restore that of the Assessing Officer dated 14.03.2016 framed u/s 143(3) of the Act.

29. Before parting, there is one more issue relating to the interest component on the refund received by the assessee. The ld. AR fairly conceded that this has been accepted. On such concession to this extent, the findings of the PCIT are upheld.

30. In the result, the appeal filed by the assessee in ITA No. 2838/DEL/2018 is partly allowed.

The order is pronounced in the open court on 29.08.2018.

Sd/-
[KULDIP SINGH]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 29th August, 2018

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
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