

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : BENCH "B" : NEW DELHI**

**BEFORE SRI R.K.PANDA, ACCOUNTANT MEMBER
AND
SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 2394/Del/2018
A.Y. 2013-14**

M/s Forum Agro Foods Pvt. Ltd. C-134, Defence Colony New Delhi – 110 024 PAN: AAACF8920D	vs.	Pr.CIT Central-2 New Delhi
(Appellant)		(Respondent)

Assessee by	Sh. Hiren Mehta, C.A.
Revenue by	Ms. Rachna Singh, CIT, D.R.
Date of Hearing	25.07.2018
Date of Pronouncement	28.09.2018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 30/03/18 passed by CIT, Central-II, New Delhi under section 263 of the Income Tax Act, 1961 (the Act) for Assessment Year 2013-14 on the following grounds of appeal:

1. *That on the facts and circumstances of the case and in law, the order passed by the Pr. Commissioner of Income Tax, Central-2, New Delhi (hereinafter referred to as Pr. CIT), is bad in law and without Jurisdiction.*

2. *That on the facts and circumstances of the case and in law, the Pr. CIT , New Delhi has erred in passing the order u/s 263 as the assessment order passed u/s 153C/ 143(3) is not erroneous.*

2.1 That the Pr. CIT has erred in not considering the fact that the provisions of section 2(22)(e) are not applicable in the case of the appellant company as the amount of Rs.2,50,00,000/- received by the appellant company from M/s AMQ Agro India Pvt Ltd during the relevant assessment year is towards share application money and not as Loans & advances and the same has been duly reflected in the Audited Balance sheet as at 31.03.2013 of the appellant company under the head Share application money .

3. *The Pr. CIT has erred in passing the order u/s 263 directing the AO to frame fresh assessment by overlooking the submission filed before him in proceedings u/s 263.*

4. *That the appellant craves leave to add, alter, modify any of the grounds at the time of hearing or before the hearing.*

2. Brief facts of the case are as under:

A search and seizure operation was conducted by investigation wing, in case of M/s AMQ India Pvt. Ltd., on 15/02/14. During search certain incriminating documents/hard disk pertaining to assessee were found and seized. The case was centralised and notice under section 153C of the Act was issued, in response to which, return declaring 'Nil' income was filed.

2.1. Ld. AO completed assessment under section 153C read with 143(3) of the Act, based upon seized materials belonging to assessee by making addition on account of unexplained investment in purchase of land.

2.2. Ld.CIT upon examination of assessment record observed that Assessing Officer completed assessment without proper examination/verification of accounts. He accordingly issued show cause notice under section 263 of the Act on 06/02/18. Show

cause notice issued has been placed at page 18-19 of paper book. For the sake of convenience it is reproduced hereunder:

“F.No. Pr. CIT/Central-2/Revision u/s 263/2017-18/2545

To

The Principal Officer

M/s Forum Agro Foods Pvt. Ltd.

C-134, Defence Colony, New Delhi - 110024

Sir,

Sub:Show cause u/s 263 of the Income Tax Act, 1961 in the case of M/s Forum Agro Foods Pvt. Ltd. (PAN : AAACF8920D) in respect of the assessment order u/s 153C/143(3) of the Income Tax Act, 1961, dated 31.03.2016 for A.Y. 2013-14-Reg.

Kindly refer to the subject mentioned above.

2. The assessment records of your case for the A.Y. 2013-14 were called for and examined by the undersigned. From perusal of the assessment records, it is seen that the assessment order passed by the Assessing Officer (A.O) , Central Circle-19, New Delhi u/s 153C/143(3) of the Income Tax Act, 1961 on 31.3.2016 is appears to be erroneous and prejudicial to the interest of revenue as per observations given hereunder:

(a) It is seen from the records that assessee company had received various amounts as loans & advances between 12.12.2012 to 27.02.2013 from M/s AMQ Agro India P.Ltd. which has common shareholding, which attracts provision of section 2(22)(e) of the Income Tax Act, 1961. Mrs. Nasreen Qureshi has 78.05% share in M/s AMQ Agro India P.Ltd. and 33% share in assessee company. Therefore, Mrs. Nasreen Qureshi has substantial interest in transferring accumulated profit for the individual benefit which was not explained by assessee. The AO has failed to take into account the provision of s.2(22)(e) of the Act in determining the

income of assessee. Thus the approach of AO in not making assessable income and without discussing the provision of section 2(22)(e) is prima facie appears to be erroneous so as to cause prejudice to the interest of Revenue.

3. *Thus, the assessment order passed in your case is appears to be erroneous and prejudicial to the interest of the revenue for the reasons stated as above.*

4. *In view of the aforesaid facts, you are hereby required to show cause as to why the assessment order passed in your case by the Assessing Officer, Central Circle-19, New Delhi on 31.03.2016, for A.Y. 2013-14, may not be considered as erroneous and prejudicial to the interest of the revenue as per the provisions of section 263 of the Income tax Act, 1961. You are hereby given an opportunity to file submissions on the issues raised, on 22.02.2018 at 12.30 PM.*

5. *You are required to attend this office, either in person or through a representative duly authorized in writing in this behalf, or produce or cause there to be produced at the said time any document, account and any other evidence on which you may rely in support of your contentions.*

6. *You are also intimated that if nothing is received from your end, then it will be presumed that you have nothing to submit on the issues contained above and your case will be decided on the basis of material available on the record and as per the provisions of the Income Tax Act, 1961.*

Sd/- (RKS Pandya)

Pr.CIT, Central-2, New Delhi

2.3. Assessee in response to show cause notice, filed its reply dated 19/03/18, it was stated that, during assessment proceedings, assessee in its reply dated 26/03/18 submitted that alleged amount received from M/s AMQ Agro India Pvt.Ltd. amounting to Rs.2,50,00,000/- is on account of share application money, which is reflected in audited balance sheet of assessee. It was further stated in reply that share application received was converted into share capital of assessee by making allotment of shares to allottees during Assessment Year 2014-15. Ld.A.R. thus submitted that under such circumstances assessment order cannot be held to be erroneous and prejudicial to the interest of the revenue.

2.4. Ld.CIT on perusal of reply of assessee held as under:

“4. I have perused the assessment records and submissions made by the assessee in this case. Assessee’s submission considered and is found to have prima facia merits. However, there were amount of Rs.2,50,00,000/- shown as share application money but there was not bifurcation provided in balance sheet about nature and source of share application money. Also assessee submission that issue of deemed dividend was examined during assessment proceedings and addition of Rs.6,43,198/- was made, is not correct. The only addition of Rs.3,90,00,000/- was made by the Assessing Officer while framing assessment order for AY 2013-14. The core issue in this revisional proceedings u/s 263 of Income Tax Act, 1961 is that assessment on the issue raised in the show-cause notice was made without proper examination/verification and without considering the applicability of Section 2(22)(e) of the IT Act, 1961.

In this case, while making assessment for A.Y. 2013-14, the A.O. has not considered the issue of applicability of the provision of the section 2(22)(e) of the IT Act, 1961 on transaction with M/s AMQ Agro (I) Pvt. Ltd. Moreover, I, thus, hold that the assessment order passed in the case of the assessee by the Assessing Officer, Central Circle-19, New Delhi on 31.03.2016 u/s. 153C/143(3) is erroneous because nature of transaction of receipt the alleged “share application money” with M/s AMQ Agro (I) Pvt. Ltd. was not verified and are thus the order passed by the AO is prejudicial to the interest of revenue. Thus, the said order is set aside and the assessment proceedings are restored back to the file of the Assessing Officer on the aforesaid limited issue only. The AO is directed to frame the assessment afresh as per the provisions of the Income Tax Act, after affording the assessee an opportunity of being heard and after making proper inquiries and verifications on the limited issue of verifying the claim of the assessee as made before me in light of applicability of Sec.2(22)(e) and deciding the issue as per law after providing due opportunity to the assessee.”

3. Aggrieved by order of Ld.CIT, assessee is in appeal before us now.

3.1. Ld.AR submitted that, s. 263 proceedings has been initiated by holding that Assessing Officer has not verified applicability of section 2 (22) (e) of the Act during assessment proceedings. He submitted that money received on behalf of M/s AMQ Agro India Pvt. Ltd. was towards share application during the year under consideration and assessee has issued shares to M/s AMQ Agro India P Ltd. in subsequent Assessment Year. He referred to audited accounts of assessee placed in paper book.

He submitted that there are no amounts received as loans and advances from M/s AMQ Agro India P Ltd. in order to check applicability of provisions of S.2(22)(e) of the Act.

4. On the contrary Ld.CIT DR submitted that during assessment proceedings under section 153A read with 143 (3) of the Act, additions were made on account of unexplained investments in purchase of land and that queries raised by Assessing Officer related only to seized materials. She submitted that, as date of search was 15/02/14, limitation period for issue of notice under section 143 (2) had not lapsed for year under consideration, and therefore it was open for Assessing Officer to assess entire income of assessee.

4.1. She submitted that there has been no enquiry initiated by Ld.AO regarding share application money to the extent of Rs.2,50,00,000/-, which stood outstanding as on 31/03/13, and therefore Ld.CIT was correct in assuming jurisdiction under section 263 by holding assessment order to be erroneous and prejudicial to the interest of the revenue. Ld. CIT DR submitted that Assessing Officer failed to investigate upon money that has been received between 12/12/12 and 27/02/13 from M/s.AMQ Agro India Pvt. Ltd., where assessee had 33% shareholding. She submitted that Assessing Officer is both an investigator as well as adjudicator, and was required to make proper enquiries and conduct verification in respect of applicability of provisions of section 2 (22) (e) during assessment proceedings.

4.2. She thus submitted that this is a case where no enquiry was made by Ld.A.O. and, therefore, Sec.263 proceedings initiated by Ld.CIT is correct.

5. We have perused the submissions advanced by both the sides in the light of the records placed before us.

6. From assessment order we find that, there has been no specific investigation by Ld.AO regarding applicability of section 2(22)(e) of the Act. However, at the time of proceedings initiated by Ld.CIT u/s 263 assessee filed reply dated 26th March, 2018 in response to notice dated 6th Feb., 2018 issued u/s 263 of the Act. It is observed that assessee in its reply submitted the amount received from M/s AMQ Agro India Pvt. Ltd. was on account of share application money and not on account of loans and advances. Ld.A.R. referred to audited financial statements of assessee as on 31.03.2014 placed at page 1-17 of paper book. It has been submitted that these audited statements were placed before Ld.AO during assessment proceedings. Referring to page no. 6 and 8 of paper book, he submitted that sum received from M/s AMQ Agro India Pvt. Ltd. is duly reflected in Balance Sheet as on 31.3.2013 and it is also observed that shares have been converted into share capital of assessee by allotting shares to M/s AMQ Agro India Pvt. Ltd. during A.Y. 2014-15, which is reflected in audited balance sheet of assessee as on 31st March, 2014.

7. Thus it is clear that amount received by assessee from M/s AMQ Agro India Pvt. Ltd. does not amount to loans and advances and Provisions of Sec.2(22)(e) of the Act cannot be applied. In our considered opinion, the order passed by Ld.AO cannot be treated as erroneous. It is a settled law that S.263 proceedings can be upheld, if twin conditions of

assessment order being erroneous, as well as prejudicial to the interest of Revenue, stands satisfied. In the present facts of the case assessee received share application money during the year under consideration and shares have been allotted during A.Y. 2014-15 to M/s AMQ Agro, therefore, in our considered opinion as Sec.2(22)(e) of the Act is not applicable to this transaction, the order passed by Ld.AO cannot be treated as erroneous, and therefore, order passed u/s 263 of the Act cannot be upheld.

8. Grounds raised by assessee are challenging the order passed u/s 263 of the Act. Accordingly, based upon above discussion and observations, we quash order passed u/s 263 of the Act.

9. In the result appeal filed by assessee stands allowed.

Order pronounced in the Open Court on 28th September, 2018.

Sd/-
(R.K.PANDA)
ACCOUNTANT MEMBER

Sd/-
(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. the 28th September, 2018

*mvg

Copy forwarded to: -

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

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

Details	Date
Draft dictated on	02/08/18
Draft placed before author	03/08/18
Draft discussed with Second Member	On various dates
Draft placed before Second Member	28.09.18
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Kept for pronouncement	
Order uploaded on	
File sent to Bench Clerk	
Date on which the file goes to Head Clerk	
Date on which file goes to A.R.	
Date of Dispatch of order	