

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH**

**श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, डा. बी.आर.आर. कुमार, लेखा सदस्य**  
**BEFORE: SMT. DIVA SINGH, JM & Dr. B.R.R. KUMAR, AM**

आयकर अपील सं./ ITA NO. 781/Chd/2017  
निर्धारण वर्ष / Assessment Year : 2012-13

Shri. N.L. Engineers Pvt. Ltd. C-114, Industrial Area Phase-VII Mohali	बनाम	Pr. CIT-2 Chandigarh
स्थायी लेखा सं./PAN NO:	AAACN5006G	
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri. Parikshit Aggarwal  
राजस्व की ओर से/ Revenue by : Shri. Jagjivan Kumar Garg

सुनवाई की तारीख/Date of Hearing : 30/08/2018  
उद्घोषणा की तारीख/Date of Pronouncement : 16/11/2018

**आदेश/Order**

**PER DR. B.R.R. KUMAR, A.M:**

The present appeal has been filed by the Assessee against the order of the Ld. PCIT-2, Chandigarh dt. 07/03/2017.

2. Brief facts of the case are that the assessee is engaged in the business of manufacturing of sub-station Structure Transmission Towers, Microwave Towers, Cable Tray and Trading of Iron & Steel. During the year under consideration the assessee has shown income under the heads "Profit and Gains from Business or Profession".

3. The first ground relates to addition of Land and Fixed Assets of Rs. 10.01 Crores which the assessee claims as not a new item and infact paid in the preceding years and only due to registration of sale deed during the year in question the item was classified as fixed assets on transferring from the head of advance.

4. The Ld. Pr. CIT vide order passed under section 263 of Income Tax Act, 1961 directed that the assessment order under section 143(3) dt. 15/11/2014 for the A.Y. 2012-13 be cancelled owing to non enquiry of Registration of the sale deed pertaining to the fixed assets brought into the books during the year in question. The complete part of the order under section 263 relevant to the issue is as under:

" 3.1.1 In its reply, the assessee submitted that real possession of the land was taken during F.Y. 2008-09 but the title deed was registered during F.Y. 2011-12 and the same was classified as fixed asset. A copy of the deed has also been submitted now by the assessee during the course of proceeding under section 263 of the Act. It is thus evident that the AO did not obtain the copy of sale deed from the assessee for verification / examination regarding source of investment, business nexus etc. during the course of assessment proceeding. Thus, the issue remains unexamined and unverified on the part of the AO."

5. During the proceedings under section 263 the assessee submitted the complete details pertaining to acquisition of the land which are as under:

*This is w.r.t. Letter No. PCIT-2/CHD/Judl./263/39/2016-17/7145 dated 16/02/2017 from office of your good self. In this regards we wish to submit as under:-*

*1. As far as the addition in land and building during A.Y. 2012-13 concerned we wish to submit that the land was mainly acquired during F.Y. 2007-08 and 2008-09 by giving payment to the party. The real possession of the land was taken during F.Y. 2008-09. However, the company from which the land was purchased was in the process of liquidation with Delhi Court. Due to which there were certain legal issues in transferring the title of the land to N.L. Engineers Pvt. Ltd. Since there was no legal title with N.L. Engineers Pvt. Ltd. WE have been showing the payments made as advance.*

*During F.Y. 2011-12 when the title deed was registered in the Company's name the same was classified as fixed asset and we made a payment of Rs. 2,06,38,500/- only for which the company had enough funds.*

*The land was purchased for business use and has been put to use since the date of purchase. The raw material and other stores are stored in such places. The place has also been registered under vat as a place of business.*

6. Before us, the Ld. AR reiterated the submissions taken before the Ld. PCIT while the Ld. DR relied on the order of the Ld. PCIT.

7. We have heard Ld. Representative of both the parties.

8. From the order of the Pr. CIT as well as the submissions of the assessee before the Pr.CIT the following facts emerged.

- i. The payment for the land was made during the F.Ys. 2007-08 and 2008-09.
- ii. The payments made were duly reflected under the head "Advances" for the A.Y. 2008-09 onwards.
- iii. The possession was taken during the current year.
- iv. The Registration expenses only were claimed during the current year.
- v. It was brought before the PCIT about the process of liquidation before the Hon'ble Delhi High Court and the reasons for non registration.
- vi. The Pr. CIT held that the Assessing Officer did not obtain the copy of the sale deed and hence the assessment was directed to be annulled.
- vii. The Pr. CIT held that Assessing Officer did not enquire the business nature and the source of investment.

From the above we observe that while passing the order under section 263 the Ld. Pr. CIT is quite aware of the fact that the amounts were received in the earlier years and duly reflected in the balance sheet over the years. After obtaining the copy of the Registration deed the PCIT would be in a well defined position to know that no escapement of Revenue or under assessment or any prejudice or error could be attributable to the year in question. Having examined the facts the PCIT could have well dropped the proceedings at that juncture. No purpose would be served by nullifying the assessment of the current year even though on record it is proved that the amount is received in the earlier years. Even if it is proved to be bogus or otherwise the addition would be called only in the earlier years. No action would be feasible in the current year. Hence keeping in view the entire facts and circumstances of the case, we are of the opinion that the action of the Ld. PCIT annulling the assessment cannot be upheld.

9. The second issue relates to annulling the assessment on the grounds that the A.O. was not examined the reasons behind fall in the gross profit and net profit of the assessee. The complete part of the order under section 263 relevant to the issue is as under:

" 3.2 Regarding decrease in the gross profit and net profit though increase in gross turnover as compared to the previous year:

3.2.1 In its reply, the assessee submitted that increase in gross turnover is due to inclusion of excise duty paid amounting to Rs. 3,38,68,746/-. Further, for increase in sale there has been corresponding increase in relevant cost. The assessee computed GP rate on net sale as 12.70% and that of on gross sale as 11.55%. The assessee also submitted that during F.Y. 2011-12 there was not much movement in WIP as compared to FY 2010-11. In reply to cause of decrease in net profit the assessee submitted that it was mainly on account of provision of deferred tax liability amounting to Rs. 19,43,711/- which was made for the first time otherwise the net profit would be 29,27,087/-.

3.2.2 The facts and figures submitted by the assessee in respect of reason behind decrease in gross profit and net profit have been considered. However, on perusal of assessment record, it is found that the AO has neither raised these issues nor examined the justification now being offered by the assessee for all in gross profit and net profit rates during the assessment proceedings. Thus, the issue issues remain unexamined and unverified on the part of the AO."

10. Before the Assessing Officer the assessee submitted the G.P rate and N.P rate for the year under assessment and for the last three A.Ys which is as under:

Assessment Year	Gross Turnover	%age GP	%age NP
2012-13	37.41	12.70%	0.26%
2011-12	30.58	14.22%	1.21%
2010-11	36.84	13.49%	1.90%

11. The assessee has filed the computation of GP/NP Ratio on net basis as per the financial statement which are as under:

Assessment Year	Turnover (In Lacs)	Purchases and Direct expenses (in Lacs)	Gross Profit (In Lacs)	GP Rate%	Indirect Expenses excl. Income Tax(In Lacs)	Net Profit before Tax as per Financial Statements	NP Rate %
2012-13	3,740.94	3,212.87	528.07	14.12	482.66	45.41	1.21
2011-12	3,057.61	2,666.92	390.69	12.78	353.15	37.54	1.23
2010-11	3,683.72	3,202.55	481.17	13.06	410.86	70.31	1.91
2009-10	4,612.49	4,032.81	579.68	12.57	483.41	96.27	2.09

12. From the above facts on record, we find that the increase in turnover on net sales is of Rs. 6.65 Crores after excluding excise duty and further we find that deferred tax liability provision of Rs. 19.43 Lacs has been made for the first time by the assessee. The Assessing Officer cannot be expected to make any further roving enquiries when the PCIT during the proceeding under section 263 could

not conduct any verification or investigation to determine that the GP and NP returned by the assessee are not correct. Hence keeping in view the entire facts on record, keeping in view the fact that examination of the profit was done by the Assessing Officer, the explanation of the assessee before the PCIT that there were modifications in accounting of excise duty and also provisions of deferred tax liability and in keeping in view there was no considerable change in the G.P /N.P in the current year, we are of the opinion that the action of the Ld. PCIT annulling the assessment cannot be upheld.

13. As a result, the order under section 263 passed by the Ld. PCIT is hereby quashed in its entirety.

Order pronounced in the open Court.

**Sd/-**  
**दिवा सिंह**  
**(DIVA SINGH)**

**न्यायिक सदस्य/ Judicial Member**

AG

Date: 16/11/2018

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
  2. प्रत्यर्थी/ The Respondent
  3. आयकर आयुक्त/ CIT
  4. आयकर आयुक्त (अपील)/ The CIT(A)
  5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
- Guard File

**Sd/-**

**डा. बी.आर.आर. कुमार,**  
**(Dr. B.R.R. KUMAR)**

**लेखा सदस्य/ Accountant Member**