IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.1193/Bang/2018
Assessment Year : 2013-14

M/s. Tayana Consult Pvt. Ltd., No. 3155/A, 11th Main, 2nd Stage, Near ESI Hospital, Indiranagar, Bangalore – 560 038. **PAN: AABCG7893D**	Vs.	The Deputy Commissioner of Income Tax, Circle – 7 (1) (1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri S. Parthasarathi, Advocate
Revenue by	:	Mrs. Priscilla Singsit, CIT (DR)
Date of hearing	:	05.09.2018
Date of Pronouncement	:	29.11.2018

O R D E R

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of ld. Pr.CIT, Bangalore-7, Bangalore dated 05.03.2018 for Assessment Year 2013-14 passed u/s 263.

2. The grounds raised by the assessee are as under.

"*1. The Order under section 263 dated of the Principle Commissioner is bad in law and is not based on facts or legal position of law as it stands.*

2. No new facts or findings have been brought on record to justify invoking the provisions of section 263 of the Act. On this ground alone the order should be set aside.

3. The observation in para 2.1 that "AO has failed to appreciate that, as per the above submission no specific reason, what so ever. has been furnished for giving advance to M/s TATA Teleservices P Ltd" is not based on facts or realty.

4. This is merely a change of opinion. No new facts have been brought on record which is contrary to the available and existing material, information to substantiate the proposed revision.

5. The Learned Commissioner ought to have demonstrated as to how the entries made could translate into income in the hands of the appellant and thus resulting in an order being prejudicial to the interest of revenue.

6. The addition of explanation 2 to section 263 w.e.f 1.6.2015 makes it very clear that the provisions of section 263 can be invoked only when orders were passed without making enquires and verifications, which is reasonable and prudent. The powers vested in not unfettered. In the case of the assesse details were sought and were submitted and the same was considered by the assessing officer while passing the assessment order.

7. The provisions of the envisages a twin condition — recourse to section 263 cannot be taken if the impugned order is erroneous but not prejudicial to interest of revenue or if it is prejudicial to the interest of revenue but not erroneous. Malabar Industrial Co Ltd v CIT 243 ITR 83 (SC). Every loss of revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of revenue. Hero Briggs & Stratton Auto Ltd v CIT 161 Taxman 127 (Delhi).

8. In the absence of any finding that there is loss of revenue, interference under section 263 is not justified. CIT v G R Thangamaligai 259 ITR 438. It is further held that where the tax effect because of an order passed by the AO is Nil, such order even if erroneous being prejudicial to the interest of revenue, is not open to revision under section 263. Punjab Wool Syndicate v ITO 17 ITR 439.

9. The fact that the appellant had submitted details to the assessing officer during assessment proceedings vide Letter dated 26.11.2015 and vide Letter dated 18.12.2015 providing details of trade payables. other loans and advances with specific reference to TATA Teleservices write off and ICD written off has not been disputed or has the facts been found to be erroneous or false.

10. The fact that the assessment order was passed after considering the response by the appellant on specific query raised during the course of hearing, details with regard to TATA Teleservices and ICD have been ignored.

11. The learned Commissioner ought to have considered the fact that the same ground was further discussed on 25.1.2016 and details with respect to earlier assessment submitted.

12. The appellant submit that the assessing officer has applied his mind and considered all aspect of the claim before passing the order and all details called for were provided during the course of assessment proceedings. Especially the fact that the appellant had accounted as payable to TATA Teleservices an amount of Rs

1.1.7.92,967. It was further brought to his notice that an amount of Rs 17,53,418 was received back by the assesse during 2009-10. The amount remaining was Rs1,00,39,549. This amount then written off during the financial year 2012-13. The reason was also explained as being 1. No confirmation from party, 2 expiry of time 3. Commercial prudence in carrying this amount in the books.

13. The facts of the case that, the payments were made as advance for business of the assesse. The assesse was not able to even get a confirmation of balance from the concerned company has been completely ignored. The appellant had brought to the notice at the time of assessment that TATA Teleservices was incurring a huge loss and its net worth was completely eroded. Further the business for which the payments were made were being discontinued and that company itself was planning to close or merge with another mobile telephone company.

14. The Appellant craves leave to add. to alter, to amend or to delete any or all the above grounds of appeal, at or prior to hearing of the appeal as may be required to enable the Honorable Bench complete this appeal in accordance with law.

15. For these and other grounds that may be urged, the appellant prays that the order be set aside."

3. Brief facts are that it is noted by Pr.CIT in Para 2 of this impugned order that it was noticed that the assessee had debited to P&L Account an amount of Rs. 1,00,39,549/- under the head "Bad Debts Written off", which was advance paid to M/s. Tata Tele services (P) Ltd. and further an amount of Rs. 79,75,474/- was debited under the head "Advance Written off", which was advance paid to M/s. Sivan & Co. It is further noted by Pr.CIT in same Para that it appears that the above advances are capital in nature, and hence on prima-face evaluation, could not be allowed to be written off. He further noted that on perusal of the assessee's reply submitted during the assessment proceedings, it is noted that no specific reason has been furnished for giving advances to M/s. Tata Teleservices Pvt. Ltd. and similarly regarding the advance written off -M/s. Sivan & Co., no other details are submitted other than the vague claim that "The advance was given in 2003 for purchase of certain investment, but the transaction could not be concluded due to legal issues of the title. Thereafter the Pr.CIT issued notice u/s. 263 to assessee and it was served on the assessee on 12.02.2018 and in response to this notice, Shri M.S. Ram, CA and AR of assessee has filed written submissions dated 12.02.2018 which was received on 26.02.2018 by ld. Pr. CIT. The Pr.CIT has considered the

replies of the assessee but he was not satisfied and he held that the assessment order passed by the AO u/s. 143(3) dated 01.03.2016 for Assessment Year 2013-14 is erroneous and prejudicial to the interest of the revenue. The Pr. CIT directed the AO to re-examine all the relevant facts de novo by making full and complete enquiry on facts and law as to the aforesaid two issues. Now the assessee is in appeal against this order passed by ld. Pr.CIT u/s. 263 of IT Act.

4. In course of hearing before us, ld. AR of assessee was asked to furnish the enquiry letter issued by the AO to the assessee in the course of assessment proceedings. He submitted copy of notice issued by the AO u/s. 142(1) of IT Act. He also submitted that in addition to various queries as per the notice u/s 142 (1), various other queries were raised by the AO orally in course of hearing and the same were replied as per letter dated 18.01.2016, paper book pages 9 to 12 and also as per letter dated 21.11.2016, paper book pages 1 & 2. Reliance was placed on Tribunal order rendered in the case of Infosys BPO Ltd. Vs. CIT as reported in 149 TTJ 50(Bangalore - Trib.).

5. As against this, the ld. DR of revenue supported the order passed by Pr.CIT u/s. 263. He also submitted that no enquiry was made by the AO in this regard as can be seen in the notice issued by him u/s. 142(1) and therefore, the order of Pr.CIT u/s. 263 should be confirmed.

6. We have considered the rival submissions. First of all, we reproduce the contents of the notice issued by the AO u/s. 142(1) in course of scrutiny assessment proceedings for Assessment Year 2013-14. The same are as under.

> "*In connection with the scrutiny assessment u/s. 143(3) for the Assessment Year 2013-14, you are required to file the following:*
>
> *(b)** produce or cause to be produced before me at my office at Nrupathunga Road the accounts and /or documents specified below:*
> - *A Brief Note on the Nature of Businessactivities.*
> - *Tax Computation Sheet both under regular provisions as well as u/s.115JB.*
> - *If return has been revised, reasons for revision and reconciliation statement between income as per original and revised return.*

- *If Brought forward losses or MAT credit is claimed, the claim may be presented in tabular form giving year-wise details. The said claim of the assessee may be juxtaposed against the permissible quantum as per the Assessing Officer's Orders.*
- *P & L A/c and Balance Sheet along with Notes on Accounts Sr Annual Report*
- *Audit Report/3CD Report/3CEB Report, Report u/s 115JB, Form No. 56F, Form No l0CCB as applicable.*
- *Details of additions to fixed assets of more than Rs. 1 Lakh with installation certificate.*
- *Copy of E-filed Return.*
- *Vakalatnama/authorizationletter,ifrepresentedbyrepresentative/ Ph.No.*
- *Bank Account details viz. Bank Account No, Bank Name & Branch, Complete Postal Address of the Bank, Bank Balance as on 31.03.2015.*
- *Assessment order if any passed for any previous year.*
- *Details of assessments completed for last 3 assessment years in the following manner.*

Returned income	Assessed Income	Nature of Additions	Result of appeal if any

"

7. From the above contents of the notice issued by the AO u/s. 142(1) of IT Act, this is seen that learned DR is correct in saying that there is no query raised by the AO with regard to bad debts written off and advances written off by assessee of Rs. 1,00,39,549/- and Rs. 79,75,474/- respectively. But as per these two replies dated 18.01.2016 and 21.11.2016, the details about these write offs were submitted by the assessee and this is the submission of the learned AR of the assessee that these submissions are in reply to oral queries of the AO. Hence, it is seen that details were filed by the assessee before the AO in course of assessment proceedings in replies filed before him and this is the submission of the learned AR of the assessee that the reply on this account of write off is with reference to oral queries of the AO and we find no reason or basis to doubt this submission. Hence, it is seen that in the facts of the present case, queries are raised by the AO and reply was filed by the assessee. This may be a case of inadequate enquiry but this is not a case of no enquiry. This is by now a settled position of law that for inadequate enquiry by the AO, the CIT cannot invoke section 263 and only if no query is made by the AO in the course of

assessment proceedings and because of that, certain claim of the assessee for deduction stands allowed without enquiry then such an assessment order is erroneous as well as prejudicial to the interest of revenue. Hence, in view of these facts of the present case as per which queries were made by the AO and replies were filed by the assessee before the AO, in is not a case of no enquiry by the AO and therefore, ld. Pr. CIT is not justified to invoke his revisional powers u/s. 263 of IT Act.

8. Now we examine the applicability of Tribunal order cited by ld. AR of assessee having been rendered in the case of Infosys BPO Ltd. Vs. CIT (supra). The issue in that case was decided by Tribunal as per para nos. 7 to 9 of that Tribunal order and hence, we reproduce these paras from this Tribunal order for the sake of ready reference. These paras are as under.

> "*7. Having heard both the parties and having considered the rival contentions, we find that the basic grievance before us is with regard to the validity of the proceedings u/s 263 of the Income-tax Act. As held by the Hon'ble High Court of Karnataka in the case of Infosys Technologies Ltd., (cited Supra), where the assessing authority has considered the issue at length and has taken a possible view, then merely because the said order does not meet the approval of the CIT, it would not become an erroneous order to be revised u/s 263 of the Income-tax Act. In the case before us, the assessing authority has considered the issue at length and at page 2 and 3 of his order, has held as under :*
>
> > *"The assessee company has computed the profits from the business at Rs.70,00,353/- and from this profits the exemption u/s 10A was claimed atRs.31,89,260/-. Theremaining profits of Rs.38,11,093/- was set off against brought forward business loss. The assessee company vide letter dated 23rd Aug, 2007 submitted the reasons for claiming benefit u/s 10A before setting off the brought forward losses. It is the contention of the assessee that sec. 10A is an exemption section.*
> >
> > *Section 10A is placed in Chapter III of the Act, which deals with incomes which do not form part of total income. Section 10A was initially in the nature in exemption. The provision was substituted w.e.f 1.4.2001 and thereafter in an exemption sec. it was converted into a deduction section. While the loss of a 10A unit was not eligible to be carried forward initially, after the amendment brought about by the Finance Act, 2000 the loss of a sec. 10A unit is eligible to be carried forward and set off against profits of subsequent years. This is in terms of sec. 10A(6) of the I.T Act. The Karnataka High Court in the case of Himatasingike Seide Ltd., 286 ITR 255 stated that the computation of total income has to be in terms of the IT Act. The judgment of the High Court makes it clear*

that the computation of eligible profits for sec. 10A has to be in accordance with the provisions of the Act and the profit of the undertaking cannot be determined in isolation of the other provisions of the Act. It is therefore held that the provisions of sec. 70 and sec. 72 are applicable in determining the profits of the business for the purposes of sec. 10A as far as unabsorbed depreciation is concerned, carry forward and set off are governed by sec. 32(2) and the unabsorbed depreciation assumes the character of current year's depreciation and has to be allowed as a deduction from current year's income. Therefore the claim u/s 10A is allowed from total income of the assessee after setting off the brought forward losses."

8. The above order of the assessing authority clearly shows that he has applied his mind to the facts of the case before him and as to whether the unabsorbed business loss and depreciation are to be reduced from the total turnover before allowing claim of deduction u/s 10A of the Income-tax Act. Therefore, in our opinion, the decision of the Hon'ble High Court of Karnataka in the case of Infosys Technologies Ltd cited (supra) is clearly applicable to the facts of the case before us and, therefore, the order of the CIT(A) u/s 263 has to be quashed. As we have already quashed the proceedings u/s 263 of the Income-tax Act, we are not inclined to go into merits of the direction of the CIT.

9. In the result, the assessee's appeal is allowed."

9. From the above paras reproduced from this Tribunal order, it is seen that in that case, a categorical finding has been given by Tribunal that from the order of assessing authority, it is clearly seen that he has applied his mind in the facts of the case before him and as to whether the unabsorbed business loss and depreciation are to be reduced from the total turnover before allowing claim of deduction u/s 10A of the IT Act and in the light of these facts, the Tribunal came to the conclusion in that case that the judgement of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Infosys Technologies Ltd. as reported in 341 ITR 393 is applicable and the order of CIT(A) u/s. 263 in that case was quashed by the Tribunal. In the present case also, we find that there is submission of the assessee before the AO in course of assessment proceedings about bad debts written off and advance written off and hence, it has to be accepted that the AO has made query and applied his mind to these two items of expenses debited by assessee to P&L Account, being an amount of Rs. 1,00,39,549/- under the head "Bad Debts Written off", which was advance paid to M/s. Tata Teleservices (P) Ltd. and further an amount of Rs. 79,75,474/- debited under the head

"Advance Written off", which was advance paid to M/s. Sivan & Co. Hence in our considered opinion, this tribunal order is applicable and the issue involved in the present case is covered in favour of the assessee by this tribunal order. Hence, we respectfully follow this tribunal order and quash the impugned order passed by PCIT u/s 263.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-	Sd/-
(SUNIL KUMAR YADAV)	(ARUN KUMAR GARODIA)
Judicial Member	Accountant Member

Bangalore,
Dated: 29.11.2018.
/MS/

Copy to:

1. Appellant	4. CIT(A)
2. Respondent	5. DR, ITAT, Bangalore
3. CIT	6. Guard file

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.