

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.573/Coch/2018 : Asst.Year 2015-2016

M/s.Malleil Industries P.Ltd C/o.M/s.Warrier & Warrier Chartered Accountants "Chandni", Parayanchery Calicut - 673 016. PAN : AAFCM0761Q.	Vs.	The Dy.Commissioner of Income-tax, Circle - 1 Thiruvalla.
(Appellant)		(Respondent)

Appellant by : Sri. C.B.M.Warrier

Respondent by : Sri.Sudhanshu Shekhar Jha

Date of Hearing : 28.02.2019	Date of Pronouncement : 01.03.2019
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ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against CIT's order dated 26.10.2018 passed u/s 263 of the I.T.Act. The relevant assessment year is 2015-2016.

2. The grounds raised by the assessee read as follows:-

"1. The Order of the Principal Commissioner of Income Tax vij s 263 of the Act deciding that the Assessment Order u/s 143(3) by the Deputy Commissioner of Income Tax, Circle - 1, Thiruvalla dated 30.12.2016 setting aside is legally incorrect and may be cancelled.

2. The Assessing Officer completed the assessment after accepting an addition of Rs. 1,75,00,000/- to the Income declared as per return after verifying the records found at the time of survey.

3. *The Commissioner of Income Tax decided the assessment as erroneous and prejudicial to the interest of revenue without any omission on the part of the Assessing Officer.*

4. *The Assessing Officer completed the assessment after accepting the additional income offered Rs. 1,75,00,000/- after detailed scrutiny of the seized records and on an agreed basis and hence the Order of the Assessing Officer is not erroneous.*

For the above reasons and other arguments those may be put forward at the time of hearing, the appellant may submit that the decision of the Principal Commissioner of Income Tax, Kottayam is incorrect and illegal in the absence of any evidence and may be cancelled."

3. The brief facts of the case are as follows:-

The assessee is a company engaged in the business of quarry. For the assessment year 2015-2016, the return of income was filed on 29.09.2015 declaring total income of Rs.2,54,10,720. A survey u/s 133A of the I.T.Act was conducted in the business premises of the assessee on 09.02.2016. Subsequent to the survey u/s 133A of the I.T.Act, the assessee filed a revised returning offering additional income of Rs.1,75,00,000. Accordingly, the assessee revised return declaring total income of Rs.4,29,10,720. The revised return filed by the assessee was accepted by assessment completed on 30.12.2016.

3.1 The CIT noticed that the A.O. had accepted the revised return blindly without making any further inquiry. Notice u/s 263 of the I.T.Act was issued by the CIT fixing the case for hearing on 22.10.2018. In the notice issued u/s 263 of the

I.T.Act, the CIT and listed out the defects in the assessment order dated 30.12.2016. In response to the notice, the assessee's Authorised Representative attended the proceedings u/s 263 of the I.T.Act. To certain infirmities in the assessment order, which is mentioned at para 5 of the impugned order of the CIT, the AR agreed that there was virtually no inquiry made by the Assessing Officer at the time of assessment and only sketchy order was passed. The CIT was of the view that there was no proper inquiry by the A.O. and held that the assessment order to be erroneous and prejudicial to the interest of the revenue. In doing so, the CIT relied on the judgment of the Hon'ble Delhi High Court in the case of *Gee Vee Enterprises v. Addl.CIT [99 ITR 375]*.

4. The assessee being aggrieved by the order of the CIT passed u/s 263 of the I.T.Act, has filed the present appeal before the Tribunal. The learned AR strongly relied on the grounds raised.

5. The learned Departmental Representative, on the other hand, strongly supported the order of the CIT passed u/s 263 of the I.T.Act.

6. We have heard the rival submissions and perused the material on record. The CIT in the impugned order passed u/s 263 of the I.T.Act, categorically found that the Assessing Officer had blindly accepted the revised return of income filed pursuant to the survey conducted u/s 133A of the I.T.Act on 09.02.2016. According to the CIT, not a single inquiry was

conducted by the Assessing Officer prior to accepting the revised return. The CIT in his notice dated 28.05.2018 had listed out some of the defects in the assessment order concluded pursuant to the revised return. On the date of hearing on 22.10.2018, the learned AR appearing on behalf of the assessee, had admitted that virtually no inquiry was made by the Assessing Officer at the time of assessment and only a sketchy order was passed. It was further stated by the learned AR that the assessee has no objection in restoring the case to the A.O. provided a reasonable opportunity of hearing is given.

6.1 As rightly held by the CIT, there was no inquiry conducted by the Assessing Officer before the revised return was accepted. Lack of inquiry, non-examination of relevant facts / materials, non-application of mind by the A.O. would result in an order being erroneous and prejudicial to the interest of the revenue and such orders would be amenable for revision u/s 263 of the I.T.Act. The following judicial pronouncements have held, lack of inquiry on the part of the Assessing Officer would make the assessment order erroneous and prejudicial to the interest of the revenue.

- (i) Gee Vee Enterprises v. Addl.CIT [(1975) 99 ITR 375 (Del.)]
- (ii) Toyota Motor Corporation v. CIT [(2008) 218 CTR 539 (SC)]
- (iii) Appollo Tyres Ltd. v. DCIT [(2014) 360 ITR 36 (Ker.)]
- (iv) Bhagheeratha Engineering Ltd. v. ACIT [(2015) 379 ITR 244 (Ker.)]

6.2 In view of the above said reasoning and the judicial pronouncements, we hold that the CIT was correct in exercising his revisionary power u/s 263 of the I.T.Act. It is ordered accordingly.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on this 01st day of March, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 01st March, 2019.
Devdas*

Copy of the Order forwarded to :

1. The Appellants
2. The Respondent.
3. The CIT Kottayam.
4. The Pr.CIT Kottayam.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin