

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
(समक्ष)श्री पी. एम.जगताप, उपाध्यक्ष एवं श्री ए.टी. वर्की,न्यायिक सदस्य)
[Before Shri P.M. Jagtap, Vice President & Shri A. T. Varkey, JM]

I.T.A. No. 1240/Kol/2018
Assessment Years: 2013-14

M/s. First Forge Limited PAN: AABCV 9216 F	Vs.	PCIT, CC-1, Kolkata
Appellant		Respondent

Date of Hearing	04.02.2019
Date of Pronouncement	15.03.2019
For the Appellant	Shri Subash Agarwal, Adv.
For the Respondent	Shri Radhe Shyam, CIT, DR

ORDER

Per Shri A.T.Varkey, JM

This is an appeal preferred by the Assessee against the order of Pr. CIT, CC-1 dated 28.03.2018 for A.Y. 2013-14 passed u/s 263 of the Act.

2. The main grievance of the assessee is that the jurisdictional fact for interfering with the order of the AO is absent in this case and, therefore, the order of the Pr. CIT is null in the eyes of law.

3. Brief facts of the case are that the Pr. CIT took note of the fact that though the AO has calculated a total amount of disallowance u/s 14A read with Rule 8D at Rs. 14,23,48,990/- however restricted the disallowance only to the dividend earned by the assessee to the tune of Rs. 15,000/-. According to the Ld. Pr. CIT, there is no provision to restrict the disallowance u/s 14A to the extent of dividend income earned by the assessee. Thereafter, he issued notices and after hearing the assessee has passed the impugned order directing reassessment to be passed afresh after determining the disallowance u/s 14A read with Rule 8D.

4. We have heard rival submissions and perused the material furnished before us. We note that if the Pr. CIT wishes to exercise the revisional jurisdiction under Section 263 of the Act in respect to the order of AO, then the condition precedent for invoking it is that twin conditions need to be satisfied that is the order of the AO should be erroneous and it

should be prejudicial to the interest of the Revenue. It has to be kept in mind that the phrase *prejudicial to the interest of Revenue* has to be read in conjunction with the *erroneous order* passed by the AO. Every loss of Revenue as a consequence of an order of the AO cannot be treated as prejudicial to the interest of the Revenue. Take for instance, when the AO adopted one of the courses permissible in law and it has resulted in loss of Revenue or whether two views are plausible and the AO has taken one view with which the Pr. CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the Revenue unless the view taken by the AO is unsustainable in law (Malabar Industrial Co. vs CIT 243 ITR 83 (SC)). So, when we have to test the order of the Pr. CIT for adjudicating the legal issue of invocation of revisional jurisdiction, the aforesaid conditional-precedent has to be satisfied. So when we examine as to whether the order of AO can be termed as erroneous order as well as prejudicial to the interest of the Revenue, we note that the fault pointed out by the Pr. CIT in the order of AO is that even though the AO has computed the disallowance u/s 14A read with Rule 8D and at a figure of Rs. 14,23,48,990/- however restricted the disallowance only to Rs. 15,000/- [which was the dividend income earned by the assessee] This action of AO to restrict disallowance only to Rs. 15,000/- is erroneous and prejudicial to the interest of Revenue. So he interfered with the order of AO by invoking his revisional jurisdictional u/s 263 of the Act, which is under challenge before us. We note that the AO has taken a view which is a possible view permissible in law as held by the Hon'ble Delhi High Court in the case of Joint Investments Pvt. Ltd. vs CIT 372 ITR 694 wherein the Hon'ble High Court held that the disallowance u/s 14A cannot exceed the exempt income earned by the assessee. So, therefore, the AO has taken a plausible view which is inconsonance with that the view of the Hon'ble Delhi High Court in Joint Investments Pvt. Ltd. (supra). The Hon'ble Bombay High Court in CIT vs Jayantilal Ramanlal & Co. 137 ITR 257 (Bom) has held that when the Jurisdictional High Court has not laid the law on the provision of a law, the order of the other High Courts should ordinarily be followed. Therefore, since the AO has taken a view permissible in law and even if it has resulted in loss of Revenue and where there are two views possible and the AO has taken one view which the Commissioner does not agree, it cannot be treated as erroneous order prejudicial to the interest of the Revenue unless the view taken by *the AO is unsustainable in law* [Malabar Industries Co. vs CIT (supra)]. So in the light of the Hon'ble Delhi High Court order in Joint Investments Pvt. Ltd.(supra) the view of the AO cannot be held to be

unsustainable in law since it is in inconsonance with that the High Court's view. Therefore, we find force in the appeal preferred by the assessee against the invocation of jurisdiction by Pr. CIT u/s 263 of the Act since we find that the jurisdictional fact which is condition precedent i.e, the AO's order is erroneous as well as prejudicial to the Revenue is absent. So the very invocation of jurisdiction by Pr. CIT u/s 263 is bad in law and therefore we hold that the Pr. CIT lacked jurisdiction to interfere with the order of AO in the facts and circumstances discussed above. Therefore, we quash the impugned order of the Pr. CIT passed u/s. 263 of the Act.

5. In the result, the appeal of the Assessee is allowed.

Order is pronounced in the open court on 15.03.2019

Sd/-

(P.M. Jagtap)
Vice-President

Sd/-

(Aby. T. Varkey)
Judicial Member

Dated : 15th March, 2019

Biswajit, Sr. P.S.

Copy of the order forwarded to:

1. Appellant – M/s. First Forge Limited, 3, L.S.C. Pamposh Enclave, Greater Kailash 1, New Delhi – 110048.
2. Respondent – Pr. CIT, CC – 1, Kolkata.
3. The CIT(A) -2, Kolkata. (through e-mail)
4. CIT Kolkata
5. DR, ITAT, Kolkata. (through e-mail)

/True Copy,

By order,

Sr. Pvt. Secretary