

IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI

BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

&

SHRI RAM LAL NEGI, JUDICIAL MEMBER

ITA No.1791/Mum/2019

(Assessment Year :2014-15)

Aritro Ashsish Roy Plot No.121, Edifice 5 th Road, Khar(W) Mumbai-400 052	Vs.	ACIT-24(1) Room NO.604, 6 th Floor Piramal Chamber, Lalbaug, Parel Mumbai-400 012
PAN/GIR No.AGAPR8158C		
Appellant)	..	Respondent)

Assessee by	Rajiv Khandelwal
Revenue by	Anadi Varma
Date of Hearing	22/07/2019
Date of Pronouncement	28/08/2019

आदेश / ORDER

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against the order of the Principal Commissioner of Income Tax –24, Mumbai, passed u/s 263 of the I.T.Act, 1961 for the Assessment Year 2014-15.

2. The assessee has raised the following grounds of appeal:-

1. *The notice issued under section 263 by the Principal Commissioner of Income Tax-24, Mumbai (hereinafter referred to as "Pr CIT") and the order passed under section 263 are illegal, bad in law and without jurisdiction.*

2. *That having regard to the facts and circumstances of the case, Pr. CIT has erred in law and on facts in assuming jurisdiction b passing the order u/s 263, more so when the assessment order passed under section 143(3) is neither erroneous nor prejudicial to the interest of Revenue.*

3. *That having regard to the facts and circumstances of the case, Pr CIT has erred in setting aside the assessment order passed under section 143(3) of the Act by the Assessing Officer on the ground that lack, of investigations' have been carried out by Assessing Officer.*
4. *That the Pr CIT has failed to appreciate that details were filed as required by the AO and the assessment order has been passed after due application of mind.*
5. *That having regard to the facts and circumstances of the case, Pr, CIT has erred in invoking the provision of Section 263 in reference to disallowance u/s 14A of the Act without appreciating that Assesses did not earn any exempt income during the relevant AY, hence no disallowance was warranted u/s 14A of the Act.*
6. *That having regard to the facts and circumstances of the case, Pr. CIT has erred in invoking the provision of Section 263 in reference to interest income of NIL shown under the head income from other sources without appreciating that the same has been shown as business income in the return of income.*
7. *That having regard to the facts and circumstances of the case, Pr. CIT has erred in invoking the provision of Section 263 in reference to mismatch of Rs. 1,34,82,973/-in sale/turnover reported in Audit report and 1TR without appreciating that the same is interest income offered for taxation.*
8. *That the assessment order passed after detailed enquiries does not become erroneous merely because CIT feels further enquiries should have been made. Hence the notice issued U/s 263 and the order passed u/s 263 is illegal, bad in law and without jurisdiction.*
9. *That without prejudice, the PCIT has wrongly and illegally held that the order passed by AO is erroneous and prejudicial to the interest when independent enquiry has been made by PCIT. Hence the notice issued U/s 263 and the order passed u/s 263 is illegal and bad in law.*
10. *That the evidence filed and material available on the record have not been properly construed and judiciously interpreted, Hence the addition/ disallowance made is uncalled for.*

11. The Appellant craves leave to add, to alter to amend the above Ground of Appeal at the time of hearing,

3. The brief facts of the case are that the assessment for AY 2014-15 was completed in this case u/s. 143(3) of the I.T.Act, 1961 on 12/12/2016, accepting the return of income of Rs. 2,19,82,050/-. Thereafter, the PCIT-24, Mumbai, issued a show cause notice u/s 263 of the I.T.Act, 1961, dated 18/02/2019 and called upon the assessee to explain, as to why assessment order passed by the AO u/s 143(3) dated 12/12/2016, shall not be revised for the reasons recorded in his show cause notices. The PCIT, in the said show cause notice , questioned two issues, i.e [**(A)**. Large interest expenses of Rs. 70,76,669/- relating to exempt income u/s 14A and **(B)**. Mismatch between gross income shown under sales turnover reported in Audit report in financial statement and interest income shown under the head income from other sources amounting Rs. 1,34,82,973/-]. According to the PCIT, Ld. AO has completed assessment without verifying necessary records to ascertain, the claim of the assessee with regard to the interest expenditure in light of provisions of section 14A of the Act, and also to find out, whether any part of interest expenditure is relating to exempt income. Similarly, the Ld. AO had also failed to verify, the aspect of mismatch between the sales turnover reported in financial statement and ITR

and also interest income of Rs. 'Nil" shown under income other sources, which is lesser than gross interest of Rs. 1,34,82,973/-. Therefore, he opined that the assessment order passed by the AO u/s 143(3) dated 12/12/2016 is erroneous, in so far as, it is prejudicial to the interest of the revenue.

4. In response to show cause notice, the assessee vide letter dated 27/1/2019 submitted that the assessment order passed by the AO u/s 143(3) is neither erroneous nor prejudicial to the interest of the revenue, because the AO has examined the issues questioned by you, in your show cause notice dated 18/02/2019 and after satisfied with explanations furnished by the assessee completed assessment without there being any additions towards disallowances of interest and mismatch in turnover reported in financial statements and ITR form. Therefore, the assessment order passed by the AO cannot be termed as erroneous, in so far as, it is prejudicial interest of the revenue.

5. The Ld.PCIT after considering relevant submissions of the assessee and also by relied upon various judicial precedents observed that in respect of Part B and C of show cause notice regarding interest income of Rs. 'Nil' shown under income from other

sources, which is lesser than gross interest receipts of Rs. 1,34,82,973/- and mismatch of Rs. 1,34,82,973/- in sales turnover reported in audit report and ITR, the explanations of the assessee seems to be prima-facie correct and acceptable. However, in respect of Part A i.e. large interest expenses of Rs. 70,76,669/- relating to exempt income u/s 14A of the Act, the Ld.PCIT held that on perusal of relevant assessment records, it was noticed that the claim of the assessee that the AO had duly examined and analyzed the applicability of section 14A r.w.Rule 8D does not support its contention. The PCIT, further observed that it is seen that notice u/s 142(1) of the Act, dated 12/09/2016, was issued by the AO containing questions of very general nature, intended to ascertain, the nature of the business of the assessee and obtained an over all view of the financial. It is pertinent to note that no specific question has been asked by the AO, with regard to 14A disallowances in the said question 'A'. Accordingly, he opined that the AO has failed to apply his mind to the facts of present case in light of provision of section 14A r.w. Rule 8D, which caused prejudice to the interest of the revenue and accordingly, by following the decision of Hon'ble Supreme Court in the case of CIT vs Malabar Industrial company Ltd. vs CIT 243 ITR 89 set aside assessment order passed by the AO and direct the AO to re-do the assessment afresh in the light of

the discussion, after following due procedure and affording the assessee reasonable opportunity of being heard. Aggrieved by the Ld. PCIT order, the assessee is in appeal before us.

6. The Ld. AR for the assessee submitted that the Ld.PCIT was erred in revision of assessment order u/s 263 of the I.T.Act, 1961 without appreciating the fact that the assessment order passed by the AO u/s 143(3) is neither erroneous, nor prejudicial to the interest of revenue. The Ld.AR, further submitted that the PCIT having accepted the fact that there is prima-facie merit in the arguments of the assessee, in respect of Part B and C of show cause notice regarding 'Nil' interest income and mismatch of sales turnover reported in audit report and ITR, erred in directing the AO to verify the facts with regard to reconciliation furnished by the assessee. The Ld. AR, further submitted that in so far as, large interest expenses, the AO has called for necessary details, in respect of interest expenses, during the course of assessment proceedings and after satisfied with explanations furnished by the assessee, chosen not to make any additions in respect of disallowances of interest u/s 14A, which is evident from the fact that the Ld. PCIT had accepted in his order that the AO, during assessment proceedings on 06/12/2016, in order sheet entry recorded that the Authorized Representative of

the assessee attended and filed necessary details to prove that the assessee has not earned any exempt income, for the year under consideration, consequently no expenditure could be disallowed u/s 14A of the Act. The PCIT having accepted the fact that there is no exempt income earned for the year under consideration, erred in directing the AO to re-do the assessment, in respect of disallowances of expenditure u/s 14A of the Act.

7. The Ld. DR, on other hand, strongly, supporting order of the Ld.PCIT submitted that assessment order passed by the AO is erroneous, in so far as, it is prejudicial to the interest of the revenue, in respect of two issues taken up by the PCIT, which is evident from the fact that the Ld.PCIT has brought out various facts in its order, in respect of non application mind by the AO, while completing assessment, on the facts of present case and in light of provision of section 14A of the Act, 1961, even though, the assessee has claimed large interest expenses. The Ld. DR, further submitted that although, the Ld.PCIT had accepted the expenses of the assessee with regard to part B and C of show cause notice, regarding 'Nil' interest income and mismatch of turnover reported in audit report and ITR, but because of insufficient record, the AO might not have

verified above facts and accordingly, set aside the order passed by the AO to re-do assessment.

8. The Ld. DR, further submitted that the Ld.PCIT has not given any specific findings on two issues and its taxability, but only pointed out mistakes committed by the AO, while completing assessment. Therefore, it is incorrect to interfere in the proceedings of PCIT to revise assessment order u/s 263, where the issue was not examined by the AO and on this ground PCIT revised the order without giving his own finding, but directing the AO to do the necessary exercises , therefore, it was not proper for the Tribunal to decide the same, converting itself to a court of first instance and deciding the factual aspect on which, neither AO nor PCIT had written any findings. In this regard, he relied upon the decision of Hon'ble Delhi High Court in the case of CIT vs Eastern Medi Kit Ltd. 2011 337 ITR 56. The Ld.DR has also relied upon the decision of Hon'ble Supreme Court in the case of Toyota Motor corporation vs CIT 2008 306 ITR 52

9. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The Ld.PCIT can assume jurisdiction u/s 263 of the I.T.Act, 1961, to revise assessment passed by the AO, if he is satisfied that

the assessment order passed by the AO is erroneous, in so far as, it is prejudicial to the interest of the revenue. In order to invoke his jurisdiction, the Ld.PCIT should ascertain from the records that the order passed by the AO is erroneous, in so far as, it is prejudicial to the interest of the revenue. Unless, the order passed by the AO is erroneous, in so far as, it is prejudicial to the interest of the revenue, the Ld.PCIT cannot assume jurisdiction to revise assessment order, because the twin conditions prescribed u/s 263 must co-exist. In case the order is erroneous, but it is not prejudicial to the interest of the revenue or *vice versa*, then the Ld.PCIT has no jurisdiction to revise assessment order u/s 263 of the I.T.Act, 1961. In this legal background, if you examine the assessment order passed by the AO, we find that although, the assessment order passed by the AO is brief and cryptic, but the aspect of disallowance of 14A and mismatch between interest income declared under the head income from other sources and turnover difference, as per ITR and audit report has been examined by the AO, during assessment proceedings, which is evident from the fact that the Ld.PCIT had accepted the fact that the AO has recorded in order sheet entry, dated 06/12/2016 regarding submissions made by the assessee, in respect of application of provision of section 14A r.w. Rule 8D, when the assessee has not earned any exempt income, for year under

consideration. Once, the AO has examined the issue, during the course of assessment proceedings and after being satisfied with explanation offered by the assessee chosen not to make any additions, then the Ld.PCIT cannot assume jurisdiction to revise assessment order, on the ground that the AO ought to have carried out further enquiries or there is a lack of enquiry, on the part of AO to examine the issue, which he ought to have verified. Similarly, in respect of Part B and C of show cause notice regarding 'Nil' interest income declared under the head income from other sources and mismatch between turnover reported in audit report and ITR, the Ld.PCIT himself, in his order at para 3 had admitted the fact that in respect of Part B and C, it seems prima-facie, the explanation offered by the assessee is correct and acceptable. The Ld.PCIT having accepted the fact that there is no prejudicial to the interest of the revenue, in respect of Part B and C of show cause notice regarding turnover mismatch and interest income, he ought not to have revise the assessment order at least on this ground. We, further noted that if, you go through the points taken up by the Ld.PCIT for verification regarding interest income and turnover mismatch, the figure taken up by the Ld.PCIT is exactly one and the same. The assessee has reported interest income under the head sales turnover in its audit reports, whereas in ITR sales turnover and

interest income has been shown separately. If, you add back sales turnover and interest income, then there would be no difference in turnover reported by the assessee in its audit report. This fact has been accepted by the PCIT, but he went on to direct the AO to verify the facts, in light of reconciliation filed by the assessee without pointing out, how the order passed by the AO is erroneous, in so far as, it is prejudicial to the interest of the revenue. Similarly, in respect of disallowances of interest expenditure u/s 14A, the assessee has made out a case of availability of own funds in form of capital, which is over and above, the amount of investments in shares and securities, which could yield exempt income. Further, the assessee has also made out a case of no exempt income for the year under consideration. It is settled position of law that in case there is no exempt income earned for the year under consideration, then there would be no disallowances of expenditure incurred in relation to exempt income u/s 14A. This legal proposition is supported by number judicial precedents, including decision of Hon'ble Supreme Court in the case of CIT vs Chettinad Logistics Pvt.Ltd. (2018) 257 taxman 2 (SC) where, the Hon'ble Supreme Court has dismissed SLP filed by the revenue and upheld the findings of Hon'ble Madras High Court regarding no exempt income, no disallowances of expenditure u/s 14A of the I.T.Act, 1961. This legal proposition was

further supported by the decision of Hon'ble Bombay High Court, in the case of Pr.CIT vs Ballarpur Industries Limited (I.T. Appeal No.51 of 2016 dated 13/10/2016) where, similar view has been expressed by the High Court. Therefore, we are of the considered view that the Ld.PCIT has set aside assessment order passed by the AO without pointing out, how the assessment order passed by the AO is erroneous, in so far as, it is prejudicial to the interest of the revenue. Accordingly, we set aside order passed by the Ld.PCIT and restore assessment order passed by the AO u/s 143(3) of the I.T.Act, 1961.

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

Order pronounced in the open court on this 28/08/2019

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 28/08/2019
Thirumalesh Sr.PS
P

Copy of the Order forwarded to :

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

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai