

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

ITA No.533/Ind/2018
Assessment Year: 2013-14

M/s Surjeet Auto Pvt. Ltd. 07, Lala Lajpat Rai Nagar, Raisen Road, Bhopal (Appellant)	<u>बनाम/</u> Vs.	Pr. CIT-2 Bhopal (Revenue)
PAN: AAOCS9058H		
Appellant by	Shri Ashok Vijaywargiya, CA	
Revenue by	Smt. Ashima Gupta, CIT- DR	
Date of Hearing:	24.09.2019	
Date of Pronouncement:	27.09.2019	

आदेश / O R D E R

PER MANISH BORAD, A.M:

This appeal at the instance of Assessee pertaining to A.Y. 2013-14 is directed against the order u/s 263 of the Income Tax Act 1961(hereinafter called as the 'Act') of Pr. Commissioner of Income Tax-2, Bhopal, (in short 'CIT'), dated 09.03.2018.

2. The assessee has raised following grounds of appeal:

"1. That, on the facts and circumstances of the case and in law and in any view of the matter, the Ld. Pr. CIT has erred in setting aside the assessment completed u/s 143(3) of the Act

vide assessment order dated. 15.10.2015 holding that the order passed by the Ld. Assessing Officer is erroneous and prejudicial to the interest of the revenue on account of not making the disallowance of Rs.2,99,263/- of employees contribution towards provident after giving reasonable opportunity to the assessee of being heard and after bringing on records the relevant supporting material and evidences in support of the action of the AO.

2. That, the appellant craves leave to add/amend any ground(s) of appeal before and/or at the time of hearing.”

3. Briefly stated facts as culled out from the records are that the assessee is a Private limited Company engaged in the business of trading in four wheelers and spare part accessories & servicing of vehicles. Income of Rs.73,72,590/- declared in the return of income filed on 01.10.2013. Assessment u/s 143(3) of the Act completed on 15.10.2015 after making various additions and assessing income at Rs.78,78,050/-. Subsequently, Ld. Pr. CIT, Bhopal while examining the assessment records observed that the assessee has not deposited employees contribution towards Provident Fund and hence there was a contravention of section 36(1)(va) of the Act and interest on TDS was not disallowed. Ld. AO failed to examine these issues. Thus, Ld. Pr. CIT invoked the provisions of section 263 of the Act and held that the order of the assessing officer is erroneous and prejudicial to the interest of the revenue.

4. Now the assessee is in appeal before the Tribunal. Ld. counsel for the assessee placed copies of challan to prove that the alleged amount of employees contribution towards Provident Fund stands deposited before the due date of filing of income and thus no disallowance u/s 36(1)(va) is called for. As regards the alleged

interest paid for delay in payment of TDS, it was submitted that it has been wrongly interpreted, since the alleged amount represents the amount of income tax of the parties on whose behalf the payment was deducted and paid to the government exchequer.

5. Per Contra Ld. Departmental Representative (DR) supported the order of Ld. Pr. CIT.

6. We have heard rival contentions and perused the record placed before us. The assessee has challenged the order u/s 263 of the Act framed by Ld. Pr. CIT holding that the order of Ld. AO is erroneous and prejudicial to the interests of the revenue. In the order u/s 263 of the Act following two issues were raised by the ld. Pr. CIT:

a) Perusal of the case records revealed that the assessee had received Rs.2,99,263/- from its employees being their contribution towards Provident Fund for the Financial year but, as per column no.16b of Form -3CD report (Annexure-16B), the same amount was shown to be not deposited within the time allowed under the statute and hence this was in contravention of section 36(1)(va). Thus, this amount of Rs.2,99,263/- was required to be disallowed and added back to the income of the assessee which has not been so done in the assessment order with the result that the total income has been under assessed to the tune of Rs.2,99,263/- on this count with consequential short levy of tax.

b) Perusal of assessment records, further revealed that as per 3CD report interest on TDS amounting to Rs.3,394/- was

certified as inadmissible expenditure u/s 40(a) referre clause 17(f) or 3CD report and therefore, this amount of Rs.3,394/- was required to be disallowed and added back to the income of the assessee which has not been so done in the assessment order with the result that the total income has been further under assessed to the tune of Rs.3,394/- with consequential short levy of tax.

7. During the course of assessment proceedings detailed questionnaire was issued to the assessee on 20.07.2015 calling for various information. In compliance thereto reply was submitted by the assessee along with producing books of account. The additions in the form of disallowance of various expenses including donation, business promotion, conveyance and travelling, telephone, printing and stationary, fuel and delivery charges were made which shows that books of accounts have been examined by the Ld. AO on test check basis.

8. As regards the first issue of the alleged non-depositing of employees contribution towards Provident Fund, on perusal of records we find that the assessee has deposited the alleged amount of employees contribution towards Provident fund before the due date of filing of return of income and copies of challan are placed before us Ld. counsel for the assessee stated as an officer of court that the alleged contribution to Provident Fund has been deposited before the due date for filing the return of income.

9. With regard to the second issue of interest on delayed payment of TDS, we find force in the contention of Ld. counsel for the assessee

that the alleged amount of interest is not for late deposits of TDS. The same represent the amount of income tax of the party on whose behalf the payment was deducted and pay to the Government and thus claimed as an expenditure in the profit and loss account.

10. Ld. Pr. CIT while conducting proceedings u/s 263 of the Act and before holding that the order of the Ld. AO is erroneous, insofar as, it is prejudicial to the interest of revenue, should have made such inquiry as he deem necessary. Since both these issues which were the basis for holding the order of the Ld. AO is erroneous and prejudicial to the interests of the revenue are settled with the necessary evidences placed on record by the assessee, in our considered view Ld. Pr. CIT wrongly assumed the jurisdiction and thus the order u/s 263 of the Act deserves to be quashed and the order of the Ld. AO u/s 143(3) of the Act dated 15.10.2015 is restored.

11. In the result, the appeal of the assessee stands allowed.

Order was pronounced in the open court on 27.09.2019.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 27/09/2019

Patel. P. S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard
file.

By order
Assistant Registrar