

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “C” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.810/Kol/2017
Assessment Year :2011-12

M/s G. Paul & Sons 167, Netaji Subash Road, Rajakatra, Kolkata-700 007 [PAN No.SSVGH 4738 R]	V/s.	Principal Commissioner of Income Tax-15, 3, Government Place, Kolkata-700 001
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Vigyaneshwar Nath Datta, Advocate
प्रत्यर्थी की ओर से/By Respondent	Dr. P.K. Srihari, CIT-DR
सुनवाई की तारीख/Date of Hearing	04-11-2019
घोषणा की तारीख/Date of Pronouncement	15 -11-2019

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2011-12 arises against the Principal Commissioner of Income Tax-15 Kolkata's order dated 10.02.2016 passed in M.No. PCIT-15/Kol/u/s263/15-16/6882-84 involving proceedings u/s 263 of the Income Tax Act, 1961; 'the Act'.

Heard both the parties. Case file perused.

2. It emerges from the perusal of the case file that assessee's instant appeal suffers from 375 days delay in filing. It has placed on record a condonation petition / affidavit dated 20.04.2017 solemnly pleading therein that its managing partner, looking after all the accounts as well as taxation matters suffered from various health ailments as per the relevant medical

certificates / treatment records annexured with the petition. All these pleadings have gone unrebutted from the Revenue sides. We quote hon'ble apex court's landmark judgment in *COLLECTOR, LAND ACQUISITION VS. Mst. KATIJI* (1987) 167 ITR 471 (SC) that the cause of substantial justice must prevail over all other technical considerations and condone the impugned delay of 375 days delay in filing.

3. We now advert to merits of the main appeal. The assessee admittedly is a partnership firm engaged in re-selling tea business. It is submitted its return on 28.09.2011 disclosing total income of ₹3,78,365/- which stood processed on 23.03.2013 accepting the returned income. The Assessing Officer thereafter framed the assessee's regular assessment in issue on 21.02.2014 adding the alleged under-valuation of closing stock amount of ₹15,91,226/- on account of the stock valuation disclosed at the assessee's behest in the books vis-à-vis those stated before the creditor bank for assessment order availing credit facilities therefrom.

4. We find that assessee preferred appeal before the CIT(A) against the said addition. The PCIT in the meantime issued his show cause notice dated 26.09.2014 assuming sec. 263 revision jurisdiction on the ground at the above stated regular assessment framed on 21.02.2014 was erroneous and prejudicial to the interest of Revenue *inter alia* on the ground that the Assessing Officer had not invoked sec. 145(3) once he himself was not satisfied with the correctness of the accounts due to which closing stock revealed under-valuation, deduction of a partner's salary u/s40(b)(v) was allowed although partnership deed nowhere contained names of the partners or quantum of their salary and brokerage was paid to various tea brokers without TDS deduction etc.

5. The assessee appeared and filed its reply alongwith its balance-sheet, profit and loss account, stock statement, stock register, daily sale break-up,

party-wise broker list, partners deed and relevant purchase bills. The same stand rejected in the PCIT's order under challenge as unde:-

"...Accordingly the show cause dated 26/09/2014 was issued to the assessee proposing to pass a suitable order and the case was posted for hearing on 16/10/2014. The A/R appeared on 16/12/2014 and furnished a written submission alongwith audited balance sheet, P/L account, relevant stock statement, stock register, sales breakup (daily basis), Purchase & sales register, party-wise brokerage list, partnership deed & relevant purchase bill. The contentions of the partner are reproduced below:-

- (a) Being aggrieved by the order of the Ld. AO we have carried the mater in appeal before the commissioner of Income Tax appeal (xxx Kol.) on 27/03/2014.*
- (b) That we have been following consistent method of accounting since the formation of the Firm and opening stock & closing stock have been taken and valued on the basis of principle of cost price or marked price whichever is less.*
- (c) That we have been submitting monthly stock statement of the firm to our banker for the overdraft facilities for which regular stock statement per month has to be furnished. It is stated that stock statement on that item produced to the bank merely on rough estimated basis with the object to cover compliance of thee terms and conditions of the Bank to enjoy the overdraft amount being sanctioned. We are enclosing herewith the month-wise stock statement derived from our books of account and registers, being maintained regularly. The details of sock statement include the quantity of the opening stock, purchase and sales & also the closing stock, where the value in each cases has been recorded & given to your kind perusal and necessary verification. That your honour may go into the statement and find that there is a difference of opening stock in quantity with the books and statement produced to the Bank.*
- (d) That your honour has pointed out in the show cause notice that stock of 825 kg. tea purchased @ 142/ per kg. on 31/03/2011 has been valued at 123/- per kg. for income tax purpose and 125/- to the bank. It can be stated that purchase price cannot be altered by us in any case. We follow the principal of cost price or market price whichever is less. Hence the stock was valued at cost price because there is a regular futures in our tea market for fluctuation of prices of the product. If the exported goods is landed in the country the fluctuation rate is occurred very frequently over which we have no control at all.*
- (e) That your honour we are producing evidences in respect of tax invoice relating to the period of march ending 201 and first part of April 2011 from where it can be found that the price of tea per kg. had been reduced considerably compelling us to value the stock of goods at the end of the March 2011 at market price, or realizable value. We are enclosing here with the Xerox copy of the Bills in support of our argument.*
- (f) That our partnership deduction provided very clearly the manner of quantifying remuneration to working partners, we have been following the provision of section 40(b)(v) strictly. Your honour my have a look at our partnership deduction, if deemed necessary.*
- (g) That we have purchased materials from the registered parties who have raised the tax invoice upon us mentioning the details of the particulars such as rate, price, and quantity particulars of goods purchased, Vat, service tax and the amount of brokerage. Everything is included in the Tax invoice and we usually have debited the entire amount except Vat and*

Service Tax. We do not pay the brokerage separately. However, the brokerage amount received has been shown as “**income**” in the Return of Income Tax of the respective parties.

The A/R also informed that appeal has been filed on the ground of inappropriate/disputed valuation of closing stock. Another written submission was filed on 05.02.2016 in respect of disputed closing stock which is alleged by the AO as undervalued. The relevant portions of the contention of the AO is reproduced below:-

- (a) That, your assessee has been maintaining books of account regularly and consistent method of accountancy has been followed and accounts have been prepared on the basis of accepted accounting principles.
- (b) That, the closing stock has been valued on the principal of at cost market price whichever is less in order to show a correct amount of profit of the firm. The detail of valuation of closing stock is attached herewith for your kind perusal and necessary records. The valuation of closing stock has been made on the basis of invoice price and value placed on each item according to the cost price. It is stated that different quality and description of goods at the end of the year has been shown in the stock statement and different value of each item has also been shown in the said statement. As your assessee has been carrying on business since long long back some asserted item of goods have been shown in the closing stock where actual value could be ascertained but the average price has been taken into consideration.
- (c) That, your assessee deals in Tea and the price of the goods does not remain the same throughout the year. The price is being fluctuated from time to time. Here it is pertinent to mention that the price of the goods has been fallen considerably in the month of April 2011.
- (d) That, your assessee has provided remuneration to partners in accordance with the partnership deduction which has been accepted by the department since the introduction of the provisions and no remuneration to the partners was paid or payable beyond the provisions of the act.
- (e) That, your assessee has paid some amount of brokerage to the Tea Auctioneers at the time of purchase and entire brokerage amount has been charged to the purchase account and it has not been shown separately in the Trading or Profit & Loss A/c. It is stated further that the recipient has given us the certificates mentioning therein that the said brokerage has been shown as income in their return.

I have carefully considered the issues with specific reference to the relevant assessment records as well as admission made by the assessee in his written submission. The facts narrated above and submission made by the assessee indicates that some aspects remained to be seen by the AO during the assessment proceedings. Non-appliance of sections of 145(3), allowance of partnership salary and brokerage, etc., has resulted in the order dated 21/02/2014 as prejudicial and erroneous to the interest of the revenue.

In view of the above, the order dated 21/02/2014 passed by ITO W-43(1), Kolkata is found to be erroneous and prejudicial to the interest of revenue and hence set aside with the direction to pass fresh assessment order after examining the evidences and documents in respect of various issues raised after giving opportunity to the assessee and in accordance with law.”

6. Learned counsel vehemently submits during the course of hearing that the PCIT has erred in law and on fact in revising the above regular

assessment on the above three counts((supra). His case is that the said regular assessment is neither erroneous nor it causes prejudice to interest of the Revenue since the Assessing Officer had rightly not rejected books us/ 145(3) of the Act and further allowed deduction of partner's salary as well as brokerage paid to the various tea vendor(s). Learned CIT-DR on the other hand submits that PCIT has rightly assumed revision jurisdiction in the facts of the instant case since some of the clinching aspects hereinabove remained to be examined by the Assessing Officer during assessment proceedings.

7. We have given our thoughtful consideration to rival pleadings. There can hardly be any dispute about the settled legal position regarding sec. 263 revision jurisdiction as per hon'ble apex court's land mark judgment in *Malabar Industrial Co. Ltd. vs. Commissioner of Income Tax* (2000) 243 ITR 83 (SC) that before an assessment is held as erroneous causing prejudice to the interest of the Revenue., it is necessary for the CIT to simultaneously satisfy both these limbs. And also that an assessment cannot form subject-matter of revision unless it has proved that the Assessing Officer has not taken one of the possible view on facts of the case. Hon'ble Delhi high court's decision in *Commissioner of Income Tax vs. D. G Housing Projects* held that the CIT cannot restore the assessment back to the Assessing Officer if it is not a case no enquiry in earlier round. We keep in mind the same and a proceed to deal with the issue. It is clear from a perusal of the PCIT's foregoing revision directions that his show cause notice on one hand had made it clear that the Assessing Officer had not acted of 145(3) of the Act and wrongly allowed partner's salary and brokerage without deduction of TDS. His findings under challenge speak otherwise wherein the PCIT is of the view of "**some aspects remained**" to be seen by the Assessing Officer during assessment proceedings. We find no reason to sustain the same. We notice that the assessee has successfully challenged the Assessing Officer's action making under-valued closing stock of addition ₹15,91,226/- in appeal **ITA No.1751/Kol/2016** before the tribunal decided on 02.02.2018. Coupled with

this, we also make it clear that the PCIT has nowhere rebutted the assessee's explanation that its partnership deed not only quantified remuneration to its working partners but also the relevant details to this effect formed part of assessment rounds. Lastly coming to the brokerage paid to various tea brokers without deduction of TDS, learned CIT-DR fails to dispute the clinching fact that same cannot be disallowed since recipients have duly certified that they have included the amount in issue as income in their returns. We keep in mind all these facts to hold that the PCIT has erred in assuming his revision jurisdiction in facts of the instant case, and that too, without holding assessment in issue to be erroneous causing prejudice to interest of the Revenue. We reverse his order under challenge dated 10.02.2016 therefore.

8. This assessee's appeal is allowed.

Order pronounced in the open court 15/11/2019

Sd/-
(लेखा सदस्य)
(A.L.Saini)
(Accountant Member)
Kolkata,

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

*Dkp

दिनांक:- 15/11/2019 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-M/s G.Paul & Sons 167, Netaji Subash Road, Rajakatra, Kolkata-007
2. प्रत्यर्थी/Respondent-PCIT-15, 3, Govt. Place, Kolkata-700 001
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।