

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'G': NEW DELHI)**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 3180/Del/2017
(Assessment Year: 2012-13)**

Shelendra Kumar Jain, 76-B, DDA Flats, Jhilmil Colony, Vivek Vihar, Delhi	Vs	Pr. CIT-19, D Block, First Floor, Vikas Bhawan, I.P. Estate, New Delhi
PAN-ADJPJ4984G		
APPELLANT		RESPONDENT
Appellant by		None
Respondent by		Shri. S.S. Rana, CIT (DR)

ORDER

PER ANADEE NATH MISSHRA, AM

[A]. This appeal has been filed by the assessee against the order dated 28.03.2017 passed by Learned Pr. Commissioner of Income Tax, New Delhi [in short, "Ld. Pr. CIT"] pertaining to 2012-13 assessment year. The assessee has raised following grounds of appeal:-

GROUND NO. 1

1.1 On the facts and circumstances of the case and in law the Ld. PR. CIT Delhi-19 has erred in passing an Order u/s 263 of the I.T. Act, 1961 as the Proceedings initiated u/s 263 are not valid in law.

GROUND NO. 2

2.1 The Pr. CIT Delhi-19 had initiated revision proceedings in order to carry out fishing and roving enquiry in the matters which had already been concluded and which were not permissible u/s 263 of the Act.

2.2. The Assessment Orders u/s 143 (3) and u/s 147 could not be considered erroneous and prejudicial to the interest of the revenue for the following reasons:

2.3 The Assessing Officer had taken the possible views after application of mind but Pr. CIT Delhi-19 had not demonstrated how the Orders passed by the Assessing Officer were not only erroneous but also prejudicial to the interest of the Revenue hence the Revision Order was beyond the scope of Section 263 of the Act and hence not valid and unsustainable in law.

2.4 Though Ld. Pr. CIT Delhi-19 was not satisfied with the scope of enquiry conducted by the Assessing Officer, but he himself has neither conducted any enquiry nor brought on record any corroborative material justifying and showing that the Assessing Officer's findings were erroneous.

2.5 The Assessing Officer had passed the Assessment Orders under Section 143(3) and further after making an addition u/s 147 also, which a Reasonable and Prudent Officer had already completed the requisite enquiries, correctly appreciated the facts and verifications and had come to a reasoned conclusion before passing the Order."

[B]. Vide assessment order dated 27.03.2015 passed u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act'), income of the assessee was determined at Rs. 1,31,83,620/-. The assessment order was revised under section 263 of the Act, by Id. Pr. CIT, vide impugned order dated 28.03.2017. The relevant portion of the aforesaid impugned order dated 28.03.2018 of Pr. CIT is reproduced as under:-

1. The assessee e-filed the return of income on 30.09.2012 declaring gross total income at Rs.74,52,299/-. Subsequently, the case was selected through CASS under complete scrutiny basically on the reason "Large Sales Promotion Expenses". The assessment was completed at an income of Rs. Rs.1,32,83,620/- after making an addition of Rs.58,40,310/- because of the involvement of expenses of personal and unverifiable nature.

2. Post re-assessment u/s 143(3), the case was examined in the office of PCIT-19 wherein it is found that some points/issues should have

been examined/ verified by the A.O. during the proceedings u/s 143(3), but he failed to do so. Consequently notice u/s 263 was issued to the assessee show causing on points/issues which are hereunder:-

To,

*Sh. Shelendra Kumar Jain,
76-B, DDA Flats,
Jhilmil Colony,
Vivek Vihar,
Delhi-110095*

Sir,

Sub: Notice u/s 263 of the I.T. Act, 1961 in the case of Sh. Shelendra Kumar Jain (PAN: ADJPJ4984G), 76-B, DDA Flats, Jhilmil Colony, Vivek Vihar, Delhi-110095, A.Y. 2012-13 – Regarding

2. You have e-filed the return of income on 30.09.2012 declaring gross total income at Rs. 74,52,299/-. Subsequently, the case was selected through CASS basically on the reason "Large Sales Promotion Expenses". The assessment was completed at an Income of Rs. 1,32,83,620/- after making an addition of Rs. 58,40,310/- because of the involvement of expenses of personal and unverifiable nature.

3. Further during the course of examination of the assessment records by PCIT-19, some issues have cropped up which the A.O. has failed to verify and did not look deeply, The issues are as under:-

[1) The main point for selection, viz. huge sales promotion expenses has not been looked into deeply. Although a 5% disallowances has been made, but no meaningful verification has been made so as to enquire its genuineness and reason for huge increase in the present year.

(ii) It appears from the past asstt. records that no books of accounts were produced during assessment proceedings. For this reason also, a thorough probe, Into genuineness of books being maintained by you need to be verified.

iii) You have furnished bank account number but statement of bank accounts maintained either for business purpose or in individual capacity was not called for by the AG during assessment proceedings. Therefore, the bank accounts maintained by you need thorough verification.

iv) You have provided list of parties from whom you have made purchases but AO has not made cross-verification during assessment proceeding. In view of the above you are requested to produced ledger and confirmation from the purchase parties.

v) You have debited various other expenses in P & L account totally to Rs. 7.19 cr. in this respect, details of the same were not called for during the assessment proceeding. In view of the above, you are required to give details of other expenses head-wise and also state applicability of TDS under chapter-XVII of the IT Act 1961.

vi) You have shown rent paid of Rs.58.66 Lakh in the Profit & Loss account but no rent agreement is on records. So, you are requested to file rent agreement and also state applicability of TDS under chapter-XVII of the IT Act 1961

3. In view of the above, it is apparent that assessment in this case has been completed without verifying the above aspects. In other words, the order of the AO under discussion is erroneous in so far as it is prejudicial to the interest of revenue.

4. The above issues were required to be examined by the AO while finalizing the assessment proceedings, In view of above, you are show-caused as to why the assessment order may not be treated as erroneous in so far it is prejudicial to the interest of revenue under die provisions of section 263 of the I.T. Act. 1961

5. In case, you have anything to submit in this regard, you may submit the same either personally or through your authorized representative in this office on 16.03.2017 at 11:30 AM at Room No. 0-106, First Floor, Vikas Bhawan, 1-P Estate, New Delhi- 110002, failing which it would be presumed that you have nothing to say in the matter and an order u/s 263 of the Income Tax Act, 1961 will be passed on the basis of material available on record."

6. Each of the issues of the show cause notice and reply of the assessee is discussed as under:-

The main point for selection, viz. huge sales promotion expenses has not been looked into deeply. Although a 5% disallowances has been made, but no meaningful verification has been made so as to enquire its genuineness and reason for huge increase in the present year.

On the above issue the assessee has submitted that his business was in expansion mode and therefore more offices in new areas were established. He had to resort comparatively high expenses on sales promotion & marketing for expanding the business. To substantiate his claims, he had filed (i) Comparative Chart for Sales Promotion Expenses for last 4 years (ii)

List of cities where expansion to establish the business in new areas (iii) Sub-head wise, month-wise and area-wise expenses on sale promotion and marketing.

It is seen from the assessment records that the same submissions had also been filed during the assessment proceedings u/s 143(3). However the A.O. had disallowed 5% of Rs.4.89 Crs. expenses owing to not filing of any corroborative documents or details in support of the expenses. Hence no adverse findings are made in this issue.

It appears from the past assessment records that no books of accounts were produced during the assessment proceedings. For this reason also, a thorough probe, into genuineness of books being maintained or not need to be verified.

On the above issue of show cause notice the assessee has submitted that he had already maintained books. The same were filed during the proceedings u/s 143(2) as when asked by the A.O. However from the assessment records it is seen that no bill or vouchers have been placed on record. Providing only the list of debtors and Creditors does not constitute production of books of accounts. Hence this issue needs examination by the A.O.

iii. The assessee has furnished bank account number but statement of bank accounts, maintained either for business purpose or in individual capacity was not called for by the AO during assessment proceedings. Therefore the bank accounts maintained by you need thorough verification.

On this issue he had submitted that saving and current accounts are maintained for business purposes not in individual capacity. The same information was also provided to the A.O. during assessment proceedings u/s 143(2) vide letter dated 09.12.2014. However the AO had not properly examined the debits and credits in the bank accounts.

iv. The assessee has provided list of parties from whom you have made purchases but AO has not made cross-verification during assessment proceedings. In view of the above, you are requested to produce ledger and confirmation from the purchase parties.

On this issue the assessee has reiterated that he had already submitted a list of S/Creditors and confirmations from some of the S/Creditors during the assessment proceedings u/s 143(2). However no independent inquiry has been made by the AO by issuing notice u/s 133(6) to the S/Creditors.

However the assessee has submitted the confirmations and ITR from the parties. In the absence of any independent inquiry, the order is erroneous as well as prejudicial to the interest of revenue.

v. You have debited various other expenses in P & L account totally to Rs. 7.19 Crs. In this respect details of the same were not called for during the assessment proceeding and no sample verification made. In view of the above, you are required to give details of other expenses head-wise and also state applicability of TDS under Chapter XVII of the I.T. Act, 1961.

On this issue the assessee has submitted details of Other Expenses booked in P & L accounts stating that in the P & L no similar headings are found so all are grouped and booked under one head i.e. Other Expenses. From perusal of the above details it is found that out of total expenses of Rs. 7.19 Crs. Major expenses have been booked in the name of Production and processing Expenses (Rs. 3.39 Crs.) Office Maintenance (Rs. 11.55 lac), Printing and stationary (Rs. 40.71 lac), Other Administrative Expenses (Rs. 83.42 lac). These issues need further examination as the name has not been done by the AO.

vi. The assessee has shown rent paid of Rs. 58.66 Lacs in the Profit & Loss account but no rent agreement is on records. So, you are requested to file rent agreement and also state applicability of TDS under Chapter XVII of the I.T. Act, 1961.

Here he has submitted that rent paid is in small amounts ranging from Rs. 2,000/- to Rs. 9,000/-p.m. hence no TDS deduction is required. However keeping in view the large amount involved under this head, independent inquiry is required by the A.O. which he had failed to do.

Keeping in view the above, I have no option but to conclude the assessment order dated 27.03.2015 is erroneous and pre-judicial to the interest of revenue on the above issues to the extent of no proper enquiry and details obtain therein.

Thus, I set-aside the assessment with instruction to the AO to enquire deeply into above issues and then reframe the assessment order."

[C] This present appeal has been filed by the assessee against the aforesaid impugned revision order dated 28.03.2017 of the Ld. Pr. CIT. At the time of hearing, Revenue was represented by Shri. S.S. Rana, CIT (DR). However, none was present from the assessee's side. In the absence of any representation from assessee's side, at the time of hearing before us, we heard the Ld. CIT (DR). The Ld. CIT (DR) relied upon the aforesaid impugned order dated 28.03.2017 of the Ld. Pr. CIT. He also relied on the precedents in the cases of (i) order dated 29.11.2017 of Hon'ble Supreme Court in the case of Denial Merchants Pvt. Ltd. vs. ITO (Appeal No. 2396/2017) ii. Malabar Industrial Co. Ltd. vs. CIT 243 ITR, 83 (SC) (iii) Rajmandir Estates (P.) Ltd. vs. PCIT 386 ITR 162 (Calcutta) iv. Rajmandir Estates (P.) Ltd., vs. PCIT 245 Taxman 127 (SC). After perusal of the order of the AO and the aforesaid impugned order dated 28.03.2017 of the Ld. He also relied on the precedents in the cases of (i) order dated 29.11.2017 of Hon'ble Supreme Court in the case of Denial Merchants Pvt. Ltd. vs. ITO (Appeal No. 2396/2017) ii. Malabar Industrial Co. Ltd. vs. CIT 243 ITR, 83 (SC) (iii) Rajmandir Estates (P.) Ltd. vs. PCIT 386 ITR 162 (Calcutta) iv. Rajmandir Estates (P.) Ltd., vs. PCIT 245 Taxman 127 (SC), we find that he has passed speaking order on merits. Relevant portion of the impugned order of the Ld. Pr. CIT had already been reproduced in foregoing paragraph (B) of this order. We find that the Ld. Pr. CIT has given detailed reasons for his decision in the aforesaid impugned revision order dated

28.03.2017. During appellate proceedings in Income Tax Appellate Tribunal ("ITAT", for short) no material has been brought for our consideration to persuade us to take a view different from the view taken by the Ld. Pr. CIT in the impugned order. Therefore, after hearing the Ld. CIT (DR) and after perusal of materials on record, and further, in view of the foregoing discussion, we decline to interfere with the aforesaid impugned appellate order dated 28.03.2017 of Ld. CIT(A). In view of the foregoing discussion, the appeal filed by assessee is dismissed.

[D] Before we part; we explicitly clarify that the assessee will be at liberty to approach ITAT for restoration of the appeal in accordance with Proviso to Rule 24 of Income Tax (Appellate Tribunal), Rules, 1963. If the assessee does approach ITAT for restoration of the appeals in ITAT, the matter will be considered in accordance with law having regard to the facts and circumstances.

[E] In the result, appeal filed by Assessee is dismissed.

Order pronounced in the open court on 20/11/2019.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 20/11/2019
SH

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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