



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA no.969/Mum./2019
(Assessment Year : 2015-16)

M/s. Sai Kiran Clearing Co. Pvt. Ltd.
202, 2nd Floor Plot no.1, Ratan Galaxie
Jawaharlal Nehru Road, Mulune (W)
Mumbai 400 080 PAN – AAFCS2365A

..... Appellant

v/s

PCIT of Income Tax
Circle-2, Mumbai

..... Respondent

Assessee by : Shri Madhur Agarwal
Revenue by : Shri B. Jaya Kumar

Date of Hearing – 16.09.2019

Date of Order – 06.12.2019

ORDER

PER SAKTIJIT DEY. J.M.

The captioned appeal has been filed by the assessee assailing the order dated 21st January 2019, passed under section 263 of the Income Tax Act, 1961 (for short "*the Act*") by the learned Principal Commissioner of Income Tax (PCIT)-2, Mumbai, for the assessment year 2015-16.

2. Brief facts are, the assessee company is carrying on business as custom house agent, clearing & forwarding agent and transport & labour contractor. For the assessment year under consideration, the assessee filed its return of income on 30th September 2015, declaring total income of ₹ 1,06,88,550. The assessment in case of the assessee was completed under section 143(3) of the Act vide order dated 30th June 2017, accepting the income returned by the assessee. After completion of the assessment as aforesaid, learned PCIT, in exercise of power conferred under section 263 of the Act, called for and examined the assessment records of the assessee. After examining the assessment records, learned PCIT was of the view that in the Profit & Loss Account, the assessee has shown net revenue from operations at ₹ 2,62,91,752, instead of gross revenue received from clearing & forwarding and agency charges. He observed, to arrive at the net revenue, the assessee must have debited certain expenses which must have reduced the gross receipts. He observed, while accepting the net revenue offered by the assessee, the Assessing Officer failed to examine various expenses incurred/claimed by the assessee to arrive at net figure. He observed, the Assessing Officer failed to examine whether such expenses are genuine and supported by details and vouchers and whether they are laid out wholly and exclusively for the purpose of business. Further, he observed, the Assessing Officer failed

to enquire whether the gross receipts shown by the assessee is reconciled with Form no.26AS and AIR data. Being of the view that the Assessing Officer has not made proper enquiry to verify the aforesaid facts, learned PCIT issued noticed to the assessee requires to show cause as to why the assessment order should not be revised. In reply to the show cause notice as well as in the course of proceedings before learned PCIT, the assessee submitted that the Assessing Officer made due enquiry with regard to expenditure claimed by the assessee and has examined all necessary information/details/supporting evidences furnished by the assessee. However, learned PCIT was not convinced with the submissions of the assessee. Further, it was submitted by the assessee that being a clearing & forwarding agent, the assessee has to incur various expenses on behalf of customer and it receives agency charges from the customer. It was submitted, since the assessee had to incur certain expenditure on behalf of the customer, major portion of the sale bill is towards reimbursement of expenses. The aforesaid arguments on merits also did not find favour with learned PCIT. He observed, the Assessing Officer has completed the assessment accepted the returned income without making enquiry and verification which he was required to make. Thus, he ultimately concluded that due to such lapse on the part of the Assessing Officer, the expenditure claimed by the assessee have not been verified which made the

assessment order erroneous and prejudicial to the interests of Revenue. Accordingly, he set aside the assessment order with a direction to the Assessing Officer to allow the expenditure claimed after due verification and enquiries.

3. The learned Authorised Representative submitted, in course of assessment proceedings Assessing Officer, on 17th May 2017, had issued notice under section 142(1) of the Act along with questionnaire. Drawing our attention to the questionnaire issued by the Assessing Officer, he submitted, the assessee was specifically directed to reconcile the income shown by the assessee with AIR data and the Assessing Officer has also directed the assessee to furnish such data in the format provided by him. He submitted, in reply to the notice and questionnaire issued by the Assessing Officer, the assessee had furnished its reply submitting all the details relating to the expenditures claimed with supporting evidences. He submitted, the assessee also furnished reconciliation statement explaining the AIR information/data. He submitted, as per the revenue recognition policy consistently followed by the assessee, gross receipts from services to the customers towards clearing & forwarding of their import and export includes various reimbursable expenditure incurred on behalf of them on one side and agency charges as main source of income of the assessee on the other side. He submitted, major portion of sale bills

raised by the assessee on customer is for reimbursement of expenses which were incurred on behalf of the customer and is received or receivable from them either in advance or after raising the bills. He submitted, the freight forwarding charges shown in credit side of the Profit & Loss Account is net of gross receipt minus expenditure incurred on behalf of the customer for clearing & forwarding their consignment and also includes agency commission. He submitted, the auditor has also certified the aforesaid fact in the audit report in Form no.3CA. The learned Authorised Representative submitted, in course of assessment proceedings, the assessee has furnished voluminous evidences relating to the expenditure incurred on behalf of the customer and has also furnished reconciliation statement to reconcile the income as per books and as per Form no.26AS. He submitted, all sales bills, invoices were furnished before the Assessing Officer with bifurcation and the total turnover of the assessee as per books matches with the figure as shown in the Profit & Loss Account. He submitted, after conducting due enquiry and necessary verification, the Assessing Officer has completed the assessment allowing the expenditures claimed. He submitted, learned PCIT has not pointed out a single defect or deficiency either in the books of account maintained by the assessee or in the evidences furnished regarding claim of expenditure. He submitted, in such circumstances, exercise of power

under section 263 of the Act simply for the purpose of going through the same exercise over again is invalid. He submitted, the observations made by learned PCIT is of general nature without revealing any specific instance of lapse or non-enquiry by the Assessing Officer. Thus, he submitted, the order passed under section 263 of the Act deserves to be quashed.

4. The learned Departmental Representative submitted, in course of assessment proceedings, the Assessing Officer has not verified the genuineness of various expenses claimed by the assessee. He submitted, no enquiry has been conducted by the Assessing Officer with regard to the net income shown by the assessee in the Profit & Loss Account. He submitted, merely because assessee's accounts are audited and the assessee has filed auditor's certificate, it cannot be said that all the expenses incurred by the assessee are genuine. Further, he submitted, learned PCIT has simply set aside the assessment order and directed the Assessing Officer to allow the expenses after due verification and enquiry. Therefore, no prejudice is caused to the assessee.

5. We have considered rival submissions and perused the material on record. It is evident, assessee's books of account are under statutory audit and the assessee has duly filed audited financial

statements along with its return of income. It is also a fact that the assessee is carrying on business as a custom house, clearing & forwarding agent. Therefore, it is required to incur certain expenses on behalf of its customers. From the material on record, it is noticed that in the course of assessment proceedings, the Assessing Officer, vide notice dated 17th May 2017, issued under section 142(1) of the Act and the Annexure appended thereto has called for various information/details from the assessee, including, reconciliation of income as per books of account, AIR data and Form no.26AS. Thus, as could be seen, the Assessing Officer has specifically enquired into the income debited to the Profit & Loss Account and has called upon the assessee to reconcile the difference between the income shown and the income as per AIR information and Form no.26AS. In response to the said query, the assessee has furnished all necessary information/details with supporting evidences. In fact, reconciliation statements have been filed by the assessee explaining the difference in income shown in the books and the income appearing in AIR information/Form no.26AS. All these evidences, as submitted in the paper book, were also filed before the Assessing Officer in the course of assessment proceedings. All the invoices raised by the assessee on customers as well as third parties have also been filed. The assessee has also explained the revenue recognition policy consistently followed

by the assessee. On a perusal of the impugned assessment order, it is seen that the Assessing Officer has specifically stated that the requisite details called for as per the questionnaire were not only placed on record but were duly verified by him. He has also referred to assessee's explanation and reconciliation of the AIR information/Form no.26A. Thus, as could be seen from the facts on record, the Assessing Officer in the course of assessment proceedings, has examined and enquired into the income shown by the assessee in the Profit & Loss Account and has also verified the details of expenditures claimed. Thus, in such circumstances, the allegation of learned PCIT that the Assessing Officer has not made any enquiry on the issues referred to by him is without any basis and contrary to the facts and materials on record. Further, on a perusal of the impugned order of learned PCIT, it is noticed that he has not pointed out even a single defect or deficiency in the evidences filed by the assessee. Even, he has not dealt with a single item of expenditure, which according to him, is either non genuine or unreasonable. On the contrary, while setting aside the assessment order, learned PCIT has himself directed the Assessing Officer to allow the expenditure claimed by the assessee after due verification and enquiries. When the Assessing Officer in the course of assessment proceedings has already enquired into and verified the expenditures claimed by the assessee, it is not understood

what more verification/enquiry has to be conducted by him. Thus, prima facie, it appears that learned PCIT has exercised his power under section 263 of the Act to initiate a roving and fishing enquiry without pointing out any specific error in the assessment order which made it erroneous and prejudicial to the interests of Revenue. Therefore, in our considered opinion, the basic conditions of section 263 of the Act in the present case are not fulfilled. Accordingly, we quash the order passed under section 263 of the Act. Consequently, the order passed by the A.O. is restored. Grounds are allowed.

6. In the result, appeal stands allowed.

Order pronounced in the open Court on 06.12.2019

Sd/-
M. BALAGANESH
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 06.12.2019

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai