

**IN THE INCOME TAX APPELLATE TRIBUNAL “C”, BENCH KOLKATA  
BEFORE SHRI A. T. VARKEY, JM & DR. A.L. SAINI, AM**

**ITA No.791/Kol/2019**  
(Assessment Year: 2014-15)

<b>M/s Zenith Fish Corporation</b> B-52, Diamond Park, Kolkata – 700104.	Vs.	<b>Pr. CIT-9, Kolkata</b>
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAFZ3455E</b>		
<b>(अपीलार्थी /Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>

Appellant by : Shri K. M. Roy, FCA  
Revenue by : Dr. P. K. Srihari, CIT(DR)

सुनवाई की तारीख / **Date of Hearing** : **26/09/2019**  
घोषणा की तारीख/**Date of Pronouncement** : **18/12/2019**

**आदेश / O R D E R**

**Per Dr. A. L. Saini, AM:**

The captioned appeal filed by the assessee, pertaining to Assessment Year 2014-15, is directed against the order passed by Id. Principal Commissioner of Income Tax-9, Kolkata, under section 263 of the Act, dated 27.03.2019.

2. By way of this appeal, the assessee has challenged the correctness of the order passed by the Id Principal Commissioner of Income Tax ( in short, ‘PCIT’), under section 263 of the Act, dated 27.03.2019. The grounds of appeal raised by the assessee are as follows:

*“1. That the order is unsustainable in the eyes of law as A.O has conducted necessary enquiry and has adopted one of the possible course of action.”*

3. The facts of the case which can be stated quite shortly are as follows: The assessee-firm filed its return of income for the Assessment Year 2014-15 on 06.12.2014 declaring a total income of Rs.11,98,290/-. Thereafter, the case was selected for scrutiny under CASS. The assessment order under section 143(3) of

the I.T. Act, 1961 was passed by AO on 05.12.2016 at an assessed income of Rs,73,95,440/-.

4. Later on, Id PCIT has exercised his jurisdiction under section 263 of the Act. The Id PCIT, on perusal of the assessment record noticed that the assessee had claimed labour charges amounting to Rs.26,25,000/-. The Id PCIT further noticed that this expense is altogether a new introduction in the assessment year under consideration and no such claim was made in earlier years by the assessee firm though the nature of business remains unchanged. The Id PCIT also noticed that one of the partners of the assessee-firm, Smt. Manjushree Chakraborty had introduced capital of Rs.16,57,666/- during the year under consideration. Such introduction of capital had not been enquired into by the A.O. while framing the assessment order; no relevant bank statement, cash flow and /or consolidated personal Balance Sheet was furnished by the A.O. Keeping in line with the facts of the case, the Assessing Officer was required to make enquiries/verification to evaluate the source of such introduction of capital. The A.O. also failed to apply his mind and make necessary verification although the overall mandate of the Assessing Officer in scrutinizing the assessee's return of income required him to make an indepth inquiry into the facts of the case.

In view of the facts enumerated above, it was felt by Id PCIT that the order passed by the A.O. was erroneous and prejudicial to the interest of the revenue. Thereafter, notice u/s. 263 was issued to the assessee on 29.10.2018.

5. In response to the notice under section 263 of the Act, the assessee submitted before the Id. Pr. CIT that all the documents were impounded by the Income Tax Department during the survey operation on 20.01.2014 and, hence, the assessee was unable to produce any documents in support of its claim of expenses towards labour charges amounting to Rs.26,25,000/-. The assessee also contended that the issue of capital introduction by Smt. Manjushree Chakraborty amounting Rs. 16,57,666/- was raised during assessment proceedings and to which assessee duly complied.

6. However, the Id. Pr. CIT rejected the contention of the assessee and held that it is a fit case for invoking provisions u/s.263 of the I.T. Act. Thus, Id PCIT set aside the order of AO and restored back to the file of the Assessing Officer for making a fresh assessment and examine the followings:

- (a) to make verification of the genuineness of the claim of labour charges of Rs.26,25,000/-, and
- (b) to inquire into the issue of introduction of capital by one of the partners, Smt. Manushree Chakraborty.

7. Aggrieved by the order of the Pr. CIT, the assessee is in appeal before us.

8. The Id. Counsel for the assessee submitted that assessee has furnished details of labour charges incurred for the purpose of business and sufficient evidences regarding capital introduced by the partner. During the scrutiny assessment, the AO issued notice under section 143(1) of the Act and in response to said notice, the assessee submitted to AO the documents and evidences which were required for his examination. The AO conducted ten hearings and examined all the evidences in respect of labour charges and capital introduced by one of the partners therefore order passed by the AO is not erroneous.

9. On the other hand, learned DR for the Revenue submitted before the Bench that AO has not conducted sufficient hearings to examine the genuineness of labour charges as well as genuineness of introduction of capital by one of the partners in the partnership firm therefore, order passed by the AO is erroneous and prejudicial to the interest of Revenue. Apart from this, Id DR has primarily reiterated the stand taken by the Id PCIT which we have already noted in our earlier para and the same is not being repeated for the sake of brevity.

10. We have heard both the parties and perused the materials available on record. First of all, we have to see whether the requisite jurisdiction necessary to

assume revisional jurisdiction is there existing before the Pr. CIT to exercise his power. For that, we have to examine as to whether in the first place the order of the Assessing Officer found fault by the Principal CIT is erroneous as well as prejudicial to the interest of the Revenue. For that, let us take the guidance of judicial precedence laid down by the Hon'ble Apex Court in *Malabar Industries Ltd. vs. CIT* [2000] 243 ITR 83(SC) wherein their Lordship have held that twin conditions needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of the Revenue. In the following circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application of law; or (iii) Assessing Officer's order is in violation of the principle of natural justice; or (iv) if the order is passed by the Assessing Officer without application of mind; (v) if the AO has not investigated the issue before him; then the order passed by the Assessing Officer can be termed as erroneous order. Coming next to the second limb, which is required to be examined as to whether the actions of the AO can be termed as prejudicial to the interest of Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of *Malabar Industries (supra)* held that this phrase i.e. "prejudicial to the interest of the revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Their Lordship held that it has to be remembered that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue "unless the view taken by the Assessing Officer is unsustainable in law".

11. Taking note of the aforesaid dictum of law laid down by the Hon'ble Apex Court, let us examine whether order passed by the AO is erroneous and prejudicial to the interest of Revenue. The Id Counsel submitted before us 'order sheet' of the assessing officer which was maintained by the assessing officer during the assessment proceedings. We have examined the 'order sheet' and noticed that assessing officer has conducted ten hearings. The particulars of ten hearings as per 'order sheet' is given below:

**M/s ZENITH Fish Corporation**  
C/o Srimanta Chakraborty  
B/52, Diamond Park, Joka, Kolkata-700104.  
PAN: AAAR2345E  
A.Y. 2014-15

10.09.2015 The return of income filed by the assessee firm on 06.12.2014 declaring total income of Rs.11,98,290/- for the A.Y. 2014-15 but the same has not yet been processed u/s-143(1) of the I.T. Act. 81 due to scrutiny selection through CASS. Accordingly, statutory notice u/s-143(2) dated 10.09.2015 is issued fixing date of appearance on 17.11.2015 at 11:00 a.m. and duly served upon the assessee firm of 24.09.2015. *Present*

16.11.2015 Neither assessee nor any A/R on behalf of the assessee firm appeared on the stipulated date and time. Subsequently, statutory notice u/s-142(1) dated 11.04.2016 is issued alongwith questionnaire fixing date of hearing on 28.04.2016 at 12:30 p.m. *Present*

28.4.16 None appeared even no written Submission was found to have been filed. *Present*

02/06/16 Refixation letter issued with a request to appear on 14/06/16 with the details as asked for through questionnaire with notice u/s-142(1) dt. 16.4.15. *Present*

14/06/16 Mr. Dipak Kr. Gueria, A/R of the assessee firm appeared and produce the following -  
(i) Power of Attorney  
(ii) Copy of ITR-5  
(iii) Bank details without statement  
(iv) Commission received from various Customers during the year  
(v) Audit report in the form of 3CD 3CD with audited P&L A/c & B/E  
(vi) Photo Copy of Partnership Deed.  
(vii) Details of debtors & Creditors  
The case is adjourned till 15/07/16 at 2:00 PM. *Present*  
14/6/16

**Income Tax Officer, Joka**  
P. C. SARDAR  
Income Tax Officer, Joka  
Income Tax Office, Joka, Kolkata  
WB-74-153(3), Kol.

②

Mr. Dipak Kr. Gueria, A/R of the assessee firm appeared and produced the following documents -

- 1) Copy of partners' return filed in individual capacity for the year 2014-15.
- 2) Hard Copy of return of (firm) assessee for the year 2014-15.
- 3) Memorandum of Association of Company M/s Rista Fisheries & Infrastructure with statutory copy of return and audit report.

However, Mr. Gueria is requested to produce the following in the next hearing -

- 1) details of Commission (Date wise)
- 2) Audit report in the form of 3CD & 3CD
- 3) Copy of bank A/c for the period from 01.4.2012 to 31.03.14.

The case is adjourned till 29/07/16. *Present*  
29/7/16

Mr. Dipak K. Gueria, A/R of the assessee appears and seeks to explain the Commission paid to partners w/o Rista Fisheries having status of Company and why would not be disallowed as per explanation of 115 provision u/s-40(b) as only individuals and HUF only are allowed to get Commission from the partnership firm. In reply no explanation offered by the counsel all accepted to the proposed disallowance.

The case is partly dismissed and adjourned till 29/07/2016. *Present*  
29/7/16

**Income Tax Officer, Joka**  
P. C. SARDAR  
Income Tax Officer, Joka  
Income Tax Office, Joka, Kolkata  
WB-74-153(3), Kol.

11/1/2016

(3)

Mr. Dipak Kumar Guria, A/R appears and asked to explain the interest on Capital allowed by the firm to Sri Srimanta Chakraborty and Smt. Manju Shree Chakraborty to the amount of Rs. 19,43,357/- & Rs. 8,32,229/- respectively during the year but not considered into (P+L) a/c. After re-examining only the resultant component i.e. interest paid by both partners to the firm on excess capital withdrawn was taken credited to (P+L) a/c by the amount of Rs. 1,63,191/- So, the residue on reinvested as Capital by both the partners would be accepted only if the interest paid by them would be considered as Income of firm. But the assessee could not take the interest component paid by the partners Rs. 26,12,397/- (19,43,357/- + 8,32,229/- - 1,63,191/-) in the (P+L) a/c as Income. Hence, how it can be excused from treating the same as undisclosed/concealed and penalty u/s-271(C) would not be invoked. Mr. Guria, A/R assented to the issue and offered cash amount for taxation. The case is closed vide 17/1/16.

02/12/16

Mr. Dipak Kumar, A/R appears and produced the detailed documentary evidences of firm and partners but unable to submit a single book as all the same were impounded by the Dept. That is the only reason for non-submission of books of accs. One issue is raised regarding labour charges paid Rs. 26,25,000 debited to the (P+L) a/c for the first time. No such expense was claimed in any earlier years by the assessee firm. Mr. Guria, is asked to explain the nature of expenses defrayed by the firm, means what kind of activities were performed by the labour used and paid. Mr. Guria states that those labour were put to carry fish from jetty to boat on daily basis. Earlier years those expenses were paid usually by the fish owner/collector/catcher which was directly adjusted against commission earned by the firm for the respective parties.

05/12/16

Penalty proceeding u/s-271(C) is deemed & discussed.

05/12/16

Office of the Income Tax Officer, Ward-25(3), Kolkata

Income Tax Officer, Ward-25(3), Kolkata

05/12/16

(4)

Assessed u/s-143(b) determining total Income of Rs. 73,95,110/- for the A.Y. 2014-15 and tax is calculated charging interest as applicable after allowing prepaid taxes. Issue copy of the order, notice and a copy of computer generated calculation sheet.

Penalty proceeding u/s-271(C) is initiated and penalty notice u/s 271 r.w.s. 271(C) issued accordingly.

05/12/16

Office of the Income Tax Officer, Ward-25(3), Kolkata

Income Tax Officer, Ward-25(3), Kolkata

The Id Counsel submits before us that during the ten hearings, the assessing officer examined the evidences and documents relating to labour charges. Besides, the assessee explained the labour charges stating that these were incurred for the purposes of business. The veracity of the introduction of capital

by one of the partners, Smt. Manushree Chakraborty, has also been examined by AO in detail. Therefore, order passed by the AO is not erroneous.

12. So far the verification of labour charges of Rs.26,25,000/- is concerned, we note that as per 'order sheet' of the Assessing Officer, the assessee's AR appeared before the AO and the AO has discussed with the authorized representative of the assessee and subsequently issued statutory notices u/s 142(1) dated 16.11.2016 along with questionnaire of hearing dated 28.04.2016. In response to the notice u/s 142(1), the assessee's AR appeared and filed before the AO the copy of income tax, bank details, commission details, audit report in Form No.3CB and 3CD, profit & loss account, balance sheet, copy of partnership deed, and details of sundry debtors and creditors. In subsequent dates, the assessee filed before the Assessing Officer the required details as sought by notice u/s 142(1) of the Act. On 02.12.2016, vide order sheet, of the Assessing Officer, the assessee submitted the details of labour charges of Rs.26,25,000/- and Assessing Officer discussed in detailed about the labour charges of Rs.26,25,000/- and then framed the assessment order. Therefore, it cannot be said that assessing officer has not conducted sufficient inquiry as alleged by the ld DR for the Revenue.

It is not a case of lack of inquiry also, as the Assessing Officer has made necessary enquiry during the assessment proceedings by conducting ten hearings, vide order dated 05.12.2016. Therefore, so far labour charges is concerned, the order passed by the Assessing Officer, cannot be treated erroneous and prejudicial to the interest of Revenue.

13. Now coming to the introduction of capital by one of the partners, Smt. Manushree Chakraborty, we note that as per order sheet of the Assessing Officer, the assessee's AR appeared before the Assessing Officer and explained the introduction of capital with relevant evidences, Vide order sheet dated 14.06.2016. The assessee's AR also produced the partnership deed and Balance Sheet before the Assessing Officer and discussed the capital introduced by Smt.

Manushree Chakraborty (one of the partners) and having discussed the matter in detail, the Assessing Officer passed the order. Therefore, order passed by the Assessing Officer on this count cannot be said that there was a lack of enquiry on his part. The Assessing Officer examined the capital introduced by partner and labour charges and having examined the relevant documents, he came to the conclusion that capital introduced by the partner is genuine, therefore it is not a case of lack of enquiry on the part of the Assessing Officer. Based on the factual position narrated above, we are of the view that Assessing Officer has scrutinized every aspect of capital introduced by partner and labour charges by conducting ten hearings, therefore the allegation of the Id DR that AO has not examined the capital introduced and labour charges by conducting sufficient hearings is baseless.

14. In view of the facts of the case and judicial pronouncements relied upon, it is well established that the impugned order passed u/s. 143(3) dated 05.12.2016 was passed after calling for relevant information and after detailed examination of the same. The AO has passed the assessment order after calling for details on the issue and after considering the reply and documents and after verification of the same and after due application of mind passed the assessment order, so it cannot be termed as erroneous and prejudicial to the interest of the revenue. So, the Ld. CIT's finding fault with the order of the AO is erroneous as well as prejudicial to the interest of revenue on account of lack of inquiry has to fail.

Therefore, at this juncture, it is pertinent to mention here that the way in which assessment should be finalized falls in the exclusive domain of the Assessing officer. Section 142(1) speaks of inquiry before assessment and gives immense power to the A.O. for conducting enquiry. Therefore, the A.O. u/s 142(1)(ii) & (iii) can ask the assessee almost any information which he think necessary for passing assessment order. The assessing officer has conducted a detailed scrutiny and thorough enquiry in respect of capital introduced and labour charges. After going through the information furnished by assessee, we note that it is not a case of inadequate scrutiny as noted by the Id CIT in his order U/s 263 of the Act.

Therefore, order passed by the AO is neither erroneous nor prejudicial to the interest of Revenue.

15. We note that it is within the province of the Assessing officer to decide that which points he wants to take up for enquiry and to what extent and, as such, the Ld. C.I.T. cannot interfere with the same and even if Ld. Commissioner has such results of enquiries, the resultant order cannot be subjected to revision proceeding. On the facts of the case it would not be out of the context to state that the impugned scrutiny assessment was not for reason of any information, search result and directions from higher authorities, inasmuch as nothing has been recorded to that effect in the assessment order. As a matter of normal procedure, the assessee's case was selected for scrutiny assessment. The objective of scrutiny assessment u/s. 143(3) is to confirm that the taxpayer has not understated the income or has not computed excessive loss or had not underpaid the tax in any manner. To confirm the above, the Assessing officer carried out a detailed scrutiny of the return of income, as deemed fit, and satisfied himself regarding various claims, deductions etc. made by an assessee in the return of income. The Ld. PCIT has subjected the assessment order to proceeding u/s. 263 of the Act mainly on the ground that the order passed by the A.O. amounts to inadequate scrutiny of labour charges and capital introduced by partner. After conducting ten hearings and discussing the matters with the A.R. on several dates and receiving requisite information/evidences in response to notices u/s.142( 1) of the Act, the Ld. A.O. was satisfied on his own perceptions about the correctness or otherwise of the capital introduced and labour charges. Therefore, the exercise aimed at ascertaining the correct income of the assessee has been fulfilled by the Ld. A.O. by exercising his quasi-judicial functions vis-a-vis passing the assessment order u/s. 143(3) of the Act. Therefore, certainly it is not a case wherein adequate enquiries at the assessment stage were not carried out or assessment was made in haste. However, what is an opinion formed as a result of these enquiries and verification of the materials is something which is in exclusive domain of the Assessing officer, and even if Commissioner does not agree with the results of

such enquiries, the resultant order cannot be subjected to revision proceedings. For this, we rely on the decision of Coordinate Bench of this Tribunal in the case of Smt. Juthika Kar vs. ITO [I.T.A. No.1128/Kol/2009, dated 16.5.2012], wherein it has been held as under :-

*"8. With the leave and consent of my learned brother, however, I may add a few words to my learned brother's analysis of Hon'ble Delhi High Court's judgment in the case of Gee Vee Enterprises (supra). Undoubtedly, as noted by their Lordships in that case, an Assessing officer cannot remain passive in the face of a return which is apparently in order but calls for further enquiry. In such a case, revision proceedings can indeed be initiated and there seems to be no serious controversy in this respect. The fine point, however, one must bear in mind is the distinction between adequate enquiries not having been conducted and the result of such enquiries not having been dealt with by way of a speaking order or not having resulted in the conclusion that could be, in the wisdom of a person other than the Assessing officer, more appropriate. Here is a case in which sufficient enquiries were conducted. As learned brother has rightly noted, the Assessing officer called for specific details, confirmations and even copies of bills. It could not, therefore, be said that sufficient enquiries were not conducted. However, what is opinion formed as a result of these enquiries is something which is in exclusive domain of the Assessing officer, and even if Commissioner has such results of enquiries, the resultant order cannot be subjected to revision proceedings. The conclusions arrived at as a result of enquiries cannot be tinkered with in the revision proceedings. **The conclusions being drawn up as a result of enquiry is a highly subjective exercise and as to what is appropriate conclusion is something on which perceptions vary from person to persons. These variations in the perceptions of the Assessing officer vis-a-vis that of the Commissioner, cannot render an order erroneous and prejudicial to the interest of the revenue.***

*9. Viewed in this perspective, and having noted that the Commissioner has subjected the assessment order mainly on the ground that the Assessing officer did not reach the right conclusions as a result of his enquiry, the impugned revision order is indeed unsustainable in law. It is not a case in which adequate enquiries has not been carried out. "*

At the cost of repetition, we state that after thorough examinations of the details and documents and explanations submitted by the Ld. A.R. of the assessee (in respect of labour charges and capital introduced), as per requisitions sought by the A.O. and as deemed fit for computing the true taxable income, the assessment was completed u/s. 143(3) of the Act, therefore, it is not a case of inadequate

scrutiny hence the order passed by the AO is neither erroneous nor prejudicial to the interest of Revenue, therefore, we quash the order passed by Id PCIT under section 263 of the Act.

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

Order pronounced in the open court on this 18/12/2019.

**Sd/-**  
**(A. T. VARKEY)**

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

Dated: 18/12/2019

RS, Sr.PS

**Sd/-**  
**(A. L. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant- M/S
2. प्रत्यर्थी / The Respondent.- Pr.
3. आयकर आयुक्त(अपील) / The C
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अ
6. गार्ड फाईल / Guard file.

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