

आयकर अपीलीय अधीकरण, न्यायपीठ – “ए” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL*  
*KOLKATA BENCH “A” KOLKATA*

Before **Shri J.Sudhakar Reddy, Accountant Member** and  
**Shri S.S.Godara, Judicial Member**

**ITA No.1027/Kol/2018**  
Assessment Year:2013-14

Kartick Bose C/o Network Industries Ltd., 171/1, Mahatma Gandhi Road, Burabazar, Kolkata-700 007 [PAN No.AOMP B 2179 K]	बनाम / V/s.	Principal Commissioner of Income Tax, Central-1, Ayakar Bhawan, Poorva, 110, Shanti Pally, E.M. Bypass, 3 <sup>rd</sup> Floor Kolkata- 107
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Soumita Choudhury, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri A.K. Nayak, CIT-DR
सुनवाई की तारीख/Date of Hearing	03-12-2019
घोषणा की तारीख/Date of Pronouncement	22-01-2020

**आदेश /O R D E R**

PER S.S.Godara, Judicial Member:-

This assessee’s appeal for assessment year 2013-14 arises against the Principal Commissioner of Income Tax (Central)-1, Kolkata’s order dated 26.03.2018 passed in Memo.No.PCIT(C)-1/sec.263/2017-18/10024-27, involving proceedings 263 of the Income Tax Act, 1961; in short ‘the Act’.

Heard both the parties. Case file(s) perused.

2. Both the learned representative(s) at the outset takes us to the PCIT’s detailed discussion holding the regular assessment in question dated 24.03.2016 as an erroneous one causing prejudice to interest of the Revenue reads as under:-

“2. The above assessment order has been examined by me along with the assessment record. As found by me from the Profit and Loss Account, the assessee has shown purchase of Rs.42,90,22,980/- and sale of Rs. 42,46,70,330/-. In the assessment order, the AO has given a finding that purchase of the proprietor concern is inflated but no further enquiry in the genuineness of the purchase declared by the assessee, has been made. In case of Vijay Proteins Ltd. Vs. CIT(2015) 58 taxmann. Com,44, the Hon'ble Gujarat High Court has confirmed the decision of ITAT, Ahmedabad disallowing 25% of purchase that was found to be inflated by showing higher purchase price through fictitious invoices. In the assessment record, only purchase and sale ledger are available. No further details or documents are available relating to enquiry made by the AO to find out about the genuineness of purchase shown by the assessee. If the AO had information about the inflation of purchase in case of the assessee, he should have investigated about the genuineness .of entire purchases shown by the assessee and then necessary decision should have been taken by him for disallowing an appropriate percentage of purchase depending on the extent of the purchases found to be inflated. Since the AO had not made any enquiry or verification in respect of purchases shown by the assessee, the above-mentioned assessment order dated 24.03.2016 passed in case of the assessee for A.Y. 2013-14 u/s 143(3) has been found to be deemed to be erroneous in so far as in prejudicial to the interest of revenue in view of Clause (a) of Explanation 2 of section 263.

3. After finding the assessment order dated 24.03.2016 being erroneous and prejudicial to the interest of revenue as discussed in .previous para, a notice dated 13.03.2018 is issued to the assessee asking it to explain as to why the above mentioned assessment order should not be revised as per the provisions of section 263 to correct the errors discussed in the previous para. In response to this notice, Shri Jaydeep Chakraborty, Advocate appeared on 19.03.2018 alongwith Vakalatnama on behalf of the assessee company as its authorized representative, hereinafter referred as the Ld. AR and filed a written submission. This written submission is reproduced as under:-

"That the main ground of objection for 263 is regarding the inflated purchases value.

That Your Honour, we would like to bring to your notice that during the course of assessment proceedings the assessee produced all the relevant documents before the Ld. A.D. relating to its purchase and expenditure. A disallowance of 25% on purchase ad hoc without any evidence may kindly be reconsidered by Your Honour for this particular matter of the assessee Shri Kartick Bose (P AN- AOMP2179K).

To substantiate our plea relating to Your 263 notice, we have relied on the following case laws for Your Honour's kind perusal.

Reliance is placed in the case of **CIT v. Lalit Bahsin 290 ITR 245 (Del)** where the Delhi High Court deleted the addition on the ground that A.O. arrived at conclusion primarily on imaginative basis and conjectures rather than on the basis of any record or books of account and hence deleted the addition.

Reliance is also placed in the case of **Omega Estates V s. ITO 106 .ITD 427 (Chennai)** where the Chennai Bench of ITAT held that since the revenue

could not prove that actual consideration was more than that recorded by the assessee and since books of account had not be rejected, there was no basis of making the estimated addition.

Reliance is further placed in the case of **K.P. Varghese Vs . ITO, Ernakulam and Another 131 ITR 597 (SC)** wherein the Supreme Court held that assessee must be shown to have received more than what is declared or disclosed ~Y him as consideration and only then addition can be sustained.

Reliance is also further placed in the case of **Pioneer Himudyog P. Ltd. Vs. Assistant Commissioner of Income-tax (ITAT Kolkata) I. T.A. No. 338/Kol/2017** where it has been opined that without rejecting the books of account, the ad hoc disallowance made is not sustainable in the eyes of law especially when Assessee has maintained books of account with supporting.

Reliance is also further placed in the case of **Balbir Singh Vs. ACIT (ITAT Jaipur)** where it has been opined that expenses can't be disallowed on estimation basis without verification of genuineness.

Considering the above facts and circumstances it is very clear that the queries raised by you have duly been considered by the A.G. at the time of making assessment u/s 143(3), therefore, Your Honour is requested to drop the proceedings u/s :?63 of the I.T. Act 1961."

4. In the above written submission, the Ld. AR has mainly argued against the ad hoc disallowance of purchases contending that during the course of assessment proceeding, the assessee produced all relevant documents before the Ld. Af) relating to its purchases and expenditures and hence, as pleaded by him, a disallowance of 25% of purchases on ad hoc basis without any evidence may be reconsidered. In support of his argument, the Ld. AR has referred to certain judgments as mentioned in the above written submission. Here, the proceeding u/s 263 has not been initiated to make ad hoc disallowance out of purchases without any evidence but due to not making any enquiry or verification by the AO, even after making an observation in the assessment order that purchases are inflated. Due to not making requisite enquiry or verification of the genuineness of purchases shown by the assessee, the assessment order passed by the AO has become deemed to be erroneous in so far as prejudicial to the interest of revenue. Therefore, now the AO is required to make enquiry from the parties from whom purchases have been shown e quantity of clothes sold, rate of clothes sold b them to the assessee corn any and the genuineness of such sale made by them to the assessee company and if genuineness of sales made by them to the assessee company is not verified due to non-traceability of such parties or rate or quantity of such clothes sold by these parties to the assessee company is found to be inflated, an appropriate percentage of such purchases should be disallowed by the AO following the decision of Vijaye Protein (supra) in which 25% of purchases were disallowed due to purchase parties could not be traced out and genuineness of purchase bills could not be verified. Therefore, in this case also, the AO is directed to make necessary enquiries and verification of purchases to find out about the genuineness of purchases-and the bills shown in their names and then, depending upon the result of enquiries, make appropriate disallowance out of purchases keeping in view the rates laid down by Gujarat High Court in case of Vijay Proteins (Supra)."

3. We have heard rival pleadings against and in support of the PCIT's action under challenge assuming sec.263 revision jurisdiction. Case file perused. There can hardly be any dispute about the settled legal proposition in *Malabar Industrial Co. Ltd. vs. Commissioner of Income Tax* (2000) 243 ITR 83 (SC) and *Commissioner of Income Tax vs. Max India* (2007) 295 ITR 282 (SC) that before an assessment is held as erroneous causing prejudice to interest of the Revenue, both these conditions have to be simultaneously satisfied. And that an assessment cannot be treated as an erroneous one causing prejudice to interest of the Revenue in case the Assessing Officer has taken one of the possible views. We keep in mind this settled legal proposition and proceed to deal with the facts of the case. We reiterate that the PCIT's revision directions quoted the catena of case law (supra) that bogus purchase have to be disallowed @ 25% that @ 5% as per regular assessment in question. We notice that the case records speak otherwise. This assessee is stated to be an individual / proprietor of M/s Jayashri Trading Co. and M/s Annette Enterprise. He traded in hosiery goods & fabrics. He had also acted as director of other group concern M/s Network Industries Ltd. It transpires from the regular assessment dated 24.03.2016 that the Assessing Officer found the assessee to have shown very lower net profit against voluminous gross receipt in its profit and loss account. He observed that the assessee's proprietor concern were actually dummy concerns for inflated purchases and sales of M/s Network Industries Ltd. And that the assessee's entire sale-purchase transactions were with the said group concern only. He therefore proceed to disallow 5% of the expenditure of ₹84,90,060/- coming to ₹4,23,503/- in the course of assessment.

4. Learned CIT-DR vehemently supported the PCIT's action that the impugned disallowance has to be made @ 25% than @ 5% going by the his foregoing reasoning. We find no merit in Revenue's instant argument. We make it clear that the case law quoted at the Revenue's behest deals with bogus purchases whereas we are dealing with an instance of alleged inflated purchases between group concerns for the purpose and reducing gross profit rate. There is further no quarrel assessee's sale purchase

figures between the group concern have been accepted *per se* since the Assessing Officer proceeded to disallow an estimated 5% inflated amount only. We conclude in this factual backdrop that the PCIT has erred in law and on facts in holding the Assessing Officer's regular assessment to this effect as an instance of outright bogus than inflated purchases. We accordingly go by following settled legal proposition to hold that PCIT has erred in law and on facts in assuming his sec. 263 revision jurisdiction. The same stands reversed. Ordered accordingly.

5. This assessee's appeal is allowed.

Order pronounced in open court on 22/01/2020

Sd/-  
(लेखा सदस्य)  
(J.Sudhakar Reddy)  
Accountant Member

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

\*Dkp-Sr.PS

दिनांक:- 22/01/2020 कोलकाता / Kolkata

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

1. अपीलार्थी/Appellant-Kartick Bose, C/o Network Industries Ltd., 171/1, Mahatma Gandhi Road, Burrabazar, Kolkat-007
2. प्रत्यर्थी/Respondent-PCIT, Central-1, Aayakar Bhawan, Poorva, 110, Shanti Pally, E.M.Bypass, 3<sup>rd</sup> Floor, Kolkata-107
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
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 ।