

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2422/MUM/2019  
Assessment Year: 2014-15**

Jay Precision  
Pharmaceuticals Pvt. Ltd.,  
Plot No. 40/41, ABCD,  
Government Industrial  
Estate, Charkop, Kandivali  
(West), Mumbai-400067.  
**PAN No. AACJ8963G**  
**Appellant**

Pr. Commissioner of Income Tax-  
12,  
Vs. Room No. 127, 1<sup>st</sup> floor, Aaykar  
Bhavan, M.K. Road,  
Mumbai-400020.

**Respondent**

Assessee by : Mr. Dharmesh Shah, AR  
Revenue by : Mr. Uodal Raj Singh, Sr. DR

Last Date of Hearing : 03/01/2020  
Date of Pronouncement : 14/07/2020

**ORDER**

**PER N.K. PRADHAN, A.M.**

This is an appeal filed by the assessee. The relevant assessment year is 2014-15. The appeal is directed against the order u/s 263 of the Income Tax Act 1961, (the 'Act') passed by the Pr. Commissioner of Income Tax-12 Mumbai [in short 'Pr. CIT'].

2. The grounds of appeal filed by the assessee read as under :

1. The Ld. Pr. CIT has erred in law and in facts in issuing notice u/s 263 of the Act and passing revision order without satisfying the conditions laid down u/s 263 of the

Act and without appreciating that the assessment order was neither erroneous nor prejudicial to the interest of revenue.

2. The Ld. Pr. CIT has erred in law and in facts in not appreciating that the claim made by the appellant was correct and proper and that the amounts of job work charges of Rs.10,68,26,606/-, labour charge of Rs.1,42,75,306/-, electricity and fuel charges of Rs.1,17,49,539/- and purchases of Rs.7,16,28,506/- were correctly reflected and claimed in the accounts.

3. Briefly stated, the facts of the case are that the appellant filed its return of income for assessment year (AY) 2014-15 on 29.11.2015 declaring total income of Rs.8,54,69,815/-. It is engaged in the business of pharmaceutical devices and allied plastic articles. It has taken over pharma division of related party M/s Jay Precision Products (India) Ltd. which got demerged w.e.f. 01.01.2014.

The Pr. CIT initiated the proceedings u/s 263 of the Act on the ground that the Assessing Officer (AO), while making the assessment u/s 143(3), failed to examine certain issues regarding job work charges which was placed at Rs.10,68,26,606/- by the assessee at the assessment stage *vis-a-vis* Rs.6,93,11,793/- debited to the profit and loss account and shown payable to M/s Jay Precision Products (India) Limited ; liability of Rs.142,75,306/- on account of labour charges and Rs.117,49,539/- on account of electricity and fuel charges of pharma division towards M/s Jay Precision Products (India) Limited, when the same after its demerger had already been taken over by the assessee-company w.e.f. 01.01.2014 and certain transactions of purchases made from and to M/s Jay Precision Products (India) Limited including making of reference of specified domestic transactions to TPO.

Though the assessee had replied to the show cause notice, the Pr. CIT was not convinced with the same and held that (i) the detail referred by the assessee which were filed at the assessment stage merely stated that job work charges of Rs.10,68,26,606/- was payable to M/s Jay Precision Products (India) Limited which was reduced by Rs.3,75,14,813/- being job work income from M/s Jay Precision Products (India) Limited due to scheme of demerger, there is no explanation as to why the amount shown in Form 3CD and 3CEB is Rs.6,93,11,793/- which clearly indicated that the assessee-company has not made proper disclosure of its expenses in Form 3CEB which requires disclosure of actual expenses and not the netted figure of any receipt; (ii) similar is the case of other expenses including labour charges and electricity and fuel charges, where assessee has provided the very same details which were mentioned in the show cause notice, wherefrom reasons for claims of such expenses due to demerger could not be deduced.

Thus the Pr. CIT observed that the assessee has netted the receipts against the expenses and only the net figures are shown in Form 3CD as covered u/s 40A(2)(b) and for specified domestic transactions in Form 3CEB which is incorrect and untrue disclosure in the said reports warranting reference to TPO. Therefore, the Pr. CIT set aside the assessment order dated 19.12.2016 passed by the AO u/s 143(3) with a direction to make a fresh order in accordance with relevant provisions of the Act.

4. Before us, the Ld. counsel for the assessee files a *Paper Book* containing *inter alia* (i) Audited balance sheet and profit and loss account for the year ended 31.03.2014 along with relevant schedules, (ii) Audit Report u/s 44AB of the Act dated 29.11.2014 for AY 2014-15 along with relevant annexures, (iii)

Form No. 3CEB of the appellant for AY 2014-15, (iv) Submission dated 25.10.2016 filed before the Assessing Officer along with relevant enclosures during the assessment proceedings, (v) Submission dated 22.11.2016 filed before the Assessing Officer along with relevant enclosures during the assessment proceedings, (vi) Submission dated 28.11.2016 filed before the Assessing Officer along with relevant enclosures during the assessment proceedings, (vii) Division-wise bifurcation of items of Profit & Loss Account of Jay Precision Products (India) Pvt. Ltd. for the year ending 31.03.2014, (viii) Following accounts of purchases/expenses in the books of the appellant for AY 2014-15 (a) Labour charges A/c, (b) Raw material plastic powder A/c, (c) Purchase Account, (ix) Ledger accounts showing purchase of imported raw materials of Rs.55,45,967/- and plastic powder aggregating to Rs.5,08,30,478/- in the books of Jay Precision Products (India) Pvt. Ltd. for the period 01.01.2014 to 31.03.2014, (x) Ledger account showing sales in various heads in the books of Jay Precision Products (India) Pvt. Ltd. for the period 01.01.2014 to 31.03.2014, (xi) Corresponding sales accounts in the books of the appellant duly incorporating the sales of Jay Precision Products (India) Pvt. Ltd. for the period 01.01.2014 to 31.03.2014.

The Ld. counsel has certified that the above documents were filed before the AO during the course of assessment proceedings.

4.1 Relying on the above documents filed before the AO, the Ld. counsel submits that during the year, the job work charges payable to pharma division of Jay Precision Products (India) Limited were Rs.10,68,26,606/-. This included Rs.6,93,11,793/- for the period from 01.04.2013 to 31.12.2013 and Rs.3,75,14,813/- for the period from 01.01.2014 to 31.03.2014. It is further

explained that upon merger of the pharma division, the sales shown by them of Rs.3,75,14,813/- to the assessee were therefore, adjusted and cancelled against expenses of same account debited to the P&L account; accordingly the net amount was claimed at Rs.6,93,11,793/- and reported in the tax audit report and Form 3CEB.

The Ld. counsel further submits that the labour/processing charges and electricity and fuel charges mentioned in the order u/s 263 passed by the Pr. CIT relate to pharma division of Jay Precision Products (India) Pvt. Ltd. for the period 01.01.2014 to 31.03.2014 which is acquired during the year.

Further, it is stated by him that the various amounts referred in the impugned order relate to expenses incurred by the pharma division of Jay Precision Products (India) Pvt. Ltd. so acquired by the assessee pursuant to the order of the Hon'ble High Court i.e. particularly expenses of Rs.55,45,967/- and Rs.5,08,30,478/- are purchases made by the pharma division from 01.01.2014 to 31.03.2014 from outside parties and these purchases have been considered as expenses of the assessee-company pursuant to the merger.

The Ld. counsel further submits that (i) amount of Rs.91,19,061/- and Rs.12,25,000/- are purchases made by the assessee-company from Jay Precision Products (India) Pvt. Ltd. during the entire year, (ii) the sale of pharma division of Jay Precision Products (India) Pvt. Ltd. for the period 01.01.2014 to 31.03.2014 were also transferred to the assessee due to effect of demerger, (iii) the amount reported in the tax audit report (Form 3CD) and

Form No. 3CEB are the gross amount of the above purchase including the duties, taxes and freight.

Finally, the Ld. counsel relies on (i) *CIT v. Nirav Modi* 390 ITR 292 (Bom.), (ii) *CIT v. Nirav Modi* 77 taxmann.com 78 (SC), (iii) *Moil Ltd. v. CIT* 396 ITR 244 (Bom.), (iv) *CIT v. Kelvinator of India Ltd.* 256 ITR 1 (Del.), (v) *CIT v. Fine Jewellery (India) Ltd.* 372 ITR 303 (Bom.).

5. On the other hand, the Ld. Departmental Representative (DR) submits that the details filed by the assessee before the AO during the course of assessment proceedings indicated that the assessee has netted the receipts against the expenses and only the net figures are shown in Form 3CD as covered u/s 40A(2)(b) and for specified domestic transaction in Form 3CEB which is an incorrect disclosure in the said reports. It is further argued by him that the AO should have obtained and verified reconciliation regarding discrepancies in various figures mentioned in the impugned order passed by the Pr. CIT. The Ld. DR finally submits that the Pr. CIT has set aside the case to the AO to make necessary inquiry and verifications and then pass a fresh order as per the provisions of the Act, after affording reasonable opportunity of being heard to the assessee before finalizing the assessment order. Thus it is stated that no prejudice is caused to the assessee.

6. We have heard the rival submissions and perused the relevant material on record. The reasons for our decision are given below.

We find that the order was passed by the Hon'ble Bombay High Court for demerger on 14.11.2014 and appointed date was fixed as 01.01.2014. Accordingly, the income and expenses of pharma division of Jay Precision

Products (India) Pvt. Ltd. for the period 01.01.2014 to 31.03.2014 was transferred to the assessee-company.

From examination of the documents filed by the assessee before the AO during the course of assessment proceedings, we find that (i) during the year the job work charges payable to pharma division of Jay Precision Products (India) Pvt. Ltd. were Rs.10,68,26,606/- and it included Rs.6,93,11,793/- for the period 01.04.2013 to 31.12.2013 and Rs.3,75,14,813/- for the period 01.01.2014 to 31.03.2014, (ii) upon merger of the pharma division of Jay Precision Products (India) Pvt. Ltd., the sales shown by them of Rs.3,75,14,813/- to the assessee were therefore adjusted and cancelled against expenses of same account debited to the P&L account and accordingly the net amount was claimed at Rs.6,93,11,793/- and the said net amount was reported in the tax audit report and in Form 3CEB, (iii) the labour/processing charges and electricity and fuel charges as mentioned in the impugned order are related to and incurred by the pharma division of Jay Precision Products (India) Pvt. Ltd. for the period 01.01.2014 to 31.03.2014, (iv) the expenses referred in the impugned order were incurred by the pharma division of Jay Precision Products (India) Pvt. Ltd. so acquired by the assessee pursuant to the order of the Hon'ble High Court, (v) the sale of pharma division of Jay Precision Products (India) Pvt. Ltd. for the period 01.01.2014 to 31.03.2014 were also transferred to the assessee-company due to the effective demerger, (vi) the amount reported in the tax audit report (Form 3CD) and Form 3CEB are the gross amount of the said purchases including duties, taxes and freight.

All the above details were filed by the assessee before the AO during the course of assessment proceedings.

In the case of *Nirav Modi* (supra), the Hon'ble Bombay High Court has held "that the Assessing Officer was satisfied, consequent to making an inquiry and examining the evidence produced by the assessee, establishing the identity and creditworthiness of the donor and also the genuineness of the gift. The Commissioner in his order of revision, did not indicate any doubts in respect of genuineness of the evidence produced by the assessee. The satisfaction of the Assessing Officer on the basis of documents was not shown to be erroneous in the absence of making a further inquiry. This was a case where a view was taken by the Assessing Officer on inquiry. Even if this view, in the opinion of the Commissioner was not correct, it would not permit him to exercise power u/s 263 of the Act. The Tribunal was right in setting aside the order u/s 263 of the Act."

The SLP filed by the Revenue against the above order has since been dismissed by the Hon'ble Supreme Court as reported in (2017) 77 taxmann.com 78 (SC).

In the case of *Moil India Limited* (supra), it is held that the Assessing Officer is not expected to raise more queries if he was satisfied about admissibility of claim on the basis of materials and details supplied and therefore, the order is not erroneous or prejudicial to the Revenue.

In view of the above factual matrix and position of law, we cancel the order u/s 263 passed by the Pr. CIT.

7. However, before we part with the matter, we must deal with one procedural issue as well. While hearing of these appeals was concluded on 03.01.2020, this order thereon is being pronounced today, much after the

expiry of 90 days from the date of conclusion of hearing. We are also alive to the fact that rule 34(5) of the Income Tax Appellate Tribunal Rules 1963, which deals with pronouncement of orders. Let us in this light revert to the prevailing situation in the country. On 24th March, 2020, Hon'ble Prime Minister of India took the bold step of imposing a nationwide lockdown, for 21 days, to prevent the spread of Covid-19 epidemic, and this lockdown was extended from time to time. As a matter of fact, even before this formal nationwide lockdown, the functioning of the Income Tax Appellate Tribunal at Mumbai was severely restricted on account of lockdown by the Maharashtra Government, and on account of strict enforcement of health advisories with a view of checking spread of Covid-19. The epidemic situation in Mumbai being grave, there was not much of a relaxation in subsequent lockdowns also. In any case, there was unprecedented disruption of judicial work all over the country. As a matter of fact, it has been such an unprecedented situation, causing disruption in the functioning of judicial machinery, that Hon'ble Supreme Court of India, in an unprecedented order in the history of India and *vide* order dated 6.5.2020 read with order dated 23.3.2020, extended the limitation to exclude not only this lockdown period but also a few more days prior to, and after, the lockdown by observing that "In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown". Hon'ble Bombay High Court, in an order dated 15th April 2020, has, besides extending the validity of all interim orders, has also observed that, "It is also clarified that while calculating time for disposal of matters made time-bound by this Court, the period for which the order

dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly", and also observed that "arrangement continued by an order dated 26th March 2020 till 30th April 2020 shall continue further till 15th June 2020".

The Hon'ble Bombay High Court itself has, *vide* judgment dated 15<sup>th</sup> April 2020, held that "while calculating the time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly".

Viewed thus, the exception to 90 day time limit for pronouncement of orders inherent in Rule 34(5)(c) clearly comes into play in the present case.

8. In the result, the appeal filed by the assessee is allowed. Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 14/07/2020

*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
ITAT, Mumbai