

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad 'A' Bench, Hyderabad**

*(Through Video Conferencing)*

**Before Smt. P. Madhavi Devi, Judicial Member  
AND  
Shri D.S. Sunder Singh, Accountant Member**

ITA No. 446/Hyd/2019		
Assessment Year: 2015-16		
M/s Vishnu Priya Foods C/o P Murali & Co., C.As 6-3-655/2/3, Somajiguda Hyderabad 500 082  PAN: AAKFV6377M  (Appellant)	Vs.	ITO, Ward-2 Nizamabad    (Respondent)
Asessee by:		Sh. P. Muralimohan Rao
Revenue by:		Smt. Anjala Sahu, D.R.
Date of hearing:		01/09/2020
Date of pronouncement:		04/09/2020

**ORDER**

**Per Smt. P. Madhavi Devi, J.M.**

This is assessee's appeal filed by the assessee for the A.Y. 2015-15 against the order of the Pr.CIT-5 Hyderabad dated 19.03.2019 passed u/s 263 of the I.T. Act, 1961.

**2.** Brief facts of the case are that the assessee, a firm, filed its return of income for the A.Y. 2015-16 on 17.10.2015 admitting total income of Rs.1,81,287/-. During the assessment proceedings u/s 143(3) of the Act, the AO on verification of audit report found that the Assessee has claimed VAT payment of

Rs.16,48,689/- and CST payment of Rs.1,03,609/-. In order to verify the correctness of the claim, AO addressed a letter to the Commercial Tax Officer (CTO), Bodhan Circle u/s 133(6) of the I.T.Act, 1961 on 24.11.2017. The CTO, Bodhan Circle informed that necessary challans/ records were not traced out in the office for verification of genuineness of payment of VAT & CST for the A.Y 2014-15 and that a fake challan scam occurred in his office and case has also been registered in Bodhan Police Station which is being investigated by the CID. It was also informed that the office was making all efforts to verify the respective cases. Since assessee did not submit original challans, the AO came to the conclusion that payment of VAT and CST were not genuine. Accordingly, he disallowed the same and brought it to tax. He also initiated penalty proceedings u/s 271(1)(c) of the I.T.Act, 1961 in respect of such addition. Assessee submitted its explanation and after considering the same, AO dropped the penalty proceedings. Thereafter, the CIT assumed the powers u/s 263 of the Act and verified the assessment records and observed that the penalty proceedings u/s 271(1)(c) of the Act were dropped without properly verifying the explanation filed by assessee. Therefore, he held that such an action is erroneous and prejudicial to the interest of Revenue. He, therefore, directed the AO to re-do the penalty order after considering the issues discussed in his order.

**2.1.** Aggrieved by the order of Pr.CIT, the assessee preferred this appeal before us by raising the following grounds of appeal.

1. *The order u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 19.03.2019 passed by the Ld.Pr. Commissioner of Income Tax-5, Hyderabad (hereinafter referred to as 'the Ld. Pr.CIT') is erroneous both on facts and in law.*

2. *The Ld. Pr.CIT erred in passing the revisional order u/s 263 of the Act without satisfying the twin conditions that dropping of penalty proceedings u/s 271(1)(c) of the Act, dt. 28.03.2018 is both erroneous and prejudicial to the interests of the revenue.*
3. *The Ld. Pr. CIT ought to have appreciated the fact that the A.O has dropped the penalty proceedings initiated u/s 271(1)(c) of the Act, after considering all aspects of the case and therefore, cannot be treated as erroneous in so far as prejudicial to the interests of the revenue u/ s 263 of the Act.*
4. *The Ld. Pr.CIT ought to have appreciated the fact that the AO. had dropped the penalty proceedings u/s 271(1)(C) of the Income Tax Act, 1961 on the same issues as he was satisfied by the explanations given by the assessee on which Ld. Pr.CIT has passed order u/s 263 which was already examined by the AO.*
5. *The Ld. Pr.CIT ought to have appreciated the fact that the assessee has provided evidence in support of VAT & CST claim based on which the AO has dropped the penalty proceedings u/s 271(1)(C).*
6. *The Ld. Pr. CIT has erred in passing the revisionary order by taking a different stand on an issue from that of a stand taken by AO.*
7. *The Ld. Pr.CIT ought to have appreciated the fact that the AO has duly verified the said issues and he was satisfied with the explanations furnished by the assessee and it is not required mandatorily on his part to record his satisfaction.*
8. *The Ld.Pr. CIT ought to have well appreciated the question of law that even if the action of AO in dropping the penalty proceedings u/s 271(1)(c) is prejudicial to the interest of revenue, unless the action is found to be erroneous no resort can be had to the provisions of section 263 of the Act.*
9. *The Ld. Pr.CIT has grossly erred in not appreciating the legal aspect that initiation of penalty proceedings is the mandatory action and levying of such penalty is discretionary basing on the facts and satisfaction of the AO.*
10. *The Ld. Pr. CIT ought to have appreciated that levy / imposition of penalty u/s 271 (1)(c) is basing on satisfaction of AO, and not based on the satisfaction of higher authority.*
11. *The Ld. Pr.CIT ought to have appreciated that no higher forum can create satisfaction on AO to impose on an assessee, even when*

*he is satisfied and came to conclusion that it is not a fit case for imposition of penalty.*

*12. The Pr.CIT erred in finding fault with AO's action in dropping penalty proceedings u/s 271(1)(c) by making order sheet notice only and not passing order of dropping, as there is no statutory provision to that extent.*

*13. The appellant may add, alter or modify any other points to the grounds of appeal at any time before or at the time of hearing of the appeal.”*

**3.** The Ld.Counsel for the assessee submitted that during the assessment proceedings, the assessee had agreed for the addition only because it could not produce the original challans in respect of payment of VAT and CST and during the penalty proceedings, the assessee had clearly explained to the AO that the addition was agreed only to avoid unwarranted litigation and that the assessee had neither concealed income nor furnished inaccurate particulars of income. He submitted that the AO, having accepted the contentions of the assessee, has dropped the penalty proceedings and thus it cannot be said to be erroneous. He submitted that for initiating or sustaining the revision order passed u/s 263 of the Act both the conditions i.e. order being erroneous and also prejudicial to the interest of Revenue have to be satisfied. Therefore, he prayed that the order of CIT be set aside.

**3.1.** Ld.DR, on the other hand, supported the order of CIT u/s 263 of the Act and submitted that the AO has dropped the penalty proceedings without proper verification and it is in these circumstances that the Pr.CIT has held the assessment order to be erroneous and prejudicial to the interest of the revenue. Therefore, she prayed that the order of the CIT be sustained.

**4.** Having regard to rival contentions and material placed on record, we find that during the assessment proceedings on issuance of a notice u/s 133(6) of the Act to the CTO Bodhan, the CTO had stated that there was a scam in their office due to which the records were not traceable and sought further time to verify the challans forwarded by the ITO. Thus, there is no adverse comment by the CTO or even any implication that challan submitted by assessee may be false or bogus or fake. It was under these circumstances that the assessee had agreed for the disallowance. During the penalty proceedings, assessee had given its explanation which has been accepted by the AO. Since AO has accepted the contentions of the assessee which have not been proved to be incorrect, the said dropping of penalty proceedings by the AO cannot be said to be erroneous. If the assessee had not given any explanation or the reply given by the assessee has been found to be unsatisfactory or incorrect and even in such circumstances, AO fails to make further verification, it can be said to be erroneous. But, where the assessee's explanation has been found to be satisfactory by the AO, and there is no adverse finding by the concerned authorities, then the view taken by the AO is one of the possible views and cannot be said to be erroneous. Since the order of CIT does not satisfy the twin conditions of the order being erroneous and prejudicial to the interest of revenue, we are of the opinion that the order u/s 263 of the Act is not sustainable. In the result the order of Pr.CIT is set aside and appeal of the assessee is allowed.

**5.** In the result, appeal of the assessee is allowed.  
Order pronounced on 04<sup>th</sup> September 2020.

<b>Sd/-</b>	<b>Sd/-</b>
<b>(D.S. SUNDER SINGH) ACCOUNTANT MEMBER</b>	<b>(P. MADHAVI DEVI) JUDICIAL MEMBER</b>

Hyderabad, dated 04<sup>th</sup> September, 2020.

*\*gmv*

Copy to:

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6-3-655/2/3, Somajiguda, Hyderabad 500 082
- 2 ITO Ward 2, Nizamabad
- 3 Pr.CIT-5, Hyderabad
- 4 The DR, ITAT Hyderabad
- 5 Guard File