

आयकर अपीलीय अधीकरण, न्यायपीठ – “वि” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “B” KOLKATA

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

ITA No.1028/Kol/2018
Assessment Year: 2013-14

M/s Green Touch Vincom Pvt. Ltd., 119A, Mahatma Gandhi Road, Burrabazar Kolkata-700 007 [PAN No.AADCG 9317 N]	बनाम / V/s.	Principal Commissioner of Income Tax, Central-1, Aayakar Bhawan Poorva, 110, Shanti Pally, E.M. Bypass, 3 rd Floor Kolkata-700 107
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Saumitra Choudhury, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Imokaba Jamair, CIT-DR
सुनवाई की तारीख/Date of Hearing	18-08-2020
घोषणा की तारीख/Date of Pronouncement	10-09-2020

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 case No.PCIT(C)-1/sec.263/2017-18/10057-60, involving proceedings u/s 263 of the Income Tax Act, 1961; in short ‘the Act’.

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

2. With the able assistance of both the learned representative(s), we notice from a perusal of the case file that the PCIT has exercised his sec. 263 revision jurisdiction to

hold that the regular assessment in question dated 24.03.2016 framed in assessee's case as an erroneous one causing prejudice to interest of the Revenue. The said assessment order reveals that the Assessing Officer held that the assessee had been actually been put up for the purpose of inflating purchase and sales of M/s. Network Industries Ltd. He thus disallowed / added 5% of its carriage and wages expenses of ₹80,80,34,415/- coming to ₹4,40,672/-. The PCIT is revision order under challenge include that the Assessing Officer has not properly examined and verified the corresponding facts which renders the same as erroneous causing prejudice interest to the Revenue 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.1,52,00,46,751/- and sale of Rs.1,52,83,74,383/-. 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 M/s.Green Touch Vincom Pvt. Ltd. (PAN- AAADCG 9317N).

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 **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 263 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. AO 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 a quantity of clothes sold, rate of clothes sold by them to the assessee 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 Vijaya 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 Vijaya Proteins (Supra).

5. In view of my above decision, the assessment order dated 24.03.2016 is set aside and restored to the file of the assessee to the extent of making enquiries and verification in respect of purchases in the manner as discussed in previous **para No.4** and then the AO should pass a fresh assessment order taking into account the finding of enquiries / verification and following of my directions as discussed in previous para. Addition made on account of disallowance of expenses in original assessment order shall remain intact.

6. In the result, the original assessment order passed u/s.143(3) for A.Y 2013-14 dated 24.03.2016 is set aside and restored to the file of the AO for making necessary enquiries / verification relating to genuineness of purchases and closing stock and passing of fresh assessment order with additions made in original assessment order remaining intact as per my direction in previous para.”

3. It is in this backdrop of facts that the assessee has challenged correctness of PCIT's foregoing revision action. The Revenue's case on the other hand is that the PCIT has rightly invoked sec. 263 proceedings by pin-pointing the above narrated lack of proper enquiry verification *qua* the assessee's purchase / sales.

4. We find no merit in the PCIT's revision action under challenge stand before us. Case file suggests that the PCIT had invoked his similar revision action in one Sh Kartick Bose's case, for the very assessment year on the same lines who is also part of M/s Network Industries Ltd group. The Assessing Officer therein had also disallowed 5% of the expenses which was revised in 263 proceedings. This tribunal's co-ordinate bench's decision in **ITA No.1027/Kol/2018** decided on 22.01.2020 has reversed the said revision action as under:-

*"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 according 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. No rebuttal *qua* the foregoing clinching aspect has come from the department's side. We therefore hold that PCIT's impugned revision action is not sustainable in the eyes of law & reverse order under challenge dated 26.03.2016. The regular assessment dated 24.03.2016 stands restored as a necessary corollary.

6. This assessee's appeal is allowed.

Order pronounced in open court on 10/09/2020

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

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

*Dkp-Sr.PS

दिनांक:- 10/09/2020 कोलकाता / Kolkata

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

1. अपीलार्थी/Appellant-M/s Green Touch Vincom Pvt. Ltd., 119A, Mahtma Gandhi Road, Burrabazar Kolkata-700 007
2. प्रत्यर्थी/Respondent-PCIT, Central-1, Ayakar Bhawan Poorva, 110, Shanti Pally, E.M.Bypass, 3rd 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 ।