

आयकर अपीलीय अधिकरण न्यायपीठ जोधपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH

माननीय श्री संदीप गोसाईं, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI SANDEEP GOSAIN, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.401/Jodh/2019

(निर्धारणवर्ष / Assessment Year: 2015-16)

Ashok Transport Company C/o. Rajendra Jain Advocate 106, Akshay Deep Complex 5th B Road, Sardarpura Jodhpur, Rajasthan-342 001.	बनाम/ Vs.	Income tax Officer-Ward-1(1) Jodhpur Rajasthan.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAVFA-0055-E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Rajendra Jain (Advocate) & Ms Raksha Birla(CA)–Ld.ARs.
Revenue by	:	Shri K.C. Badhok- Ld. CIT- DR

सुनवाई की तारीख/ Date of Hearing	:	04/11/2020
घोषणा की तारीख / Date of Pronouncement	:	21/12/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member): -

1. By way of this appeal, the assessee challenges the validity of revisional jurisdiction u/s 263 as exercised by Ld. Pr. Commissioner of Income-Tax-1, Jodhpur, [Pr.CIT) for Assessment Year (AY)

2015-16 vide order dated 06/11/2019. The effective grounds taken by the assessee read as under:-

1. That on the facts and in the circumstances of the case, the order by Ld. Pr. CIT, Jodhpur is bad in law and bad in facts.
2. That on the facts and in the circumstances of the case, the notice issued u/s. 263 by Pr. CIT, Jodhpur without making any independent enquiry to find out whether the order passed by the Ld. AO and his satisfaction with respect to the correctness of the claim of the assessee is found to be erroneous as well as prejudiced.
3. That on the facts and in the circumstances of the case, the Id Pr. CIT, Jodhpur erred in holding that the order passed by the Id AO is erroneous as well as prejudiced to the interest of revenue particularly, when the Ld. AO passed the order after making proper enquiry as per provision of law.
4. That on the facts and in the circumstances of the case, the Id Pr.CIT, Jodhpur erred in invoking provision of section 263 of the Act on the basis of surmises and conjectures without disclosing any error in the assessment order passed by the Ld.AO.
5. That on the facts and in the circumstances of the case, the Id Pr.CIT, Jodhpur has also erred in recording various observation in the order which are contrary to the material available on record and laid down by the various Hon'ble Courts.

2. We have carefully heard the rival submissions and perused relevant material on record. The judicial precedents as cited during the course of hearing have duly been deliberated upon. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3.1 The material facts are that the assessee being resident firm was assessed u/s. 143(3) on 28/10/2017 at Rs.3.54 Lacs after certain additions / disallowances. Subsequently, Ld. Pr. CIT, upon perusal of case records and invoking the provisions of Sec.263, opined that the order was passed without making proper inquiries or verification and therefore, the same would require exercise of revisional jurisdiction in terms of Sec.263.

3.2 The said jurisdiction would stem from the observation that outstanding freight creditors reflected by the assessee included one creditor namely Sh. Ugara Ram S/o Sh. Ganga Ram. Although the outstanding amount against this creditor was Rs.4,44,650/-, however, the creditor confirmed balance only for Rs.84,650/-. This discrepancy was not verified by Ld. AO and the expenditure was over-stated by the assessee to that extent and therefore, the order was erroneous as well as prejudicial to the interest of the revenue.

3.3 In response to show-cause notice, the assessee submitted that truck-wise confirmation of the said creditor was filed since the assessee dealt with cement companies where many different trucks were used for transportation. The information was recorded trip-wise and truck-wise as per quantity and distance between the station and place of supply and for accounting purpose clubbed together where-ever needed. In support, fresh confirmation of Sh. Ugara Ram was filed which was in respect of 4 different trucks. The amount aggregated to Rs.4,44,650/-. The creditor confirmed that the earlier information was sought in respect of Truck No. RJ04GB1481 for an amount of Rs.84,650/-. However, he was maintaining vehicle-wise record for due amount and the amount of Rs.4,44,650/- was in respect of all the vehicles owned by him.

3.4 However, Ld. Pr. CIT rejected the submissions in view of the fact that the assessee did not submit documentary evidences about ownership of Sh. Ugara Ram of the remaining three trucks and the amount due thereon and the fact of ownership remained unverifiable. The letter issued by Ld. AO to Sh. Ugara Ram at the

time of assessment proceedings did not mention of any amount or particular truck. Therefore, the assessee failed to establish that the outstanding amount represented genuine business expenditure.

3.5 During revisional proceedings, the assessee had filed another confirmation from Sh. Jora Ram for Rs.1,02,725/- which was not filed as well as examined during 143(3) proceedings and therefore, the same would also make the order erroneous and prejudicial to the interest of the revenue.

3.6 Finally, invoking the provisions of clause (a) to Explanation-2 to Sec.263 (1), the order was set aside on the stated issue and Ld. AO was directed to examine the issue after providing an opportunity of the hearing to the assessee.

3.7 Aggrieved, the assessee is in further appeal before us assailing invocation of revisional jurisdiction u/s 263.

4. Upon careful consideration, it is quite evident from the observation of Ld. Pr. CIT that the confirmation of sundry creditors was called for by Ld. AO during the assessment proceedings. The truck wise detail of freight payable at year-end was furnished by the assessee vide Annexure-A during the course of assessment proceedings. Upon perusal of the same, we find that these details are truck-wise details and the name of Sh. Ugara Ram appears against 4 trucks which fortify the submissions that the assessee maintained truck wise details and the aggregate amount due towards that party was Rs.4,44,650/-. In fact that creditor filed an affidavit confirming the truck-wise total amount due against the assessee. Therefore, the concern raised by Ld. Pr. CIT, in our

considered opinion, is without any substance. The order could not be said to be erroneous or prejudicial to the interest of revenue on this fact.

5. So far as the confirmation of Sh. Jora Ram is concerned, we find that the addition of Rs.1,02,725/- with respect to this party has already been made by Ld.AO in the assessment order dated 28/10/2017 and therefore, non-consideration of the same could not be said to be prejudicial to the interest of revenue, in any manner.

6. Finally, on the facts and circumstances of the case, we do not concur with the stand of Ld. Pr.CIT in invoking jurisdiction u/s 263. By quashing revisional order dated 06/11/2019, we allow the appeal.

7. In nutshell, the appeal stands allowed.

*Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal)
Rules, 1963.*

Sd/-
(Sandeep Gosain)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 21/12/2020
Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Jodhpur
6. गार्डफाईल / Guard File

ITA No.401/Jodh/2019
M/s Ashok Transport Company
Assessment Year: 2015-16
आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, जोधपुर / ITAT, Jodhpur.