

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 239/JP/2020
निर्धारण वर्ष/Assessment Year :2015-16

Sh. Akhil Modi Plot No. 51 & 52, Vijay Nagar, Kartarpura Phatak, Jaipur	बनाम Vs.	Pr. CIT, Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABVPM3602L		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Surendra Shah (CA)
राजस्व की ओर से/ Revenue by : Shri Amrish Bedi (CIT)

सुनवाई की तारीख/ Date of Hearing : 22/03/2021
उदघोषणा की तारीख/Date of Pronouncement: 08/04/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. Pr. CIT, Alwar dated 05.02.2020 passed u/s 263 of the Act pertaining to A.Y 2015-16.

2. Briefly stated, the facts of the case are that the assessee filed his return of income on 30.09.2015 declaring total income of Rs. 2,58,75,800/- which was selected under CASS for limited scrutiny and thereafter, the assessment was completed u/s 143(3) vide order dated 29.12.2017 wherein income of the assessee was assessed at Rs. 2,69,98,090/-. Subsequently, assessment records were called for and examined by the Id. Pr. CIT and a show cause was issued on 26.04.2019 and the contents of the show cause read as under:-

"(a) On examination of assessment record it is observed that you have debited Rs. 1,20,480/- on account of Bad Debts in P&L A/c and the same was allowed under scrutiny assessment whereas it was not allowable as deduction as the assessee maintained Book of Accounts on Cash System, i.e income were booked on receipt basis, hence there was no question arises of Bad Debts. Bad Debts is allowable where the income were booked on accrual basis, i.e Mercantile System.

(b) You have debited a sum of Rs. 6,91,000/- on account of mis. Software Up-gradation charges in P&L A/c and the same was allowed under scrutiny assessment whereas it was not allowable as the expenses on Software Up-gradation Charges was in nature of Capital Expenditure being of Software is fallen under the category in capital assets and was to be allowed depreciation @60% i.e Rs. 4,14,600/-.

(c) The disallowed 10% expenses related to conveyance & Petrol and Depreciation on Vehicle for personal use in Para 7 & 8 of assessment order. Accordingly, 10% of the expenses (i) Interest on Auto Loan Rs. 2,33,745/- (ii) Vehicle Maintenance Expenses Rs. 2,26,826/- was to be added back to the total income as these expenses were correlated to the expenses on which the Assessing Officer made addition, so the Addition of Rs. 46,057/- was to be made (10% of 2,33,745+2,26,826)."

3. In response, the assessee filed his submissions and thereafter, considering the submissions of the assessee, the Id. Pr. CIT set aside the assessment order passed by the Assessing Officer with the direction to pass a speaking order after considering the various issues raised by him in the impugned order. Against the said findings, the assessee is in appeal before us.

4. During the course of hearing, the Id. AR reiterated the submissions made before the Id. Pr. CIT and our reference was drawn to the assessee's submissions which reads as under:-

"With reference your above mentioned letter, Para wise justification are as follows:

1. With regard to the content stated in Para no. 1, it is stated that an amount of Rs. 1,20,480/- has been invested in M/s Oro Trade Network India Ltd., Jaipur vide cheque No. 048628 dt. 26.09.2008 drawn on Bank of Baroda, Udyog Bhawan Branch, Jaipur. The amount was for the purpose of investment and getting returns for the same. That the said company was involved in fraud and stopped conduction of their business. There are several news articles that were published in this regard and the Company Directors were also found guilty. The Enforcement Directorate (Government) has also attached properties of said the company. The invested amount has thus become irrecoverable from the said company and as such, we have transferred the said amount of Rs. 1,20,480/- in Bad debts account.

2. With regard to the content stated in Para No. 2 we would like to apprise that the amount paid to the tune of Rs. 6,91,000/- is towards expenses of MIS and Software Updation Charges during the financial year 2014-15. That the said amount has been paid towards the Updation of Internal Software and data feeding in Excel as well as the Software. The said information is used for providing MIS and other information facility services to our clients with regard to case updates i.e Previous/Next date of hearing, Current Stage of proceedings/litigations, Case No. Court/forum etc. Thus, the said charges of Rs. 6,91,000/- pertain to the 'Updation charges' and not

"Up-gradation charges", which is being done on daily basis as per status of proceedings/litigation.

3. With regard to the content stated in Para No. 3, it would be stated that the said vehicle is being used for visit purposes by associates, counsels and other officials; for routine work of the court proceedings, for court/forum visits i.e District Courts, District Magistrate, Consumer Forums, State Commission, Debt Recovery Tribunals, High Court etc., visiting government bodies, for Police Stations visits, to visit client's offices/branches and for other visits pertaining to Profession/Business purposes.

Further, as per the assessment order dated 29.12.2017 (Para No. 7 & 8) Assessing officer passed the order of the disallowance of the 10% expenses of depreciation of the Jaguar Vehicle. In this regard, the vehicle was purchased on 15.03.2015 and the amount of interest on Loan is not charged from the Profit and Loss account for the A. Y 2015-16. Further, it is also pertinent to note that the fuel for jaguar vehicle to the tune of Rs.5,000/- was purchased during that period."

5. It was further submitted that a bare reading of section 263 of the Act makes it clear that the prerequisite for the exercise of jurisdiction by the Commissioner is that the order of the Income Tax Officer is erroneous is so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent – if the order of the Income Tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue – recourse cannot be had to section 263(1) of the Act. (Malabar Industrial Co. Ltd. Vs. CIT reported in 243 ITR 83 (SC))

Kind attention of Hon'ble bench is also invited to Explanation 2 inserted in section 263 by Finance Act, 2015, w.e.f. 01.06.2015, which reads as under:

"Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the Revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.]"

A perusal of above clarifies that order passed by Assessing officer shall be deemed to be erroneous and prejudicial to the interest of the Revenue only if AO has passed such order without making inquiries or verification which should have been made. It is worthwhile to note here that the phrase "which should have been made" here in no way means that enquiries should have been made in manner as desired by CIT.

(A) The Order of Ld. AO is not erroneous:

Complete details as asked for by the Ld. AO were submitted by assessee during the course of assessment proceedings. After considering the entire material available on record in the shape of the submissions and departmental record, the Ld. AO passed a reasoned order. Assessment was not done on returned income but additions aggregating to Rs 11,22,291.00 under 5 heads were

made by the Ld AO. It is therefore, submitted that the Ld. AO has taken a legal and correct view of the entire material available before him and after due application of mind on law and on facts had reached to a reasonable satisfaction of concluding the assessment. Thus the order of Ld. AO is not erroneous on any count nor prejudicial to the interest of Revenue.

Thus, the order of Ld. AO cannot at all be held as erroneous and thus the action of Ld. PCIT Alwar in passing the impugned order concluding that the said order is erroneous and prejudicial to the revenue is bad in law.

It is further submitted that the Hon'ble Bombay High Court in the case of CIT Vs. Gabriel India Ltd., reported in 203 ITR 108, has held that, "CIT cannot revise order merely because he disagrees with the conclusion arrived at by the ITO". Further, in the case of CIT Vs. Sunbeam Auto Ltd., reported in 227 CTR 133, the Hon'ble Delhi High Court drew a distinction between "Lack of inquiry" and "inadequate enquiry" and held that in the case of inadequate enquiry, provisions under section 263 cannot be invoked.

(B) The Order of Ld. AO is not prejudicial to the interest of Revenue:

The action of the Ld. AO was not at all prejudicial to the interest of revenue. After making all the necessary enquiries, he made additions of Rs 11,22,291. Amount to Oro Trade Network India Pvt Ltd was paid in the course of business to earn decent returns but the company defrauded its investors. Therefore it had to be written off as bad debts and was allowable expenditure u/s 37. Amount of software upgradation is actually software updation charges and are of revenue nature. Vehicle is used for business purpose only. Since the amount of disallowance was small, no appeal was filed. Accordingly, it cannot be said that the action of Ld. AO was prejudicial to the interest of Revenue.

It has been held in the case of CIT v. Max India Ltd. reported in 295 ITR 282 (SC) that 'every loss of revenue cannot be said to be prejudicial to the interests

of revenue', This submission of assessee is fortified from the observations of Hon'ble Supreme Court in the case of CIT Vs. Max India (supra) wherein it was held as under: The phrase "prejudicial to the interests of the Revenue" in section 263 of the Income-tax Act, 1961, has to be read in conjunction with the expression "erroneous" order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue.

Thus, it is submitted without admitting that the defect (if any) does not in anyway lead to supply the foundation for revising an otherwise valid order which can neither be said erroneous nor prejudicial to invoke section 263 of the Income Tax Act, 1961, which section cannot be permitted to be brought into play unless both the conditions i.e. the order has to be prejudicial as well as erroneous both, meaning thereby that the twin conditions are to be cumulatively satisfied before proceeding to revise an assessment order.

In light of the facts / circumstances of the case, submissions made above, and the case laws relied upon, it is submitted that the impugned revision order of Ld. PCIT Alwar may please be quashed and held bad in law, thereby restoring the assessment order of Ld. AO.

6. Per contra, the Id. Pr. CIT/ DR submitted that the case was selected for limited scrutiny and one of the reasons for selection was examination of other expenses claimed in the profit & loss account. Further, referring to the show cause notice issued by the Id. Pr. CIT, it was submitted that the Assessing Officer has not made proper inquiries about the various issues so raised in the show cause notice and in absence of proper inquiries/investigation and non-application of mind, the assessment order has been held to be erroneous as well as prejudicial to the interests of the Revenue. Further, our reference was drawn to the findings of the Id. Pr. CIT which reads as under:-

"In view of above facts and judicial pronouncement, the order u/s 143(3) of I.T. Act dated 29.12.2017 passed by the Assessing Officer is deemed to be erroneous so far as it is prejudicial to the interest of Revenue, as I am of the opinion that the order passed is based on mistaken view of law/erroneous application of provisions of the Act. During the revision proceedings u/s 263 of the Act, it is found that assessee has wrongly claimed bad debts, debited his P & L a/c for software upgradation, which is a capital expenditure but the same is allowed by the AO. Further it is also seen that AO disallowed 10% expenses related to conveyance and petrol & depreciation on vehicle for personal uses, but fail to disallowed the amount on Interest on auto loan and vehicle maintenance. Therefore, the same amount was required to be added in the income of the assessee."

7. We have heard the rival submissions and perused the material available on record. Firstly, regarding the claim of bad debts amounting to Rs 120,480, it is an admitted fact that the same has been claimed in respect of investment made in M/s Oro Trade Network India Ltd which has been written off in the books of accounts and not in respect of any regular debtors in respect of which the revenues have been booked on cash basis. Where the said claim has been made and allowed by the Assessing officer during the course of assessment proceedings, we do not find that the order so passed by the AO can be held as erroneous in so far as prejudicial to the interest of Revenue. Secondly, the software updation charges amounting to Rs 691,000/- are recurring charges paid on regular basis for updation of software from time to time and are thus for usage of the software and cannot be held as providing any enduring benefit to the assessee or for that matter, has resulted in creation of any ownership rights over such software and are more in the nature of usage/licence fees for usage of the software and has thus rightly been claimed and allowed as

revenue expenditure. Lastly, it is an admitted position that the assessee has purchased the vehicle only on 15.03.2015 and he has not claimed any interest on auto loan and vehicle maintenance expenses for the impugned assessment year and therefore, the question of disallowance of the same doesn't arise. In light of the aforesaid discussions, we are of the considered view that there is no basis to hold that the order so passed by the AO is based on mistaken view of law/erroneous application of the provisions of the Act and is erroneous in so far as prejudicial to the interest of the Revenue. The order so passed by the Id Pr CIT is thus set-aside and the order of the AO is restored.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 08/04/2021.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 08/04/2021

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Sh. Akhil Modi, Jaipur
2. प्रत्यर्थी / The Respondent- Pr. CIT, Alwar
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 239/JP/2020}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

