

आयकर अपीलीय अधिकरण, 'ए' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.474/Chny/2020

(निर्धारण वर्ष / Assessment Year: 2015-16)

M/s. Stalex Engineering P.Ltd. E-49, SIDCO Industrial Estate, Kuruchi, Coimbatore-641 021.	Vs	The Principal Commissioner of Income Tax-1, Coimbatore.
PAN: AADCS 0582K		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Mrs. K.Hemalatha, C.A.
प्रत्यर्थीकी ओरसे/Respondent by	:	Mr. S.Bharath, CIT

सुनवाईकीतारीख/Date of hearing	:	21.04.2021
घोषणाकीतारीख /Date of Pronouncement	:	16.07.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against order of the learned Principal CIT-1, Coimbatore dated 04.02.2020 u/s.263 of the Income Tax Act, 1961 and pertains to assessment year 2015-16.

2. The assessee has raised following grounds of appeal:-

“1. The order passed by the Learned Principal Commissioner of Income Tax is against the law and facts of the case.

2. The Ld. Principal CIT ought to have considered the various submissions and explanations made at the time of assessment before passing an order u/s 263 of the Income Tax Act, 1961.

3. The Ld. PCIT has erred in considering the quantitative figures of the products (in Kgs) reported in tax audit report and values (in rupees) for the quantity reported in Profit and Loss account.

4. The Ld. PCIT ought not to have accepted the closing stock rate for the yarn sold to arrive at the sale value.

5. The Ld. PCIT ought to have considered the fact that yarn and cloth prices depend on market fluctuations.

6. The Ld. PCIT ought to have considered the fact that quantity of Yarn specified in Form 3CD is inclusive of Yarn supplied for conversion division.

7. The Ld. PCIT erred in arriving at the sale quantity without considering the production capacity of the unit.

8. The Ld. PRINCIPAL CIT ought to have considered that the assessing officer has verified every aspect and passed the final order.

9. The Ld. PCIT ought not to have been guided by the other evidences such as Audit objection etc. for invoking The section 263 of the Income Tax Act, 1961."

3. Brief facts of the case are that the assessee company is engaged in the business of manufacture of cotton yarn, cloth and dealing in textile testing instruments filed its return of income for assessment year 2015-16 on 31.10.2015 declaring loss of Rs.5,70,831/-. The assessment for impugned assessment year has been completed u/s.143(3) of the Act, on 28.09.2017 and determined total loss at Rs.3,30,488/- by

making certain additions. The case has been subsequently taken up for revision proceedings u/s. 263 of the Act, and thus, show cause notice dated 31.07.2019 was served on the assessee u/s. 263 of the Income Tax Act, 1961 and called upon the assessee to file objections, if any, for revision of assessment order passed by the Assessing Officer u/s.143(3) dated 28.09.2017. The learned Principal CIT in said show cause notice has proposed to revise assessment order passed by the Assessing Officer on the ground that there is a variation with sale value as shown in profit & loss account, when compared to quantity of finished goods produced and sold during the year, as per details furnished in Form No.3CD issued by Auditor as required u/s.44AB of the Act, as per which the assessee has shown lesser sale value to the extent of Rs.8,72,09,103/-. The Assessing Officer while completing assessment has failed to verify issue of sales declared in books of account with reference to quantitative details supplied in Form 3CD to ascertain true and correct details of sales declared for the year, which rendered assessment order to be erroneous and prejudicial to the interests of revenue.

4. In response to show-cause notice, the assessee vide its letters dated 05.09.2019 & 18.09.2019 submitted that assessment order passed by the Assessing Officer is neither erroneous nor prejudicial to the interests of revenue, because issue of verification of sales with reference to quantitative details of goods manufactured and sold declared in Form 3CD has been thoroughly examined by the Assessing Officer and after being satisfied with the explanation furnished by the assessee, the Assessing Officer has accepted sales declared in books of account. The assessee further contended that working of sales difference arrived at by the Principal CIT is not based on any facts, but purely on suspicious without pointing out how and why there is a difference in sales declared by the assessee. Therefore, assessment order passed by the Assessing Officer u/s.143(3) dated 28.09.2017 cannot be revised u/s.263 of the Income Tax Act, 1961.

5. The learned Principal CIT, after considering relevant submissions of the assessee observed that prima-facie, there appears to be inconsistency in figures reported in column

no.35B(b) of tax-audit report for the year ended 31.03.2015 and figures reported in profit & loss account towards yarn manufactured and sold for the year under consideration. The Principal CIT further observed that on perusal of assessment records, it appears that although the assessee was called upon to furnish month-wise details of sale of finished goods, but the assessee conveniently failed to submit month-wise sales details and thus, point of suspicion of the very same issue of this present proceedings is under-reporting of sales figures vis-à-vis profit & loss account and Form 3CD has not been properly verified by the Assessing Officer during the course of assessment proceedings. Although, the AR for the assessee tried to explain that yarn transferred to clothing division is included in sales reported in Form 3CD, but the AR has failed to produce necessary clinching evidence to show that sales reported in profit & loss account and value in Form 3CD have been accurate so as to enable this proceedings to be null & void. Therefore, he opined that assessment order passed by the Assessing Officer is erroneous, insofar as it is pre-judicial to the interests of revenue and hence, set aside assessment

order passed by the Assessing Officer dated 28.09.2017 and direct him to redo assessment in accordance with law. Aggrieved by the Principal CIT order, the assessee is in appeal before us.

6. The learned A.R for the assessee submitted that the Principal CIT has erred in revision of assessment order passed by the Assessing Officer u/s.263 of the Act, without appreciating fact that the Principal CIT himself has not arrived at satisfaction that the Assessing Officer has passed erroneous order which caused prejudicial to the interests of revenue. It is well settled principles of law that in order to invoke jurisdiction & revision u/s.263 of the Act, the Principal CIT has to satisfy himself about twin conditions embedded therein, as per which order passed by the Assessing Officer must be erroneous and further, it should be prejudicial to the interests of revenue. In this case, the Principal CIT has revised the assessment order on the ground of under-reporting of sales turnover in books of account and such under-reporting has been arrived at purely on suspicious ground by estimating sales turnover based on closing stock declared by the

assessee in books of account and quantitative details supplied in Form 3CD, even though the assessee has clarified that sales reported in Form 3CD includes internal transfer of yarn to the tune of 745991 kgs to clothing division.

7. The learned DR, on the other hand, supporting order of the Principal CIT submitted that learned Principal CIT has brought out clear facts and reasons how and why assessment order passed by the Assessing Officer is erroneous, insofar as prejudicial to the interests of revenue and hence, there is no merit in the arguments of the assessee that assessment order passed by the Assessing Officer is not erroneous and prejudicial to the interests of revenue, which cannot be subjected to revision proceedings u/s.263 of the Act.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The provisions of section 263 of the Act empowers the Principal CIT to revise assessment order passed by the Assessing Officer, if he feels that assessment order passed by

the Assessing Officer is erroneous, insofar as it is prejudicial to the interests of the revenue. From a plain reading of section 263 of the Act, it is very clear that before exercising his jurisdiction u/s.263 of the Act, the Principal CIT should satisfy himself that the Assessing Officer has passed order which is erroneous and prejudicial to the interests of revenue. Unless the Principal CIT proves that order passed by the Assessing Officer is erroneous or which is not passed in accordance with law in right perspective of facts, the Principal CIT cannot revise assessment order passed by the Assessing Officer. Further, to invoke jurisdiction u/s.263 of the Act, twin conditions embedded u/s.263 of the Act must co-exist. In other words, if the assessment order passed by the Assessing Officer is erroneous, but it is not prejudicial to the interests of revenue, or vice-versa, then the Principal CIT does not have any power to revise the assessment order passed by the Assessing Officer. This legal proposition is supported by plethora of judicial decisions including the decision of Hon'ble Supreme Court in the case of M/s.Malabar Industries Co.Ltd. Vs. CIT (2000) 243 ITR 83(SC).

9. In this legal background, if you examine facts of the present case one has to understand as to whether the assessment order passed by the Assessing Officer is erroneous, insofar as prejudicial to the interests of the revenue in respect of the issue questioned by the Principal CIT in his show-cause notice dated 31.07.2019. The Principal CIT has revised assessment order on the ground of under-reporting of sales turnover in respect of yarn and said under-reporting has been worked out on the basis of closing stock declared by the assessee and quantitative details of goods produced and sold in Form 3CD. The Principal CIT has arrived at total sales of Rs.34.89 crores and as against this, he had compared sales turnover declared by the assessee at Rs.26.17 crores and thus, pointed out difference of Rs.8.72 crores. We have gone through reasons given by the Principal CIT and working of difference in sales turnover arrived at by him and after going through explanation furnished by the assessee, we ourselves do not subscribe to the reasons given by the Principal CIT to term assessment order as erroneous, insofar as it is prejudicial to the interests of revenue. It is a well settled principles of law that in order to

term any order to be erroneous and prejudicial to the interests of revenue, the Principal CIT himself should satisfy about the assessment order passed by the Assessing Officer and specify how and why the assessment order is erroneous and prejudicial to the interests of revenue. In this case, on perusal of reasons given for revision of assessment order, we find that the Principal CIT has arrived at under-reporting of sales purely on suspicious grounds and further extrapolated the figures declared by the assessee in its books of account and tax-audit report without there being any finding that sales declared by the assessee is not true and correct. We further noted the Principal CIT has computed difference in sales turnover on the basis of production and sales details of yarn declared by the assessee in Form 3CD and then compared with closing stock declared in profit & loss account. The Principal CIT first arrived at average selling price of yarn on the basis of quantity of yarn declared in Form 3CD and value of closing stock in the profit & loss account. Further, he has compared sales figure declared by the assessee to estimate sales worked out by himself on the basis of sale of quantity of

yarn declared in Form 3CD. It was the explanation of the assessee before the Principal CIT that quantity of sales of yarn declared in column no.35B(b) of tax audit report includes quantity of yarn transferred to clothing division. If we exclude quantity of yarn transferred to clothing division, then sales quantity of yarn declared in Form 3CD and value of sales declared in books of account does not have any difference. This fact has been explained before the Principal CIT by filing reconciliation of quantitative details of goods produced and sales declared in books of account. The Principal CIT, ignoring all evidences filed by the assessee has simply arrived at difference in sales purely by estimating sales figure without pointing out how sales declared in books of account is incorrect. Therefore, we are of the considered view that the Principal CIT has erred in revision of assessment order by making certain general observations based on suspicion and wrong working of sales and without specifying errors which are prejudicial to the interests of revenue, contrary to the settled principles of law that assessment order cannot be revised merely on suspicious and surmises grounds.

10. Coming back to case laws relied upon by the assessee. The assessee has relied upon decision of Kokata Bench of the ITAT in the case of Nitson & Amitsu Pvt.Ltd. Vs. ACIT in ITA No.160/Kol/2019, where under identical set of facts, the Tribunal has quashed revision order passed by the Principal CIT u/s.263 of the Act. The relevant findings of the Tribunal are as under:-

“ 14. Applying the propositions of law laid down in these case laws to the facts of the case on hand, we hold that the Pr. CIT should have conducted enquiries and should have verified the accounts and other documents and details himself and pointed out specifically as to where an error has occurred which is prejudicial to the interest of the Revenue and which in his opinion would result in the assessee being not assessed at the correct amount of income and only after such enquiries, examination and verification he can come to a conclusion that there is an error insofar as it is prejudicial to the interest of the Revenue. The Pr. CIT is not authorized to simply set aside an assessment order by making certain general observations based on suspicion and wrong working out of the WIP and without specifically pointing out errors which are prejudicial to the interest of the Revenue. Mere suspicion of likely escapement of income is not a ground for revision by invoking powers u/s 263 of the Act. Such an order is bad in law.

14.1. Thus, we uphold the contentions of the assessee and quash the order passed by Pr. CIT u/s 263 of the Act.”

11. In this view of the matter and considering facts and circumstances of the case, we are of the considered view that assessment order passed by the Assessing Officer is neither erroneous nor pre-judicial to the interests of revenue which can be subject matter of proceedings u/s.263 of the Income Tax Act, 1961. Hence, we quash revision order passed by the Pr.CIT and restore assessment order passed by the Assessing Officer u/s.143(3) of the Act dated 28.09.2017.

12. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 16th July, 2021

Sd/-
(वी.दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 16th July, 2021
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.