

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", 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. 282/JP/2020
Assessment Year: 2015-16

Shri Narendra Sharma, 2 Opp. Midway, GT Road, Dholpur.	बनाम Vs.	P.C.I.T. Alwar.
PAN No.: AFIPN 1992 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal Parwal (CA)
राजस्व की ओर से / Revenue by : Shri B.K. Gupta (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 28/06/2021
उदघोषणा की तारीख / Date of Pronouncement : 15/09/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of the Id. Pr.CIT, Alwar dated 17/03/2020 passed U/s 263 of the Income Tax Act, 1961 (in short, the Act) for the A.Y. 2015-16. The assessee has raised following grounds of appeal:

- "1. Under the facts and circumstances of the case, order passed by the Ld. PCIT u/s 263 is illegal & bad in law and the same be quashed.*
- 2. The Id. PCIT has erred on facts and in law in directing the AO to pass the assessment order afresh ignoring that the case of assessee was selected for limited scrutiny on specific issues on which the AO made the detailed enquiry which fact is not denied and therefore, direction to make fresh assessment is illegal & bad in law.*

3. *The Id. PCIT has erred on facts and in law in directing the AO to examine the claim of deduction u/s 80C of Rs.1,50,000/- which was not an issue for limited scrutiny and otherwise verifiable from the material available on record and the reason for large increase in sundry creditors and direct/ indirect expenses which otherwise was examined by the AO and explained before the Ld. PCIT on which no adverse finding is given.*
4. *The Id. PCIT has erred on facts and in law in enlarging the scope of limited scrutiny for which the case of assessee was selected by directing the AO not only to consider the issues mentioned by him in the order but also the issues which may subsequently come to his notice during the assessment proceedings u/s 143(3)/ 263 of the Act.*
5. *The appellant craves to alter, amend and modify any ground of appeal.*
6. *Necessary cost be awarded to the assessee."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. The brief facts of the case are that the assessee is engaged in the business of civil contractor. Return of income was filed on 30.09.2015 declaring total income of Rs.81,53,490/- which was revised at total income of Rs.1,02,03,490/- on 16.10.2015. The case of assessee was selected for limited scrutiny for four reasons, i.e. (i) contract receipt/ fees mismatch (ii) sales turnover mismatch (iii) sundry creditors and (iv) tax credit mismatch. In course of the original assessment proceedings, the assessee explained all these issues vide different letters. The AO after considering the same and after making necessary enquiries/ verification

accepted the income returned by the assessee vide order u/s 143(3) of the Income Tax Act, 1961 (in short, the Act) dated 30.08.2017 at an income of Rs. 1,02,03,490/-. By the impugned order, the Id. PCIT set aside the assessment order passed by the AO u/s 143(3) of the Act with direction to pass speaking assessment order after making proper enquires and after affording adequate opportunity of being heard to the assessee.

4. Against the order passed by the Id. PCIT, the assessee has preferred the present appeal before the ITAT on the grounds mentioned above.

5. The main grievance of the assessee relates to challenging the order of the Id. PCIT in passing the order U/s 263 of the Act. In this regard, the Id AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. PCIT and also relied on the written submissions filed before the Bench and the same is reproduced below:

"From the facts stated above it can be noted that case of the assessee was picked up for limited scrutiny to verify the mismatch between contract receipt, sales turnover, tax credit mismatch and increase in sundry creditors. All these four issues were examined by the AO in detail by issuing notice u/s 142(1) dt. 04.01.2017 by raising six queries (PB 4). The assessee explained all these queries and the mismatch between Form 26AS vis-à-vis audited P&L A/c with reference to the turnover/ gross receipt, TDS credit and the turnover reported in audit report as compared

with ITR was explained. So far as verification of sundry creditors is concerned the same was explained by filing confirmation of M/s Krishna Infrastructure which is the main sundry creditor of Rs.4.10 crores out of total sundry creditors of Rs.4,59,61,765/-. The sundry creditors were mainly in respect of outstanding sub-contractor payment and the explanation for increase in sundry creditors vis-à-vis last year was also furnished before the CIT (PB 6-7) as well as the AO (PB 24-26). It may be noted that on the issue of mismatch of turnover and TDS credit Ld. CIT has not raised any issue but in respect of sundry creditors he has raised the issue in sec.263 order ignoring that this issue has been thoroughly examined by the AO during the course of assessment proceedings. Thus, on this issue the order of AO cannot be held to be erroneous or prejudicial to the interest of revenue.

The PCIT has observed that assessee has not replied on the issues raised in show cause notice u/s 263 dt. 05.02.2020. This is incorrect in as much as all the three issues raised in the show cause notice has been replied by assessee vide letter dt. 02.03.2020 (PB 9-10). It may be noted that in respect of claim of deduction under Chapter VI-A, when this issue is not a subject matter of limited scrutiny, the AO is to confine himself to those issues only as per the CBDT Instruction No.20/2015 dt. 29.12.2015 (PB 13) where it is specifically mentioned that in case of limited scrutiny questionnaire u/s 142(1) shall remain confined to specific reasons/ issues for which case has been picked up for scrutiny. Only when the AO notices that there is potential escapement of income exceeding Rs.5 lacs then the case may be taken for complete scrutiny. However, on verification of the issues taken up for limited scrutiny, AO has not found anything incorrect and therefore, there was no reason for him to ask for complete scrutiny. Therefore, in respect of Chapter VI-A deduction, if the AO has not made an enquiry the same cannot be considered as erroneous or prejudicial to the interest of revenue more particularly when such claim is allowed in

the preceding year and is verifiable from the capital account of assessee for the year under consideration (PB 38). Further on the issue of large amount of sundry creditors and expenses claimed in the P&L A/c the same is duly explained before the AO as stated above who after making necessary verification and enquiry from the assessee has accepted the explanation of assessee. Therefore, on the issue of increase in sundry creditor with respect to turnover as compared to the preceding year, the order passed by AO cannot be held to be erroneous or prejudicial to the interest of revenue.

The PCIT has directed the AO to pass the assessment order afresh ignoring that when the case is selected for limited scrutiny the jurisdiction of CIT for holding the order erroneous or prejudicial to the interest of revenue is confined only to the issue of limited scrutiny and not to direct the AO to pass a denovo assessment afresh by raising issues beyond what is permitted in the limited scrutiny. Hence, the direction given by Ld. CIT is also bad in law.

He relied on the following case laws:

- i. Torrent Pharmaceuticals Ltd. Vs. DCIT (2018) 173 ITD 130 (Ahd.) (Trib.)*
- ii. Amira Pure Foods Pvt. Ltd. Vs. PCIT (2017) 63 ITR(Trib.) 355/ 51 CCH 473 (Del.) (Trib.)*

6. On the other hand, the Id CIT-DR has vehemently supported the order of the PCIT and also relied on the following case laws:

- (i) CIT Vs Smt. Saraswati Devi (1995) 212 ITR 445 (Raj)
- (ii) Baby Memorial Hospital Ltd. Vs ACIT, Circle 1(1), Kozhikode (2019) 111 Taxmann.com 189 (Cochin-Trib)

7. We have heard the Id. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. As per the facts of the present case, we noticed that the assessee is engaged in the business of civil contractor. Return of income was filed declaring total income of Rs.81,53,490/- thereafter the same was revised at a total income of Rs.1,02,03,490/- which was accepted by the A.O. Thereafter, the Id. PCIT issued notice u/s 263 of the Act dated 05.02.2020 stating that (i) assessee has claimed deduction under chapter VI-A of Rs.1,50,000/- but no supporting documents/ evidence is placed on record (ii) assessee has shown large amount of sundry creditors amounting to Rs.4,59,61,765/- but confirmation and verification was not made during the assessment proceedings (iii) assessee has debited direct expenses of Rs.13,69,88,804/- and indirect expenses of Rs.58,41,645/- against total receipt of Rs.15,31,83,951/- and shown net profit of Rs.1,03,53,493/- which is not justified/ verified (iv) as per CBDT Instruction No.20/2015 dated 29.12.2015, if the AO notice that there is potential escapement of income exceeding Rs.5 lacs requiring substantial verification on any other issue, the case may be taken up for complete scrutiny with the approval of PCIT/CIT. However, the AO has

not made proper enquiry/investigation on the above issues and therefore, order passed by AO is erroneous and prejudicial to the interest of revenue.

8. We noticed that the assessee in response to show cause notice, vide its letter dated 02.03.2020 submitted that in course of assessment proceedings, the AO required the assessee to furnish various information vide notice u/s 142(1) dated 04.01.2017 including the issues for which assessment was taken up for limited scrutiny and the same is duly explained before the AO. With reference to three issues raised in show cause notice u/s 263 of the Act it was explained that claim of deduction under Chapter VI-A was not an issue for limited scrutiny, in respect of large amount of sundry creditors, assessee has filed complete explanation for the same in course of assessment proceedings (PB 24, Point No.6) and in respect of direct and indirect expenses claimed in the P&L A/c, the same is explained with reference to the increase in turnover/ expenses vis-à-vis that in the previous year. Thus, it is contended that AO passed the order after complete verification/ enquiry and thus, order passed by him is not erroneous or prejudicial to the interest of revenue. The Ld. PCIT, however, at Page 12-13 of the order observed that (i) AO has not asked the assessee to furnish the capital account in support of claim of deduction under Chapter VI-A nor the same is mentioned in the tax audit

report (ii) the major sundry creditors of Rs.4.10 crores is in the name of M/s Krishna Infrastructure but confirmation of sundry creditor is not filed except in case of M/s Krishna Infrastructure, further copy of ledger account of assessee in the books of sub-contractor has not been called (iii) net profit shown is unverified with reference to direct and indirect expenses claimed in P&L A/c of which the major expenses to the extent of Rs.8,53,19,970/- relate to sub-contract expenses of which Rs.7,92,35,635/- pertain to M/s Krishna Infrastructure and thus, the claim of direct expenses is interlinked with sundry creditors. Accordingly, the order passed by AO is erroneous and prejudicial to the interest of revenue on account of non-examination of case properly on the issue specially 'large increase in sundry creditors with respect to turnover as compared to preceding year'. He further observed that during proceedings u/s 263 assessee failed to submit the reply on the issues raised through notice dated 05.02.2020 and AO has not made proper investigation and verification on these issues. Accordingly, the order passed by AO is set side with the direction to properly examine all the issues.

9. From perusal of the records, we observed that the case of the assessee was picked up for limited scrutiny to verify the mismatch between contract receipt, sales turnover, tax credit mismatch and increase in sundry creditors. All these four issues were examined by the

AO in detail by issuing notice u/s 142(1) of the Act dated 04.01.2017 by raising six queries, which is available at page No. 4 of the assessee's paper book. The assessee explained all these queries and the mismatch between Form 26AS vis-à-vis audited P&L A/c with reference to the turnover/ gross receipt, TDS credit and the turnover reported in audit report as compared with ITR was explained. So far as verification of sundry creditors is concerned the same was explained by filing confirmation of M/s Krishna Infrastructure which is the main sundry creditor of Rs.4.10 crores out of total sundry creditors of Rs.4,59,61,765/. The sundry creditors were mainly in respect of outstanding sub-contractor payment and the explanation for increase in sundry creditors vis-à-vis last year was also furnished before the CIT, which are available at page No. 6-7 of the assessee's paper book as well as the AO which are available at page No. 24 -26 of the assessee's paper book. It may be noted that on the issue of mismatch of turnover and TDS credit, the Id. PCIT has not raised any issue but in respect of sundry creditors he has raised the issue in Sec.263 order ignoring that this issue has been thoroughly examined by the AO during the course of assessment proceedings. Thus, on this issue, the order of AO cannot be held to be erroneous or prejudicial to the interest of revenue.

10. We further observed that the PCIT has held that assessee has not replied on the issues raised in show cause notice u/s 263 dated 05.02.2020. This is incorrect inasmuch as all the three issues raised in the show cause notice has been replied by assessee vide letter dated 02.03.2020, which are available at page No. 9-10 of the assessee's paper book. It may be noted that in respect of claim of deduction under Chapter VI-A, when this issue is not a subject matter of limited scrutiny, the AO is to confine himself to those issues only as per the CBDT Instruction No.20/2015 dated 29.12.2015, which is available at page No. 13 of the assessee's paper book where it is specifically mentioned that in case of limited scrutiny questionnaire u/s 142(1) shall remain confined to specific reasons/ issues for which case has been picked up for scrutiny. Only when the AO notices that there is potential escapement of income exceeding Rs.5 lacs then the case may be taken for complete scrutiny. However, on verification of the issues taken up for limited scrutiny, the AO has not found anything incorrect and therefore, there was no reason for him to ask for complete scrutiny. Therefore, in respect of Chapter VI-A deduction, if the AO has not made an enquiry the same cannot be considered as erroneous or prejudicial to the interest of revenue more particularly when such claim is allowed in the preceding year and is verifiable from the capital account of assessee for the year under

consideration. Further on the issue of large amount of sundry creditors and expenses claimed in the P&L A/c the same is duly explained before the AO, who after making necessary verification and enquiry from the assessee has accepted the explanation of assessee. Therefore, on the issue of increase in sundry creditor with respect to turnover as compared to the preceding year, therefore, in our view, the order passed by the AO cannot be held to be erroneous or prejudicial to the interest of revenue. The Id. PCIT has directed the AO to pass the assessment order afresh ignoring that when the case is selected for limited scrutiny, the jurisdiction of CIT for holding the order erroneous or prejudicial to the interest of revenue is confined only to the issue of limited scrutiny and not to direct the AO to pass a denovo assessment afresh by raising issues beyond what is permitted in the limited scrutiny. Hence, the direction given by Ld. CIT is also bad in law. We draw strength from the decision as relied by the Id AR, in the case of **Torrent Pharmaceuticals Ltd. Vs. DCIT (2018) 173 ITD 130 (Ahd.) (Trib.) wherein the Coordinate Bench has observed as under:**

Even after the insertion of Explanation 2, the Revisional Commissioner is expected to show that the view taken by the AO is wholly unsustainable in law before embarking upon exercise of revisionary powers. The revisional powers cannot be exercised for directing a fuller inquiry to merely find out if the earlier view taken is erroneous particularly when a view was already taken after inquiry. If such course of action as interpreted by the Revisional Commissioner in light of the Explanation 2 is permitted, Revisional Commissioner can possibly find fault with each and every assessment order without himself making any inquiry or verification and without

establishing that assessment order is not sustainable in law. This would inevitably mean that every order of the lower authority would thus become susceptible to section 263 of the Act and in turn will cause serious unintended hardship to the tax payer concerned for no fault on his part. Apparently, this is not intended by the Explanation. Howsoever wide the scope of Explanation 2(a) may be, its limits are implicit in it. It is only in a very gross case of inadequacy in inquiry or where inquiry is per se mandated on the basis of record available before the AO and such inquiry was not conducted, the revisional power so conferred can be exercised to invalidate the action of AO.

We also draw strength from the decision in the case of **Amira Pure Foods Pvt. Ltd. Vs. PCIT (2017) 63 ITR(Trib.) 355/ 51 CCH 473 (Del.) (Trib.)** wherein the Coordinate Bench has observed as under:

Explanation 2 to s. 263 inserted w.e.f. 01.06.2015 does not override the law as interpreted by the various High Courts whereby it is held that the CIT cannot treat the AO's order as being erroneous and prejudicial to the interest of revenue without conducting an enquiry and recording a finding. If the Explanation is interpreted otherwise, the CIT will be empowered to find fault with each and every assessment order and also to force the AO to conduct enquiries in the manner preferred by the CIT, thus prejudicing the mind of the AO. This will lead to unending litigation and no finality in the legal proceedings which cannot be the intention of the legislature in inserting the Explanation.

Hence, we are not in agreement with the view taken by the Id. Pr.CIT in the facts and circumstances of the case and therefore we hold that the assessment order, subjected to revision u/s 263, is not erroneous and prejudicial to the interest of the revenue. The case laws relied upon by the Id. CIT-DR are not applicable on the facts and circumstances of the present case, therefore, considering the totality of facts and circumstances of the case, the impugned order passed u/s 263 of the Act by the Id. Pr.CIT, is therefore, quashed.

11. Once, we quash the order passed U/s 263 of the Act, then in that eventuality, the other grounds raised by the assessee become infructuous and needs no adjudication.

12. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 15th September, 2021

Sd/-

(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 15/09/2021

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Narendra Sharma, Dholpur.
2. प्रत्यर्थी / The Respondent- The P.C.I.T. Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 282/JP/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar