

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAIPUR” BENCH, RAIPUR**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI N. K. CHOUDHRY, JUDICIAL MEMBER**

**आयकर अपील सं./I.T.A. No.92/RPR/2019
(निर्धारण वर्ष / Assessment Year : 2012-13)**

ABIS Broiler Private Limited, C/o. IB Group Corporate House, Village Indamara, Post Pendri, District Rajnandgaon, Chhattisgarh	बनाम/ Vs.	Assistant Commissioner of Income-tax, Central-2, Raipur
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAHCA 6940 P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Amit M. Jain, CA
प्रत्यर्थी की ओर से/Respondent by :	Shri R.K. Singh, CIT-DR

सुनवाई की तारीख / Date of Hearing	29.07.2021
घोषणा की तारीख/Date of Pronouncement	29.09.2021

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the revisional order of the Principal Commissioner of Income Tax (Central) (“PCIT” in short), Bhopal dated 08.03.2019 passed under Section 263 of the Income Tax Act, 1961 (“the Act” in short) whereby the assessment order passed by the Assessing Officer (“AO” in short) dated 19.12.2016 under Section 153A/143(3) of the Act concerning Assessment Year (“AY” in short) 2012-13 was sought to be set aside for reframing the assessment in terms of supervisory jurisdiction.

2. As per its grounds of appeal, the assessee has challenged the revisional action of the PCIT whereby the Assessing Officer was

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directed to pass the assessment order *de novo* after making inquiries on the points set out in the notice which has already examined and considered during the original assessment proceedings concerning AY 2012-13. The assessee has challenged the assumption of jurisdiction by the PCIT under Section 263 of the Act on the ground that the Assessment Order under revision is neither erroneous nor prejudicial to the interest of the revenue.

3. The relevant facts, in brief, are that the return of the assessee was subjected to search assessment for the AY 2012-13 in question and the assessment was completed by the Assessing Officer by passing the assessment order under Section 153A r.w.s. 143(3) of the Act dated 19.12.2016.

4. Thereafter, the PCIT called for the assessment records and opined that the assessment order so passed is erroneous insofar as prejudicial to the interest of the revenue on the issue of non-examination of arranging bogus purchase bills amounting to Rs.1,24,02,421/- from M/s. Rajdhani Trading Company by the assessee. Similarly, another group company M/s. Indian Agro and Food Industries Limited is also stated to have availed the bogus purchase bills from M/s. Rajdhani Trading Company. The PCIT accordingly invoked revisional powers under Section 263 of the Act and issued show-cause notice dated 26.04.2017 to this effect.

5. The PCIT did not find merit in the explanations of the assessee in its defense and alleged that the Assessing Officer did not make verification and inquiries that should have been made in the context of the case. The PCIT accordingly set aside the impugned assessment

order passed under Section 153A r.w.s. 143(3) of the Act dated 19.12.2016 concerning Assessment Year 2012-13 in question. The Assessing Officer was directed to reframe the assessment after examining the issue with adequate inquiries. Aggrieved, the assessee preferred an appeal before the Tribunal.

6. When the matter was called for hearing, the learned Counsel for the assessee, at the outset, submitted that the action of the PCIT is plainly without authority of law. The assessee was earlier subjected to assessment which stood completed earlier before the search and was thus not abated in terms of second proviso to Section 153A of the Act. The inquiries in the concluded assessment thus could not go without reference to incriminating material found in the course of search. In response to the substantive allegation of the PCIT that the transactions of the purchase done with M/s. Rajdhani Trading Company was not properly verified by the Assessing Officer, the learned Counsel adverted to question No.6 of the questionnaire dated 19.02.2016 on the issue (Page Nos. 17 & 18 of the paper-book). In response to the specific query raised by the Assessing Officer, the assessee has furnished a detailed submission on 30.06.2016 to defend its factual position (Reply placed at page Nos.22 to 25 of the paper-book). It was thus contended that it is after perusal of the submissions and examination of facts and circumstances of the case, the Assessing Officer found merit in the plea of the assessee after proper application of mind. It is thus contended that the factual issue which has been examined threadbare by the Assessing Officer in search assessment, the reopening of the assessment on the same issue in the garb of review is highly unjustified. It was further submitted that the assessment order passed under Section 153A of the Act, after

raising specific query, was further approved by the JCIT under Section 153D of the Act. It was thus harped that two different officers have applied their mind to the factual aspect involving the issue and took a plausible view. The allegation of bogus bill is based on a vague and unreliable statement of third party which does not impeach the assessee. The learned Counsel relied upon several judicial precedents to contend that the assessment is neither erroneous nor prejudicial to the interest of the revenue where the Assessing Officer has taken a plausible view in the factual context after due application of mind. The learned Counsel for the assessee accordingly urged for the reversal of revisional action.

7. The learned Departmental Representative, on the other hand, supported the action of the revisional authority and relied upon the revisional order.

8. We have carefully considered the rival submissions and perused the revisional order in question and also other materials referred to and relied upon by the respective sides and case-laws cited in this regard. On a broader reckoning, the factual position that emerges out is that the assessee has procured poultry feed from M/s. Rajdhani Trading Co. The revenue was in possession of certain information pertaining to M/s. Rajdhani Trading Co. and on the basis of that information, the Assessing Officer raised specific query and confronted the factual position to the assessee. In response to the specific query, the assessee submitted certain submissions to support its case that the transactions undertaken with M/s. Rajdhani Trading Co. is bonafide and also submitted the copy of confirmation and tax audit report of the supplier company. All the bills and vouchers for

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such transactions were placed before the Assessing Officer for verification. It was also pointed out that the proprietor of the supplier company has not identified the assessee for the purposes of alleged bogus bills and such statement of the supplier company is vague and generic in nature. The request for cross-examination of the concerned person (Shri Jitendra Kumar Sahu) giving statement on behalf of the supplier company was not honoured. The proprietor of supplier namely Shri Jitendra Kumar Sahu vide affidavit dated 10.04.2013 has also retracted his original statement, which in any case, was general without implicating the assessee in particular. In this factual backdrop and after considering the submissions of the assessee and verification of books of accounts and documents produced by the assessee, the Assessing Officer was convinced with the bonafides of the purchases made and did not embark upon any additions in this regard.

8.1 It appears that, on the same set of facts, the PCIT has invoked jurisdiction under Section 263 of the Act. On perusal of the show-cause notice, it is apparent that the PCIT himself has not alleged a lack of inquiry in the matter; but has avered that adequate inquiries were not carried out in the matter. We do not understand the purport of such observations. The PCIT has not spelt out as to what inquiry was lacking in the action of the Assessing Officer. The PCIT himself has not done any minimal inquiry to ascertain the alleged error of inadequacy in inquiries. It appears that the PCIT has merely directed the Assessing Officer to make further inquiries to find out whether some error has been committed or not. In our view, before giving such general directions, it was incumbent upon the PCIT to show that the view taken by the Assessing Officer is wholly unsustainable in law. The revisional powers cannot be exercised in a perfunctory manner

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for directing some further and fuller inquiry made to merely find out if the earlier view taken is erroneous or not.

8.2 In the instant case, an inquiry has been carried out and defense of the assessee was affirmed by the Assessing Officer as well as the JCIT. We thus see no scope for review for the purposes of making some unspelt "inadequate inquiry". Thus, the ingredients for issuing show-cause notice under Section 263 of the Act are found absent. Consequently, the revisional order passed under Section 263 of the Act is bad in law and is liable to be quashed and set aside.

9. In the result, the appeal of the assessee is allowed.

Pronounced on 29.09.2021 as per Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-

(N. K. CHOUDHRY)
JUDICIAL MEMBER

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

BT

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

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर / DR, ITAT, RAIPUR
6. गार्ड फाइल / Guard file.

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By order

Assistant Registrar
Income Tax Appellate Tribunal
Raipur Bench, Raipur