

**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. 85/RPR/2019)
(निर्धारण वर्ष / Assessment Year : 2014-15)

M/s. Vishal Automobile Tifra, Near Railway Crossings, Bilaspur, Chhattisgarh - 495001	बनाम/ Vs.	Pr. Commissioner of Income Tax Aayakar Bhawan, Mahima Complex, Vyapar Vihar, Bilaspur, Chhattisgarh - 495001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFV0333C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Smt. Richa Khatri, C.A.
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	12/10/2021

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Principal Commissioner of Income Tax, Bilaspur ('PCIT' in short), dated 28.03.2019 passed under s.263 of the Income Tax Act, 1961 (the Act) whereby the assessment order passed by the Assessing Officer (AO) dated 26.12.2016 under

s. 143(3) of the Act concerning AY 2014-15 was sought to be set aside for reframing assessment in terms of supervisory directions.

2. As per its grounds of appeal, the assessee has challenged the revisional action of the PCIT whereby the Assessing Officer (A.O.) was directed to pass the assessment order *de novo* after making enquiries on the points set out in the notice which has already examined and considered during the original assessment proceedings concerning A.Y. 2014-15. 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. Briefly stated, the assessee is engaged in selling of Motor Bikes of Honda Company and Kamaz Trucks. The return of income filed by the assessee for AY 2014-15 declaring total income at Rs.22,56,060/- was subjected to scrutiny assessment. In the course of the scrutiny assessment, the AO *inter alia* made disallowances under various heads of expenses and assessed the income at Rs.35,36,270/-.

4. Thereafter, the PCIT in exercise of its revisionary powers issued show cause notice dated 04.03.2019 under s.263 of the Act requiring the assessee to show cause as to why the impugned assessment so framed under s.143 of the Act should not be modified/set aside on the ground that such order is erroneous and so far as prejudicial to the interest of the Revenue on the points set out in the show cause notice. It was essentially alleged that the AO has failed to properly examine the return of income towards fall in gross profit and expenses incurred *viz.* PDI expenses, salary expenses, repair & maintenance expenses, expenses on tippers, interest on

loans & advances etc. The assessee, in response to the show cause notice, filed a detailed submission to justify its stand on various issues raised by the PCIT. The PCIT, however, did not find the defense of the assessee to be convincing and consequently set aside various issues for *de novo* examination at the end of the AO in terms of revisional order dated 28.03.2019 in question.

5. Aggrieved by the revisional order passed by the PCIT, the assessee is in appeal before the Tribunal agitating the supervisory jurisdiction usurped by the PCIT and consequential revisional order passed under s.263 of the Act.

6. We have heard the rival submissions on various points on which the assessment order has been set aside by the Revisional Commissioner.

6.1 The first issue concerns non verification of PDI expenses and salary expenses. In defense, it is contended on behalf of the assessee that the pre-delivery inspection (PDI) is the final check carried out by the dealer of car, vehicle, tippers before they are handed over to the customers. These charges/expenses are borne by the dealer-assessee. During the year, the assessee has dealership of Kamaz Vectra Motors Pvt. Ltd. for selling of tippers. The turnover has gone up substantially this year *qua* the earlier years and the PDI expenses are merely 0.24% of the sales. The expenses in the similar range have been incurred in the earlier years as well but however were clubbed with workshop expenses. Thus, when seen combinedly, no major difference in percentage can be observed. The expenses of this year is about 0.24% of sales whereas in previous two years it was in the range of 0.17% & 0.23% in F.Y. 2013-14 & 2012-13 respectively. The books are not only audited

but were also produced before the AO and test checked as per the order sheet available at page no.40-41 of the paper book. It was thus contended that where the books of accounts are audited and no serious deviation in expenses are reported, the action of AO in admitting such routine expenses without minute verifications on each item is not fatal. It is for the AO to gauge the scope and extent of enquiry for such routine expenses.

6.2 As regards salary expenses, the assessee contends that such expense stands at 0.89% as against 1.22% of sales in the preceding assessment year and 1.76% in the year before last. Hence, where the accounts were audited and there is no visible abnormality in the expense incurred, there was no occasion or necessity for the AO to verify such facts of routine nature in a detailed manner. The books of accounts were produced as pointed out earlier.

6.3 We find force in the plea of the assessee. The AO in discharge of *quasi judicial* function, is entitled to exercise his judicial discretion for the extent of enquiry needed in a particular case. It has been demonstrated on behalf of the assessee that books of accounts were audited and certified by the tax auditors. The AO has also called for the books and has also test checked the veracity of expenses. In the absence of any serious deviation pointed out by the PCIT which may invite the attention of a reasonable person for enquiry, the acceptance of such routine expenses cannot be dislodged in a light hearted manner. If the approach adopted by the PCIT is endorsed, every single case assessed under s.143(3) of the Act would be susceptible to revisional proceedings. We are not inclined to uphold the action of the PCIT. The directions of the PCIT in this regard are thus set aside.

7. The second objection of the PCIT is towards non verification of sundry creditors. The learned counsel contends that the credit arises on account of purchases made from the suppliers of the vehicle to whom the payments are made through banking channel in the regular course. These facts are easily discernable from the accounting records and are consistent with the accounting policy followed in this regard. The opening stock purchase sales and closing stock and other entries in the books are not in dispute. The correctness and genuineness of income and expenses have been examined by the AO. The AO has applied his mind to the state of affairs of the assessee and there are not prescribed yardsticks as to what enquiry or what kind of verification is expected from the AO. The PCIT has not pointed out on what basis the sundry creditors reflected in the books are abnormal. The supplies are made by the multinational companies and the creditors have arisen on towards outstanding payments. The payments are made in ordinary course as an ordinary business affair. It is claimed that having regard to the substantial turnover of the assessee, the outstanding creditors is a normal incident of business. The assessee contends that without pointing out what enquiry and why enquiry are needed, setting aside of the issue affects the civil rights accrued to the assessee on assessments made under s.143(3) of the Act and it is unfair to put the assessee to rigor action again in a perfunctory manner. It was further contended that mere non-confirmation of the sundry creditors does not necessarily render the order erroneous to the prejudicial to the interest of the Revenue.

7.1 Without prejudice, it is also pointed out on behalf of the assessee that in the post revision, assessment framed under s.143(3) of the Act r.w.s. 263 of the Act, no addition has been made on this point and the AO found the explanation on sundry creditors

satisfactory after enquiries and verifications. It was thus submitted that the assessee is thus not really aggrieved by this direction and hence does not strictly press for its adjudication on merits.

7.2 We are not inclined to interfere with the directions of PCIT on this score, having regard to the averments made on behalf of the assessee in para 7.1 above.

8. The third issue concerns enquiry on rental income amounting to Rs.14,22,635/-. The assessee contends that the property held in the name of the partner was lent to public bank/SBI/ and the tenant (SBI) has deducted TDS in the PAN of the assessee firm herein. We, at the outset, do not see what prejudice is caused to the Revenue in the instant case where income has been declared on the property held in the name of the partner. Without going into any other discussion, the issue requires to be set aside at the threshold.

9. The fourth issue concerns interest expenses of Rs.57.26 Lakhs relating to cash credit taken from the bank. The assessee contends that the books of accounts clearly shows that expenditure has been incurred for utilization of cash credit facility from the bank towards construction of capital asset i.e. hotel building. The identical issue cropped up in A.Y. 2015-16 where relief was granted by the CIT(A) for which the order has been placed in the paper book. In the light of the fact that issue stands settled in favour of the assessee, the action of AO can be said to be plausible and the order under review thus cannot be regarded as erroneous. The pre-conditions for invocation of Section 263 of the Act on this point are thus not satisfied. The action of PCIT is thus set aside.

10. The fifth issue concerns disallowance of expenses on tippers. The assessee contends that three tippers were purchased in the relevant previous year in February and March 2014. The vehicles were put to use for transportation of coal at Lakhanpur in Odisha State and the corresponding transportation receipts have been recorded in F.Y. 2014-15 when transactions were consummated and therefore no prejudice is caused to the Revenue *per se* in the larger context. The direction of PCIT towards disallowance of depreciation on such tippers amounting to Rs.2,25,000/- is in controversy. We observe that it is an admitted position that tippers were purchased in the F.Y. 2013-14 relevant to A.Y. 2014-15 in question. The vehicle having been purchased are naturally ready for use which tantamount to putting it to use in respect of such movable assets/vehicles. The claim of depreciation thus being plausible thus cannot be termed as 'erroneous' for the purposes of s.263 of the Act. The action of the PCIT is set aside.

11. As per sixth issue, the PCIT has questioned the eligibility of interest expenditure of Rs.57.26 Lakhs on the ground of non-business use. The assessee in this regard contends that the aforesaid interest was paid to Bank of Baroda and ICICI Banks for cash credit loans taken from these banks and utilized as working capital of the business of the assessee. The loans & advances given is not out of the borrowed funds but out of own capital. We observe that utilization of loans & advances of the purposes of business is extremely subjective and depends on evaluation of variety of attendant factors. No straight jacket formula can be envisaged with mathematical precession to ascertain such disallowance, if any, at the revisional stage. The relevant facts were placed before the AO. In the absence of any cogent evidence available before the PCIT to assail the claim of the interest expenditure incurred on working

capital loan, the revisionary proceedings to explore the possibility of error, if any, is not justified. We thus set aside the directions of the PCIT in this regard.

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

Order pronounced on 12/10/2021 by placing the result on the Notice Board as per Rule 34(4) of the Income Tax (Appellate Tribunal) Rule, 1963.

Sd/-
(N. K. CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / 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.

By order,

Sr. Private Secretary
ITAT, Raipur (on Tour)