

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.	A.Y.	Appellant	Respondent
180/Hyd/21	2015-16	Vodafone Idea Limited, Hyderabad [PAN: AAACB2100P]	Asst. Commissioner of Income Tax, TDS Circle-2(1), Hyderabad
181/Hyd/21	2016-17		

For Assessee : Shri Ronak G.Doshi, AR
For Revenue : Shri Ravi Kiran, DR

Date of Hearing : 21-10-2021
Date of Pronouncement : 26-11-2021

ORDER

PER S.S.GODARA, J.M. :

These two assessee's appeals for AYs.2015-16 & 2016-17 arise from the PCIT(TDS)-Hyderabad's order(s) dated 27-02-2020 passed in DIN & Letter Nos.ITBA/COM/F/17/2019-20/1025818209(1), involving proceedings u/s.263 of the Income Tax Act, 1961 [in short, 'the Act']; respectively.

Heard both the parties. Case files perused.

2. Both the learned representatives take us to the PCIT's detailed discussion terming corresponding twin orders/ assessments passed u/s.201(1) and 201(1A) of the Act dt.27-02-2017 as erroneous ones causing prejudice to the interest of Revenue as follows:

“2.1 From the proposal of the Assessing Officer, it is seen that while passing the orders under Sec.201(1) & 201(1A) of the I T Act, 1961 for the Assessment Years 2015-16 and 2016-17, the name of the assessee has been mentioned inadvertently as - "M/s Vodafone South Limited (VSL - Hyd)" instead of mentioning the name of the assessee as – M/s.Vodafone Mobile Services Limited. It is also observed from the proposal of the Assessing Officer that the demand raised for both these Assessment Years are as under-

Assessment Year Demand raised Order under Sec. & Date of order

2015-16 Rs.2,09,61,635 201(1) & 201(1A)
& 27-02-2017

2016-17 Rs.3,84,16,393 201(1) & 201(1A)
& 27-02-2017

It has been submitted by the Assessing Officer in his proposal that as the mentioning of wrong name in the order is prejudicial to the interest of revenue, as pointed by the assessee, the Assessing Officer and the JCIT, TDS Range - 2, Hyderabad have submitted that the orders under sec.201(1) & 201(1A) passed for the A.Ys. 2015-16 & 2016-17, are required to be revised under Sec.263 of the I T Act, 1961 in order to protect the interest of revenue.

2.2 It is also important to mention here that before submitting the proposals for Revision under Sec.263, the Assessing Officer has passed a Corrigendum on 22-01-2018 rectifying the name of the company to M/s Vodafone Mobile Services Limited for both the Assessment Years i.e. for the A.Ys. 2015-16 & 2016-17.

3. After receipt of the proposal of the Assessing Officer for Revision, a show cause letter dated 22-05-2018 was issued to the assessee company posting the case for hearing on 06-06-2018 at 3.30 PM. In response to the said notice, the assessee sought for a short adjournment of one week and the same was considered and the case was reposted for hearing on 13-06-2018.

On 13-06-2018 the assessee's Authorised Representatives - Sri Ravi Bharadwaj & Ms. Shruthi Upadhyay, Chartered Accountants appeared and filed Power of Attorney and also filed written submissions. The written submissions furnished by the assessee have been perused and placed on record.

4. I have also gone through the proposal of the Assessing Officer i.e. DCIT, TDS Circle - 2(1), Hyderabad and the forwarding note of the JCIT, Range - 2, Hyderabad and there is no doubt that a huge demand is involved for both these Assessment Years. Further, it is also a fact that the Assessing Officer has wrongly quoted the name of the assessee while passing the orders under sec.201 (1) & 201 (1A) of the I T Act, 1961 and therefore, the passing of an order with a

wrong name is prejudicial to the interest of revenue and therefore, the interest of the revenue needs to be protected. In view of these observations, I am of the view that this is a fit case for Revision of the assessment.

5.1 Further, the provisions of section 263 is reproduced in this regard as under

"The Commissioner may call for an examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the Revenue, he may after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."

5.2 From the above, it is clear that the provisions of section 263 are applicable to an order passed under the Act and it is evident that the order of the Assessing Officer is erroneous, as pointed by the assessee, and it is to be considered to be prejudicial to the interest of revenue. Before proceeding further in the case, it is important to discuss here as to why the order of the Assessing Officer is prejudicial to the interest of revenue. The following course of actions of the Assessing Officer and the observations of the Hon'ble ITAT goes to prove that the order of the Assessing Officer is prejudicial to the interest of revenue -

1. The Assessing Officer while passing the order under Sec.201(1) & 201(1A) dated 27-02-2017 has mentioned the name of the assessee as M/s Vodafone South Limited (VSL - Hyd) in the said orders, which company got merged with Mis Vodafone Mobile Services Limited w.e.f 01-04-2014 as per the scheme of merger approved by the Hon'ble Calcutta, Madras & Delhi High Courts;

2. Thus, the name of the company mentioned in the orders dated 27-02-2017 passed under sec.201(1) & 201(1A) on a subsequent date of merger is erroneous in the light of the fact that the name mentioned in the order is non-existent;

3. Further, the Hon'ble Tribunal while disposing off the Stay Application of the assessee in S A Nos. 3 & 4/H/2018 (in ITA Nos.40 & 41/H/18) dated 24-01-2018 at para - 5 of its order has held as under-

"5. Considering the rival submissions and perused the orders of the revenue authorities. We find that the department is seeking adjournment for hearing of the main appeals. As the balance of convenience is in favour of the assessee considering the fact

that the Hon'ble High Court has given stay of recovery for the earlier years and also considering the fact that the assessment order passed in the name of non-existing company, the assessment order itself may not survive depending upon the facts on record. We cannot pass on any order without hearing the main appeal. Therefore, we are inclined to grant temporary stay of the outstanding demands for both the years under consideration for a period of month from the date of this order. "

It can be seen from the above, that the Hon'ble Tribunal has expressed that considering the fact that the assessment order passed in the name of non-existing company may not survive depending upon the facts on record, clearly spells out that the order passed by the Assessing Officer quoting the name of a non-existent company is erroneous.

6.1 Thus, there is no doubt to state that the order is erroneous and is subject to Revision. Now keeping this aspect aside, the assessee during the course of hearing in its written submissions has expressed objections for Revision of the assessment under Sec.263 of the IT Act, 1961. The assessee submitted that when the issue involved is a subject matter of appeal before a higher authority, the Commissioner of Income-tax has no jurisdiction under Sec.263 as the order passed by the lower authorities on such issue merges with the appellate order passed by the higher authorities. While duly honouring the directions or orders of the higher authorities or the higher appellate authorities, before arriving at any conclusion, it is also important to discuss here the assessee's strategies and its attitude in the course of proceedings right from the stage of passing of orders under sec.201 of the I T Act, 1961 till the submissions made during the 263 proceedings as well as before the appellate proceedings which are briefly discussed hereunder-

- i. The assessee during assessment proceedings under sec. 201 (1) & 201 (1A) has attended to the hearings and furnished the requisite information and has never raised this issue and has duly co-operated in finalisation of the assessments;*
- ii. It has not raised any ground in the appeal filed before CIT (A) regarding wrong mention of the name in the Assessment Order;*
- iii. It has raised this ground only when it filed appeal before the Hon'ble Tribunal stating that the order passed by the AO in the name of a non-existent company is null and void and needs to be quashed;*

6.2 The assessee company raised this ground only before the Hon'ble Tribunal that the order passed by the AO quoting the name of a

company which got merged company as null and void, despite the fact that a corrigendum has already been passed correcting the name quoted in the orders passed under Sec 201(1) & 201(1A) of the I T Act, 1961 for the A.Ys. 2015-16 & 2016-17. This depicts the intention and attitude of the assessee company to get rid of a huge demand of RS.2,09,61,635/- & Rs.3,84,16,393/- for the A.Ys. 2015-16 & 2016-17 respectively making an attempt to project the clerical mistake of quoting a wrong name as a mistake which has no remedial action and magnify the issue to such an extent, that the appellate authorities may feel that the action of the Assessing Officer has no remedy and needs to be disqualified. However, in my opinion, the following aspects support the fact that the error is a clerical error and can be corrected -

- 1. The Assessing Officer though mentioned the name as M/s Vodafone South Limited, the TAN and the PAN have been correctly quoted in the orders passed under Sec.201(1) & 201(1A);*
- 2. The assessee has never raised this issue during the course of proceedings and cooperated in furnishing the requisite information and in finalisation of the assessment proceedings;*
- 3. Even in its appeal before the CIT (A) also, the assessee has not raised any ground regarding the wrong' mention of the name in the orders passed under Sec.201 (1) & 201 (1A) of the I T Act, 1961 ;*
- 4. The Assessing Officer having noticed that the name has been wrongly mentioned in the said orders, has passed a Corrigendum on 22-01-2018 and corrected the name and the same has been communicated to the assessee company;*
- 5. For the first time, the assessee raised a ground before the Hon'ble ITAT that the order passed by the AO is null and void as the said order has been passed in the name of a non-existent company;*
- 6. The Hon'ble ITAT has in its order in ITA Nos.40 & 41/Hyd/2018 dated 30-05-2018 disposed off the quantum appeals and at para - 6 of the order has held as under-*

"6. Having regard to the rival contentions and material on record, we find that the assessee 'Vodafone South Limited' had merged with 'Vodafone Mobile Service Ltd.," and had intimated to the relevant AO and CIT (A) about the said merger. We find that the AO had issued the notice in the correct name, but while passing the assessment order, he has mentioned the earlier name of the assessee. Though the Ld. Counsel for the assessee has placed reliance upon the judgement of the Delhi High Court in the case of Spice Entertainment Limited (supra), we find that the Hon'ble Supreme Court in a recent case of Skylight Hospitality LLP Vs. ACIT in SLP (L) No. 740912018 dated 0-04-

2018, has held that the wrong name given in the notice was merely a clerical error which could be corrected under Sec.292B of the I T Act. In fact, the AO has passed a corrigendum dated 22-01-2018, correcting the name of the assessee and therefore, there is no infirmity in the assessment order. In view of the same, the additional grounds of appeal raised by the assessee is rejected."

Thus, from the above, it is clear that even the apex Court (see vide supra) has held that the mistake was a clerical mistake and could be corrected under Sec.292B of the I T Act. Accordingly, the Assessing Officer has corrected the order by passing a Corrigendum dated 22-01-2018 to the orders passed under Sec.201(1) & 201(1A) dated 27-02-2017. The Hon'ble ITAT placing reliance on the decision of the Hon'ble Apex Court has dismissed the ground raised by the assessee and the issue has been decided in favour of Revenue;

1. Simultaneously, as an abundant precaution, the AO has also proposed Revision under sec.263 of the I T Act, 1961 ;

Thus, from the above analysis, it can be understood that the mistake in the order is only a clerical error and can be rectified.

6.3 Mere quoting of wrong name cannot be considered for disqualifying the entire order. Therefore, keeping in mind the conduct of the assessee company and in order to protect the interest of revenue since the orders passed under Sec.201 (1) & 201(1A) for the AYs 2015-16 and 2016-17 involve huge demands, as an abundant precaution, to protect the interest of revenue, I am of the opinion that the orders passed under Sec.201 (1) & 201 (1A) are erroneous and prejudicial to the interest of revenue and needs to be revised under Sec; 263 of the I T Act, 1961.

7. Without going into the merits of the case on any other issues or contents of the orders passed under Sec.201 (1) & 201 (1A) of the I T Act, 1961 dated 27-02-2017 for the A.Ys. 2015-16 and 2016-17, the Assessing Officer is directed to pass necessary orders revising the orders as per the provisions of Sec.263 of the I T Act, 1961 quoting the name of the assessee as "M/s Vodafone Mobile Services Limited (Formerly known as Vodafone South Limited)".

3. We have given our thoughtful consideration to rival pleadings against and in support of the correctness of the PCIT's foregoing directions and find no reason to uphold the same. It is made clear that the learned PCIT's detailed discussion in issue before us has itself acknowledged that the

Assessing Officer had passed the necessary corrigendum dt.22-01-2018 rectifying the name of the assessee-company from M/s.Vodafone South Ltd., (VSL-Hyd) to M/s.Vodafone Mobile Services Limited. There could hardly be any dispute that such corrigendum forming part of the PCIT's discussion in para 2.2 dates back to the main orders as on 27-02-2017 only.

4. We next note that this tribunal's common order in assessee's corresponding quantum appeals ITA Nos.40 and 41/Hyd/2018 decided on 30-05-2018 (supra) has rejected the assessee's corresponding pleas as well.

It is abundantly clear therefore that once learned PCIT's revision directions in view of the issue, treat the alleged error committed by the Assessing Officer in incorporating the foregoing name to be only clerical and rectifiable in nature (para 6.2), we fail to understand in this clinching factual backdrop as to how the impugned assessment/order(s) passed by the Assessing Officer could be erroneous ones, causing prejudice to the interest of Revenue; simultaneously as held in *Malabar Industrial Co. Vs. CIT* [243 ITR 83] (SC). We make it clear that the PCIT has nowhere concluded that the Assessing Officer's orders in issue attract assumption of Section 263 revision jurisdiction in the given facts after the assessing authority had issued corrigendum and the same involved only a clerical mistake; as the case may be (supra).

We thus conclude that the PCIT herein has erred in law and facts in invoking his Section 263 revision jurisdiction. His common order under challenge in both the assessment years

i.e., AYs.2015-16 & 2016-17 stands reversed therefore. All necessary consequences shall follow subject to just exceptions.

5. These assessee's twin appeals are allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 26th November, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 26-11-2021

TNMM

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Copy to :

1.M/s.Vodafone Idea Limited, H.No.1-10-178, 2nd Floor, Varun Towers-II, Begumpet, Hyderabad.

2.Asst.Commissioner of Income Tax-TDS, Circle-2(1), Hyderabad.

3.PCIT(TDS)-Hyderabad.

4.D.R. ITAT, Hyderabad.

5.Guard File.