IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No. 156/PUN/2021
निर्धारण वर्ष / Assessment Year : 2015-16

Ajay Engineering and Agricultural Equipment Company, 5-14-42, Engineering Compound, Adalat Road, Aurangabad Maharashtra – 431 005 PAN : AAEFA0474A	Vs.	Pr.CIT-1, Nashik
Appellant		Respondent

Assessee by Shri Pratik Sandbhor
Revenue by Shri Mohit Jain

Date of hearing 19-01-2022
Date of pronouncement 20-01-2022

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee arises out of the order dated 19-03-2021 passed by the Principal CIT, Nashik-1 u/s.263 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2015-16.

2. Briefly stated, the facts of the case are that the assessee is engaged in the business of sale of Tractors, Tractor parts, Two wheelers and spare parts etc. The assessee filed its return declaring total income at Rs.32,37,270/-. The assessment was

finalized at the same income. Invoking the powers u/s.263, the ld. Pr. CIT held the assessment order to be erroneous and prejudicial to the interest of the Revenue on the five counts, namely,

(i) Disallowance of Professional Fees at Rs.73,000/- u/s.40(a)(ia) for non-deduction of tax at source u/s.194J;

(ii) Disallowance of Transport Expenses of Rs.37,19,441/- u/s.40(a)(ia) on account of failure to deduct TDS u/s.194C;

(iii) Mismatch of Sales Turnover at Rs.1,72,62,558/-;

(iv) Improper verification of Sundry Creditors; and

(v) Interest on refund u/s.244A at Rs.24,969/- not offered for taxation.

3. During the course of revision proceedings, the assessee submitted explanation in respect of all the five items jotted down above. The ld. Pr.CIT discussed these issues one by one and held that there was failure on the part of the AO to examine each of them thereby rendering the assessment order both erroneous and prejudicial to the interest of the Revenue. He, therefore, set-aside the assessment order and directed the AO to re-frame the assessment as per law. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

4. We have heard both the sides in Virtual Court and perused the relevant material on record. The ld. Pr.CIT has invoked the jurisdiction u/s.263 of the Act, which pre-supposes satisfaction of the twin conditions, viz., the assessment order should be erroneous and also it should be prejudicial to the interest of the Revenue. Both the above conditions must be cumulatively satisfied so as to render an assessment order amenable to revision u/s.263. If an order is only erroneous but not prejudicial to the interest of the Revenue or *vice-versa*, the power u/s.263 is ousted. In hue of the above background, we now proceed to determine the five issues raised by the ld. Pr. CIT for exercising revisionary power.

(i) Disallowance of Professional Fees at Rs.73,000/- u/s.40(a)(ia) for non-deduction of tax at source u/s.194J :

5.1. The ld. Pr. CIT noticed that the Aurangabad Branch of the assessee-firm paid Professional fees of Rs.73,000/-. He opined in the show cause notice that deduction of tax at source was warranted u/s.194J @10%, which the assessee failed to do and hence disallowance u/s.40(a)(ia) of the Act was called for. In response, the assessee submitted that the total professional fees debited to Aurangabad Branch was albeit Rs.73,000/-, but no

individual payment or aggregate of amounts paid to a single party exceeded a sum of Rs.30,000/-, which was a condition precedent for deduction of tax at source. The assessee tendered break-up of Rs.73,000/- which has been incorporated at para 3.1.2 of the impugned order. Not convinced, the ld. Pr. CIT held the assessment order to be erroneous and prejudicial to the interest of the Revenue on the ground that the AO did not examine this aspect.

5.2. It can be seen that none of the individual items of payments or aggregate to one party exceeds Rs.30,000/-. Once the position is such, the case gets covered under the first proviso to section 194J(1), requiring no deduction of tax at source on professional fees or technical fees in terms of section 194J. The ld. Pr.CIT, without controverting the factual position stated before him, failed to consider that the assessee was, in fact, not required to deduct tax at source in view of the first proviso to section 194J. When the AO impliedly accepted the assessee's contention, the assessment order cannot be held as prejudicial to the interest of the Revenue inasmuch as there is no loss to the Revenue warranting disallowance u/s.40(a)(ia) of the Act. The assessment order may be termed as erroneous from the standpoint of the ld.

Pr.CIT for not having discussed the issue in the assessment order, but it cannot be branded as prejudicial to the interest of the Revenue because there is no loss to the revenue inasmuch as the issue is tax neutral. In the absence of the cumulative satisfaction of the twin conditions, we hold that the ld. Pr.CIT was not justified in treating the assessment order as erroneous and prejudicial to the interest of the Revenue on this score.

(ii) Disallowance of Transport Expenses of Rs.37,19,441/- u/s.40(a)(ia) on account of failure to deduct TDS u/s. 194C :

6.1. The ld. Pr.CIT observed in the show cause notice that the AO ought to have made disallowance of Transport Expenses of Rs.37,19,441/- u/s.40(a)(ia) for failure on the part of the assessee to deduct tax at source u/s.194C of the Act. The assessee submitted before the ld. Pr.CIT that the case was covered under sub-section (6) of section 194C which states that no deduction shall be made from any sum credited or paid to a contractor during the course of business of plying, hiring or leasing goods carriages where such contractor owns ten or less carriages on any time during the previous year and furnishes a declaration to the effect along with Permanent Account Number to the persons paying such sum. The assessee furnished necessary details with

the amount paid to each party along with their PAN Numbers, which have been tabulated in para 4.1.2 of the impugned order. The ld. Pr.CIT still held that the AO failed to conduct inquiry on this issue, which rendered the assessment order amenable to the revision.

6.2. Even though the AO did not make a mention of the issue in the assessment order, the same cannot be considered as prejudicial to the interest of the Revenue because the provisions of sub-section (6) of section 194C did not require deduction of tax at source. The position so stated before the ld. Pr.CIT, giving all the necessary details which have been tabulated in the impugned order, has not been controverted in any manner. We, therefore, hold that the ld. Pr.CIT was not justified in exercising the revisionary power on this issue because the twin conditions for revision were not satisfied.

(iii) <u>Mismatch of Sales Turnover at Rs.1,72,62,558/-</u> :

7.1. The ld. Pr.CIT observed that there was mismatch in Sales Turnover reported in Audit report and Income-tax return. He noticed that the audit report of the assessee showed sales turnover at Rs.38,74,74,192/- as against Rs.40,47,36,750/- shown in the income-tax return, leading to difference of Rs.1,72,62,558/-,

which was not verified by the AO. In response, the assessee submitted before the ld. Pr.CIT that the sales turnover declared in the return at Rs.38,74,74,192/- matched with the actual turnover. Not convinced, the ld. Pr.CIT held the assessment order liable for revision because the AO did not examine this fact.

7.2 We have gone through the relevant material in this regard. Page 33 of the paper book is a copy of Annexure 1 Part B of the Tax Audit report in which the amount of turnover has been shown at Rs.40,47,36,750/-. As against that, the amount of turnover as per the Trading Account, appearing at page 8 of the paper book, has been declared at Rs.38,74,74,192/-. It is this latter amount of turnover which has been actually considered for the purposes of computation of total income. Even though there is a mistake in mentioning the figure of turnover in Tax Audit report but that mistake does not affect the total income inasmuch as the amount of profit shown in the Profit and loss account has been considered for the purposes of computation of total income. In fact, the same audit report having Annexure 1 Part B gives the amount of net profit/loss to be taxed as per the Profit and loss account at Rs.3,08,72,691/-, which matches with the amount of profit as per the Profit and loss account. *Albeit*, the AO did not conduct any

inquiry on wrong mentioning of the amount of total turnover in the Tax Audit report, which was although correctly considered in return of income, but the assessment order cannot be considered as prejudicial to the interest of the Revenue because the amount of profit has been correctly reflected. As such, the assessment order cannot be said to pass the test of satisfying the dual conditions laid down in section 263 of the Act.

(iv) Improper verification of Sundry Creditors:

8.1. The ld. Pr.CIT noticed that the case was selected for scrutiny because there was much increase in sundry creditors as compared to the preceding year but the AO failed to verify this aspect. On notice, it was stated before the Pr.CIT that the AO did inquire about all the creditors whose balances were more than Rs.1.00 lakh. The assessee also furnished a list of sundry creditors, as incorporated in para 3.4 of the impugned order, showing copious details of all the sundry creditors including the creditors with balances of Rs.1.00 lakh or more that were duly confirmed by the respective parties also. Only small balances below Rs.1.00 lakh were without confirmation. It can be seen from the details of such sundry creditors as given in the impugned order itself that large chunk of total sundry creditors got

exhausted in the balances of more than Rs.1.00 lakh, for which proper verifications were done. Some small balances here and there below Rs.1.00 lakh even though not examined by the AO, did not render the assessment order erroneous and prejudicial to the interest of the Revenue unless the ld. Pr.CIT demonstrates something amiss in them, which is actually not the case.

(v) Interest on refund u/s.244A at Rs.24,969/- not offered for taxation :

9.1. The ld. Pr.CIT observed in the show cause notice that interest on refund amounting to Rs.24,969/- received by the assessee u/s.244A of the Act was not offered for taxation, which the AO did not examine. In response, the assessee submitted that the amount of interest was included in the Interest income, which got taxed. A copy of the ledger account was also produced before the ld. Pr.CIT, who still held the assessment order to be erroneous because the AO did not conduct any inquiry on this issue.

9.2. We have gone through the copy of Interest account from the assesse's ledger which has been placed at pages 102 and 103 of the paper book. It can be seen that the amount of interest on income-tax refund at Rs.24,969/- has been duly credited on 16-07-2014. The total closing balance from such account at

Rs.10,27,788/- has been taken to the Profit and loss account which has been considered for declaring the income chargeable to tax. Under these circumstances, we fail to appreciate as to how the assessment order can be termed as prejudicial to the interest of the Revenue when the assessee disclosed the amount of interest on income-tax refund in its interest income account.

10. On all the five reasons given by the ld. Pr.CIT for holding the assessment order as erroneous and prejudicial to the interest of the Revenue, we find that none of them justifies the revision because the ld. Pr.CIT, even though observed that the assessment order did not discuss these issues, but failed to point out as to how it was prejudicial to the interest of the Revenue. All these fives items are of such a nature that either no disallowance was called for or the income was properly offered for taxation, even though the AO did not specifically discuss these issues in the assessment order.

11. Ordinarily, an AO is supposed to discuss only the important issues of assessment in his order. Unless an issue is of grave importance or has serious implications or *prima facie* warrants examination, the AO needs to incorporate discussion in the assessment order only on such issues, with which he does not

agree with the treatment given by the assessee. For instance, if an assessee has claimed a deduction or exemption, with which the AO does not concur, he needs to discuss the same in the body of the assessment order and incorporate his reasons before making such an addition or disallowance. Other items of usual or repetitive nature from year to year, with which the AO agrees with the assessee, need not be specifically discussed before accepting claim. Simply non-discussion of an issue in the assessment order *per se* does not render an assessment order erroneous and prejudicial to the interest of the revenue so as to empower the CIT to invoke the provisions of section 263 of the Act. Once a show cause notice is issued u/s 263 on the ground that a particular expenditure was liable to the disallowed and the AO has not made any discussion of the same in the assessment order, then the reply of the assessee needs to be examined. If a satisfactory reply is given to Pr. CIT which shows that notwithstanding the factum of non-discussion in the assessment order, the expenditure was liable to be allowed as deduction, then the Pr. CIT cannot hold the assessment order erroneous and prejudicial to the interest of the revenue because of the AO not discussing the issue in the assessment order. It is only where

either no reply is given by the assessee to the Pr. CIT or the reply so given does not justify deduction, the assessment order would qualify for revision as a case of non-application of mind by the AO.

12. Adverting to the facts of the instant case, we find that even though the AO did not specifically discuss such five issues in the assessment order, but the assessment order does not satisfy the second condition of being prejudicial to the interest of the Revenue. *Ex consequenti,* we hold that the ld. Pr.CIT was not justified in revising the assessment order. We, therefore, set-aside the same.

13. In the result, the appeal is allowed.

Order pronounced in the Open Court on 20th January, 2022.

Sd/-	Sd/-
(S.S.VISWANETHRA RAVI)	**(R.S.SYAL)**
JUDICIAL MEMBER	**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 20th January, 2022
Satish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The Pr.CIT-1, Nashik
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "A" / DR 'A', ITAT, Pune
5. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	19-01-2022	Sr.PS
2.	Draft placed before author	19-01-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
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10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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