IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

| ITA No.668/Bang/2021 |
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| Assessment year: 2015-16 |

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| Karnataka Forest Development Corporation Ltd.,<br>Vanavikas, 18th Cross,<br>Malleswaram,<br>Bengaluru – 560 003.<br>**PAN: AAACK 9424B** | Vs. | The Principal Commissioner of Income Tax,<br>Bengaluru-4,<br>Bengaluru. |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Shri B.S. Balachandran, Advocate |
| Respondent by | : | Shri Sumer Singh Meena, CIT(DR)(ITAT), Bengaluru. |

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| Date of hearing | : | 01.02.2022 |
| Date of Pronouncement | : | 08.02.2022 |

**O R D E R**

*Per Chandra Poojari, Accountant Member*

This appeal by the assessee arises out of the order of the Principal Commissioner of Income-tax, PCIT-4, Bangalore [PCIT] passed u/s. 263 of the Income-tax Act, 1961 [the Act] dated 19.3.2020 for the assessment year 2015-16.

2. The facts of the case are that the assessee company filed its return for the AY 2015-16 declaring total income of Rs.6,73,09,130. The case was selected for scrutiny and assessment was completed on 17.11.2017 assessing income at Rs.13,27,59,560.

3. The PCIT on perusal of the assessment records was of the view that the assessment order passed by the AO is erroneous and prejudicial to the interests of the revenue for the following reasons. With regard to donation of Rs.2 lakhs was wrongly allowed by the AO without examining the deduction u/s. Rule 7A(2). There was nothing in the assessment records to show that the prior period expenses of Rs.74,702 crystallised during the year as claimed by the assessee. In respect of expenses written off to the extent of Rs.28,97,408, this issue was also not examined by the AO. Out of this amount interest of Rs.12,94,130 has been voluntarily waived off by the assessee out of interest of Rs.51,76,521 receivable from Karnataka Cashew Development Corporation. A voluntary waiver of interest prima facie cannot be claimed as deduction by the assessee and interest to this extent was wrongly allowed by the AO. Similarly, an amount spent on Bamboo planation of Rs.3,52,144 was prima facie in the nature of capital expenditure and the same has been wrongly allowed as a deduction by the AO without examining the issue. An amount of Rs.4,49,194 written off as interest on loan to Mysore Paper Mills Ltd. and write off of agricultural income tax recoverable from Govt. of Karnataka amounting to Rs.2,53,586 and write off of sundry balances amounting to Rs.609 was not properly examined by the AO. The PCIT therefore set aside the order of the AO with a direction to re-examine the above issues and decide the same accordingly. Further, on the deduction under Rule 7A(2), he clarified that if the AO finds that the actual allowable deduction is Rs.7,09,58,595, he shall restrict the deduction to Rs.6,46,03,000 which is the amount allowed in the original assessment order since the revisionary proceedings are aimed at rectifying the orders prejudicial to the interest of revenue and not intended to provide relief to the assessee. Against this, the assessee is in appeal before us.

4. The assessee has raised the following rounds:-

"LEGAL GROUNDS:

1. The revisionary order dated 19 March 2020 passed by the learned Principal Commissioner of Income tax-tax ("PCIT") under section 263 of the Income-tax Act, 1961 ("Act") is bad in law and erroneous and against the facts and circumstances of the case;

2. The learned PCIT erred in concluding that the assessment order passed by the Assessing Officer ("AO") was erroneous and prejudicial to the interest of the Revenue without demonstrating the same;

3. The learned PCIT erred in facts and in law in concluding that the AO had failed to conduct any enquiries regarding the issues for which the revisionary proceedings have been initiated without appreciating that the AO had allowed the claim of the Appellant after due verification;

4. The learned PCIT has erred in law and on facts in not appreciating that failure of AO to make an elaborate discussion on an examined issue does not itself amount to non-enquiry of the issue;

5. The learned PCIT failed to appreciate that the provisions of section 263 can be invoked only when twin conditions are satisfied i.e., the assessment order is erroneous and prejudicial to the interest of the Revenue;

6. The learned PCIT erred in law in not respecting the decisions of the Hon'ble Apex Court in the case of Malabar Industrial Company Limited v PCIT (243 ITR 83) and several judicial precedents which have held that the expression 'prejudicial to revenue' must be read in conjunction with the expression 'erroneous order';

7. The learned PCIT erred in law in not regarding the decision of the jurisdictional Karnataka High Court judgment in V.G. Krishnamurthy v PCIT (152 ITR 683) and also (131 ITR 301) wherein it has been held that the order passed by the

AO must be both erroneous and prejudicial to the interest of the Revenue;

GROUNDS ON MERITS:

A] In Regard Deduction claimed under rule 7A (2) excess claim of Rs.1,51,81,556/-

8. The learned PCIT erred in facts and in law in holding that the deduction of Rs.6,46,03,000/- allowed by the AO under Rule 7(2) of the Income-tax Rules, 1962 ("Rules") is erroneous and the same ought to have been restricted to Rs.4,94,21,444/-, without providing any reasons for such restriction;

9. The learned PCIT failed to appreciate the submission of the Appellant that it was entitled to deduction of Rs.7,09,58,595/- but only Rs.6,46,03,000/- was claimed in the return of income hence there was no prejudice to the Revenue;

10. The learned PCIT erred on facts in ignoring the working sheet and the supporting documents filed by the Appellant to demonstrate that it was eligible for deduction of Rs. 7,09,58,595/- under Rule 7(2) and hence there was no loss of revenue. The assessment order was not prejudicial to the interest of the Revenue and hence the same was outside the purview of revision under section 263 of the Act;

11. The learned PCIT erred in setting aside the issue of Rule 7A(2) to the file of the AO without considering the evidences filed by the Appellant on merits which clearly shows that the deduction granted in the assessment order was in order;

12. The PCIT erred in not appreciating that the AO had applied his mind to Rule 7A(2) as per the details called for and furnished by the Appellant, and thus there is no any failure to conduct the enquiry;

B] PRIOR PERIOD EXPENSES:

13. The learned PCIT erred in holding that prior period expenses of Rs.74,702/- ought to have been disallowed without appreciating that they were crystalized in the subject AY 2015-16 and claimed;

C] EXPENSES WRITTEN OFF:

14. The learned PCIT failed to appreciate that interest of Rs.5,47,745/-receivable from Karnataka Cashew Development Corporation was written off, hence, there was no prejudice to the Revenue;

15. The learned PCIT failed to appreciate that concession was given to Karnataka Cashew Development Corporation and an amount of Rs.12,94,130/- was waived off, hence, there was no prejudice to the Revenue;

16. The learned PCIT failed to appreciate that amount of Rs.3,52,144/-spent on pulpwood plantation of Shimoga Division had failed due to unavoidable conditions and the same was written off, hence, there was no prejudice to the Revenue;

17. The learned PCIT failed to appreciate that the interest on loan to Mysore Paper Mills Ltd of Rs.4,49,194/- was unrecoverable and hence written off, there was therefore no prejudice to the Revenue;

18. The learned PCIT failed to appreciate that the amount of Rs.2,53,586/- being agriculture income tax recoverable from Government of Karnataka was written off and hence there was no prejudice to the Revenue;

19. The learned PCIT failed to appreciate that sundry balance of Rs.609/- was written off as bad debt and hence there was no prejudice to the Revenue;

20. Without prejudice to the above, the learned PCIT failed to appreciate that on similar facts, the revisionary proceedings for AY 2014-15 were dropped by the PCIT after

considering the issues on the remand by this Hon'ble Income Tax Appellate Tribunal vide its order dated 29.11.2019 passed in ITA No.168/Bang/2019.

Each one of the above grounds is without prejudice to the other and without prejudice to the grounds of appeal taken earlier.

The Appellant reserves the right to further add, alter or amend each one of the above grounds of appeal" .

5. Ground Nos.1 to 7 are with regard to legality of assuming jurisdiction by the PCIT u/s. 263 of the Act. The ld. AR submitted that during the course of assessment proceedings, the assessee produced all books of account and vouchers and the AO examined the books of account voluntarily and sought various explanation from the assessee and after being satisfied with the explanations of the assessee, he allowed the various claims of the assessee. There is no error in the order of the AO insofar as it is prejudicial to the interests of the revenue. According to the ld. AR, the AO completed the assessment after due application of mind and taken a conscious decision on various issued raised by the PCIT. Therefore, the assessment order cannot be termed as erroneous and prejudicial to the interests of revenue. According to the ld. AR, the PCIT cannot substitute his own conditions on the issues where the AO has taken a conscious decision after due verification of the books of account, as such exercise of jurisdiction u/s. 263 of the Act is bad in law. For this purpose, he relied don the judgment of the Supreme Court in the case of *Malabar Industrial Co. Ltd. v. CIT , 243 ITR 83 (SC)*.

6. The ld. AR further submitted that since the AO after duly considering the explanation filed by the assessee in response to questions raised and after being satisfied with such explanation chose not to make any further enquiry. Endless enquiry is not possible and it is for the AO to decide when

to end the enquiry. According to the ld. AR, the PCIT cannot transgress the jurisdiction u/s. 263 by mentioning that no proper enquiry was made by the AO. Therefore he prayed that the impugned order u/s. 263 has to be set aside.

7. On the other hand, the ld. DR submitted that enquiry conducted by the AO is not sufficient to come to the correct conclusion that there is no addition warranted on the issues raised by the PCIT. As such the very reason to invoke the provisions of section 263 is that there was no enquiry by the AO or wrong assumption of facts by the AO which warrant exercise of jurisdiction u/s. 263 of the Act by the PCIT.

8. We have considered the rival submissions on the legal issue with regard to invoking the provisions of section 263 of the Act by the PCIT. The PCIT can exercise revision proceedings u/s. 263 if he is satisfied that the order of the AO sought to be revised is erroneous and prejudicial to the interests of the revenue. Section 263 empower the PCIT to initiate section 263 proceedings where the AO either takes a wrong decision without considering the material on record or he takes a decision without making proper enquiry and that such enquiry was *prima facie* warranted. If the PCIT was of the opinion that there was no proper enquiry by the AO and the AO accepted the various claims of the assessee mentioned in his order without conducting further enquiry with regard to the genuineness of the claim of the assessee and it is incumbent on the part of the AO to come to an independent conclusion that various expenditure claimed by the assessee were laid out wholly and exclusively for the purpose of business of the assessee.

9. In the present case, as seen from the assessment order, the AO closed his eyes on the issues raised by the PCIT for the reasons best known to him and accepted the deduction claimed by the assessee in his

return of income. Though AO is required to make necessary enquiries himself regarding the various claims of the assessee, he failed to do so. Therefore, the issues dealt by the PCIT were within his powers to invoke the provisions of section 263 of the Act where such enquiry was *prima facie* warranted. In view of the above, we are of the opinion that the ld. PCIT was justified in invoking the provisions of section 263 of the Act.

10. **Ground Nos. 8 to 20** are on merits. The ld. AR submitted that in regard to Rule 7A(2), the assessee actually made an addition of Rs.7,09,58,595/- and the analysis of Capital work in progress of Rubber Replanting project for the FY 2014-15 for claiming under rule 7A(2), but claimed an amount of Rs.6,46,03,000/- only in the revised statement of income. The analysis of capital work in progress of Rubber replanting project for the above year and amount which is capitalized during the year is reflected in the capital work in progress as per note 9. Thus claim of Rs.6,46,03,000/- is less and thus there is no prejudice caused to the revenue and in fact prejudice is caused only to the assessee corporation and hence it is outside the preview of section 263 of the Act.

11. Further, regarding the actual capital work in progress of replanting project for assessment year, the closing balance of capital work in progress of Rubber Replanting project is Rs.30,09,26,057/- is reflected on Note-09 at Sl.No.1 which was also submitted during the course of assessment proceedings. The amount of additions during the year as claimed in the statement of income and return of income has not been routed through profit and loss. The actual additions made during the year is Rs.8,21,20,139/ minus the capitalized amount comprising of the amount ( Rs.2,15,592/- Budwood nursery plantings + Rs.35,69,395/- of TP Bed Nursery in 2012-13 + Rs.18,43,286/- of TP Bed nursery of 2013-14 + Rs.55,33,271/- polybag nursery during 2013-14 = Rs.1,11,61,544) and

hence Rs.7,09,58,595/- (Rs.8,21,20,139 – Rs.1,11,61,544) as per analysis of Capital Work in progress of Rubber replanting project for the assessment year 2015-16 and the same should have been claimed as per rule-7A(2), but Rs.6,46,03,000/- has been claimed. Further the assessee is not replanting in any new place, all the replanting is done only in old places and existing area where the rubber planted earlier in the same place allotted originally to the corporation for planting of rubber trees in the year 1976.

12. The ld. AR submitted that the Government of Karnataka had allotted 4423.32 hectares of plantation to the corporation for Rubber plantation in 1976 and the corporation has planted rubber trees. KFDC is developing rubber plantations in the area originally allotted to KFDC and no additional area has been allotted. On extraction of the old unyielding rubber trees, re-plantations are raised in the same area transferred from the Forest department on lease and not on new areas. Since there are no new areas being acquired by the Corporation the only option left to the Corporation is to re-plant the rubber trees in the old areas of plantation after the old rubber trees being felled after 25 to 30 years being the life of the rubber trees.

13. The rubber plantations were transferred from Government of Karnataka to KFDC as special case to Rehabilitate Srilankan Tamil repatriates (since the Srilankans who repatriated were familiar to the works of rubber plantation and rubber latex collection and other processes) as per Indo -Srilankan Pact between Government of India and Government of Srilanka in 1964. Further, KFDC provides quarters, health facility and other amenities to these labourer's working in the plantations.

14. In regard to a sum of Rs.74,702/- debited to P & L account as prior period expenses, it was submitted that the expenses got crystalized only in this year and hence it is claimed in this year. Even otherwise also if it is not

allowable in this year it is allowable in the earlier year and the tax rates remains same for both the years and thus there is no prejudice caused.

15. In regard to a sum of Rs.2,00,000/-paid as donation in the P & L account, since the donation paid is in the FY 2014-15 and assessee is not able to get the donation receipts, the assessee is agreeing for the addition of the same.

16. In regard to a sum of Rs.28,97,408/- expenses written off, it is stated that it is made up of the following components:-

(a) Interest receivable from Karnataka Cashew Development Corporation Rs.18,41,875/- (Rs.5,47,745 + Rs.12,94,130/-)

The total interest receivable as per books as on 01/04/2014 was Rs.53,00,246/- and Rs.4,24,020/- provision was made for the year 20141-5 FY and the total receivable was Rs.57,24,266/ which is reflected in books. Out of total interest receivable Rs.5,47,745/- was written off since the interest rate was calculated on compounding basis and rate of interest percentage was also more than it was decided in the board meeting to reduce interest @ 8%, hence the excess interest charges have been reversed and written off. Even during the year as per board meeting approval to give concession on interest payable by Karnataka Cashew Development Corporation since that also being Government of Karnataka undertaking, 25 % on Rs.51,76,521/- to the tune of Rs.12,94,130/- was waived off and the same amount was written off. Thus in any view of the matter it is also allowable either as bad debt or as trade expenditure and hence there is neither any error nor any prejudice to the revenue.

(b) Amount spent on BambooPlantation of Shimoga Division - Rs.3,52,144/-

The above amount is spent on pulpwood plantation of Shimoga Division and the planted Bamboo plants was failed due to unavoidable conditions and the same is written off and also in the fixed assets ( Fixed Assets schedule) also the bamboo plantation has been deleted during the year and reduced hence the same is written off. Moreover the bamboo plantation comes under agriculture activities. Thus in any view of the matter it is also allowable either as bad debt or as trade expenditure and hence there is neither any error nor any prejudice to the revenue.

(c) Interest on Loan to Mysore Paper Mills Ltd -Rs.4,49,194/-

The above amount is written off since the same is not recoverable from the Mysore Paper Mills Ltd company and that also being government organization and also board approval was taken. Thus in any view of the matter it is also allowable either as bad debt or as trade expenditure and hence there is neither any error nor any prejudice to the revenue.

(d) Agriculture Income tax recoverable from Government of Karnataka of Rs.2,53,586/-

This amount has been accounted as income and it was kept as receivable in the balance sheet but the government of Karnataka has refused to reimburse and hence it has been written off. Thus in any view of the matter it is also allowable either as bad debt or

as trade expenditure and hence there is neither any error nor any prejudice to the revenue.

(e) Sundry Balance of Rs.609/-

This amount pertains to sundry balances and has been written off as bad debts and the same is also in order. Thus in any view of the matter it is allowable and hence there is neither any error nor any prejudice to the revenue.

17. In the circumstances it is prayed that the impugned order requires at best to be revised only on the issue of donation paid of Rs.2,00,000/-.

18. The ld. DR submitted that the PCIT just remitted the various issues to the AO as there was no enquiry and he has not expressed any opinion on merits and hence the impugned order has to be sustained.

19. We have heard both the parties and perused the material on record. Admittedly, the PCIT remitted the issues relating to prior period expenses, interest receivable from Karnataka Cashew Development Board, amount spent on bamboo plantation, interest on loan to Mysore Paper Mills Ltd., agricultural Income tax recoverable from Govt. of Karnataka and sundry balance written off as bad debts to the AO for reconsideration as there was no enquiry from the AO on this issues. However, with regard to deduction under Rule 7A(2), he has mentioned that even if the AO finds that finds that the actual allowable deduction is Rs.7,09,58,595, he shall restrict the deduction to Rs.6,46,03,000 which is the amount allowed in the original assessment order. In our opinion, the allowability of deduction is to the extent of claim made in the original assessment order of Rs.6,46,03,000. However, he has not denied this deduction, but only remitted the issue to reconsider the allowability of deduction under Rule 7A(2). Being so, even

on this issue there is no error by the PCIT in giving such a direction to the AO. In other words, the AO is directed to re-examine the entire issues dealt with by the PCIT in his order in accordance with law after giving adequate opportunity of being heard to the assessee. The AO shall not be influenced by any of the observations of the PCIT on merits in his order. However, the AO should not allow the deduction under Rule 7A(2) more than the claim made in the original assessment order. With these observations, we confirm the order of the PCIT.

20. In the result, the appeal by the assessee is dismissed.

Pronounced in the open court on this 8th day of February, 2022.

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| Sd/- | Sd/- |
| ( BEENA PILLAI ) | ( CHANDRA POOJARI ) |
| JUDICIAL MEMBER | ACCOUNTANT MEMBER |

Bangalore,
Dated, the 8th February, 2022.

/*Desai S Murthy /*

Copy to:

1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.