

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “ए”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH ‘A’, CHANDIGARH

BEFORE: SHRI SUDHANSHU SRIIVASTAVA, JUDICIAL MEMBER
AND SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

ITA No. 307/Chd/2020
(Assessment Year: 2015-16)

Ashwani Marwah,
Marwah Niwas, Dhanda,
Totu, Distt. Shimla.

बनाम

Pr. Commissioner of
Income Tax,
Shimla.

स्थायी लेखा सं./PAN NO: ABOMP1175H

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Adv.

राजस्व की ओर से/ Revenue by : Shri Vivek Nangia, CIT DR

सुनवाई की तारीख/Date of Hearing: 14.02.2022

उद्घोषणा की तारीख/Date of Pronouncement: 23.02.2022

(Hearing through Webex)

आदेश/ORDER

Per Vikram Singh Yadav, Accountant Member:

This is an appeal filed by the assessee against the order of Learned Principal Commissioner of Income Tax [in short the ‘Ld. Pr.CIT’)], Shimla, passed u/s 263 of the Income Tax Act, 1961 (in short ‘the Act’) dated 19.03.2020 pertaining to assessment year 2015-16, wherein the assessee has taken the following grounds of appeal:

- “1. On the facts and in the circumstances of the case, the learned Principal Commissioner of Income Tax (hereafter, "the Pr. CIT") had no occasion to initiate proceedings under section 263 of the Income Tax Act, 1961 (hereafter, "the Act") as the assessment order sought to be revised is neither erroneous nor prejudicial to the interests of the revenue.
2. The impugned order of the learned Principal Commissioner of Income Tax is bad in law as there is no specific finding in the order that the order of assessment is erroneous insofar as it is erroneous in respect of any of the issues raised.
3. The learned Pr. CIT acted without jurisdiction in passing an order in respect of agreed addition and verification of creditors and wages payable already carried out by the Ld. AO before passing order u/s. 143(3).
4. For these and other grounds that may be adduced at the time of hearing, the order of the learned Pr. CIT may be quashed and the appeal allowed. The appellant craves leave to add to, or, amend/ alter/ withdraw any of the above grounds of appeal. All the grounds of appeal are without prejudice to each other.”

2. Briefly, the facts of the case are that the assessee, who is in the business of civil construction, filed his return of income declaring total income of Rs.22,92,890/-, which was selected for limited scrutiny as per CASS to examine sundry creditors and sales turnover mis-match and thereafter notices u/s 143(2) and 142(1) were issued to the assessee. In response, the Ld. AR on behalf of the assessee attended the proceedings and filed necessary information and documentation so called for by the AO. Thereafter the assessment was completed u/s 143(3) of the Act, dated 12.12.2017 making an addition of Rs.3 lacs and assessed

income was determined at Rs.25,92,890/-. Subsequently, assessment records were called for and examined by the Ld. Pr.CIT and a show cause notice u/s 263 of the Act was issued on 28.02.2020. In the show cause notice, the Ld. Pr.CIT has stated that the assessee in his return of income furnished with the Department has declared sundry creditors of Rs.76,58,117/- which includes wages payable of Rs.56,73,422/-. It has been further stated by the Ld. Pr.CIT that during the course of assessment proceedings, the assessee has filed copy of the ledger account showing labour wages payable at Rs.56,73,422/- showing only names of labourers. However, no documentary evidences, such as labour register containing names & addresses of the labourers and labour payment vouchers, etc. were furnished during assessment proceedings. It has been further observed by the Ld. Pr.CIT that most of the wages were paid in cash and without deducting tax at source, which makes these payments suspicious but no independent enquiries were conducted by the AO and only agreed addition of Rs.3 lacs was made by him. It has been further observed by the Ld. Pr.CIT that the assessee has debited a sum of Rs.47,41,630/- on account of labour wages in the Profit & Loss Account, whereas in the Balance Sheet, labour wages payable has been shown at Rs.56,73,422/-. It has been further stated by the Ld. Pr.CIT

that no enquiries were made in respect of other sundry creditors shown by the assessee at Rs.76,58,116/- in its Balance Sheet which was the core issue of the case being selected for scrutiny.

3. In response to the show cause notice, the assessee submitted that he is a civil contractor engaged in the civil construction work exclusively for HPCL and IOC and he has declared net profit of Rs.26,04,889/- including interest income of Rs.4,14,969/- on total sales turnover of Rs.2,59,18,414/- and after deducting the interest income from the net profit, the net profit percentage declared by him is 8.45%, which is in excess of the presumptive rate accepted in number of judicial pronouncements in the case of contractors. It was further submitted that as against the sundry creditors of Rs.76,58,117/- mentioned in the show cause notice, the total sundry creditors are only at Rs.19,84,695/- and list of the sundry creditors forms part of the audited financial statements. It was further submitted that the ledger account for these creditors was verified during the course of assessment proceedings and most of these balances were independently confirmed by the parties and their confirmation also form part of the assessment records. Regarding the labour wages payable amounting to Rs.56,73,422/-, it was submitted that the same was also duly verified during the

course of assessment proceedings and bill vouchers and labour wage muster rolls were produced. Regarding the fact that the wages were paid in cash, it was submitted that the wages were paid at different locations all over Himachal Pradesh and Punjab where the assessee was working as a contractor and local and outside labourers were engaged at the respective sites. It was further submitted that the wages to the labourers do not attract TDS since all were drawing salary below the taxable limit. It was submitted that the assessee employ these people who work far-away from their homes and only draw enough money to buy foods and normally draw their wages while going homes. It was accordingly, submitted that these facts were duly verified by the AO during assessment proceedings and at the same time to buy piece of mind, an addition of Rs.3 lacs was agreed to buy peace of mind and, therefore, the order so passed by the AO after due verification cannot be held as erroneous and prejudicial to the interest of the Revenue.

4. The submissions so filed by the assessee were considered but not found acceptable to the Ld. Pr.CIT. The Ld. Pr.CIT has stated that the case of the assessee was selected for limited scrutiny through CASS for the reasons "sundry creditors and sales turnover mismatch" and without verifying the reasons for which the case was selected for scrutiny, the AO has made

addition of Rs.3 lacs and income was assessed at Rs.25,92,890/-. Further the Ld. Pr.CIT reiterated the initial findings as given in the show cause notice that most of the wages were paid in cash without deducting taxes at source, which makes these payments suspicious and no independent enquiries were conducted by the AO to verify wages payable being old ones. It was held that the order has been passed by the AO without making any enquiries or verification which should have been made in the case of the assessee. It was also held that the AO has not properly examined the issue of other sundry creditors which is one of the reasons for selection of the case for limited scrutiny. Further the plea of the assessee that labour wages payable as per books was verified by the AO was not found tenable as there was a mis-match of sundry creditors in the ITR and audit report, and ledger account furnished by the assessee during the course of assessment proceedings. It was accordingly held that the failure on the part of the AO to verify the above issues during the course of assessment proceedings has rendered assessment order erroneous in so far as it is prejudicial to the interest of the Revenue and in the light of Explanation-2 to section 263 of the Act, the AO has passed the order without making enquiries or verification which should have been made thereafter relying on certain judicial authorities on the

subject of invoking of provisions of section 263 of the Act, the Ld. Pr.CIT has set aside the order so passed by the AO and has directed him to re-assess and recompute the income of the assessee in the light of the directions so contained in the impugned order by conducting further enquiries after providing reasonable opportunity to the assessee.

5. Against the said order and findings of the Ld. Pr.CIT, the assessee is in appeal before us. Firstly, it was submitted by the Ld. AR that the Ld. Pr.CIT has not applied his independent mind while initiating the proceedings u/s 263 of the Act as the balance of sundry creditors in the financial statements of the assessee company has been reflected at Rs.19,84,695/- and not Rs.76,58,117/- which has been stated by the Ld. Pr.CIT while issuing the show cause notice. It was submitted that the labour and wages payable has been duly reflected under the separate head of 'labour wages payable' amounting to Rs.56,73,422/-. It was accordingly submitted that the proceedings as initiated by the Ld. Pr.CIT on wrong figures and mis-interpretation of details, which form part of the assessment records, are bad in law and deserves to be set aside. It was further submitted that the case of the assessee was selected for limited scrutiny for examining sundry creditors and sales mismatch and the AO after due examination of the sundry creditors and sales mis-match

which were duly explained during the course of assessment proceedings and after independent application of mind has passed the assessment order. It was accordingly submitted that being a limited scrutiny case, the Ld. Pr.CIT cannot initiate the proceedings u/s 263 of the Act, on the issue of labour and wages payable amounting to Rs.56,73,422/-, which are beyond the scope of limited scrutiny. It was submitted that the case of the assessee is covered by the decision of the Coordinate Benches in the case of Tejpal Bhardwaj, 88 ITR (Trib.) 353 which has been subsequently followed in the case of Tenzin Construction Co. Pvt. Ltd in ITA No.306/Chd/2021, dated 27.10.2021. It was further submitted that even though the issue of labour and wages payable was not subject matter of limited scrutiny even then the AO has gone ahead and had examined the said issue and during the course of assessment proceedings, the information was called for by issuing notices from time to time and the assessee has duly responded to those notices and submitted requisite information/documentation. In this regard, our reference was drawn to the submissions filed by the assessee before the AO where copy of the ledger account for labour wages payable as well as details of the wages payable as on 31.03.2015 were duly submitted. It was submitted that these details were duly examined by the AO and thereafter by way of

a speaking order the assessment order has been passed wherein there is a clear finding in para 2 of the assessment order that the labour and wages account has been duly test-checked by the AO and given that some of the outstandings were old, an addition of Rs.3 lacs was made by the AO which was accepted by the assessee to buy piece of mind. Further, our reference was drawn to the submissions filed before the Ld. Pr.CIT where again the assessee has submitted that the labour wages payable were duly verified with the bill vouchers and labour wages muster rolls were produced during assessment proceedings. It was accordingly submitted that where the AO has duly examined the matter and has applied his independent mind and basis thereof, an addition by way of disallowance of labour/wages expenses has also been made, the order so passed by the AO cannot be termed as erroneous and prejudicial to the interest of the Revenue.

6. Per contra, the 1d CIT DR submitted that the 1d AR is trying to make distinction between the wages payable and other sundry creditors. However, such a distinction which is more in the form of a nomenclature cannot escape the fact that all these expenses are in the nature of sundry creditors having not been paid at the year-end and remained outstanding for either goods purchased or services availed by the assessee and whether payable to the labourers/employees

or to outside third parties and, therefore, the contention advanced by the Ld. AR that the Ld. Pr.CIT has initiated the proceedings on wrong facts and exceeded his jurisdiction u/s 263 in terms of examining the matter of labour and wages payable as beyond the scope of limited scrutiny assessment cannot be accepted. It was further submitted that when the matter was selected for limited scrutiny and that too specifically for examining the matter relating to sundry creditors which includes labour and wages payable, it was incumbent on the part of the AO to verify complete facts and carry out thorough enquiries. However, it can be seen as rightly pointed out by the ld PCIT in the impugned order that no documentary evidence in the form of labour register containing name, addresses of the labourers and labour payment vouchers were furnished during the course of assessment proceedings. It was submitted that the Ld. Pr.CIT has also observed that the payments were made in cash and without deducting tax at source, a fact which has not been denied by the assessee and given that it was incumbent on the part of the AO to examine and carry out independent verification to examine the authenticity of the payment so claimed to be made to the labourers and also to examine whether any tax is deductible at source or not. It was submitted that no independent enquiries at all were made by

the AO in this regard. What all has been submitted by the assessee has been taken on face value by the AO. It was further submitted that the Ld. Pr.CIT has also stated in his order that no enquiry has been made in respect of other sundry creditors other than labour and wages payable shown by the assessee in his Balance Sheet. It was accordingly, submitted that in terms of Explanation-2 to section 263 of the Act, where the AO has passed the order without making proper enquiries and verification which should have been made, there is not infirmity in the order so passed by the Ld. Pr.CIT, holding the order so passed by the AO as erroneous and prejudicial to the interest of the Revenue. Further reliance was placed on various decisions which have been relied upon by the Ld. Pr.CIT in his order as well as decisions in case of Commissioner of Income Tax vs Active Traders (P) Ltd. 214 ITR 583 High Court of Calcutta 03.02.1992, ITAT No. 209 of 2013, G.A. No. 3436 of 2013 in the case of Commissioner of Income Tax vs M/s Maithan International High Court of Calcutta dated 10.04.2014, Commissioner of Income Tax vs Nagesh Knitweare Pvt Ltd. ITA NOS. 591/2008 High Court of Delhi dated 01.06.2012, M/s Gee Vee Enterprise vs Additional Commissioner of Income Tax 99 ITR 375 High Court of Delhi dated 07.10.1974, Rajmandir Estates Pvt vs Principal Commissioner of Income Tax G.A.

No. 509 of 2016 with ITAT No. 113 of 2016 High Court of Delhi dated 13.05.2016.

7. We have heard the rival contentions and perused the material available on record. Firstly, we refer to the contention advanced by the ld AR that the proceedings initiated by the Ld. Pr.CIT were on wrong figures and mis-interpretation of details available on record and secondly, being a limited scrutiny case, it has been contended that the Ld. Pr.CIT cannot initiate the proceedings u/s 263 of the Act, on the issue of labour and wages payable amounting to Rs.56,73,422/-, which are beyond the scope of limited scrutiny for verification of sundry creditors. In this regard, we find that the case of the assessee was selected for limited scrutiny through CASS to examine *inter-alia* the issue of sundry creditors. The information and documentation which forms the basis for said computerized selection is the return of income disclosing computation of income under various heads of income as well as the particulars of income and expenditure as well as particulars of assets and liabilities. In the return of income in Form 4 so filed and submitted online by the assessee, we find that as part of current liabilities and provisions, the assessee has shown sundry creditors at Rs 76,58,117/- and other provisions at Nil as part of his balance sheet as on 31.03.2015. At the same time, we also

note that in the hard copy of the financial statements so filed subsequently by the assessee, as part of current liabilities and provisions, the assessee has shown sundry creditors at Rs 19,84,695/- and labour wages payable as part of provisions at Rs 56,73,422/-. At the relevant point in time, we find that when the return of income was selected for scrutiny, only information which was available with the department was the return of income filed online containing particulars as per the financial statements and not hard copy of the financial statements filed subsequently and therefore, what has been selected for examination is the figure of sundry creditors amounting to Rs 76,58,117/- by the Assessing officer and during the course of assessment proceedings, the Assessing officer basis such selection has proceeded to examine the sundry creditors amounting to Rs 76,58,117/- as part of limited scrutiny assessment to which the assessee has voluntarily participated without raising any objections and supplied information/documentation and therefore, where the ld PCIT issues a show cause u/s 263 regarding the matter relating to examination of labour and wages payable, we do not find any infirmity in the said action in his assumption of jurisdiction u/s 263 which is well within the limited scrutiny for which the matter was initially selected for examination by the Assessing officer.

8. Now, coming to other contentions advanced by the ld AR that the AO has duly examined the matter and has applied his independent mind and basis thereof, an addition by way of disallowance of labour/wages expenses has also been made and the order so passed by the AO cannot be termed as erroneous and prejudicial to the interest of the Revenue.

9. In this regard, firstly, we refer to the assessment order so passed by the Assessing officer and find that the AO has discussed this matter in para 2 of the assessment order wherein he has stated that the case of the assessee was discussed with the AR of the assessee in light of the reason for selection of case for scrutiny and the labour and wages account was test-checked. It has been stated by the AO that some of the outstandings were old which was confronted to the AR and to which, the ld AR had submitted that the wages and labour charges were paid on demand and considering the submissions so made and after discussions with the AR, an addition of Rs.3 lacs was made by the AO which was accepted by the AR on behalf of the assessee as so stated in the assessment order. We therefore that it is not a case where the AO has not examined the matter for which the case was selected for scrutiny and he did examine the matter and basis such examination and submissions so made on behalf of the

assessee, an addition of Rs 3 lacs was made while passing the assessment order.

10. Now, let's examine as to how the ld PCIT arrive at a finding that the AO has passed the assessment order without making proper enquiries or verification which should have been made and therefore, the order so passed was erroneous in so far as prejudicial to the interest of the Revenue.

11. Firstly, the ld PCIT has stated that there is a mismatch in the figures as debited in the profit/loss account and as reflected in the balance sheet which shows that the AO should have examined this aspect of the matter and has not examined. In this regard, on perusal of the ledger account of labour and wages payable, which was submitted during the course of assessment proceeding and has also been referred by the ld PCIT though in context of other findings, we find that there is an opening balance of Rs 65,60,420/-, there are credits during the year amounting to Rs 47,41,630/- in form of fresh labour and wages expenses incurred during the year, there are payments to the tune of Rs 56,28,628/- and then, there is closing balance of Rs 56,73,422/-. In the profit/loss account, the assessee has shown labour and wages of Rs 47,41,630/- and in the balance sheet, the assessee has shown labour and wages payable of Rs 56,73,422/-. Therefore, on combined

reading of ledger account and financial statements, we do not find any mismatch in the figures so contained in the books of accounts and so reported by the assessee. Therefore, on this account, it cannot be held that the AO has failed to examine this aspect of the matter in respect of mis-match of the figures where there is no such mis-match of figures at first place.

12. Secondly, the ld PCIT has stated that only ledger account has been submitted during the course of assessment proceedings which only contains the name of the labourers but no address of such labourers have been furnished, no labour register containing signature of labour and labour payment vouchers has been furnished, the payments have been made in cash without deducting tax at source which makes the payment suspicious and no independent enquiries have been made to verify wages payable being old one and therefore, the order so passed by the AO has been held as erroneous in so far as prejudicial to the interest of Revenue.

13. To our mind, where the matter is selected for precise reason for examination of labour and wages payable, certain basic questions arise for consideration which a person of reasonable intellect and understanding should raise and examine. Firstly, who are these persons – whether regular

employees or hired through a third party, name and address and other basic identification particulars of these persons who are hired and terms of such hiring in terms of salary/wages/social security, etc., work/project for which they are hired and their attendance records, etc to establish actual rendering of services and period/hours of service, payment/muster rolls etc showing salary/wages payable, actual payment and whether liable for TDS and actual TDS done and deposited in their respective accounts. And in respect of old outstandings, the persons in respect of whom the amount has remained outstanding, the period and reasons for such outstandings and whether any payments have been made during the year or not and applicability of TDS on such payments. Therefore, where the ld PCIT has stated that besides ledger account, there is no documentation on record in support of such expenses, we agree that the Assessing officer did not make proper and adequate enquiries while making the assessment. The explanation in support of cash payments and reasons for such payments not liable for TDS can only be tested once the complete details are available on record and in absence of the same, the same will remain contention which cannot be accepted without leading any evidence in support thereof. It is ordinarily expected that the Assessing officer examine these transactions thoroughly

rather than just relying on the information submitted by the assessee company and making an adhoc addition without specifying the basis thereof. It is not a question of kind and extent of enquiry and hence, a difference of approach and methodology of examination of a particular transaction as done by the AO and as suggested by the 1d PCIT. No doubt every Assessing officer has his unique style of functioning and no hard and fast rule can be laid down as to how he should conduct the enquiry in discharge of his statutory functions. However, where the factual scenario of a case prima facie indicates abnormalities and cry for looking deep into it as rightly highlighted by the 1d PCIT in terms of complete lack of documentation, old outstandings, payment in cash, etc, then mere calling for the details of labour and wages payable and accepting the ledger account containing incomplete details and without calling for further information/documentation and conducting independent enquiries cannot be held as conducting proper enquiry. Therefore, on this account, we agree with the findings of the 1d PCIT that proper enquiries have not been conducted by the AO and the order thus passed is clearly erroneous and prejudicial to the interest of the Revenue.

14. It is not a case where the 1d. PCIT has set-aside the assessment order rather he has examined these transactions

and has carried out broad analysis of the ledger account so submitted by the assessee company and has come to a conclusion that the AO has failed to carry out adequate and proper enquiries which he should have conducted in respect of labour and wages payable.

15. In light of aforesaid discussions and in the entirety of facts and circumstances of the case, we upheld the order so passed by the Id PCIT u/s 263 and the grounds of appeal are dismissed.

16. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on 23.02.2022.

Sd/-
(SUDHANSHU SRIVASTAVA)
न्यायकि सदस्य/Judicial Member

Sd/-
(VIKRAM SINGH YADAV)
लेखा सदस्य/Accountant Member

Dated: 23.02.2022

रती

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar

