

that has become subject for review by the Learned Principal Commissioner Of Income Tax (in short LdPr.CIT), is neither erroneous nor prejudicial to the interest of the revenue, therefore, the impugned order passed u/s 263 of the IT Act 1961 is liable to be quashed.

- 2. The Ld.Pr.CIT failed to consider that the alleged under assessment of power subsidy and interest receipt was a subject matter dealt by the Assessing Officer (in short AO) who after due verification accepted the income reported of these two in which event the order of the AO termed as erroneous under the provisions of sec 263 of the IT Act 1961.*
- 3. The LdPr.CIT ought to have known that when AO has called the details with respect to power and interest subsidy and after verification satisfied that income has been reported correctly, under such circumstances the Assessment Order could not be said to be erroneous merely because the Ld.PrCIT has a different view which view is against the provisions, of law.*
- 4. The Ld.Pr.CIT without understanding the issue in the right manner, in a summary and casual manner, has given an adverse finding terming the assessment order as erroneous which findings is itself erroneous and contrary to the provisions of law, therefore, the impugned order is to be quashed in the interest of justice.*
- 5. For these and other reasons that are to be urged at the time of hearing of the case the appellant prays that the orders passed by the learned LthPr.CIT are against the provisions of law and facts of the case, therefore, the orders passed u/s 263 of the IT Act are to be quashed in the interest of justice."*

3. Brief facts of the case are that the assessee-company is engaged in the business activity of manufacture and trade in cotton yarn, filed its return of income for the A.Y. 2014-15 on 27/11/2014 declaring total income of Rs. 31,51,96,680/-. The return was processed u/sec. 143(1) and subsequently selected for complete scrutiny under CASS. Accordingly, statutory notices u/sec. 143(2) 142(1) were issued and served on the assessee. In response to the notices, the assessee submitted details as called for. The AO after

perusing the submissions of the assessee accepted the return of income.

4. Subsequently, by virtue of powers vested in section 263 of the Act, PCIT noticed that total power subsidy and TUF subsidy were wrongly declared by the assessee. In this connection, a show-cause notice dated 14/05/2019 was issued to assessee and an opportunity was provided vide letter dated 17/02/2020 to the assessee. In response to the show-cause notice, the assessee filed its written submission on 23/05/2019 & 23/02/2020. The PCIT made the following inferences from the submissions of the assessee company:-

- (i) The assessee company has been maintaining mercantile system of accounting as was evident from column No.13(a) of Form No.3CD submitted by the assessee.
- (ii) The amount of TUF subsidy receivable as on 31/03/2014 was Rs. 12,52,10,816/- but offered for taxation was Rs.5,15,27,285/- and thereby short admission of TUF subsidy was Rs. 7,36,83,531/-.
- (iii) The power subsidy receivable as on 31/03/2014 was Rs. 7,15,07,799/- but offered for taxation was only 6,18,35,999/- and thereby short admission of power subsidy was Rs. 96,71,800/-.
- (iv) In the balance sheet under the head Other Items, the assessee company clearly shown power subsidy receivable and amount of TUF subsidy receivable at Rs. 7,15,07,799/- and Rs. 12,52,10,816/- respectively.

The PCIT considered the assessment order passed by the AO to be erroneous and prejudicial to the interests of revenue and invoked the provisions of section 263. He stated that in the instant case, nowhere it was mentioned in the assessment order by the AO

that he has conducted necessary enquiry with regard to the above issues, such as, power subsidy and TUF subsidy and the AO failed to discuss the above two issues in the assessment order. The PCIT also concluded that AO has not applied his mind and conducted proper enquiry while passing the assessment order, but allowed the claim of the assessee wrongly by noting that assessee has followed mercantile system of accounting. The PCIT quoted section 263(1) of the Act wherein explanation was inserted w.e.f. 01/06/2015 which is reproduced below:-

"Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal 69[Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner,—

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person."

The PCIT also relied on the judgments of the Hon'ble Supreme Court and the High Courts in invoking the provisions of section 263, then he directed the AO to redo the assessment on the lines indicated above in accordance with law and established procedure by affording a reasonable opportunity of being heard to the assessee and set aside the assessment order of the AO.

5. Aggrieved by the order of the PCIT, the assessee is in appeal before this Tribunal.

6. With respect to ground Nos.1 to 3, Id.DR forcibly argued that the AO has not considered the relevant facts hence, reopening of assessment u/sec. 263 is valid in law.

7. On the contrary, Id.AR argued that assessee has provided all the details before the AO in response to the questionnaire raised u/sec. 142(1) of the Act, on 05/10/2017, however, Id.AR could not produce the evidence regarding submission of the letter dated 05/10/2017 to the AO. Id.AR also relied on the AO's findings as below:-

"After discussing the case with the assessee's representative and after verification of the material evidences submitted by him, the total income is computed as under."

9. The fact and circumstances as discussed by the PCIT in para 5 which are reproduced below:-

"5. From the facts and circumstances of the case, it is concluded that the assessee has been maintaining books of account under mercantile system of accounting. There is no reason as to why the AO allowed on actual basis. By passing erroneous order which resulted in allowance of excess claim of power subsidy and TUF subsidy to the extent of (Rs. 96,71,800 + Rs. 7,36,83,531) Rs.8,33,55,331/- and has to be brought to tax now. In this context the contention of the assessee company that the AO had conducted necessary enquiry before passing assessment order has no relevance at all in so far as issue(s) concerned. In the instant case the contentious issue is whether the assessee has offered subsidies on accrual basis for taxation even though the assessee has been following mercantile system of accounting."

10. Id.AR contended that assessee is following mercantile system of accounting and has accounted the income received during the

year in the profit & loss account and amount receivable in the balance sheet. Ld.AR further stated that the power subsidy and TUF subsidy is granted by the Ministry of Textiles based on the interest payment made by the assessee-company to the banks. Ld.AR further demonstrated that the assessee-company is eligible for subsidy for each year and has claimed the subsidy accordingly. However, the claim of subsidy is validated by the Ministry and it will be receivable in the subsequent years which is shown as receivable in the balance sheet. Ld.AR also took us through the table as detailed in page No.17 of the paper book regarding yearly claim made with banks for the amount of subsidies to be received by them.

| Accounting Year | Assessment year | Opening balance as on 1.4 | Claim made with Govt. (offered as income in P&L a/c every year) | Total | Amount received | Closing balance of claim receivable as on 31.3 |
|-----------------|-----------------|---------------------------|---|-----------|-----------------|--|
| 2006-07 | 2007-08 | 1232144 | 21331478 | 22563622 | 7047644 | 15515978 |
| 2007-08 | 2008-09 | 15515978 | 40185692 | 55701670 | 14573813 | 41127857 |
| 2008-09 | 2009-10 | 41127857 | 51128872 | 92256729 | 34795400 | 57461329 |
| 2009-10 | 2010-11 | 57461329 | 61811964 | 119273293 | 64311497 | 54961796 |
| 2010-11 | 2011-12 | 54961796 | 56046291 | 111008087 | 29429740 | 81578347 |
| 2011-12 | 2012-13 | 81578347 | 61830194 | 143408241 | 55717694 | 87690847 |
| 2012-13 | 2013-14 | 87690847 | 57787851 | 145478698 | 39183409 | 106295289 |
| 2013-14 | 2014-15 | 106295289 | 51527285 | 157822574 | 32611758 | 125210816 |

Ld.AR also argued that balance sheet figures are cumulative in nature and income from subsidy accruing each year is accounted in the respective year's profit and loss account. The Id AR pointed out that PCIT have erred in taking the "Claims receivable" figures instead of income shown in the profit & loss account for every assessment year. The Id AR also pointed out that since the subsidies has already suffered tax in the respective previous years, it cannot be taxed again.

11. Ld.DR relied on the order passed by the PCIT u/sec. 263 of the Act.

12. We have heard both the parties and perused the material placed on record.

We find force in the argument of the Id.AR who has demonstrated that the income accruing each year is accounted in the profit & loss account as mentioned in page No.42 of the paper book under the head 'other income'. Similarly, he also invited our attention to page No. 59 of the paper book where the receivable of the subsidy is shown under short term loans and advances. Since the assessee is maintaining the books under mercantile basis, interest subsidy receivable under TUF scheme and the power subsidy receivable for the A.Y. 2014-15 represent the balance receivable from the Ministry of Textiles as on the date of balance sheet. Based on the merits and facts of the case, there is no escapement of any income and the amount of claim of subsidy made in the profit & loss account is income accrued to the assessee for that particular accounting year. The Id.AR also explained that the following entries were passed in the books of accounts.

- *Interest subsidy receivable from government dr (Shown under balance sheet "Loans and advances sine this is the claim receivable from government)*
- *To Interest subsidy (Income credited to P&L a/c offered as income and shown under Other Income)*

The assessee company has challenged the very invocation of jurisdiction by Ld. PCIT of his revisional powers u/s 263 of the Act. Therefore, firstly we have to look at the revisional powers by the Ld. PCIT for which we have to examine whether in the first place the order of the Assessing Officer found fault by the Ld. PCIT is

erroneous in so far as it is prejudicial to the interest of the Revenue. For that, let us take the guidance of judicial precedence laid down by the Hon'ble Apex Court in the case of Malabar Industries Ltd. vs. CIT [2000] 243 ITR 83 (SC) wherein their Lordships have held that twin conditions needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of the Revenue. In the following circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application of law; or (iii) Assessing Officer's order is in violation of the principle of natural justice; or (iv) if the order is passed by the Assessing Officer without application of mind; (v) if the AO has not investigated the issue before him; then in aforesaid any of the events, the order passed by the AO can be termed as erroneous order. Looking at the second limb as to whether the actions of the AO can be termed as prejudicial to the interest of Revenue, one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of Malabar Industries (supra) held that this phrase i.e. "prejudicial to the interest of the revenue" has to be read in conjunction with an erroneous order passed by the AO. Their Lordships held that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the

revenue unless the view taken by the Assessing Officer is unsustainable in law. Considering the facts and circumstance of the case, there is no escapement of income which is prejudicial to the interest of the revenue as contemplated under section 263 of the Act and the impugned order of Id.PCIT under section 263 of the Act is quashed. The appeal of the assessee is allowed.

13. In the result, the grounds raised by the assessee is allowed.

Order Pronounced in open Court on this 09th day of March, 2022.

Sd/-
(DUVVURU R L REDDY)
Judicial Member

Sd/-
(S. BALAKRISHNAN)
Accountant Member

Dated: 09th March, 2022.

vr/-

Copy to:

1. *The Assessee - M/s. Amaravathi Textiles Pvt. Ltd., D.No.33/263, Kankimalla Road, Pandaripuram, Chilakaluripet, Guntur.*
2. *The Revenue - ACIT, Circle-1(1), Guntur.*
3. *The Pr.CIT, Guntur.*
4. *The D.R., Visakhapatnam.*
5. *Guard file.*

By order

Sr. Private Secretary,
ITAT, Visakhapatnam.