

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Ms. Astha Chandra, Judicial Member

ITA No. 877/Del/2021 : Asstt. Year : 2016-17

Shree Balaji Polymers, SCO 6, HSIIDC, Sector-3, Karnal, Haryana-132001 (APPELLANT)	Vs	Pr. CIT, Rohtak, Haryana-124001 (RESPONDENT)
PAN No. AADFS4020K		

Assessee by : Sh. Vipul Arora, CA

Revenue by : Sh. Umesh Takyar, Sr. DR

Date of Hearing: 08.02.2022

Date of Pronouncement: 15.03.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. PCIT, Rohtak dated 23.03.2021.

2. Following grounds have been raised by the assessee:

"1. That the Worthy Commissioner of Income Tax, Rohtak erred in holding that the Assessment Order passed by the Learned AO was erroneous and prejudicial to the interest of the revenue and setting aside the same partly to the extent of issue of examination Unsecured Loans of Rs.9,00,000/- on the alleged inadequate/no enquiry by the AO during Assessment proceedings u/s 143 (2) of the Income Tax Act, 1961.

2. That the Worthy Commissioner of Income Tax , Rohtak erred in holding that the Assessment order was passed in haste and in casual manner without making any enquiry whereas the AO had made proper enquiries and took the time of more than 2 months in passing the Assessment Order dated

18.12.2018 from the last reply filed by the appellant on 16.10.2018.

3. That the Worthy Commissioner of Income Tax, Rohtak erred in setting aside the order of the AO when the appellant produced relevant material along with Affidavit and offered explanation in pursuance of notice u/s 142(1) r.w.s. 143(2) of the Act and after considering materials and explanations, the A.O. has come to a definite conclusion and mere fact that a different view can be taken, should not be basis for an action under Section 263 of the Income Tax Act, 1961."

3. Heard the arguments of both the parties and perused the material available on record.

4. The assessee filed return of income on 03.10.2016 declaring income of Rs.21,05,680/-. The assessee firm is a del-credere agent of M/s Reliance Industries Ltd. for polymer products and received income in the form of commission only for booking orders and collecting payments on behalf of the company.

5. The assessment in this case was completed u/s 143(3) of the Income Tax Act, 1961 on 09.12.2018 by Income-Tax Officer, Ward 4, Karnal at an income of 2510440/- against the returned income of Rs.21,05,680/- by making various disallowances of Rs.4,04,760/-.

6. Thereafter a notice u/s 263 of the Income Tax Act, 1961 was issued by Id. PCIT, Rohtak on 23.02.2021 alleging that the Assessing Officer had completed the assessment in undue haste and without carrying out necessary and proper enquiry which he ought to have carried out. The Id. PCIT in his order stated that the order passed u/s 143(3) of the Income Tax Act, 1961 appeared to be erroneous and thus, was prejudicial to the

interest of revenue. Notice u/s 263 was issued on 23.02.2021 under DIN No. ITBA/REV/F/REV1/2020-21/1030887801(1) mentioning therein alleged instances of failure on the part of the A.O and the assessee was requested to show cause by 01.03.2021 as to why the assessment proceedings for A.Y. 2016-17 vide order dated 09.12.2018 u/s 143(3) should not be cancelled by invoking the provisions of Section 263 of the Act.

7. For the sake of ready reference, the relevant portion of the notice mentioning instances of failure by the Assessing Officer is reproduced as under:

"You have accepted fresh unsecured loan of Rs. 9,00,000/- from Vijay Kumar Jain HUF on 30.03.2016. The firm has furnished copy of ITR, Bank statement and affidavit of the above mentioned person during the course of assessment proceedings. On perusal of ITR of above mentioned person, it has been noticed that he had declared income below taxable limit. Besides this, perusal of bank statement it is also observed that he had made cash deposits of Rs. 9,00,000/- on 30.03.2016 and on the same day, RTGS has been made to the assessee firm but source of cash deposits remained unexplained in the hands of lender. Thus, genuineness and creditworthiness of the aforesaid person has not been proved as the lender do not appears to be man of means, therefore amount of Rs.9,00,000/- on account of deposits accepted during the year is required to be added back to your income u/s 68 of the Act, being unexplained credits in your books of account, routed through the third party."

8. The submission of the assessee against the show cause notice issued u/s 263 was rejected by Id. PCIT. The evidences were in the form of ITR of the lender named Vijay Kumar HUF, copy of affidavit declaring that the HUF has given the said amount were not appreciated, Bank account of the lender, Copy of account of the lender in the books of appellant firm and copy of cash book of lender for the relevant period were rejected by the Id. PCIT and the order passed by the AO u/s 143(3) was set aside to the extent of the issue of examination unsecured loan of Rs. 9,00,000/- with the direction to pass an order afresh in accordance with the law.

9. During the course of assessment proceedings, notice u/s 142(1) of the Income Tax Act, 1961 on 29.05.2018 with questionnaire was issued. The point 11 of the questionnaire is being reproduced below:

"11) Copy of account of secured/unsecured loans/squared up accounts/cash credits during the year along with confirmation of the loans raised during the year. To prove the genuineness of the said loans, capacity and credit worthiness of the creditors along with source from where the loans were advanced and any other documents in support thereof. Also furnish PAN and the designation of concerned Assessing Officer of the creditors if assessed to tax."

10. The more specific and pointed question was again put in the notice u/s 142(1) dated 05.10.2018 as under in the 13 point questionnaire. The point 11 of the questionnaire is reproduced below:

"Unsecured loans have been accepted/taken during the year from the following persons. Please explain the identity, creditworthiness & genuineness of loan transaction.

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|------|--------------------------------|--------------------|
| I) | <i>Sh. Rajesh Aggarwal</i> | <i>30,00,000/-</i> |
| ii) | <i>Gautam Goel HUF</i> | <i>6,69,590/-</i> |
| iii) | <i>Rakesh Kumar Mangal HUF</i> | <i>57,00,000/-</i> |
| iv) | <i>Vijay Kumar Jain HUF</i> | <i>9,00,000/-</i> |

11. The assessee replied the whole questionnaire on 16.10.2018. The reply to point 11 of questionnaire is being reproduced below:

"The assessee respectfully submits the identity, creditworthiness & Genuineness of loan as under:

-	Name	Amount (Rs.)	Particulars
1	<i>Rajesh Aggarwal</i>	4025222	<i>Rs 3000000 Lacs received on 4.4.2015. Copy of Affidavit, Copy of ITR Copy of bank Statement, Copy of account are enclosed as Annexure 5.1</i>
2	<i>Gautam Goyal HUF</i>	669590	<i>Rs 600000/- received on 23.6.2015 from saving account. Copy of Affidavit, Copy of ITR Copy of bank Statement, Copy of account & copy I/D proof are enclosed as Annexure 5.2</i>
3	<i>Rakesh Kumar Mangal</i>	5700000	<i>Total amount received Rs. 5700000 on various dates from saving account with HDFC Bank. Copy of Affidavit, copy of Bank Account, Copy of ITR are enclosed as per Annexure 5.3</i>
4	<i>Vijay Kumar Jain HUF</i>	900000	<i>Rs 900000 received on 30.3.2016 from his saving account with OBC. Copy of Affidavit, copy of ITR, Copy of Account are enclosed as Annexure 5.4"</i>

12. After considering the above reply, the AO accepted the identity, genuineness and creditworthiness of the lenders including Vijay Kumar Jain HUF. Hence, the matter of creditworthiness and genuineness of the loan transactions was considered in detail by the AO by asking the pointed question twice in the two separate questionnaires. The assessee has also replied on the issue of genuineness and creditworthiness. The AO has made his view and accepted the explanations of the assessee.

13. The Id. PCIT in the order u/s 263 has held that the Assessment order passed by the AO is hasty without making any enquiry. For the sake of ready reference, the observation of the Id. PCIT is reproduced as under:

"The reply along with documents submitted by the assessee has been perused but the same was not found tenable as the source of the amount of unsecured loan advanced by the lender Sh. Vijay Kumar Jain HUF could not be explained. Moreover, the facts involved in the case laws relied upon by the assessee are different from the case of the assessee and hence not helpful to the assessee in this case, hence, the reply of the assessee is hereby rejected."

14. We find that the AO has specifically inquired about the source and the details have been filed by the assessee to the satisfaction of the AO. The cash deposit is in the bank account of Vijay Kumar Jain HUF who is a regular assessee and the best course would be to reopen the case of Vijay Kumar Jain HUF, if the cash deposits have to be taxed but not the assessee who has received the loan from Vijay Kumar Jain HUF.

15. The reliance is placed on following decisions in support of contentions that it is possible that a plausible view of the AO

could not considered as erroneous and prejudicial to the interest of revenue.

16. The Hon'ble Supreme Court in PCIT, Surat-2 vs. Shreeji Prints (P.) Ltd. 130 taxmann.com 294 vide order dated 27.08.2021 held that,

"SLP dismissed against impugned order passed by High Court holding that where assessee-company had received unsecured loans from two different companies and Assessing Officer had made inquires in detail and accepted genuineness of same, such view of Assessing Officer being a plausible view could not be considered erroneous or prejudicial to interest of revenue.

"6 Thus, the Tribunal has considered in detail the aspect of revisional power to be exercised by the PCIT in the facts of the case and has given a finding of facts that the Assessing Officer has made inquiries in detail and after applying mind, accepted the genuineness of loans received by the respondent assessee from the aforesaid two companies and such view of the Assessing Officer is a plausible view, and therefore, the same cannot be said to be erroneous or prejudicial to the interest of the Revenue."

17. The Co-ordinate Bench of Tribunal in Small Wonder Industries vs. CIT in ITA No.2464/2013 has observed that,

"Where a matter has been considered in detail by seeking explanation by way of a questionnaire, which has been responded by assessee before assessment and considered by the Assessing Officer, there can be no scope for revisional jurisdiction under Section 263 in respect of a matter so covered."

18. The Hon'ble High Court of Allahabad in Meerut Roller Flour Mills (P.) Ltd. Vs. CIT 110 taxmann.com 170 held that,

"21. It is clear that after the notice was issued by the Assessing Officer raising 28 queries from the assessee, which was also replied by him along with the documentary evidence in regard to each of the query, thus the assessment order passed under Section 143(3) of the Act would not render the same as erroneous and prejudicial to the interest of Revenue, unless the Commissioner exercising power under Section 263 brings on record to show that the order of the Assessing Officer is erroneous, as the same was passed without application of mind or the Assessing Officer had made an incorrect assessment of fact or incorrect application of law, but the same not being the case, and the CIT relying upon the reply and the documentary evidence submitted by the assessee granted partial relief, as such the order dated 09.02.2012 passed under Section 263 relegating back the matter to the Assessing Officer as regards unsecured loans and creditors is unsustainable.

22. Having examined the matter at length on facts as well as on the law, we are of the considered opinion that in the present case, it is abundantly clear that the order passed by the Assessing Officer was neither erroneous nor prejudicial to the interest of the Revenue."

19. Hence, we hold that the assessment of the assessee with regard to unsecured loan from Vijay Kumar Jain HUF of Rs.9,00,000/- was made with proper application of mind, by analyzing, understanding and appreciating all the documents filed by the assessee during the assessment proceedings. The AO held a plausible view with regard to genuineness and creditworthiness of unsecured loan of Rs.9,00,000/- taken by

the appellant firm from Vijay Kumar Jain HUF, and therefore, the same cannot be said to be erroneous or prejudicial to the interest of the revenue. Hence, we hereby quash the order passed under Section 263 by the Id. PCIT, Rohtak.

20. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 15/03/2022.

Sd/-

(Astha Chandra)
Judicial Member

Dated: 15/03/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR