

**IN THE INCOME TAX APPELLATE TRIBUNAL "B"**  
**BENCH KOLKATA**

**Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member**

**I.T.A. No.99/Kol/2021**  
Assessment Year: 2016-17

**M/s Diach Chemicals & Pigments Pvt. Ltd.....Appellant**  
C/o Rajesh Mohan & Associates,  
Unit No.18, 5<sup>th</sup> Floor, Bagati House,  
34, Ganesh Chandra Avenue,  
Kolkata-700013.  
**[PAN: AABCB6040P]**

vs.

**ACIT, Circle-10(2), Kolkata.....Respondent**

**Appearances by:**

Shri S.M. Surana, Advocate, appeared on behalf of the appellant.  
Shri Sudipta Guha, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : March 30, 2022

Date of pronouncing the order : March 30, 2022

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 26.02.2021 of the Principal Commissioner of Income Tax, Kolkata [hereinafter referred to as 'PCIT'] passed u/s 263 of the Income Tax Act(hereinafter referred to as the 'Act') whereby the Id. PCIT exercising his revision jurisdiction has set aside the assessment with a direction to the Assessing Officer to pass assessment order afresh.

2. The brief facts of the case are that the assessee is engaged in the business of manufacturing of lead ingots. The assessee during the year disclosed total income of Rs.2,33,65,644/-. The Assessing Officer after examining the details relating to purchases of the raw material and sales of the assessee and after having gone through the accounts, accepted the net profit shown by the assessee @1.01%. However, he made some other additions which are not disputed before us.

Thereafter, information was received by the PCIT from the DCIT, Kolkata that the assessee company had availed accommodation entry of Rs.92,04,868/- in the form of bogus billings through a shell entity M/s Dynamic Sales (India), controlled and operated

by an entry operator namely Shri Sanjiw Kumar Singh. On the basis of the said information, the Id. PCIT exercising his powers u/s 263 of the Act, issued notice to the assessee as to why the assessment order be not set aside for want of necessary verification of the genuineness of the purchases made by the assessee from the alleged shell entity. In reply to the notice, the assessee submitted written submissions which have been reproduced by the Id. PCIT in the impugned order which are further reproduced as under:

“4. In response to the said notice the assessee submitted written submission on 24.02.2021 which is as follows:

*"We are in receipt of the notice u/s 263 dated: 22/01/2021 issued by your honour. The revision proceedings have been initiated in respect of the purchases made by the assessee company from M/s. Dynamic Sales (India) during the Financial Year 2015-16.*

*In this regard, it is hereby stated that in course of the assessment proceedings, the AO in order required the following documents from the assessee:-*

1. *Audited Financial Statements.*
2. *Tax Audit Report.*

*After going through the above documents, the Ld. AO further required the following documents and explanations from the assessee:-*

1. *Details of Trade Payables.*
2. *Copies of VAT Returns,*

*The Ld. A.O. also noted that Net Profit ratio of the assessee company for the A.Y. 2016-17 was marginally lower than the net profit in preceding year. In response to the same, the assessee explained the reasons for fall in net profit ratio and being satisfied the Ld. AO accepted the return of income filed by the assessee.*

*In support of the purchases of raw materials made from M/s. Dynamic Sales (India), we have filed copies of challans and purchases bills. The supplier is registered under VAT/CST. We have also filed copies of the VAT returns and VAT Audit Report. All the payment to the supplier has been made through banking channels.*

*It is also submitted that admittedly the transactions with Dynamic Sales (India) are duly supported by bills and challans and all the payments are settled through banking channels. There is also no dispute that the supplier is duly registered under VAT and CST.*

*In our reply to the notice u/s 133(6), we have already explained that standard yield from Lead Ingots is 94% +/- 2%, whereby the production during the year is 96.35%. As such there is no excess consumption of raw material. Since there is no dispute to sales /*

*production and there is no increase in raw material consumption ratio, there is nothing to dispute the raw material purchases.*

*It is also submitted that the assessee maintains regular books of account and the same are duly audited under the Companies Act, 2013, Income Tax Act, 1961 and also under WBVAT Act. There are no adverse comments by the auditors. Therefore, merely for the reason that the party is not found at its address that also almost 5 years after the dates of transactions, it cannot be said that the purchases are not genuine.*

*We also state that statements per se without any corroborative material have no evidentiary value and nothing has been brought on record to show that any cash has been paid by the supplier to the assessee. It is also not known that in what capacity the said Mr. Sanjiw Kumar Singh has made the statement on behalf of the supplier. Moreover, no material has been brought on record to show that Mr. Singh in his statement has implicated the assessee. As such no adverse inference on the basis of Shri Singh may be made. Moreover, unless a copy of the statement of Mr. Singh is made available to the assessee for rebuttal and Mr. Singh is produced for cross examination, his statement cannot be relied upon. In this regard, we refer to the decision of the Hon'ble Supreme Court in the case of **CIT v Odeon Builders Pvt. Ltd. [2019] 110 taxmann.com 64 (SC)** wherein the Hon'ble Court held that where assessee has submitted purchase bills, transportation bills, confirmed copy of accounts and VAT Registration of sellers as also their Income Tax Return and payment was made through cheques, impugned purchases could not be disallowed.*

*In any case, the Ld. AO has passed the assessment order after examining the audited financial statements, accounting ratios reported in the tax audit report, trade payables vat returns and explanation for low net profit. As such the assessment order has been made after making necessary inquiries and due application of mind and therefore, the assessment order passed in neither erroneous nor prejudicial to the interest of the revenue.*

*In view of the above, the revision proceedings may kindly be dropped.”*

However, the Id. PCIT without discussing about the aforesaid submissions of the assessee, simply held vide para 5 of the impugned order that since there was an information that the assessee was indulged in bogus billings of a shell entity, hence the order passed by the Assessing Officer was erroneous and prejudicial to the interest of the Revenue. He, accordingly, set aside the assessment order to the Assessing Officer for making assessment afresh after considering the issue discussed by him in para 2 of the impugned order.

It seems that in fact, the Id. PCIT impliedly directed the Assessing Officer to add the amount of alleged bogus purchases of Rs.92,04,868/- as the Id. PCIT has mentioned that the aforesaid amount of Rs.92,04,868/- was transferred to the account of the assessee by

the alleged bogus entity and be directed the Assessing Officer to pass assessment order as per his observations made.

3. Before us, the Id. counsel for the assessee has submitted that books of accounts of the assessee have not been rejected. The assessee furnished not only audited financial statements and tax audit report but also details of trade payable and copies of the VAT returns and details of excise duty paid. The Id. counsel in this respect has submitted that the assessee has produced the evidence of the sales made by the assessee which could not have been possible without the purchases of the raw material and thereafter manufacturing of the goods. The Id. counsel has further submitted that the assessee duly maintained stock register, day to day register showing the ingress and egress of the products. That the same has not been disputed either by the Assessing Officer nor by the PCIT. The Id. counsel has submitted that without the purchases being made, the sales were not possible. He, therefore, has contended that the Id. PCIT has erred in exercising his jurisdiction u/s 263 of the Act.

4. On the other hand, the Id. DR has submitted that before issuing the notice u/s 263 of the Act to the assessee, certain enquiries were made by the Department from which it was found that the alleged seller of the raw material did not exist at the given address, therefore, it was apparent that the purchases were not made by the assessee from the said parties. In view of this, he, therefore, has submitted that the bogus purchases were required to be added regarding which the Assessing Officer has failed to make necessary enquiries. The Id. DR has, therefore, has submitted that the Id. PCIT has rightly exercised his jurisdiction u/s 263 of the Act.

5. We have heard the rival contentions and gone through the records. In this case, there is un-rebutted evidence by the assessee such as the copy of the VAT return, the copy of the excise details, the copy of the stock register and daily register relating to the stock showing that there were purchases of raw material and sales of finished goods. The Id. DR has also not disputed the same. This fact has also not been denied that there cannot be sales of finished goods without the purchases of the raw material. Even if, the case of the Revenue is assumed as correct, what can be inferred is that the assessee might

have purchased raw material from grey market at a lower price and thereby might have shown profit at a lesser rate.

At this stage, the ld. counsel for the assessee has submitted that the net profit shown by the assessee for the year under consideration was marginally low as compared to the earlier assessment year. The net profit rate shown by the assessee in the earlier assessment year was at @1.05% and for the assessment year under consideration was @1.01%. He has submitted that the Assessing Officer duly considered the submissions of the assessee for a marginal difference in the rate of profit for the current year as compared to earlier year and has accepted the returned profit of the assessee. However, the ld. AR has been fair enough to state that at the most in this case, the net profit rate could have been enhanced, but it was not fair on the part of the ld. PCIT to set aside the entire assessment order and thereby pushing the assessee in a fresh round of litigation. The ld. DR also could not deny this argument of the ld. AR.

6. Though, the present appeal is against the order passed by the ld. PCIT u/s 263 of the Act, however, we find that the dispute can be resolved after considering the aforesaid submissions of the ld. representatives of both the parties, which not only would save the parties of harassment of facing another round of litigation but also could avoid multiplicity of litigation. Even otherwise, as per the provisions of section 263 of the Act, the ld. PCIT, either can modify the assessment order, enhance the assessment or may set aside the assessment for a fresh assessment, as he may deem fit, as per facts and circumstances of the case. It is a well-settled law that the appellate authority under the Act, has inherent powers as that of the lower authorities, which can be well exercised in the interest of justice. Considering the facts and circumstances of the case, as suggested by both the ld. representatives of the parties and since the ld. AR has also agreed that the net profit rate of the assessee may be reasonably enhanced so as to prevent the assessee for another round of litigation and for the purpose of finality of the proceedings, which has not been objected by the ld. DR, we direct the Assessing Officer to assess the net profit rate of the assessee @2% of the alleged bogus purchases. The order of ld. PCIT is modified accordingly. The directions given by the ld. PCIT for assessment afresh are set aside.

7. In the result, the appeal of the assessee stands partly allowed.

**Kolkata, the 30<sup>th</sup> March, 2022.**

Sd/-  
**[Girish Agrawal]**  
**Accountant Member**

Sd/-  
**[Sanjay Garg]**  
**Judicial Member**

Dated: 30.03.2022.

RS

*Copy of the order forwarded to:*

1. M/s Diach Chemicals & Pigments Pvt. Ltd
2. ACIT, Circle-10(2), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches