

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**
(CONDUCTED THROUGH E-COURT AT AHMEDABAD)

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

अपील सं./**ITA No.132/Rjt/2018**
निर्धारण वर्ष/**Asstt. Year: 2014-2015**

M/s Aditya Gopal Exports Pvt. Ltd. No.6/20, Rukmani Street, West Mambalam, Chennai-600033. (Tamilnadu) PAN: AACCA3014H	Vs.	The Principal Commissioner of Income-tax, Jamnagar
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(Applicant)		(Respondent)
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Assessee by :	Shri Mehul Ranpura, A.R
Revenue by :	Shri K.K. Oza, CIT. D.R

सुनवाई की तारीख/**Date of Hearing** : 11/04/2022
घोषणा की तारीख /**Date of Pronouncement**: 29/04/2022

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Principal Commissioner of Income Tax, Jamnagar, dated 02/02/2018 arising in the matter of assessment order passed under s. 263 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-15.

2. The only issue raised by the assessee is that the learned Principal CIT erred in holding the assessment framed by the AO under section 143(3) of the Act as erroneous insofar as prejudicial to the interest of revenue under section 263 of the Act.

3. The assessee in the present case is a private limited company and filed the return of income declaring an income of Rs. 5,11,580/- only. Subsequently, the case of the assessee was selected under scrutiny and assessment was framed under section 143(3) of the Act determining the total income at Rs. 5,11,580/- vide order dated 26th October 2016.

3.1 Subsequently, the learned Principal CIT on verification of the assessment records found certain defects in the assessment framed by the AO as detailed below:

- i. The assessee has shown opening value of stock namely met coke at 242.725 MT amounting to Rs. 57,67,150/- which comes at Rs. 23,760 per MT. Likewise the purchases were shown at 79.905 MT for Rs. 15,84,321.00. At the same time, there was the purchase return for 21.27 MT amounting to Rs. 1,17,115.00. Thus, the effective purchase comes at Rs. 25,022/- per MT $(15,84,321 - 11,71,150 / 58,635 \{ 79.905 \text{ minus } 21.27 \text{ MT} \})$. However, the assessee has shown closing stock at a value of ₹20,761 per MT which is below the value of the opening rate as well as purchase rate.
- ii. The assessee has shown purchases of cooking coke from the outside parties namely Global Coke Ltd at Rs. 6,600/- but the same product was procured from the associated party namely M/s Hindustan Coal Movers Pvt. Ltd at Rs. 14,050/- per MT which is much higher than the purchase from the unconnected party.
- iii. The assessee has shown sales of its product namely Coke at Rs. 15,580/- per MT against the purchases of Rs. 18,150/- per MT from M/s Haldia Coke and Chemicals Pvt. Ltd.

3.2 Based on the above, the learned PCIT was of the view that the assessment has been framed by the AO without carrying out the necessary verification of the items as discussed above. Thus, the Id. PCIT proposed to hold the assessment order as erroneous insofar prejudicial to the interest of revenue by issuing a show cause notice to the assessee dated 27th December 2017.

3.3 The assessee in response to such show cause notice submitted that the closing stock has been valued at cost or the market value whichever is lower. In the present case the market value was at Rs. 20,761/- per MT and therefore the same value was adopted for valuing the closing stock. This fact was duly verified by the AO during the assessment proceedings and therefore the valuation declared by the assessee was accepted.

3.4 Likewise, the assessee contended that the product purchased from the associated party namely M/s Hindustan Coal Movers Pvt was of different quality in comparison to the product purchased from the party namely M/s Global Coke Ltd. at Rs. 6600 per MT. Since, the product Cooking Coal-NE and Cooking Coal Grade was different, therefore the same are not comparable. Furthermore, the assessee contended that all these facts were duly verified by the AO during the assessment proceedings.

3.5 The assessee further submitted that the sale of coke has been made to the party at an average price of Rs. 18,204 per MT against purchase at Rs. 18,107 per MT, but PCIT wrongly assumed sale price at Rs. 15,580 per MT. This fact was also duly verified by the AO during the assessment proceedings.

3.6 In view of the above, the assessee contended that the order passed by the AO was well reasoned and after due application of mind. Therefore the same cannot be treated as erroneous insofar prejudicial to the interest of revenue.

3.7 However, the learned PCIT disregarded the contention of the assessee and held the order of the AO as erroneous insofar as prejudicial to the interest of revenue by holding as under.

5. The written submission of the assessee on the issue of cancellation of assessment u/s. 263 of I.T and other relevant facts have been duly considered. I have also examined the assessment record containing detailed questionnaire issued by the AO as also written submission along with the documentary evidence filed during the course of assessment proceedings. It is found that the AO has initiated inquiries in respect of valuation of closing stock of Met Coke vide letter dated 27.07.2016 and The assessee, vide submission before the AO dated 08.09.2016 submitted that the stock of coal was valued at lower of cost or net realisable value. The assessee has shown closing stock of Met Coke 301.360 and the value of the closing stock has been shown at Rs. 6229663. The assessee has furnished purchase invoice as per which Met Coke weighing 16.730MT was purchased from M/s Aditya Coke at the rate of Rs. 20625 per MT and adding transportation cost the realisable value of the stock was determined at Rs 20761. Accordingly, the closing stock of 301.360MT has been valued at the rate of 20761/MT. It may be noted that during the period under consideration the assessee has not made any sales of Met Coke. The assessee was having opening stock of 242.725MT the value of which was issued on at Rs. 5767.50 and the average cost of opening stock was arrived at Rs. 23760/MT. The assessee purchased Met Coke weighing 79.905MT and the average cost price arrived that Rs.25022. As per the assessee, the closing stock was to be revalued at the cost price for realisable value whichever is less and as per the assessee the last realisable value for at Rs. 20761. The main issue to be looked into was as to whether the AO has made any inquiries regarding the prevailing rate of Met coke at the time of end of the financial year. The purchase of Met Coke dated: 24.03.2014 from M/s Aditya Coke private Ltd. did not prove that this purchase was on the prevailing market rate. There is nothing on record which may indicate that the prevailing rate of the Met Coke was at Rs. 20761/MT. The valuation of the closing stock of 301.360MT has been made on the basis of a single purchase made on 24.03.2014 for 16.730MT. Moreover, when this purchase was made, the assessee was having adequate stock of Met Coke and considering the fact that no sale of Met Coke has been made, the purchase of Met Coke on 24.03.2014 was prima facie appeared as if to have been made to justify the valuation of closing stock at inadequate consideration. As regards the issue of payment of higher prices for purchases to M/s Hindustan Coal Movers Pvt Ltd., which is a specified person within the meaning of section 4QA(2)(B), the assessee's contention is that the quality of Coke purchased from M/s. Hindustan Coal Movers Pvt. Ltd. was different i.e. "coking coal" as against the purchases made from M/s. Global Coke Ltd. which was "coking coal ended-NE." In this connection, it may be mentioned that even if the contention of the assessee is accepted, it was the duty of the AO to have conducted independent inquiries in respect of the purchases made from the sister concern i.e. M/s Hindustan Coal Movers Pvt. Ltd. and the AO should have properly verified the fact that such purchases were on the prevailing market rate. The facts remain that even on this issue the AO has not conducted any independent inquiries which may indicate that the purchases from the sister concern was on the prevailing market rate as also that the AO simply relied and accepted the submission of the assessee.

*Another **issue** that the closing **stock of the Met Coke** should have **been** 322.63MT as against the closing **stock shown by the assessee at 301.360MT is also found to be correct. The assessee has also not rebutted such facts during the proceedings u/s. 263 of the I.T. Act.***

6. All these facts indicate that the AO while completing the assessment has not conducted any independent inquiries in respect of the valuation of closing stock and purchases made for the sister concern. Considering these facts, the order passed by the AO was erroneous in so far as it is prejudicial to the interest of the Revenue. The assessee in his written

*submission has referred and relied on various case laws. However, the facts of the assessee's case are different with the case laws relied upon by the assessee in as much as in assessee's case, the AO while completing the assessment has not conducted any independent inquiries in respect of valuation of closing stock and purchases made from sister concern. Reference is made to the Explanation 2 to section 263 of the I. T. Act inserted by the Finance Act 2015 w.e.f. 01.06.2015 which provides that any order passed by the AO without making inquiries or verification which should **have been made, will be deemed to be an order erroneous in so far as it is prejudicial to the interest of the Revenue. The facts and circumstances discussed in Para 5 above amply indicate that the AO has not conducted any inquiries in respect of valuation of closing stock and purchases made from the sister concern.***

7. I, therefore, hold that the assessment order finalized by the AO u/s 143(3) of the I. T. Act, 1961 is erroneous in so far as it is prejudicial to the interests of revenue within the meaning of section 263 of the I. T. Act, 1961.

8. Accordingly, the assessment is set aside. The AO is directed to reframe the assessment afresh after properly verifying the above aspects through independent enquiries (as may be required) and after giving the assessee a reasonable opportunity of being heard.

4. Being aggrieved by the order of the learned PCIT, the assessee is in appeal before us.

5. The learned AR before us filed a paper book running from pages 1 to 80 and contended that the assessment order was framed after due verification and application of mind. The learned AR in support of its contention drew our attention to the pages number of 15 and 19 of paper book where relevant queries raised by the AO vide notices issued under section 142(1) and reply made by the assessee were placed.

6. On the contrary the learned DR vehemently supported the order of the learned Pr. CIT.

7. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the present case relates whether the assessment order has been passed by Ld. AO without making inquiries or verification with respect to the items as discussed above and hence the assessment is erroneous insofar prejudicial to the interest of the Revenue and thus requiring revision by Pr. CIT u/s 263 of the Act.

7.1 An inquiry made by the Assessing Officer, considered inadequate by the Commissioner of Income Tax, cannot make the order of the Assessing Officer erroneous. In our view, the order can be erroneous if the Assessing Officer fails to apply the law rightly on the facts of the case. As far as adequacy of inquiry is considered, there is no law which provides the extent of inquiries to be made by the Assessing Officer. It is Assessing Officer's prerogative to make inquiry to the extent he feels proper. The Commissioner of Income Tax by invoking revisionary powers under section 263 of the Act cannot impose his own understanding of the extent of inquiry. There were a number of judgments by various High Courts in this regard.

7.2 Delhi High Court in the case of **CIT Vs. Sunbeam Auto 332 ITR 167 (Del.)**, made a distinction between lack of inquiry and inadequate inquiry. The Hon'ble court held that where the AO has made inquiry prior to the completion of assessment, the same cannot be set aside u/s 263 of the Act on the ground of inadequate inquiry. The relevant observation of Hon'ble Delhi High Court reads as under:

"12. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry", that such a course of action would be open. ———

*From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. **The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure.** It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in*

accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed.

15. Thus, even the Commissioner conceded the position that the Assessing Officer made the inquiries, elicited replies and thereafter passed the assessment order. The grievance of the Commissioner was that the Assessing Officer should have made further inquiries rather than accepting the explanation. Therefore, it cannot be said that it is a case of 'lack of inquiry'."

7.3 The Hon'ble Bombay High Court in case of **Gabriel India Ltd. [1993] 203 ITR 108 (Bom)**, discussed the law on this aspect in length in the following manner:

*"The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue, must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. **The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity.***

7.4 The Mumbai ITAT in the case of **Sh. Narayan Tatu Rane Vs. ITO, I.T.A. No. 2690/2691/Mum/2016, dt. 06.05.2016** examined the scope of enquiry under Explanation 2(a) to section 263 in the following words:-

*"20. Further clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the AO vis-à-vis its reasonableness in the facts and circumstances of the case. **Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquiries or verification that would have been carried out by a prudent officer.** Hence, in our view, the question as to whether the amendment brought in by way of Explanation 2(a) shall have retrospective or prospective application shall not be relevant."*

7.5 The Hon'ble Supreme Court in recent case of **Principal Commissioner of Income-tax 2 v. Shree Gayatri Associates*[2019] 106 taxmann.com 31 (SC)**, held that where Pr. CIT passed a revised order after making addition to assessee's income under section 69A in respect of on-money receipts, however, said order was set aside by Tribunal holding that AO had made detailed enquiries in respect of such on-money receipts and said view was also confirmed by High Court, SLP filed against decision of High Court was liable to be dismissed. The facts of this case were that pursuant to search proceedings, assessee filed its return declaring certain unaccounted income. The Assessing Officer completed assessment by making addition of said amount to assessee's income. The Principal Commissioner passed a revised order under section 263 on ground that Assessing Officer had failed to carry out proper inquiries with respect to assessee's on money receipt. In appeal, the Tribunal took a view that Assessing Officer had carried out detailed inquiries which included assessee's on-money transactions and Tribunal, thus, set aside the revised order passed by Commissioner. The Hon'ble High Court upheld Tribunal's order. The Hon'ble Supreme Court while dismissing the SLP filed by the Department held as under:-

"We have heard learned counsel for the Revenue and perused the documents on record. In particular, the Tribunal has in the impugned judgment referred to the detailed correspondence between Assessing Officer and the assessee during the course of assessment proceedings to come to a conclusion that the Assessing Officer had carried out detailed inquiries which includes assessee's on-money transactions. It was on account of these findings that the Tribunal was prompted to reverse the order of revision. No question of law arises. Tax Appeal is dismissed"

7.6 The Supreme Court in the another recent case of **Principal Commissioner of Income-tax-2, Meerut v. Canara Bank Securities Ltd[2020] 114 taxmann.com 545 (SC)**, dismissed the Revenue's SLP holding that 263 proceedings are invalid when AO had made enquiries and taken a plausible view in law, with the following observations:

"Having heard learned counsel for the parties and having perused the documents on record, we see no reason to interfere with the view of the Tribunal. The question whether the income should be taxed as business income or as arising from the other source was a debatable issue. The Assessing Officer has taken a plausible view. More importantly, if the Commissioner was of the opinion that on the available facts from record it could be conclusively held that income arose from other sources, he could and ought to have so

held in the order of revision. There was simply no necessity to remand the proceedings to the Assessing Officer when no further inquiries were called for or directed"

7.7 From an analysis of the above judicial precedents, the principles which emerge are that the phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Assessing Officer adopts one of the course permissible in law and it has resulted in loss of revenue; or where two views are possible and the Assessing Officer has taken one view with which the Commissioner of Income-tax does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Assessing Officer is unsustainable in law, or the AO has completely omitted to make any enquiry altogether or the order demonstrates non-application of mind.

7.8 Now in the facts before us, in the case of the assessee the AO during the course of assessment proceedings, made enquiries on this issue and after consideration of written submissions filed by the assessee and documents / evidence placed on record, the Ld. AO framed assessment under section 143(3) accepting the return of income. This fact can be verified from the notices issued under section 142(1) of the Act by the AO and submission in reply of such notices.

Notice dated 27-07-2016:

Furnish justification of closing stock valuation with supporting documents.

Reply of the assessee vide letter dated 08-09-2016

Closing stock is valued lower of cost or net realizable value. For the valuation copy of supporting bill is attached at page 3 to 5.

Regarding justification as to purchase rate paid to Hindustan Coal Movers Pvt. Ltd. It is submitted that we have purchased imported cooking coal from HCML who is the only supplier. Where as purchases from others is local cooking coal having inferior quality and containing higher moisturiser, fix carbon, v.m and ash rations of coke. Generally local cooking coal is used for blending the product and used for mixing the coal to make the rate of our product as competitive. Thus rate paid is justifiable.

7.9 The fact that the assessee has made inquiries with regard to stock valuation rate difference, purchases from related and unrelated parties and sale of coke at less than purchase price also verifiable from the finding of the learned Pr. CIT which are extracted below:

It is found that the AO has initiated inquiries in respect of valuation of closing stock of Met Coke vide letter dated 27.07.2016 and The assesses, vide submission before the AO dated 08.09.2016 submitted that the stock of coal was valued at lower of cost or net realisable value.

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The facts remains that even on this issue the AO have not conducted any independent inquiries which may indicate that the purchases from sister concern ws on the prevailing market rate as also that the AO simply relied and accepted the submission of the assessee.

7.10 From the above it is revealed it is not the case that the AO has not made enquiry. Indeed, the Pr. CIT initiated proceedings under section 263 of the Act on the ground that the AO has not made enquiries or verification which should have been made in respect of valuation of closing stock, purchases from and sale to related party. It is not the case of the Pr. CIT that the Ld. AO did not apply his mind to the issue on hand or he had omitted to make enquiries altogether. In the instant set of facts, the Ld. AO had made enquiries and after consideration of material placed on record accepted the genuineness of the closing stock, rate difference in purchase of cooking coke from related party and sale of coke allegedly less than cost price. We thus find no error in the order of Ld. AO so as to justify initiation of the proceedings by the Ld. Pr. CIT under section 263 of the Act.

7.11 Without prejudice to the above, it is also important to note that the assessment order framed by the AO was held to be erroneous insofar prejudicial to the interest of revenue on account of 3 items which have been elaborated in the preceding paragraph. The AO in the consequential order dated 28-12-2018 has not made any addition qua the purchase and sale of the products except the valuation of closing stock. Thus to our understanding, there remains no grievance to the assessee with respect to these 2 items where no addition was made by the AO in consequence to the direction of the learned PCIT. For the 3rd item of the addition, we have quashed the order passed by the learned PCIT under section 263 of the

Act on the reasoning that there were proper inquiries and application of mind of the AO. Hence, the ground of appeal raised by the assessee is thus allowed.

8. In the result, the appeal of the assessee is **allowed**.

Order pronounced in the Court on 29/04/2022 at Ahmedabad.

**Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**
29/04/2022
Manish