

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.522/Del/2021
Assessment Year: 2015-16

M/s. Shakti Basmati Rice (P) Ltd., C/o- RRA TAXINDIA, D-28, South Extension Part-1, New Delhi	Vs.	Pr. CIT, Rohtak
PAN :AAQCS7594G		
(Appellant)		(Respondent)

Appellant by	Sh. Rakesh Gupta, Advocate
Respondent by	Sh. H.K. Chaudhary, CIT (DR)

Date of hearing	03.03.2022
Date of pronouncement	13.05.2022

ORDER

PER SAKTIJIT DEY, JM:

Captioned appeal has been filed by the assessee calling into question the validity of order dated 20.03.2021 passed by learned Principal Commissioner of Income Tax (PCIT), Rohtak, under section 263 of the Income-tax 1961 (for short 'the Act') for the assessment year 2015-16.

2. The grounds raised by the assessee are as under:

1. *That having regard to facts and circumstances of the case, Ld. Pr. CIT has erred in law and on facts in assuming jurisdiction u/s 263 of Income Tax Act, 1961 and has erred in holding the assessment order dated 22.12.2017 as erroneous as well as*

prejudicial to the interest of revenue within the meaning of section 263 read with explanation -2 there under and that too by recording incorrect facts and findings and in violation of principles of natural justice.

2. *That having regard to facts and circumstances of the case, Ld. Pr. CIT has erred in law and on facts in cancelling the order passed by the assessing officer u/s 143(3) dated 22.12.2017 with direction to pass an order afresh and that too by recording incorrect fact and findings and without observing the principles of natural justice and more particularly when all the details/evidences were available on the record at the time of assessment proceedings.*
3. *That having regard to facts and circumstances of the case, Ld. Pr. CIT has erred in law and on facts in passing the impugned order u/s 263 and that too without providing the opportunity of being heard and in violation of principles of natural justice.*
4. *That having regard to facts and circumstances of the case, Ld. Pr. CIT has erred in law and on facts in observing that the order passed by Ld. AO in a very casual manner without due diligence and without conducting any worthwhile enquiries.*
5. *In view of the matter and in any case, order passed under 263 is bad in law and against the facts and circumstances of the case and is barred by limitation.*

3. Briefly the facts are, the assessee, a resident company, is stated to be engaged in the business of running rice mill. For the assessment year under dispute, the assessee filed its return of income on 30.09.2015 declaring income of Rs.1,41,12,500/-. The return of income filed by the assessee was picked up for limited scrutiny. In course of assessment proceeding, the Assessing Officer called upon the assessee to furnish the necessary details and ultimately completed the assessment under section 143(3) of the Income-tax Act, 1961 (for short 'the Act') vide order dated 22.12.2017 accepting the returned income. Post completion of assessment, learned PCIT, in exercise of jurisdiction under

section 263 of the Act, called for and examined the assessment records of the assessee. On such examination, he found that the Assessing Officer has completed the assessment without carrying out proper enquiry which he should have carried out. Thus, prima facie, he was of the view that the assessment order is erroneous and prejudicial to the interest of Revenue. Accordingly, he issued a show-cause notice to the assessee to explain, as to why the assessment order should not be set aside.

4. As alleged by learned PCIT, in response to the aforesaid show-cause notice issued on 02.03.2021 requiring the assessee to file its reply by 09.03.2021, no such reply was filed by the assessee. Accordingly, he proceeded to complete the proceeding under section 263 of the Act. While doing so, he observed that assessee's case was selected for limited scrutiny for examining large commission expenses and low net profit rate and mismatch in sales turnover reported in Audit Report and ITR. He observed, the net profit rate shown by the assessee in the impugned assessment year is much less than the net profit rate shown in assessment year 2014-15 at 1.18%. He observed, to verify the low net profit shown by the assessee, the Assessing Officer should have examined the genuineness of expenses shown under the

head 'manufacturing expenses and establishment expenses' after obtaining documentary evidences from the assessee. However, the Assessing Officer failed to do so. Thus, he held that the Assessing Officer having failed to examine the genuineness of expenses, the assessment order is erroneous and prejudicial to the interest of Revenue. Having held so, he observed, the Assessing Officer should conduct detailed enquiries on the issue of genuineness of expenses by examining documentary evidences. Further, he observed, the Assessing Officer must also examine the cash expenses. Thus, ultimately, he set aside the assessment order with a direction to the Assessing Officer to pass a fresh assessment order keeping in view the observations made in the revision order.

5. Learned counsel for the assessee submitted, assessee's case was selected for limited scrutiny for verifying large commission expenses and low net profit and mismatch in sales turnover. He submitted, in course of assessment proceeding, the Assessing Officer had conducted full length enquiry into the issues for which the assessment was selected for limited scrutiny. He submitted, the Assessing Officer issued statutory notices under section 142(1) and 143(3) of the Act requiring the assessee to

furnish the details of commission expenses incurred by the assessee, both in India and abroad. He submitted, after verifying the details of overseas commission along with shipping bills furnished by the assessee, the Assessing Officer completed the assessment having been satisfied that the expenses are genuine. He submitted, insofar as brokerage/commission paid in respect of domestic sales, the details of brokerage paid alongwith proof of deduction of tax at source were filed. He submitted, the assessee has also filed a statement reconciling the difference in sales figures appearing in the Audit Report and ITR which was due to cash discount and quality discount. He submitted, the assessee furnished the details of foreign commission by showing the date of shipping bills in the name of the parties, invoices, value and the commission paid. He submitted, even confirmation from the brokers confirming receipt of brokerage was furnished. Thus, he submitted, the allegation of learned PCIT that the Assessing Officer did not make proper enquiry and examination while accepting the return of income is contrary to the facts and materials on record. He submitted, only because the Assessing Officer has not passed a detailed order discussing the nature of enquiry conducted by him and the evidences furnished by the

assessee, it cannot be said that the Assessing Officer has passed the order without proper enquiry and application of mind.

6. Drawing our attention to the Office Note of the Assessing Officer obtained through Right to Information Act, learned counsel submitted, in the Office Note the Assessing Officer has clearly and categorically observed that he has examined the issues on which limited scrutiny was done by calling for necessary details/evidences and verifying them. Thus, he submitted, the Assessing Officer after having conducted proper enquiry passed the assessment order, it cannot be said that the assessment order is erroneous and prejudicial to the interest of Revenue, only because, he has accepted the income returned by the assessee. In support of his contention, learned counsel relied upon the following decision:

1. *ITO Vs. DG Housing Projects Ltd. (2012) 343 ITR 329 (Delhi HC)*

7. Learned Departmental Representative submitted, no enquiry worth its name was conducted by the Assessing Officer on the issues on which assessee's case was selected for limited scrutiny. Drawing our attention to the assessment order, he submitted, the observations of the Assessing Officer on the limited scrutiny issues are unreasoned and without application of mind. He

submitted, when the net profit rate shown by the assessee has drastically reduced, the Assessing Officer should have made thorough enquiry to find out the reason behind such low net profit rate and whether such fall in net profit rate is not due to huge commission expenses. Thus, he submitted, due to lack of proper enquiry the Revisionary Authority can revise the assessment order under section 263 of the Act in terms with Explanation 2(a) to section 263 of the Act. Thus, he submitted, failure on the part of the Assessing Officer to conduct proper enquiry has resulted in acceptance of the income returned by the assessee, thereby, making the assessment order erroneous and prejudicial to the interest of Revenue.

8. We have considered rival submissions and perused the materials on record. Undisputedly, assessee's case was selected for limited scrutiny to verify large commission expenses and low net profit and mismatch in sales turnover reported in Audit Report and ITR. From the materials placed before, it is evident, to verify the issues, for which assessee's case was selected for limited scrutiny, the Assessing Officer, from time to time, had issued statutory notices under section 142(1) and 143(2) of the Act calling upon the assessee to furnish various details with

supporting evidences in respect of commission expenses. It is relevant to observe, in reply to the statutory notices issued by the Assessing Officer, the assessee had furnished details of commission/brokerage paid to both domestic as well as overseas agents along with all other relevant documents, including shipping bills. Though, in the body of the assessment order the Assessing Officer has not discussed in detail the nature of enquiry conducted by him and the evidences produced by the assessee, however, he nevertheless has mentioned that in response to statutory notices issued from time to time and various order-sheet entries, the counsel of the assessee has attended and furnished written replies along with supporting documentary evidences. In fact, in the Office Note appended to the assessment order, a copy of which was obtained by the assessee under Right to Information Act, 2005, the Assessing Officer has clearly and categorically mentioned that he has examined both the issues of large commission expenses and low net profit and mismatch in sales turnover reported in Audit Report and ITR by verifying the submissions and supporting evidences furnished by the assessee and has found nothing adverse in them. Thus, the aforesaid observations of the Assessing Officer in the assessment order and

the Office Note coupled with submissions made by the assessee and supporting evidences furnished, which forms part of the record, would clearly reveal that the Assessing Officer has not only made proper enquiry on the issues for which the case was selected for limited scrutiny but being satisfied with the genuineness of the expenses which was established through the supporting evidences, accepted the returned income.

9. Reading of the impugned order of learned PCIT would reveal that he has considered the assessment order to be erroneous and prejudicial to the interest of Revenue only for the reason that the Assessing Officer has not made proper enquiry on the issues, on which, the case was selected for limited scrutiny. However, the facts on record are contrary to the allegation made by learned PCIT. Further, while holding the assessment order to be erroneous and prejudicial to the interest of Revenue, learned PCIT has directed the Assessing Officer to conduct detailed enquiries on the limited scrutiny issues by examining documentary evidences in respect of huge expenses shown by the assessee. When in course of assessment proceeding, the Assessing Officer has called for the documentary evidences relating to the commission expenses and the assessee has furnished them, it is

not understood what more documentary evidences learned PCIT wanted the assessee to furnish. It is very much evident, learned PCIT has not mentioned the nature of evidences to be furnished by the assessee. Therefore, the direction to the Assessing Officer appears to be in vacuum and without any substance. When all the evidences relating to commission/brokerage paid by assessee both to domestic as well as overseas agents are available on record, what more evidences are required to be furnished by the assessee is beyond comprehension. When the facts on record reveal that the Assessing Officer has made proper enquiry on the issues, on which limited scrutiny was directed, by merely referring to Explanation 2(a) to section 263 of the Act, the assessment order cannot be held to be erroneous and prejudicial to the interest of Revenue by making a general observation that proper enquiry, which the Assessing Officer ought to have made was not made. When the Assessing Officer has conducted proper enquiry and the assessee has furnished all documentary evidences and has offered proper explanation for the low net profit shown, merely because, the assessment order is cryptic one without discussing in detail the nature of enquiry conducted and the evidences furnished by the assessee, it cannot be said that

the order is erroneous and prejudicial to the interest of Revenue. Certainly, the assessee is expected to have any control over the mode and manner in which the Assessing Officer drafts the assessment order.

10. Thus, on overall consideration of facts and materials on record, we are of the view that the Assessing Officer having passed the assessment order after proper enquiry and application of mind, the assessment order cannot be held to be erroneous and prejudicial to the interest of Revenue, so as to, empower learned PCIT to revise it under section 263 of the Act. Thus, in our considered opinion, the exercise of power under section 263 of the Act in the instant case is invalid. Accordingly, we set aside the impugned order of learned PCIT passed under section 263 of the Act and consequently restore the assessment order.

11. In the result, the appeal is allowed.

Order pronounced in the open court on 13th May, 2022

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 13th May, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi