

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH
(Conducted Through Virtual Court)
Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member

ITA No. 675 /Ahd/2015
Assessment Year 2010-11

Himanshu Engineering Works P.A. No. AABFH2716F, Plot No. 620, Phase-IV, GIDC, Vatva, Ahmedabad PAN: AABFH2716F (Appellant)	Vs	Pr. CIT-3, Ahmedabad (Respondent)
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Assessee by: Shri P.F. Jain, A.R.
Revenue by: Shri Shushilkumar Madhuk, CIT-D.R.

Date of hearing : 21-03-2022
Date of pronouncement : 18-05-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Pr. Commissioner of Income Tax-3, Ahmedabad vide order dated 23/02/2015 passed for the assessment year 2010-11.

2. The assessee has raised following grounds of appeal:-

“1. The Id. Pr.C.I.T.-3, Ahmedabad has erred in law and on facts in assuming jurisdiction u/s.263 and resorting to provisions of Section 263 against the order passed u/s.143(3) on 15/03/2013 in the case of appellant inasmuch as that the order u/s.143(3) is neither erroneous nor prejudicial to the interest of revenue.

2. The Id. Pr. C.I.T. has erred in law and on facts in not properly appreciating the written submission dtd. 18/02/2015 explaining with documentary proof the various issues mentioned in the show cause notice u/s. 263 dated 22/10/2014.

3. He has erred in law and on facts in observing that, the A.O. has not examined several issues having bearing on computation of income and levy of tax and that order passed is without proper verification and without application of mind.

4. He has erred in law and on facts in considering the assessment order passed u/s. 143(3) as erroneous and prejudicial to the interest of revenue.

5. On the facts, no proceedings u/s.263 ought to have been initiated.

6. The appellant craves leave to add .alter and/or modify any grounds of appeal.”

3. The brief facts of the case are the assessee is a manufacturer of rolling mills machinery and parts. During the year under consideration, assessee had shown total turnover of ₹ 2, 25, 07, 622/- inclusive of job work and sales. The assessee had filed a net income of Rs. 7,54,319/-. The case of the assessee was picked up for scrutiny and the assessing officer after verification of bills and vouchers on test check basis passed the assessment order accepting the returned income filed by the assessee.

3.1 Subsequently, the Principal CIT initiated proceedings u/s 263 of the Act and held that order passed by the AO was erroneous and prejudicial to the interests of the Revenue on various counts. Firstly, the Principal CIT noted that the assessee had paid a sum of Rs. 2,76,454/- towards electricity charges in cash which are dis-allowable u/s 40A(3) of the Act. The AO did not examine this aspect at all during assessment proceedings. The principal CIT further held that the explanation of the assessee that payment had to be made in cash since the cheque issued to the electricity company was dishonoured due to insufficient funds was found to be not acceptable because if the cash was available in the books of accounts, then the same could have been deposited in the bank before issuing the cheque. Secondly, Principal CIT observed that remuneration of Rs. 12,00,000/- was paid to partners of the firm. It was observed, that the assessee had paid a sum of Rs. 6,00,000/- to one of the partners Mr. Varia, in his capacity as Karta of HUF. But, since Mr. Varia is representing his HUF, and HUF cannot be termed as a “working partner”, therefore this remuneration of ₹ 6 lakhs was required to be disallowed by the AO, which he did not do in the assessment order. The Principal CIT held that though the assessee has submitted before him

that this aspect was also part of the earlier years assessment and the issue is pending adjudication before CIT(A), however the AO should have examined this aspect in the assessment order, which he failed to do. Thirdly, it was noticed that there was a delay of 14 days in deposit of employees PF contribution in the month of September, 2009, which was disallowable u/s 36(1)(va) of the Act. The AO omitted to analyse this aspect in the assessment order and simply accepted the assessee's explanation without appreciating that the language of section 36(1)(va) of the Act is plain and unambiguous. Fourthly, on perusal of P&L Account, it was noticed that the assessee had credited a sum of Rs. 2,25,07,622/- under the head sales whereas party -wise accounts have reflected the job work receipts of Rs. 2,49,81,339/- from 3 parties. Accordingly, the AO failed to reconcile the difference of Rs.24,73,717/- which was required to be reconciled and in absence of a valid explanation thereof, should have been added to the returned income of the assessee. The Principal CIT noted that in 263 proceedings, the assessee has simply stated that the differences is on account of excise duty, VAT etc. but has not been able to account for the difference. While the difference is of ₹ 24, 73, 717 /- but the assessee has been able to account for only ₹ 24, 17, 599 /- and even the correctness of this claim needs to be verified. This omission has resulted into passing of an order which is erroneous and prejudicial and to the interest of the revenue. Fifth, assessee had claimed TDS of Rs. 6,62,553/- but the AO allowed the same without calling for the corresponding credits of Rs. 2,92,38,879/- approximately and carrying out the necessary reconciliation, which again shows that the order passed was erroneous and prejudicial to the interests of the revenue. Even before the Principal CIT, the assessee could not reconcile

the TDS figure with the receipts and hence the order was erroneous and prejudicial to the interests of the revenue. Further, Principal CIT observed that assessee had taken certain amount as advances against labour work and most of which had been repaid within a period of 9 months in cash. The AO failed to examine the applicability of sections 269SS and 269T of the Act and also did not analyse the applicability of section 271D and 271E of the Act in respect of the cash payments. Accordingly, the Principal CIT held that since the AO has not examined several issues as enumerated above, and therefore the assessment order is erroneous and prejudicial to the interests of the revenue and is therefore set aside to be made de-novo after giving due opportunity of hearing to the assessee.

4. Before us, Ld. Counsel for the assessee submitted that Principal CIT has erred in initiating 263 proceedings in the instant of the facts. The AO during the course of assessment proceedings had issued detailed questionnaire and the various issues on the basis of which principal CIT had initiated 263 proceedings were already dealt with by the AO during the course of assessment proceedings. He submitted that if the assessee has produced the relevant material and offered explanation in pursuance to notice issued under s. 142(1) read with s. 143(2) of the Act, then the mere fact that a different view could be taken cannot be a basis for an action under s. 263 of the Act. In respect of the specific instances pointed out by the Principal CIT, he submitted that the assessee was coerced to make electricity payments in cash since the cheque had got dishonoured and relevant proof was submitted before Principal CIT in 263 proceedings. On the aspect of a remuneration paid to HUF, this aspect has already been dealt in the cases of

the assessee for the earlier years, a copy of which was duly produced before the AO during the course of assessment proceedings, and after due consideration of the same, the AO had granted relief to the assessee. On the difference in receipt of Rs. 24,73,717/- which was required to be reconciled, the AO during the assessment proceedings had issued notice seeking various details, but however he did not specifically ask for reconciliation in respect of the same. With respect to the TDS claim of Rs. 6,62,553/-, the Ld. counsel for the assessee drew our attention to page 30 of the paper book, and submitted that at para iii), the AO had specifically called for these details and hence there is no infirmity in the assessment order. The AO had after considering the reply of the assessee and made no additions on this count. With respect to the receipt of advances from M/s Varia Engineering Works and Bavala Rolling against labour work of ₹ 30 lakhs in cash and repayment of thereof within 9 months, the counsel for the assessee submitted that no expense in respect thereof has been claimed while computing taxable income and assessee has also given reasonable explanation that the amount was taken to meet the financial requirement therefore there is no cause for levy penalty in the instant set of facts. Therefore, the AO has not erred in applying the provisions of sections 269SS and 269T. The counsel for the assessee place reliance on the case of the **CIT v. Arvind Jewellers to 259 ITR 502 (Gujarat)** and on the case of **CIT v. Gabriel India Ltd. 203 ITR 108 (Gujarat)** in support of his contention that section 263 does not visualise substitution of judgement of Commissioner for that of the assessing officer, unless the decision is held to be erroneous. Accordingly, he submitted that the order passed by the Principal CIT deserves to be set aside

in the instant set of facts. In response, the Ld. Departmental Representative placed reliance on the observations of the Principal CIT in the 263 order.

5. We have heard the rival submissions and perused the material on record. We note that the order passed by the assessing officer is a brief order and does not discuss in detail the various details called for and the explanation given by the assessee. The AO has accepted the returned income filed by the assessee. Though we note that though the AO had from time to time sought for various details from the assessee and also for certain matters in respect of which Principal CIT has made certain observations, the Ld. Assessing Officer had sought for details and analysed the issues, for instance one related to payment of remuneration to HUF, in respect of which there was an ongoing litigation in previous years, however we equally note that in respect of certain issues for instance the difference of ₹ 24,73,717/- in respect of receipts as compared to party -wise ledger accounts, there was an obvious omission on the part of the assessing officer in not carrying out the necessary reconciliation between total receipts under the head "Sales" with the party -wise accounts reflected as "job work" receipts from the various parties. As noted by the Principal CIT, even during the 263 proceedings, the assessee has not been able to satisfactorily reconcile the difference. Another aspect for consideration, is the disallowance on account of late payment of employees Provident Fund beyond the due date prescribed under the relevant Act. This issue was not analysed by the AO during the course of assessment proceedings, especially when the language of the Act is clear and unambiguous. In our view, during the course of assessment proceedings, the AO did not verify certain details which in our view should have been done

in order to assess the correct taxable income of the assessee. Accordingly, in a considered view, the Principal CIT has not erred in law and facts in setting aside the assessment order under s. 263 of the Act since the same is erroneous and prejudicial to the interests of the revenue. The same is accordingly being set aside to pass a fresh order after giving due opportunity of hearing to the assessee.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 18-05-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 18/05/2022

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद