

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 410/Asr/2019
Assessment Year: 2009-10

Sh. Sham Sunder Aggarwal,
Prop. M/s PK & Company,
15-New Sabji Mandi,
Kapurthala

Vs. Pr. C. I. T.-2,
Jalandhar

[PAN: AAWPA 3347E]

(Appellant)

(Respondent)

Appellant by : Sh. J. S. Bhasin, Adv.

Respondent by: Sh. Chandrajit Singh, CIT DR

Date of Hearing: 29.06.2022

Date of Pronouncement: 24.08.2022

ORDER

Per Anikesh Banerjee, J.M.:

The instant appeal was filed by the assessee against the order passed by the Ld. Pr. Commissioner of Income Tax-2, Jalandhar [in brevity the PCIT], bearing Order No. Pr.CIT-2/Jal/Judl./2018-19/4789 dated 29.03.2019, passed u/s 263 of the Income Tax Act, 1961 [in brevity the Act], in respect of Assessment Year 2009-10. The impugned order was generated from the order of the ld. Income Tax Officer,

Ward-2, Kapurthala (in brevity AO) passed u/s 143(3)/148 of the Act, dated 29.12.2016.

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

- “1. *That neither in facts nor on law, the Id. Pr. CIT was justified in exercising jurisdiction under section 263 of the Income Tax Act, 1961 in this case.*
2. *That the Id. Pr.CIT, grossly erred in law, to hold the re-assessment order passed u/s,143(3)/147, as erroneous u/s.263, by relying upon a purported mis-match list, subsequently procured by her from the ETO, unmindful that the Id. ITO had concluded reassessment based on material available on record, at the time of recording of reasons u/s.148 and duly approved by the then Pr.CIT u/s.151.*
3. *That by holding that the ITO failed to obtain the mis-match list from the ETO, at the time of reassessment, to ascertain the parties from whom bogus purchases were made, the Id. Pr.CIT, in a way, has held the order u/s.148 itself as bad in law, thus leaving no scope to further revise the same under section 263. The impugned order, is therefore, inherently illegal.*
4. *That by any angle, when the Id.AO had made every possible enquiry and also examined purchases made from all parties, inclusive of parties mentioned in the mis-match list, there remained no ground for the Id. Pr. CIT to still set aside the reassessment order u/s.263, also losing sight of the fact that reassessment, in this case, was preceded by a regular assessment made earlier.*
5. *That the order under appeal is wholly against law and facts of the case.”*

3. Brief fact is that the assessee is a proprietor of M/s P.K. & Company, Kapurthala was engaged in trading of paddy husk and also transportation of goods from the premises of Vendor to the premises of the buyers. The assessee is regularly filed his return. The assessment was made u/s 143(3) of the Act in a summary basis. After the assessment order, the proceeding was started by the Id.

Pr. CIT u/s 263 on the basis of information received from ADIT. The allegation was that the purchase from 8 parties was bogus. The name of the parties are as follows:

- i. *M/s Sandeep Rice & General Mills Jalalabad/Guru Harsahai.*
- ii. *M/s Ganesh Rice & General Mills Jalalabad/ Guru Harsahai.*
- iii. *M/s Agro, Jalalabad/ Guru Harsahai.*
- iv. *M/s Galhotra Industries, Jalalabad/ Guru Harsahai.*
- v. *M/s J.B Agro, Guru Harsahai.*
- vi. *M/s D.M/ Agro Mills, Jalalabad.*
- vii. *M/s Agro, Jalalabad/ Guru Harsahai.*
- viii. *M/s Malkiat Trading Co., Jalalabad/ Guru Harsahai.*

Accordingly, the assessment order was treated as erroneous and prejudicial to the interest of the revenue. The order of assessment was set aside by the Id. Pr. CIT u/s 263 of the Act.

4. Aggrieved assessee filed an appeal before us.

5. The observation of the Id. Pr.CIT as per order U/s 263 of the Act is as follows:

“5. Meanwhile this office through a letter to Deputy Excise and Taxation Officer, Jalandhar vide No Pr.CIT-2/Jal./Tech./2018-19/4595 dated 06.03.2019 requested to furnish a copy of appellate order passed by appellate authorities in this case. The same has been received in this office from the office of Deputy Excise and taxation Officer, Jalandhar vide their letter No.7368 dated 07.03.2019. It is seen that assessee’s appeal against the order dated 25.10.2012 of Excise and Taxation Officer-eum- Designated Officer, Kapurthala was also dismissed by the Deputy Excise and Taxation Commissioner (Hq.), Camp Jalandhar vide order in appeal No. VAT/340/2012-13 dated 01.10.2013. The operative part of the order of the Deputy Excise and Taxation Commissioner reads as under: -

“The arguments of both the sides have been heard at length the grounds of appeals taken by the appellant, written reply of the Department and the record produced have also been perused. The Designated Officer has passed a reasonable and speaking order and the appellant counsel has failed to rebut any of the contentions contained in the assessment order. Accordingly finding no merits in the appeal the same is rejected.”

6. *The assessee during the hearing before me has contested that out of the 74 parties mentioned in the mismatch list forwarded by the Excise and Taxation Department, the repetitive names in 3 cases need to be excluded, there are 9 cases where the names of the parties have not been mentioned. It is only written as record not found. With respect to the remaining parties bills and copies of account were submitted.*

It is apparent that in the impugned proceedings before the AO, the mismatch list was not obtained by the AO from the Excise & Taxation Department. He made misdirected Inquiry about eight entities from whom purchases were not made and who did not figure in the mismatch list. The AO thus failed to make the Requisite verifications as he did not even obtain and did not have the mismatch list to make the necessary enquiries. In view of this fallacy and failure, the assessment order dated 29.12.2016 is held to be erroneous and prejudicial to the interest of revenue.

7. *Considering the entirety of facts, it is held that the order made u/s 143(3) is erroneous in so far as it is prejudicial to the interest of revenue. Clause (a) of Explanation 2 of sub-section 1 of Section 263 also provides that the order which is passed without making inquiries/verification, which should have been made, shall be deemed to be erroneous in so far as it is prejudicial to the interest of revenue.*

8. *Therefore, the said order passed on 29.12.2016 is set-aside to the file of the assessing officer to pass fresh order, after making necessary inquiries/verifications, in the light of above discussion and after giving an opportunity of being heard, to the assessee.”*

6. The ld. DR relying on the order of the ld. Pr. CIT.

7. We heard both the parties and relied on the documents available on the record. The ld. counsel of the assessee Mr. Bhasin had filed a paper book which is kept in record. He argued that reopening was made u/s 148 on dated 30.03.2016 as per the reasons recorded by the AO which was duly approved u/s 151 by Pr. CIT for the assessment year 2009-10. The copy of the reasons recorded is annexed in page no. 35 to 36 of the paper book. The reasons are recorded on the basis of the enquiry report of ADIT(Inv.) Jalandhar copy at page 28 to 34 of the paper book alleged claim of bogus purchase amount of Rs.4,05,57,307/-. The amount of bogus purchase was informed from the Sales Tax order.

During the assessment proceedings, the assessee had confronted about the alleged bogus purchase related to 8 different parties as provided by the Sales Tax Department. However, the assessee as per his reply denied his purchase from the said 8 parties. The copy of the letter annexed in page no. 42. In this respect, the ld. counsel filed an office note which is annexed in page no. 49 of APB. The Office Note of revenue is reproduced as under:

“Office Note

This case was selected in scrutiny by recording reasons for reopening the case after obtaining approval from the Pr CIT-2, Jalandhar on the basis of information received from the office of the Dy. Director of Income Tax (investigation) Jalandhar vide his office letter No. DDIT(Inv)/JAL/P/KK/2015-16/2053 dated 16.3.2016 that the assessee made bogus purchases of husk and allied products generated out of milling process of the rice from the cancelled dealers M/ Sandeep Rice and General Mills

Jalalabad, and other cancelled dealers of Guru Harsahai and Ferozepur surrounding areas.

In view of the above, during the course of assessment proceedings the assessee was asked to justify the purchases made during the period under consideration from 4.2.2008 to 31.3.2009 from the following firms:

- i. M/ Sandeep Rice and General Mills Jalalabad/Guru Harsahai/Ferozepur.*
- ii. M/s. Ganesh Rice & General Mills, Jalalabad/Guru Harsahai/Ferozepur.*
- iii. M/s Jagdish Arora, Jalalabad/Guru Harsahai/Ferozepur.*
- iv. M/s Galhotra Industries, Jalalabad/Guru Harsahai/Ferozepur.*
- v. M/s J B Agro Mills, Jalalabad/Guru Harsahai/Ferozepur.*
- vi. M/s D .M. Agro Mills,*
- vii. M/s M S Agro*
- viii. Malikiat Trading Co.*

In response to the same, the counsel of the assessee has submitted that during the period from 01.04.2008 to 31.3.2009, the assessee has not made any purchases from the above parties.

Subsequently, a letter bearing No.1112 dated 20.12.2016 was also issued to the Asstt. Director of Income Tax(lnv) Jalandhar with the request to provide complete names and address of the firms/parties from which the assessee has made bogus purchases during the period under consideration so that the purchases may be verified from these parties. In response to same, the ADIT (lnv) Jalandhar vide her office letter No. DDIT(lnv)/JAL/Misc/2016-17/1660 dated 21.12.2016 has informed that "the complete information, as available with this office, with regard to the above mentioned case has already been forwarded to you vide this office letter DDIT(lnv)/JAUP/KK/2015- 16/2053 dated 16.3.2016".

However, a letter bearing No.914 dated 14.12.2016 is also issued to Asstt Excise Taxation Commissioner Aman Nagar, Kapurthala for confirmation that whether the assessee Shri Sham Sunder Aggarwal, Prop. P K & Company, Kapurthala had made purchases from these parties as referred above. In this regard the Asstt Excise Taxation Commissioner Aman Nagar, Kapurthala vide her office letter No.1695 dated 28.12.2016 has confirmed that as per our office record purchases made from under mentioned firms are as under:

Sr. No.	Name of firm & address	Purchase amount
1.	M/ Sandeep Rice and General Mills Jalalabad/Guru Harsahai/Ferozepur.	NIL
2.	M/s. Ganesh Rice & General Mills, Jalalabad/Guru Harsahai/Ferozepur.	Nil
3.	M/s Jagdish Arora, Jalalabad/Guru Harsahai/Ferozepur	Nil
4.	M/s Galhotra Industries, Jalalabad/Guru Harsahai/Ferozepur.	Nil
5.	M/s J B Agro Mills, Jalalabad/Guru Harsahai/Ferozepur.	Nil
6.	M/s D.M. Agro Mills, 1 st chowk, Shop No.1 New Grain Market, Jalandhar.	Nil
7.	M/s M. S Agro Mills, New Grain Market, Jalalbad.	Nil
8.	M/s Maliat Trading Co 1st Chowk, Shop No. 1, New Grain Market, Jalandhar.	Nil

Further the assessee was asked to furnish the names and addresses of the parties from which/whom purchases/sales have been made during the period from 1.4.2008 to 31.3.2009. The counsel of the assessee has furnished a list of purchaser and copies of sales accounts. The counsel of the assessee Sh Rakesh Sabharwal Advocate and Sh Anish Aggarwal son of assessee produced complete books of accounts along with vouchers and bills of purchase/sale etc. On verification of books of accounts the assessee, specifically purchase accounts, as per ledger of Sh Sham Sunder Aggarwal Prop. P K & Company, 15 New Sabji Mandi, Kapurthala, no purchases have been made from the above referred firms/parties/cancelled dealers and no transaction of purchases appeared in the ledger of assessee's account as reported by the Sales Tax Department. The purchase/sales have been examined and verified, out of which some vouchers of purchases/sales have been taken and placed on record. Hence, no adverse inference is drawn."

The Id. AO sought more information from ADIT(Inv.) and also from AETC but there was no further information about such bogus parties. The Id AO had verified the purchase & the sale as per report received from authority. The verification of the bills and vouchers were completed during the assessment proceeding. Accordingly, the assessment vide order on 29.12.2016 was completed.

The Id. Counsel has drawn our attention in two notices in APB, Page 45-46. The notices were issued by the ITO, Kapurthala U/s 133(6) related assessee for calling

information about the sellers (details are mentioned above), letter dated 20.12.2016, addressed to the Assistant Director of Income Tax (Inv), Jalandhar and another notice was issued to the Asstt. Excise and Taxation Commissioner (AETC), Aman Nagar, Kapurthala on dated 14.12.2016. Both the letters are kept in the record.

7. The ld. counsel of the assessee Mr. Bhasin strictly pointed out that the notice was issued u/s 148 on that basis of approval taken u/s 151. The ld. AO investigated the matter during the assessment proceedings by sending a letter to the ADIT (Inv.) and the AETC, Kapurthala. In office note the ld. AO properly applied his mind for verification of the bogus purchase. He further, mentioned that in the notice u/s 263, the assessee also confronted the issues by submitting its document and producing the books of account. The all short of verification was completed during assessment proceeding. In any case, the order should not be called erroneous.

8. In this respect, the ld. counsel of the assessee submitted the catena of judgment of the different court & apex court which are annexed here.

1. Denial Merchants Pvt Ltd vs ITO, Appeal No. 2396/2017, Dated 29/11/2017

2. Malabar Industrial Co. Ltd. v. CIT [2000] 109 Taxman 66 (SC)/[2000] 243 ITR 83 (SC)/[2000] 159 CTR 1 (SC)

3. Rajmandir Estates (P.) Ltd. v. PCIT [70 taxmann.com 124 (Calcutta)/[2016] 240 Taxman 306 (Calcutta)/[2016] 386 ITR 162 (Calcutta)/[2016] 287 CTR 512]

4. *Rajmandir Estates (P.) Ltd. v. PCIT [2017] 77 taxmann.com 285 (SC)/[2017] 245 Taxman 127 (SC)*
 5. *Shree Manjunathesware Packing Products & Comphor Works v. CIT [1998] 96 Taxman 1 (SC)/1998] 231 ITR 53 (SC)/[1997] 143 CTR 406 (SC)*
 6. *Surya Jyoti Software Pvt. Ltd. v. PCIT I.T.A. No. 2158/DEL/2017) ITAT Delhi*
 7. *Surya Financial Services Ltd. v. PCIT I.T.A. No. 2158/DEL/2017) ITAT Delhi*
 8. *Crompton Greaves Ltd. v. CIT-6, Mumbai [2017] 82 taxmann.com 246 (Mumbai – Trib.)*
9. In discussion about the assessment order, prejudicial to the interest of the Revenue, the ld. counsel, Mr. Bhasin, further explained that the assessee is not related with any of the sellers/parties and total bogus purchase claimed by the Revenue related to an amount of Rs.4,05,57,307/-. In the Balance sheet of the assessee, the total purchase is showing Rs.16,14,95,797/-. The copy of the Profit and Loss and Balance Sheet is annexed in paper book page of 13 & 14.
- 9.1. The ld. counsel also argued that the assessee after inspection of the assessment record filed a detailed reply of notice U/s 263 on 19.03.2018 (page 54 to 60 of paper book), and while strongly defending the assessment order. Also, assessee raised the jurisdictional issue on two grounds (i) that the Pr. CIT himself having granted approval u/s 151, after being satisfied with the reasons recorded by the ITO based on material available on record has produced before him and examined by him after his supervisory judicial power, was not justified in law to review the

same now u/s 263. (ii) That when the names of the parties as bogus purchases are mentioned in the Sales Tax order, which was already under challenge before the concerned appellate authorities, it was no good and valid information to invoked any proceeding as matter is sub judice.

10. The learned CIT DR argued In favour of revenue and relied on the order of revenue authorities. Related the reopening under section 148 and section 263 under there is same issue, bogus purchase. The learned CIT DR was unable to bring any country fact against the argument of ld. Counsel.

11. We heard the rival submission and relied on the documents available in the record and also considered the order of revenue authorities and the judgement of different courts. The learned PCIT had issued notice for setting aside the order of assessing authority passed under section 148 of the Act. Considering the fact of the case the reopening was made under section 148 was related to bogus purchase from the parties mentioned above. The same issue was further agitated by issuing notice under section 263 of the Act. The same PCIT approved the reopening under section 151 by considering the issues. During the hearing the learned counsel produced “office note” of revenue department which is mentioned above. After a quick look on the “office note” of revenue dated 16/03/2016, it is observed that the verification of documents with books of accounts of assessee & an application of mind related bogus purchase was made by the assessing authority during the

assessment proceeding. The information was received by the revenue authorities from the State tax authority and all the purchasers are default for paying there state tax which are under sub judice under state tax act. It is admitted fact that assessee is no longer related with those bogus sellers. As per the 'office note' it is confirmed that the books of accounts and relevant documents are verified by the assessing authority during the assessment proceeding and no such bogus purchase was found in the books of the assessee. Revenue authorities was unable to substantial any nexus with the sellers and assessee. The proper verification was made during assessment proceeding with the proper application of mind. So, the assessment order cannot be called as erroneous. The assessee had complied the notice U/s 263 by the letter dated 19/03/2018, APB page 54 to 60. But ld PCIT unable to comply the same in the order U/s 263. Both in reopening U/s 148 & revision U/s 263 the same issue, bogus purchase cannot be enquired multiple time. Ld Counsel respectfully considered the order of Hon'able Punjab and Haryana High Court in the case of **CIT versus Paramjit Kaur (2009) 311 ITR 38** held that the existence of material must be real and it must also have nexus with the believe that income, escaped assessment.

Respectful observation of the Hon'able apex court in the case of **Parashuram Pottery Works Co. Ltd vs ITO 1977 CTR (SC) 32/ 106 ITR 1 (SC)**

“The CIT cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Search 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, response in and set at rest judicial and quasi-judicial controversies as it must in other spares of human activity.”

Hence, no inference can be drawn that the AO has not examined the issue although he has expressed it in as many terms as may be considered appropriate by his superior authority and even if the same was verified in last proceeding. It is clear that an order cannot be termed as erroneous unless it is not in accordance with law. This section does not visualize a case of substitution of the judgment of the Commissioner for that of the AO. Therefore, it cannot be held that in the instant case the Id. AO's order was erroneous and prejudicial to the interest of the revenue within the terms of section 263 of the Act. Once the impugned issue was considered and examined by the Assessing Officer, Ld. Commissioner cannot set aside the order without recording a contrary finding. This will be contrary to Section 263 of the Act. Therefore, in view of the factual matrix of the case and respectfully following the ratio of the various judicial pronouncements as discussed above, we are of the considered opinion that the impugned action of the Ld. PCIT u/s 263 of the Act was patently illegal and is liable to be quashed. The proceedings u/s. 263 of the Act are accordingly quashed.

12. In the result, the appeal of the assessee, **ITA. No. 410/Asr/2019** is allowed

Order pronounced in the open court on 24.08.2022

Sd/-
(Dr. M. L. Meena)
Accountant Member

Sd/-
(Anikesh Banerjee)
Judicial Member

GP/Sr. PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(A),
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T
- (6) The Guard File

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