

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.129/Ind/2021
Assessment Year: 2016-17

Shri Jodha Singh Atwal Bhopal	<u>बनाम/</u> Vs.	Pr. CIT-1, Bhopal
(Appellant / Assessee)		(Respondent / Revenue)
PAN: AENPA4904L		
Assessee by	Shri S.S. Deshpandey, AR	
Revenue by	None	
Date of Hearing	24.08.2022	
Date of Pronouncement	30.08.2022	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

1. This appeal by assessee is directed against the order dated 19.03.2021 by Pr. Commissioner of Income-Tax-1, Bhopal [**"Ld. PCIT(A)"**], u/s 263 of the Income-tax Act, 1961 [**"the Act"**] which in turn arises out of the order of assessment dated 06.12.2018 passed by Ld. ACIT-2(1), Bhopal [**"Ld. AO"**] u/s 143(3) of the Act for Assessment Year 2016-17, on following grounds:

"1. That on the facts and in the circumstances of the case} the order passed by the Ld. Principal Commissioner of Income-tax u/s 263 of the Act is vague and nonspeaking order as the Ld. Principal Commissioner of income-tax

passed the order without considering the submissions placed by the appellant and without considering the fact properly and hence, the same is liable to be quashed.

2. That under the circumstances, the order passed by the Ld. Principal Commissioner of Income-tax is unjustified and unwarranted as the same was passed in routine manner without considering the facts properly and without affording a reasonable and proper opportunity of being heard.

3. That on the facts and in the circumstances of the case, the order passed by the Ld. Principal Commissioner of Income -tax u/ s 263 of the Act is unjustified and bad in law as the same was passed without considering the fact that before passing the assessment order} the Assessing Order has considered all the facts regarding issue of TDS etc. properly and thereafter, passed the order with due diligence. Thus in these circumstances action u/s 263 is not justified.”

2. This appeal is required to be argued by CIT-DR from revenue side, but when the matter was called for hearing, none appeared on behalf of revenue. It is observed that the revenue has been seeking regular adjournments. Vide 1st letter dated 12.08.2022, adjournments have been sought for cases fixed on 16.08.2022 to 18.08.2022 on medical-ground of Ld. CIT-DR. Thereafter, vide 2nd letter dated 18.08.2022 (accompanied by a certificate of Dr. Manish Nema), adjournments have been sought for cases fixed on 22.08.2022 to 23.08.2022 on medical-ground. Again vide 3rd letter dated 23.08.2022, adjournments have been sought for the cases fixed on 24.08.2022 to 25.08.2022 on medical-ground and in the same letter it is also mentioned that the charge had been given to a different CIT-DR, but interestingly it is also mentioned that the new CIT-DR is attending training at IIM, Ahmedabad and therefore unable to represent. It is also observed that in the 2nd letter dated 18.08.2022 and 3rd letter dated 23.08.2022, although request has been made to grant adjournments in “following cases” or “cases as per list” but no details of cases for which adjournments were required is actually furnished. The revenue has not taken care to make a suitable arrangement to represent its cases. Initially for a few days, the ITAT has

allowed adjournment-requests but thereafter it was not possible to entertain such requests any more due to discomfort to the litigants and their counsels. Therefore, the adjournment-request of revenue is not accepted in this appeal. We proceed to dispose of appeal after hearing the Ld. AR and material available on record.

3. The brief facts are such that the original assessment of assessee was completed by way of limited scrutiny through CASS at a total income of Rs. 1,01,17,009/- vide order dated 06.12.2018 u/s 143(3). Subsequently, Ld. PCIT examined the records of proceeding conducted by Ld. AO and found the assessment-order as erroneous in so far it is prejudicial to the interest of revenue on the ground that the assessee had shown contract-receipts of Rs. 3,92,54,869/- in the P&L A/c as against the respect of Rs. 4,17,10,366/- shown in the Form 26AS and the Ld. AO has not verified the difference of Rs. 24,55,497/- between two. Accordingly, Ld. PCIT took action u/s 263 of the Act through notice dated 01.03.2021.

4. During proceeding before Ld. PCIT, the assessee made a detailed submission vide letter dated 18.03.2021 to demonstrate that the assessment-order is neither erroneous nor prejudicial to the interest of revenue. However, the Ld. PCIT was not satisfied with the submission of assessee and passed revision-order on 19.03.2021 whereby she has set aside the assessment-order with a direction to Ld. AO to pass a reasoned and speaking order in accordance with law.

5. Being aggrieved by this order of Ld. PCIT u/s 263 of the Act, the assessee has filed present appeal and now before us.

6. During hearing before us, Ld. AR submitted that assessee is a civil work contractor, mainly of Government Departments and some times of private parties also. The Government Departments are deducting TDS out of the contract payments made to the assessee from time to time. Ld. AR submitted that the assessee is regularly following mercantile method of accounting and recording the revenue from contract-receipts as per such

regularly followed method of accounting and there is no dispute *qua* this fact. Ld. AR submitted that sometimes it happens that the assessee does contract-work of Government Departments and recognizes the same as income in books of accounts in a particular year. But the Government Departments deduct TDS in a subsequent-year and therefore the concerned contract-receipt as well as TDS appears in Form No. 26AS of subsequent-year. Similarly, there could be receipts from private parties without TDS and those receipts do not appear in Form 26AS, although the assessee pays proper tax by offering those receipts in books of account. Ld. AR submitted that these are the precise reasons which have also happened in the present case of assessee.

7. Having explained above, Ld. AR carried us to the relevant documents to demonstrate the facts and figures. Our attention was drawn to Page No. 7 of the Paper-Book where a copy of the letter dated 18.03.2021 filed by assessee to Ld. PCIT is placed, relevant para of which is extracted below:

“Now, the assessee has received notice u/s 263 in which it is mentioned that the assessee has shown short work receipts of Rs. 24,55,497/-. It is submitted that the assessee is government contractor doing contract since long. The assessee has maintained proper and regular books of accounts which are audited u/s 44AB of the Income-tax Act. During the year under consideration, the assessee has shown work receipts of Rs. 3,92,54,869/-from different department. The details of work receipt as per 26AS and as per books of account is as under:

<i>Particulars</i>	<i>Work as per 26AS</i>	<i>Work as per books</i>
<i>E.E. PWD Harda</i>	<i>4,24,103</i>	<i>4,24,103</i>
<i>Nagar Parishad, Badi</i>	<i>48,00,757</i>	<i>0</i>
<i>Public Work Department</i>	<i>6,46,034</i>	<i>6,46,034</i>
<i>Project General Manager (MPRRD) PIU</i>	<i>1,18,50,963</i>	<i>1,18,50,963</i>
<i>Project General Manager (MPRRD) PIU No.3</i>	<i>2,39,88,509</i>	<i>2,39,88,509</i>

Private Work	0	23,45,260
Total (Rs.)	4,17,10,366	3,92,54,869

It is submitted that work receipts from Nagar Parishad, Badi amounting to Rs. 48,00,757/- is not related A.Y. 2016-17 as well as payments received in AY 2014-15 and hence the assessee has shown work receipts in A.Y. 2014-15 which is as under:

Particulars	Work as per books
E.E. PWD Harda	30,04,185
Nagar Parishad Badi	48,00,757
Project General Manager (MPRRD) PIU	1,79,64,323
E.E. PWD Building & Road Division No. 1	50,97,234
Project General Manager (MPRRD) PIU No.3	51,39,330
Private Work	10,00,000
Total (Rs.)	3,70,05,829

7. The above details submitted to Ld. PCIT give a complete reconciliation of the contract-receipts. Ld. AR submitted that there are two tables in the above submission, the 1st Table being of AY 2016-17 (under consideration) and 2nd Table being of AY 2014-15 (earlier assessment-year). Referring to the 1st Table of AY 2016-17, Ld. AR submitted that the difference of Rs. 24,55,497/- alleged by Ld. PCIT consists of two components, viz. (i) Rs. 48,00,757/- from Nagar Parishad was appearing in Form 26AS but the assessee had not declared in books of accounts, and (ii) Rs. 23,45,260/- from Private-Work which was declared in the books of account but not reflected in Form No. 26AS. Regarding these two components, the Ld. AR made following submissions at length:

- (i) The first component of Rs. 48,00,757/- is the contract-receipt from Nagar Parishad, Badi which was in fact related to earlier assessment-

year 2014-15 and not related to assessment year 2016-17 under consideration. Therefore, the same formed part of the Contract-Receipts of Rs. 3,70,05,829/- of AY 2014-15, which is clearly appearing in 2nd Table. Ld. AR submitted that the assessee has already declared contract-receipts of Rs. 3,70,05,829/- (which includes the impugned receipt of Rs. 48,00,757/-) and the department has already taxed the same in AY 2014-15, which is very much evident from the audited P&L A/c (Page No. 67 of the Paper-Book) and Ledger A/c of Contract-Receipts (Page No. 72 of the Paper-Book) of AY 2014-15. Ld. AR also pointed out that the assessment of AY 2014-15 was also finalized by way of scrutiny u/s 143(3) of the Act and the contract receipts of Rs. 3,70,05,829/-, which is inclusive of the impugned contract receipt of Rs. 48,00,757/-, had been assessed by revenue, a copy of the assessment-order is also placed at Page No. 56 of the Paper-Book. Ld. AR further carried our attention to Page No. 46 to 55 of the Paper-Book where copies of Form No. 26AS, Acknowledgment of return, Computation of Total Income and Tax Calculation Sheet of AY 2014-15 are placed. By means of these documents, Ld. AR submitted that although the assessee claimed credited of TDS of Rs. 48,007/- pertaining to the Contract-Receipts of Rs. 48,00,757/- in AY 2014-15 but the Ld. AO did not allow TDS credit for the reason it was not appearing in Form No. 26AS of AY 2014-15. Then Ld. AR carried us to Form No. 26AS of AY 2016-17 and demonstrated that the Nagar Parishad, Badi deducted TDS of Rs. 48,007/- out of the contract-receipts of Rs. 48,00,757/- in AY 2016-17 and it is due to that reason that the same got reflected in Form No. 26AS of that year. In nutshell, Ld. AR submitted that the receipt of Rs. 48,00,757/- were related to AY 2014-15; the same was rightly declared by assessee in that assessment-year and also assessed by department. But, however, the same receipt got reflected in Form No. 26AS of AY 2016-17 due to deduction of TDS by Nagar Parishad, Badi in a the year relevant to AY 2016-17. With these facts and figures, Ld.

AR submitted that the department has already taxed the impugned receipt of Rs. 48,00,757/- and collected its legitimate tax in earlier AY 2014-15, therefore the receipt of Rs. 48,00,757/- could not be re-taxed in the AY 2016-17.

- (ii) The second component of Rs. 23,45,260/- is the contract-receipts derived from private parties, which are not appearing in Form No. 26AS because the parties have not deducted TDS. However, the assessee has declared these receipts in books of account of AY 2016-17 and paid tax thereon.

With these submissions, Ld. AR argued that the assessee has rightly declared the contract-receipts of Rs. 3,92,54,869/- in P&L A/c of AY 2016-17 and the difference of Rs. 24,55,497/- stands fully reconciled from which it is also clear that no part of the income has remained untaxed in AY 2016-17. Therefore, according to Ld. AR, the Ld. AO has passed a proper assessment-order of AY 2016-17 which is neither erroneous nor prejudicial to the interest of revenue. Hence the Ld. PCIT has wrongly set aside the assessment-order through revision-order passed u/s 263. Therefore, the revision-order deserves to be quashed.

8. We have considered the submission made by Ld. AR and also perused the relevant documents pointed out by Ld. AR in the Paper-Book. On a careful consideration, we observe that the assessee has given a proper reconciliation to the Ld. PCIT. Without repeating the facts and figures in much detail, since we have elaborately discussed the same in preceding paragraph, we suffice it to conclude that the receipt of Rs. 48,00,757/- had already been taxed in AY 2014-15 and the Ld. AR is correct in making submission that the same could not be taxed in AY 2016-17. Regarding the receipt of Rs. 23,45,260/-, we observe that the assessee has declared these receipts in books of account and paid tax thereon in AY 2016-17 although the same do not appear in Form 26AS. Therefore, we find that the Ld. AO has passed a proper assessment-order accepting the contract-receipts of Rs.

3,92,54,869/-. This brings us to conclude that neither there is any error in the assessment-order nor any prejudice is caused to the revenue. Therefore, the Ld. PCIT was not justified in treating the assessment-order as erroneous in so far it is prejudicial to the interest of revenue. Resultantly, we are persuaded to quash the order passed by Ld. PCIT u/s 263 of the Act and we order accordingly.

9. In the result, this appeal of Assessee is allowed.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 30/08/2022.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 30.08.2022

Patel/Sr. PS

- Copies to:*
- (1) *The appellant*
 - (2) *The respondent*
 - (3) *CIT*
 - (4) *CIT(A)*
 - (5) *Departmental Representative*
 - (6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	

4.	Date on which the fair order is placed before the Dictating Member for pronouncement	
5.	Date on which the file goes to the Bench Clerk	
6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	
8.	Date of dispatch of the Order	