

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No. 887/Mum/2022
(Assessment Year 2017-18)

Vipul Lalit Sheth
2/2, Kailash Niwas,
R.B. Mehta Road
Ghatkopar (East),
Mumbai-400 077

Vs.

ACIT
R.No.401, 4th Floor,
Tower No.6,
Vashi,
Navi Mumbai 400703

(Appellant)

(Respondent)

PAN No. AABPS7946J

Assessee by : Shri Ripple G Trashawala, AR
Revenue by : Shri Achal Sharma, CIT DR

Date of hearing: 25.07.2022
Date of pronouncement: 21.10.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the assessee against revisionary order of the Pr. Commissioner of Income Tax-27, Mumbai (the PCIT) under Section 263 of the Income-tax Act, 1961 (the Act) for A.Y. 2017-18, wherein it has been held that assessment order dated 10th December, 2019 under Section 143(3) is erroneous in so far as it is prejudicial to the interest of the Revenue and the learned Assessing Officer was directed to make a fresh assessment.
02. Assessee has preferred the following grounds of appeal: -

"Order passed u/s. 263 of the Act is bad-in-law & liable to be quashed



1. *The Ld. Pr. CIT erred in passing revision order u/s. 263 of the Act without appreciating that the assessment order passed by the Ld. AO u/s.143(3) of the Act dated 10.12.2019 was not erroneous in so far as prejudicial to the interest of the revenue and hence, the order passed under section 263 of the Act dated 30.03.2022 is bad-in-law and liable to be quashed.*

2. *The Ld. Pr. CIT failed to appreciate that during the course of assessment proceedings, the AO has verified and examined all the issues considered in proceedings u/s.263 of the Act including confirmation letters of lenders supported by their IT Returns, and hence, the order passed under section 263 of the Act dated 30.03.2022 is contrary to factual position and thus, bad in law and liable to be quashed.*

Without prejudice to the above:

3. *The Ld. Pr. CIT erred in directing the AO to make fresh assessment order and not limiting the fresh assessment order in respect of issues considered in 263 proceedings and hence, the order passed u/s.263 of the Act dated 30.03.2022 is bad in law and needs to be quashed."*

03. In fact, the grounds of appeal challenge the validity and findings of the order of the PCIT.
04. The fact shows that assessee is an individual engaged in the business of trading in iron and steel in a proprietary concern of M/s Siddhi Enterprises. Assessee filed his

return of income on 1st November, 2017 at ₹1,34,36,914/- . The return was picked up for scrutiny and assessment order under Section 143(3) of the Act was passed on 10thDecember 2019 at the same figure.

05. The learned PCIT, on examination of the record issued notice under Section 263 of the Act on 4thMarch2022because the learned Assessing Officer has not verified the Sundry Creditors of ₹9.35 crores, other expenses of ₹79,53 lacs, brokerage paid of ₹1.36 crores and unsecured loan of ₹7.45 crores. The learned PCIT is of the view that as the learned Assessing Officer has not verified these aspects while passing the assessment order same as erroneous and prejudicial to the interest of the Revenue under Section 263 of the Act.
06. The Assessee made written submission on 9th March, 2022. The claim of the assessee is that the learned Assessing Officer has examined all the details, applied his mind, did not make any adjustment to the total income therefore, the order is neither erroneous nor prejudicial to the interest of the Revenue.
07. On the reply of the assessee, the learned PCIT called for factual report from the learned Assessing Officer which was submitted on 16th March, 2022. The learned Assessing Officer on the issue of unsecured loan from 15 parties amounting to ₹7,45 crores to whom interest of ₹1.46 crores was paid tabulated the same and also stated that Id. AO then, issued notice under Section 133(6) of the Act to 4 different parties during the course of assessment

proceedings. The learned Assessing Officer further noted that assessee has only submitted the details of unsecured loans, however, same were not available in the scrutiny folder and ITBS system. One company submitted response to notice under Section 133(6) of the Act has very small income.

08. The learned PCIT directed the assessee to submit explanation on the report of the learned Assessing Officer. The same was submitted on 23rd March 2022. The Assessee referred letter dated 13th November 2019 submitted that with respect to unsecured loans the learned Assessing Officer only asked confirmation letter from only one M/s Pratiti Seth from whom new loan was taken during the year of ₹4,25,000/- as all other loans were old. Further, on 9th November 2019, the confirmation letter along with return of income was submitted physically as well as uploaded the same on ITBA with respect to old lenders. The assessee submitted the e-proceedings response acknowledgement. Therefore, it was submitted that there is no error in the order of the learned Assessing Officer as same was passed after the detail enquiries.
09. The learned PCIT held that the order passed by the learned Assessing Officer is erroneous and prejudicial to the interest of the Revenue On the issue of (i) unsecured loan of ₹7.45 crores and interest expenses thereon of ₹1.46 crores, (ii) verification of sundry debtors of ₹9.35 crores, (Iii) expenses of ₹79.53 lacs and (iv) deduction on



brokerage of ₹1.36 crores. Consequently, order under Section 263 of the Act was passed on 30th March 2022 holding that assessment order passed by the learned Assessing Officer is erroneous in so far as it is prejudicial to the interest of the Revenue. The learned Assessing Officer was directed to remake the assessment order.

010. The learned Authorized Representative referred to the paper book of 386 pages. He first referred to page no. 323 of the Paper Book which is a show cause notice dated 4.3.2022 under Section 263 of the Act and referred to page no. 325 to page no. 346 which is also reply of the assessee before the PCIT. Coming to the assessment proceedings, he referred to the return of income and the annual accounts of the assessee and thereafter referred to notice under Section 142(1) of the Act issued on 3rd June, 2019 by the learned Assessing Officer. He referred to paragraph no.4 wherein the details of loans and interest taken in a tabular form was asked for. As per Para no.6, the details of sundry creditors and debtors were asked for along with paragraph no. 13 where Party wise details of purchase and sales along with complete postal address of the party above ₹10 lacs was asked for. He further referred to paragraph no.14 where the details of major heads of expenditure along with the TDS thereon were called for. He referred to page no. 41 where letter dated 13th November 2019 was submitted before the learned Assessing Officer. On page no. 60 there was part compliance and therefore, notice for penalty is also issued by the learned Assessing Officer. He referred to page no.



62, wherein letter dated 28th November 2019 is placed and at page no.64 to 78 detail explanation with respect to the brokerage paid stating name, address, PAN number, amount as well as the TDS is submitted. Similarly, is the case at page no. 79 to 80 where the details of interest paid stating name and address, PAN Number, interest amount and TDS thereon was also submitted. He further referred to the page number 82 to 88 and page no. 89 to 90 where the details of transportation charges and other expenses are provided stating the name of the payee, permanent account number and amount paid. He further referred to page no. 95 and 96 of the Paper Book stating that details of unsecured loans stating the name and address of the lender, permanent account number, opening balances, loan received during the year, interest paid, TDS made thereon, and the closing balance is submitted. He submitted that during the year a fresh loan of ₹4,25,000/- has received from Pratiti Seth, whose confirmation and return of income was submitted. He further stated that at page no.258 of the Paper Book Assessee submitted the complete details of all creditors along with the name and address at page no.276, the confirmation letters from all the parties along with their income tax returns submitted before the learned Assessing Officer vide letter dated 9th December 2019. He further submitted that at page no.300, the complete confirmation of the two parties which were called for by the learned Assessing Officer was submitted. He also stated that all expenses details were also submitted vide page no.314 to

335 of paper book before the learned Assessing Officer. Therefore, he submitted that all the details were verified by the learned Assessing Officer therefore, it cannot be stated that the order passed by the learned Assessing Officer suffers from any inadequate enquiry or lack of inquiry. He further relied on the decision of the co-ordinate bench in ITA No. 2690 & 2691 /Mum/2016 in case of Shri Narayan Tatu Rane dated 6.5.2016 to show that in such case all the orders passed by the learned Assessing Officer could be held to be erroneous on whims and fancy of the revisionary authorities.

011. The learned Departmental Representative vehemently supported the order of the learned PCIT. He specifically referred to page no. 381, wherein the report of the learned Assessing Officer dated 16th March 2022 is placed in the paper book. He specifically stated that no confirmation letters and bank statement are found in the scrutiny folder and in the ITBA system of the relevant parties to whom interest has been paid and therefore, the learned PCIT is correct in holding that the order passed by the learned Assessing Officer is erroneous and prejudicial to the interest of the Revenue.

012. We have carefully considered the rival contentions and perused the orders of the lower authorities. The assessment order in the present case was passed on the basis of inquiries mentioned in notice under Section 142(1) of the Act issued by the learned Assessing Officer on 3rd June, 2019 wherein the return filed by the assessee



on 1st November, 2017 was picked up for scrutiny. The return was accompanied by the audited accounts and tax audit reports. By this notice, the learned Assessing Officer vide Para no.4 asked for the details of loan taken and received and interest expenses paid and credited in a particular format along with loan confirmation in respect of new loan, old loans and squared up loans during the year. Assessee has submitted the details of loans and interest paid, details of the interest paid are placed at page no. 79 of the Paper Book wherein the name and address, permanent account number, amount of interest paid as well as the amount of tax deduction at source made thereon was provided. With respect to the unsecured loans assessee submitted the name and address of the lender, Permanent Account Number, opening balances, loan received during the year, repaid during the year, interest paid, TDS made thereon and closing balance were submitted. Since during the year only fresh loan of ₹4,25,000/-was accepted from Pratiti Sheth, whose confirmation as well as the copy of return of income was submitted. This was the only fresh loan taken during the year. Assessee also submitted subsequently the confirmation letters of the old lenders along with their income tax return. Assessee has shown that such letter was submitted before the learned Assessing Officer in physical format and as well as uploaded on ITBA website. Such evidence was placed before the learned PCIT. The learned PCIT did not give finding that such acknowledgement shown by the assessee is not correct.

Instead of that report from the learned Assessing Officer was called for. In that report it was categorically stated by him that in the scrutiny folder as well as ITBA portal of the relevant parties from whom interest has been paid have not been found. We do not know that on what basis the learned Assessing Officer has held so when assessee has shown the ITBA's response acknowledgement before us. Same is also placed at page no.386 of the Paper Book and also submitted before the learned PCIT vide letter dated 23rd March 2022 which remains un-rebutted. Further, with respect to the brokerage expense assessee has given details of brokerage charges stating the name, address, PAN no. account of brokerage paid, tax deduction at source of these parties starting from page no.64 to page no.79 of the Paper Book. Therefore, it cannot be said that the learned Assessing Officer has not inquired and examined the same. The learned Assessing Officer has categorically asked for the details of all the expenditure party wise and head wise. With respect to purchase and sales, the learned Assessing Officer enquired about all the parties from whom such transaction is in excess of ₹10 lacs. Assessee complied with giving the list of such Sundry Debtors and Sundry Creditors along with their names and address as well as the bank statement of the Assessee wherever the payments are made and receipts are shown. Similarly, with respect to all the expenditure, the details are submitted before the learned Assessing Officer.

013. The details submitted and examined by the learned Assessing Officer resulted into acceptance of the return

income by the learned Assessing Officer for making an assessment. The learned CIT (A) in Para No.4.4 to 4.7 has found fault with the same for following reasons: -

"4.4 As far as unsecured loan of Rs. 7.45 crores and interest of Rs. 1.46 crore claimed to have been paid on such loans is concerned, it is undisputed fact that the assessee had not furnished even confirmatory letters of the parties to whom interest of Rs. 1.46 crore was claimed to have been paid. The Assessing Officer has accepted the claim of the assessee without examining the correctness and genuineness of the claim of the assessee. The Assessing Officer before allowing the deduction for interest paid of Rs. 1.46 crore, should have examined the genuineness of the payment and also whether the borrowed funds on which the interest is claimed to have been paid were utilized for the purpose of business carried on by the assessee. The Assessing Officer has failed to do so.

4.5 The assessee has shown sundry debtors of Rs. 9.35 crores. The AO has not examined, except the two creditors, the creditors appearing in the balance sheet dated 31.03.2017. The Assessing Officer should have analyzed the creditors appearing in the balance sheet and examined the genuineness of such creditors under appropriate sections of the I.T. Act, 1961. The Assessing Officer has failed to do so.

4.6 The assessee has claimed other expenses of Rs. 79.53 lakhs. The Assessing Officer has accepted the claim of the assessee and allowed the deduction without examining the correctness and genuineness



of the expenses. The Assessing Officer before completing the assessment should have examined correctness and genuineness of the expenses and also whether the expenses debited under the head other-expenses were actually incurred for the purpose of the business carried on by the assessee. The Assessing Officer has failed to do so.

4.7 The assessee has claimed deduction in respect of brokerage paid of Rs. 1.36 crore. The Assessing Officer has allowed a deduction without examining the nature of the services rendered by the recipients of the brokerage. The Assessing Officer before completing the assessment should have examined whether the persons whom the brokerage is claimed to have been paid, had rendered any service and whether the services so rendered were for the purpose of business carried on by the assessee. The Assessing Officer failed to do so.”

014. On careful examination of the same, we find that the learned Assessing Officer has called for all the information required for making assessment, have perused the relevant details filed by the assessee, wherever the details are not coming forth the requisite penalty notices were issued and the balance information was obtained and verified. The learned PCIT has also called for the report of the learned Assessing Officer where the learned Assessing Officer has also shown that requisite notices under Section 133(6) of the Act were issued and replies were obtained from lenders. It is not the case of the learned PCIT that the learned Assessing Officer has allowed the claim of



the assessee or not made addition/ disallowances, which should have been made as per law. Only reason for holding the order of the learned Assessing Officer erroneous is that interest was not examined if same were utilized for the purpose of the business, the expenses were correct or genuine and whether for brokerage expenses services were rendered or not. The learned PCIT did not find single instances despite having all the information available with him, which is even remotely suggesting and supporting the reasons for which order under Section 263 of the Act was passed.

015. It is true that if the order has been passed without making enquiries or verification which are reasonable and prudent officer should have carried out, in that case no doubt the order passed by the learned Assessing Officer becomes erroneous. However, the learned PCIT should have shown that what are the further enquiries or verification should have been made by the learned Assessing Officer which he has failed to do. The revisionary authority should be in a position to show that failure to make the enquiry in a particular fashion, which should have been made by the man of reasonable prudence, and learned Assessing Officer has failed to do so. This could have been shown by also looking at the past assessment history of the assessee. In fact the assessee has shown that in earlier assessment year passed under scrutiny assessment did not result into any addition. There is nothing in the revisionary order to show that the claim of deduction of expenses with respect to the purchase, expenses,



brokerage or interest is not in accordance with the law. It is also not shown that fresh loans taken by the assessee and he has failed to discharge initial onus. In the result, we do not find that the assessment order passed by the learned Assessing Officer is erroneous so far as it is prejudicial to the interest of the Revenue.

016. In the result, the order passed by the learned PCIT under Section 263 of the Act is not sustainable, hence, quashed.

017. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 21.10.2022.

Sd/-
(KAVITHA RAJAGOPAL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 21.10.2022

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai