

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER &
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

I.T.A. No.456/Ahd/2020
(Assessment Year: 2017-18)

Veer Plastics Pvt. Ltd. 1 st Floor, 104, Sardar Patel Colony, Stadium Road, Navjivan Post, Ahmedabad-380014	Vs.	Pr. CIT-4, Ahmedabad
[PAN No.AACV6291P]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Tushar Hemani, Sr. Adv. & Shri P. B. Parmar, C.A.
Respondent by:	Shri A. P. Singh, CIT

Date of Hearing	02.11.2022
Date of Pronouncement	09.11.2022

ORDER

PER SUCHITRA KAMBLE - JM:

This appeal is filed by the assessee against the order dated 27.07.2020 passed by the Ld. Pr. CIT-4, Ahmedabad for A.Y. 2017-18.

2. The grounds of appeal raised by the assessee read as under:

“1. The learned Principal Commissioner of Income Tax-4, Ahmedabad (PCIT) has erred in law and on facts in assuming jurisdiction and issuing notice u/s 263 of the Income Tax Act 1961 (Act) on the issues on which the Assessing Officer (AO) had already raised specific queries in the questionnaire, considered and verified the detailed reply filed during the course of assessment proceedings and adjudicated upon them in the assessment order u/s 143 (3) of the Act de hors the allegations in the notice that the AO accepted the claims without making any enquiry, whatsoever.

2. The learned PCIT has erred in law and on facts in assuming jurisdiction u/s 263 of the Act on the specious ground of 'no enquiry' directing the AO to make further enquiries particularly in respect of three specific issues which have already been considered and granted in the original assessment order made u/s.

- 2 -

143(3), namely (i) claim of deduction u/s. 80IC for a sum of Rs.74,72,390/-, (ii) claim of additional depreciation u/s. 32(1)(iia) for a sum of Rs.6,41,37,291/- and (iii) alleged non-inclusion of interest u/s. 244A of Rs. 4,83,616/- on the income tax refund which has already been included in total income assessed by AO; in utter disregard to the fact that in the course of original assessment proceedings, the AO has made necessary enquiries on all the above issues and after due verification, he has taken a conscious decision in accordance with the provisions of Act.

3. The learned Principal Commissioner of Income Tax-4, Ahmedabad has erred in law and on facts of the case in initiating the proceedings u/s. 263 and finally passing the order dated 27.7.2020 under that section in utter disregard to the fact that the original assessment order u/s. 143(3) dated 21.9.2019 had been passed by the AO after making enquiries and thorough verification. There had been no failure on the part of the AO to make enquiries or verification and no relief/deduction had been allowed to the appellant assessee without enquiring into the claim. Thus, the issues with respect to which the Principal Commissioner of Income Tax-4, Ahmedabad has directed the AO to make fresh assessment had already been thoroughly examined and verified by the AO in the course of the original assessment proceedings and a conscious decision in accordance with the provisions of the Income Tax Act had been taken by the AO while passing the original assessment order u/s. 143(3). The assessment order so passed cannot be said to be erroneous and prejudicial to the interest of the revenue.

4. The learned PCIT has erred in law and on facts in passing the order u/s 263 of the Act holding the assessment order erroneous and prejudicial to the interest of revenue, on surmises and conjectures, after taking 'a fresh look' at the Profit & Loss Account and also concluding, without any justification, that 'there is every possibility of diversion of profits of non-eligible units to the eligible unit' for claim of deduction u/s 80IC of the Act.

5. The learned PCIT has erred in law and on facts in ignoring the fact that the very reason for selection of the case narrated in the assessment order itself was for 'complete scrutiny of all the issues and in particular for the verification of the assessee's claim for deduction u/s 80IC etc' which has been scrupulously enquired and considered by the AO, and therefore, directing the AO to make further inquiries on the same issues again, agitates against the well settled principle of law that 'inadequate enquiry', if at all, could not be equated with Mack of enquiry' to assume jurisdiction u/s 263 of the Act.

6. The learned PCIT has erred in law and on facts in passing the impugned order directing the AO to make the assessment de novo in relation to the three issues without setting aside or without cancelling the original assessment order passed by the AO u/s. 143(3) or without otherwise modifying the said assessment

- 3 -

order ignoring the fact such directions would result in an anomalous situation of two separate assessment orders for the same year.

7. *The appellant prays liberty to add or alter any ground at the time of hearing.”*

3. Return of income was filed on 26.10.2017 declaring total income of Rs. 18,75,68,180/-. The Assessing Officer passed order under Section 143(3) of the Income Tax Act on 21.09.2019 determining total income at Rs. 18,95,54,202/-, thereby making addition of Rs. 19,86,022/- being the amount of payments made to the Provident Fund/ESIC authorities by invoking the provision of Section 36(1)(va) r.w.s. 2(24)(x) of the Act. The Pr. CIT issued notice dated 10.02.2020 under Section 263 thereby invoking the revisionary power of the Pr. CIT. The Pr. CIT on 27.07.2020 directed the Assessing Officer to make the assessment de novo in light of the findings given therein and held that original assessment order dated 21.09.2019 is erroneous and prejudicial to the interest of Revenue.

4. Being aggrieved by the order under Section 263 passed by the Pr. CIT, the assessee is before us.

5. The Ld. A. R. submitted that the Assessee filed return of income for the year under consideration on 26.10.17 declaring total income at Rs.18,75,68,180/- after considering various income and expenses including the followings:

- Deduction u/s 80-IC : Rs.74,72,390/-
- Additional depreciation: Rs.6,41,37,291/-
- Interest on income tax refund: Rs.4,83,615/-

- 4 -

The case was selected for scrutiny assessment. Details of various "notices" issued by Assessing Officer and "replies" furnished by the assessee from time to time at the assessment stage which are as follows:

- Ack. of ITR and STI;
- Tax Audit Report;
- Audited Financial Statements;
- Form 10CCB;

Eventually, assessment was framed u/s 143(3) whereby no addition was made by Assessing Officer in respect of above referred three items. The Pr. CIT issued show cause notice ("SCN" for short) dated 10.02.2020 u/s 263 whereby assessee was called upon to show cause as to why Asst. Order should not be revised in relation to following items:

Deduction u/s 80IC (Points 2-7):

- "Other income" of Rs.26,24,805/- needs to be considered as income not derived from manufacturing activities for the purposes of S.80IC. Consequently, excess deduction of Rs.7,87,401/- u/s 80IC has been allowed by Assessing Officer.
- Since assessee has multiple production units at various places, there is every possibility of diversion of profits of non-eligible units to eligible unit;

Additional depreciation (Points 8-10):

- Additional depreciation of Rs.68,02,491/- on P & Mc. transferred from Silvassa unit to Santej unit has been wrongly allowed.

- 5 -

- There must be several expenses for bringing such assets to various sites and putting them to use which ought to have been capitalized but have been claimed as revenue expenses.

Interest on income-tax refund (Point 11):

- It needs to be verified as to whether interest income of Rs.4,83,616/- on income-tax refund has been included in "other income" credited to the P&L a/c.

Assessee furnished reply vide written submissions dated on 21.02.2020 to the Pr. CIT in response to above referred SCN. Eventually, the Pr. CIT passed order u/s 263 whereby Assessing Officer has been directed to carry out de-novo assessment in relation to above discussed three issues. The Ld. AR submitted that it is a settled law that in order to invoke revisionary jurisdiction, following twin conditions need to be fulfilled:

- AO's order must be erroneous; &
- AO's order must be prejudicial to the interest of the revenue.

If either of the above stated conditions is not satisfied, Pr. CIT cannot invoke revisionary jurisdiction. The Ld. AR relied upon the decision of the Apex Court in case of "Malabar Industrial Co. Ltd. vs. CIT" - (2000) 243 ITR 83 (SC). The Ld. AR further submitted that the Pr. CIT failed to appreciate that for the purpose of invoking revisionary jurisdiction, it is essential that both the conditions stated above are satisfied. If either of these two conditions is not satisfied in a given case, Pr. CIT cannot invoke revisionary jurisdiction u/s 263 at all. The Assessment Order is not at all 'erroneous' and hence, one of the twin conditions for invoking jurisdiction u/s 263 is not satisfied. Since one of the conditions for

invoking jurisdiction u/s 263 of the Act is not satisfied in the present case, the impugned order must be quashed. The Ld. AR further submitted that issues on hand were threadbare examined at the original assessment stage. When an issue has been examined at the original assessment stage, it is not open to the Department to invoke revisionary jurisdiction. Where an issue has been examined at the original assessment stage but the same does not get reflected in the final assessment order, then that, by itself would not lead to a conclusion that order of Assessing Officer calls for interference by Pr. CIT u/s 263 of the Act. The Ld. AR relied upon the followings decisions:

- CIT vs. Nirma Chemicals Works (P.) Ltd. - 309 ITR 67 (Guj)
- Gujarat Power Corporation vs. ACIT - 350 ITR 266 (Guj)
- Rayon Silk Mills vs CIT - 221 ITR 155 @ 158-159 (Guj)
- Had Iron Trading Co. v. CIT 12003] 263 ITR 437 (P&H)
- CIT v. Gabriel India Ltd. [1993] 203 ITR 108 (Bom)
- CIT vs. Vikas Polymers - 341 ITR 537 (Del)
- CIT vs Honda Siel Power Products - 333 ITR 547 @ 557-558 (Del)
- Jai Rashmikant Patel vs. PCIT - IT A 427/A/2020

The Ld. AR submitted that it is settled law that if two views are possible as regards a particular issue and Assessing Officer adopts either of two such views, then Pr. CIT cannot invoke jurisdiction u/s 263. Mere fact that different view could have been taken doesn't justify proceedings u/s 263. The Ld. AR relied upon the followings decisions:

- Malabar Industrial Co. Ltd. vs. CIT - 243 ITR 83 (SC);

- 7 -

- Kwaliti Steel Suppliers vs. CIT - 395 ITR 1 (SC);
- CIT vs. Mehsana District Co-op. Milk Producers Union Ltd. - 263 ITR 645 (Guj)
- CIT vs. D. P. Karia - 266 ITR 113 (Guj);
- CIT vs. Arvind Jewellers - 259 ITR 502 (Guj);
- Sir Dorabji Tata Trust vs. DCIT(E) - (2021) 188 ITD 38 (Mum);
- Torrent Pharmaceutical. vs DCIT -(2021) 173 ITD 130 (Ahd);

The Ld. AR submitted that "Inadequacy" of inquiry by Assessing Officer also cannot be ground for proceedings under section 263 of the Act. The Ld. AR relied upon the followings decisions:

- CIT vs. Sunbeam Auto Ltd. - 332 ITR 167 (Delhi);
- CIT vs. Anil Kumar Sharma - 335 ITR 83 (Delhi);
- CIT vs. Vikas Polymers - 341 ITR 537 (Delhi);

The Ld. AR further submitted that even on merits, no addition is called for in respect of either of the three issues raised by Pr. CIT in view of contentions taken by the assessee during the proceedings under Section 263 of the Act. In addition to above, the proposed additions are not justified in view of following legal contentions as well:

- Assessee has incurred "interest expenses" of Rs.2,64,84,532/-. Hence, after deducting "interest income" of Rs.11,76,956/-, assessee has incurred "net interest expenditure" of Rs.2,53,07,576/- (i.e. Rs.2,64,84,532 - Rs.11,76,956). "Benefit of netting off" has to be granted. The Ld. AR relied upon the decision of Hon'ble Apex Court in case of "ACG Associated Capsules P. Ltd. vs. CIT - 343 ITR 89 (SC)". Once the benefit of netting off is granted, question

- 8 -

of exclusion of "interest income" for computing deduction u/s 80IC does not arise.

- In any case, there is close and direct nexus between “other income” and “business of the assessee”. Hence, such "other income" is eligible for "deduction u/s 80IC". The Ld. AR relied upon the decision of "CIT vs. Meghalaya Steels Ltd. - 383 ITR 217 (SC)".
- Interest of Rs.4,83,615/- on income tax refund" has already been offered for tax, as is evident from the followings:
 - ✓ Detailed break-up of "Interest income" of Rs.54,47,339/- which includes "interest of Rs.4,83,615/-".
 - ✓ Ledger of "Interest on IT refund" for the year under consideration.
 - ✓ Note 18 - Other income" of Audited Annual Accounts" wherein "Total interest income" of Rs.54,47,339/-.

Certain trivial observations made by CIT in the impugned order are dealt with as follows:

- As regards questioning depreciation of Rs. 1,26,43,415/- in respect of "eligible unit", the said issue is beyond the "SCN u/s 263" and hence, CIT was not justified in making reference to the same while passing the impugned order.
- As regards allocation of expenses between the “eligible unit” and "other units" on proportionate basis, such action is not correct since vide letter dated 17.09.19 addressed to Assessing Officer, it was categorically submitted that separate books of accounts have

been maintained, audited accounts of eligible unit includes all the expenses incurred for its operations, Net profit ratio of eligible unit is 3.60% as against which, Net Profit ratio of "other units" is 5.75%. Thus, Net Profit rate of eligible unit is less than Net Profit rate of "other units".

➤ As regards Para 5.4(a, b & c) on Pgs.21-22 of CIT's order, it is submitted as follows:

✓ The Plant and Machinery worth Rs.1,71,30,116/- was shifted "from Bharuch to Kadi" and not "from Silvassa to Santej".

Hence, reference to such P & Me. while dealing with "*additional depreciation*" claimed on P & Mc. transferred by assessee "*from Silvassa to Santej*" is out of context.

✓ Complete details of freight, installation and other allied expenses were already placed on record,

✓ *In addition to above referred charges*, the assessee has also capitalized certain "*pre-operative expenses of 1,15,82,311/-*" which includes "*interest expenses*" as well.

✓ *The authorities below have completely overlooked above referred details*. Consequently, erroneous conclusion has been drawn that details of installation and other expenses were not furnished. Perusal of record would indicate that as a matter, all such details were already available on record.

Thus, even on merits, there is no error in the order passed by Assessing Officer in the case of the assessee for the year under

consideration. The Pr. CIT could not have set-aside issue to Assessing Officer for "de-novo" assessment. In any case, Pr. CIT himself ought to have examined the order passed by Assessing Officer on merits and then ought to have established that Assessing Officer's order is erroneous and prejudicial to the interest of the revenue. Without doing so, Pr. CIT could not have set aside the issue to the file of Assessing Officer with a direction to conduct further inquiries. Reliance is placed on "ITO Vs. D.G. Housing Projects Ltd. -(2012) 343ITR 329 (Delhi).In view of the above, the Pr. CIT was not justified in invoking revisionary jurisdiction u/s 263 of the Act.

6. The Ld. D.R. relied upon the order of the Pr. CIT passed under Section 263 of the Act and submitted that the Assessing Officer has not verified the claim of assessee under Section 80IC as well as the additional depreciation claimed by the assessee and interest income arising out of excess payment of advance tax/TDS.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that in the original assessment under Section 143(3) the Assessing Officer has pointedly raised pre-related to details of deduction claim under Section 80IC in the return of income along with supporting evidences in respect of partly transaction of Himachal Unit in the format given in the notice dated 11.03.2019. At the time of assessment proceedings the Assessing Officer has verified Form 10CCB as well as audited financial statements along with audit report which was enclosed with income tax return and

- 11 -

computation of income. The very issues raised by the Pr. CIT of non-verification has been verified thoroughly by the Assessing Officer at the stage of assessment proceedings under Section 143(3). In fact, the assessee through the documents has demonstrated that the claim of 80IC has also been previously claim for nine continuous years and this is the last and 10th year of the said deduction which has been claimed by the assessee. The additional depreciation part as well has been demonstrated by the assessee during the assessment proceedings. Related to interest of TDS the same also has been properly verified by the Assessing Officer and the documents reveals that no addition is called for in that sphere. Therefore, the invocation of 263 of the Act by the Pr. CIT is not justifiable as the proper verification has been done by the Assessing Officer at the assessment state and the view taken by the Pr. CIT is considered as a changed of opinion and cannot be construed as revisionary powers envisaged under the Pr. CIT's powers given under Section 263 of the Act. Thus, the appeal of the assessee is allowed.

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

This Order pronounced in Open Court on

09/11/2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 09/11/2022

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

- 12 -

3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asst.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad