

**IN THE INCOME TAX APPELLATE TRIBUNAL "PATNA" BENCH: PATNA
VIRTUAL HEARING AT KOLKATA**

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र) एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
[Before Shri Rajpal Yadav, Vice-President (KZ) & Shri Rajesh Kumar, Accountant Member]

**I.T.A. No. 25/Pat/2022
Assessment Year: 2017-18**

Reliable Services Pvt. Ltd. (PAN: AADCR 0245 C)	Vs.	PCIT, Patna-1, Patna
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	21.09.2022
Date of Pronouncement / आदेश उद्घोषणा की तिथि	09.11.2022
For the Appellant / निर्धारिती की ओर से	Puja Somani, Advocate
For the Respondent / राजस्व की ओर से	Shri Sanjay Mukherjee, CITDR

ORDER/ आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Principal Commissioner of Income Tax, Patna-1 [hereinafter referred to as 'Ld. PCIT'] passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') dated 25.03.2022 for the assessment year 2017-18.

2. The only issue raised in the various grounds of appeal is against the invalid exercise of revisionary jurisdiction u/s 263 of the Act by Ld. PCIT thereby cancelling

and setting aside the assessment framed u/s 143(3) of the Act which was neither erroneous nor prejudicial to the interest of the revenue.

3. Facts in brief are that the assessment was framed u/s 143(3) of the Act dated 04.12.2019 by the AO. The case of the assessee was selected for complete scrutiny to scrutinize two items: i) High ratio of refund of TDS and ii) Large refund claimed out of advance tax. The assessee filed return of income on 18.09.2017 showing total income of Rs. 1,77,59,170/- and the AO assessed the income in the assessment order at Rs. 1,88,95,846/- by making a disallowance of Rs. 11,36,677/-. The Id PCIT, on perusal of the assessment order, came to the conclusion that AO has failed to make an enquiry in respect of difference of Rs. 36,23,622/- between receipt of brokerage and commission as per TDS certificates deducted u/s 194H of the Act and the income declared by the assessee in the books of accounts. Accordingly a show cause notice was issued to the assessee u/s 263 of the Act dated 21.12.2021 as to why the assessment order dated 04.12.2019 should not be cancelled, set aside and revised as the same is erroneous and prejudicial to the interest of the revenue for the reasons stated hereinabove. The assessee replied the said show cause notice by filing detailed reconciliation and explaining that there is no difference of Rs. 36,23,515/- and the said income has already been offered to tax as under:

Reconciliation of Difference as per SCN u/s 263 of the Act

Excess Income offered in FY 2014-15 7,66,485/-

Excess Income offered in FY 2015-16 27,42,530/-

TDS wrongly deducted by Electrosteel Steel Ltd. on Reimbursement of Expenses in FY 2016-17 shown in Form 26AS of AY 2017-18 1,14,500/-

Difference Reconciled 36,23,515/-

The assessee also attached the necessary evidences such as balance sheet, profit and loss account, relevant Form 26AS etc. corroborating the said facts. The assessee submitted that the income was shown in the earlier years on the basis of accrual basis

pursuant to mercantile system of accounting as Rs. 7,66,485/- was offered to tax in AY 2015-16, Rs. 27,42,530/- was offered in AY 2016-17 and TDS of Rs. 1,14,500/- was wrongly deducted by Electrosteel Steel Ltd. on reimbursement of expenses in AY 2017-18 as shown in Form 26AS of AY 2017-18. The Ld. PCIT went ahead with setting aside the assessment order by rejecting the reply of the assessee by observing that the assessee has not filed any corroborating evidences to prove its averments by directing the AO to make necessary enquiry /investigation and frame the assessment de novo after affording a reasonable opportunity of hearing to the assessee.

4. The Ld. A.R. vehemently submitted that Ld. PCIT hopelessly failed to appreciate the facts and evidences furnished by the assessee before the Ld. PCIT which fully explained the difference as pointed by the Ld. PCIT of Rs. 36,23,515/- by filing reply to notice issued u/s 263 of the Act with with proper reconciliation and corroborating evidences. The Ld. A.R. submitted that Ld. PCIT has failed to demonstrate as to how the order passed by the AO u/s 143(3) of the Act dated 04.12.2019 is erroneous in so far as prejudicial to the interest of the revenue. The Ld. A.R. submitted that the difference pointed out by the Ld. PCIT in fact is not there as the income representing the said difference stood assessed to tax in the earlier two years mainly Rs. 7,66,485/- in FY 2014-15 and Rs. 27,42,530/- in FY 2015-16 and TDS of Rs. 1,14,500/- was wrongly deducted by Electrosteel Steel Ltd. on reimbursement of expenses in FY 2016-17 shown in Form 26AS relevant to AY 2017-18. The Ld. PCIT has not gone into and perused the reply and the attached evidences by the assessee which explained that there was no difference of Rs. 36,23,515/- and therefore the order passed by the AO is neither erroneous nor prejudicial to the interest of the revenue and as such the invocation of jurisdiction u/s 263 of the Act is invalid and bad in law. The Ld. A.R. submitted that in order to invoke jurisdiction u/s 263 of the Act the satisfaction of twin conditions is must but in the present case none of the conditions is satisfied as stated hereinabove. The Ld. A.R. while controverting by filing detailed paper book comprising page no. 1 to 79 which comprised of the various evidences which were also fled before the PCIT which

proved that there was no mistake in the order passed u/s 263 of the Act. The Ld. A.R submitted that in the Ld. PCIT's order, the AO has failed to discharge its functional enquiry and verification with regard to the difference of Rs. 36,23,515/- which in fact did not exceed at all. The said amount was already offered to tax in FY 2014-15 and 1015-16 and remaining difference of Rs. 1,14,500/- on account of wrong deduction of TDS. The Ld. A.R. submitted that Ld. PCIT is duty bound to make an enquiry with regard to so called difference Rs. 36,23,515/- when the assessee submitted that necessary details and reconciliation proving thereby that there was no difference at all and assessment was correctly passed but PCIT in respect of carrying out any further investigation proceeded to set aside and direct the AO to make assessment after making fresh assessment and verification. The Ld. A.R. submitted that the said action of Ld. PCIT is against the provision of the Act and is supported by the decision of Hon'ble Delhi High Court in the case of PCIT vs. Delhi Airport Metro Express Pvt. Ltd. in (2018) 99 taxmann.com 382 (Del).

5. The Ld. D.R on the other hand relied on the order of PCIT , there is no prejudice caused to the assessee by exercise the jurisdiction u/s 263 of the Act. The assessee would be afforded reasonable opportunity of presenting its case and therefore prayed that appeal of the assessee may kindly be dismissed.

6. Having heard the rival submissions and perusing the material on record including the reconciliation statement filed before us with the necessary evidences such as Form 26AS for AY 2016-17 and 2017-18 and 2018-19, copy of account of Electrosteel Casting Ltd., Annual Accounts for the year ended on 31.03.2015, 31.03.2016 and 31.03.2017, ledger accounts of commission for the three years and copies of ledger account of Shri Kalahasthi Pipes Ltd./, Electrosteel Steel Ltd., Electrosteel Casting Ltd. and Electrosteel Casting Ltd., Chennai and find that the assessment has been done correctly by the AO as there was no difference of Rs. 36,23,515/-. A perusal of the said records shows that the said amount has been offered to tax by the assessee [Rs. 7,66,485/- in AY 2015-16 and Rs. 27,42,530/- in AY 2016-17]. We note that the remaining amount of Rs. 1,14,500/- represented wrong deduction

of TDS on Electrosteel Steel Ltd. on reimbursement of expenses in FY 2016-17 which appeared in Form 26AS for AY 2017-18. Thus the order passed by the AO is neither erroneous nor prejudicial to the interest of the revenue which is the mandatory condition to be fulfilled before exercise of jurisdiction u/s 263 of the Act. The case of the assessee is squarely covered by the decision of Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT reported in [2000] 243 ITR 83 (SC) wherein the Hon'ble Court has held that the twin condition have to be satisfied before invoking the jurisdiction u/s 263 of the Act and even if one of the two conditions is fulfilled the jurisdiction u/s 263 cannot be invoked. Similarly the case of the assessee finds support to the decision referred by the Ld. A.R namely PCIT vs. Delhi Airport Metro Express Pvt. Ltd. (supra) wherein the Hon'ble High Court held that the Ld. PCIT has to determine the excess depreciation before setting aside the order of AO but since the Ld. PCIT has not undertaken any enquiry to this effect and therefore the order of Ld. PCIT was not sustainable. Similarly in the present case the Ld. PCIT has not undertaken any enquiry despite the assessee submitting all the necessary details/evidences to this effect and there was no mistake in the order as the so called difference was correctly assessed to tax in AY 2015-16, AY 2017-18 and of Rs. 1,14,500/- shown on account of wrong deduction by Electrosteel Steel Ltd. reimbursement of expenses was appearing in Form 26AS in AY 2017-18. In view of these facts, we are inclined to quash the revisionary proceedings as well the order passed u/s 263 of the Act.

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

Order is pronounced in the open court on 9th November, 2022

Sd/-

(Rajpal Yadav / राजपाल यादव)
Vice-President / उपाध्यक्ष

Sd/-

(Rajesh Kumar / राजेश कुमार)
Accountant Member / लेखा सदस्य

Dated: 9th November, 2022

SB, Sr. PS