

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

**BEFORE SHRI C.M. GARG, JUDICIAL MEMEBR
AND
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 285/Ind/2020
(निर्धारण वर्ष / Assessment Year : 2014-15)

M/s S.K. Jain, HIG-20, Shivaji Nagar, Bhopal, Madhya Pradesh – 462001	बनाम/ Vs.	The DCIT, 1(1), Aaykar Bhawan, Bhopal, Madhya Pradesh - 462001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAOFS1606A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Ashish Goyal & Shri N.D. Patwa, ARs
प्रत्यर्थी की ओर से / Respondent by :	Shri P.K. Mishra, CIT-D.R.
सुनवाई की तारीख / Date of Hearing	07.11.2022
घोषणा की तारीख /Date of Pronouncement	11 /11/2022

ORDER

PER C.M. GARG, JM:

The instant appeal filed by the assessee is directed against the order dated 22.03.2019 passed by the Pr. CIT-1, Bhopal u/s 263 of the Income-tax Act, 1961 (for short, 'the 'Act') for A.Y. 2014-15.

2. There is a delay of 108 days in preferring the instant appeal before us. It was submitted that the delay has occurred as the previous counsel did not file the appeal in time and as this fact was never informed to the assessee. It was, therefore, prayed that the above delay in filing the appeal

may kindly be condoned since there was *bona fide* reason for not filing the appeal in time. The Ld. DR had no objection if the delay is condoned. In view the above explanation of the assessee for the delay in filing the appeal late, and in view of the decision of the Apex Court in the case of *Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors., reported in AIR 1987 SC 1353*, we condone the delay and the appeal is admitted for adjudication.

3. The ld. Counsel of the assessee submitted that the ld. PCIT has invoked the provisions of section 263 of the Act without any basis and reasoning as the AO, during the scrutiny assessment order dated 24.11.2016 u/s 143(3) of the Act took a plausible view in rejecting the books of account by invoking the provisions of section 145(3) of the Act and estimating the profit @ 8% including the amount of interest on FDR of Rs.1,55,92,840/- and an amount of commercial tax refund of Rs.1,40,45,310/- credited to the P&L Account. Placing reliance on the judgement of the Hon'ble Supreme Court in the case of *PCIT vs. V. Dhana Reddy & Co. (2018) 100 taxmann.com 358 (SC)*, the ld. Counsel submitted that while determining the assessee's income in respect of godown receipts on estimate basis, the AO had adopted a plausible view and, thus, the revisional order u/s 263 of the Act on the said issue was not sustainable as the view taken by the AO out of two possible view was a plausible one.

4. Replying to the above, the ld.CIT-DR vehemently supporting the impugned revisional order passed by the ld. PCIT, Bhopal dated 22.03.2019 submitted that the amount of interest earned on FDR cannot be included in the turnover for making estimation of income as it is not part of the turnover and this amount required to be added wholly to the taxable income of the assessee. Regarding the amount of commercial tax refund, the ld. CIT-DR submitted that this also cannot be treated as part of the

turnover for estimating profit in the hands of the assessee. The Id.CIT-DR submitted that the proposition rendered by the Hon'ble Supreme Court and relied upon by the Id. AR in the case of *PCIT vs. V. Dhana Reddy & Co. (supra)* is not applicable to the present case because the view taken by the AO was not a plausible view as per the facts and circumstances of the case and as per well established principles of tax jurisprudence. Therefore, the appeal of the assessee may kindly be dismissed.

5. On careful consideration of the above submissions, first all, from the impugned assessment order, we note that the AO, during the scrutiny assessment proceedings u/s 143(3) of the Act, firstly rejected the books of account of the assessee u/s 145(3) of the Act and, thereafter, considering the factum of receipt of interest on FDR amounting to Rs.1,55,92,841/- and commercial tax refund of Rs.1,40,45,312/- and dismissing the explanation of the assessee, proceeded to include the said two items in the turnover of the assessee and estimated the profit @ 8% thereof. Undisputedly, the amount of interest earned on FDR was accrued to the assessee as earnest money deposited, security deposit through FDRs for the day-to-day business and this income is inextricably linked with the business activities of civil contractorship for Irrigation Department of the Government of Madhya Pradesh. But, this amount of interest on FDR cannot be treated as part of turnover of the assessee. Similarly, the amount of commercial tax refund is concerned, on being asked by the Bench, the Id. Counsel replied that the amount of commercial tax refund was claimed in the P&L Account at the time of payment of such tax which was allowed by the Department to the assessee. In view of the said fact, the total amount of commercial tax refund was to be treated as income of the assessee and it was not includible in the turnover of the assessee. Therefore, we reach to a logical conclusion that the AO was not correct as in the facts and circumstances of the case and as per well established principles of tax jurisprudence in including the

amount of interest on FDR and commercial tax refund to the turnover of the assessee and making estimation of 8% profit thereof. Thus, the view taken by the AO was neither permissible nor plausible and the benefit of the judgement of the Hon'ble Supreme Court in the case of *PCIT vs. V. Dhana Reddy & Co. (supra)* is not available to the assessee in the present case.

6. Finally, we are inclined to hold that the order of the AO was not only erroneous, but also prejudicial to the interest of the Revenue as the amount of interest on FDRs and commercial tax refund was not includible in the turnover of the assessee for making estimation of profit and the entire amount of interest on FDRs and commercial tax refund was to be treated as income of the assessee under the facts and circumstances of the case as noted above. Therefore, the ld. PCIT was right in invoking the provisions of section 263 of the Act and setting aside the impugned assessment order dated 24.11.2016 for AY 2014-15 and directing the AO to frame *denovo* assessment after allowing due opportunity of being heard to the assessee. Accordingly, the grounds of the assessee are dismissed.

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

Order pronounced in Open Court on 11 /11/2022

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Indore: Dated, 11 /11/2022

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आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore