

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “H” BENCH: NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER &
SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA No.460/Del/2021

[Assessment Year : 2016-17]

CHW FORGE Pvt. Ltd., Near Hapur Road Flyover, Mailwara, Ghaziabad, Uttar Pradesh-201001. PAN-AAACC6049C	vs	Pr. CIT, Ghaziabad.
APPELLANT		RESPONDENT
Appellant by	Shri Prakash Kumar Sinha, Adv. & Shri Abhinav Dixit	
Respondent by	Shri M. Baranwal, CIT DR	
Date of Hearing	14.11.2022	
Date of Pronouncement	14.11.2022	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order of Ld. Pr. CIT, Ghaziabad dated 26.02.2021 for the Assessment Year (“AY”) 2016-17.

2. The assessee has raised following grounds in this appeal:-

“Your appellant prays that the following grounds be decided independent of and without prejudice to each other:

1. *The learned Pr. Commissioner of Income-tax, Ghaziabad [hereinafter referred to as PCIT] erred in passing order under section 263 of the Income-tax Act, 1961 [the Act] dated 26-02-2021, without giving full opportunity of being heard to the appellant.*

The learned PCIT was not justified in passing the impugned order under section 263 dated 26-02-2021 disallowing Rs. 51,68,235 under provisions of section 40(a)(i) of the Act, which is violative of principles

of natural justice, untenable in the eyes of law and deserves to be quashed.

2. *The learned PCIT was not justified in holding that the assessment order under section 143(3) passed by the Deputy Commissioner of Income-tax, Special Range 2(4), Ghaziabad (the learned Assessing Officer) was erroneous and prejudicial to the interest of revenue as the order was allegedly passed without making enquiries or verification which should have been made by the learned Assessing Officer.*

The appellant prays that it be held that the assessment order u/s 143(3) passed was not erroneous since adequate/necessary information and documents were sought, furnished and inquiries and verification had been undertaken by the learned Assessing Officer.

3. *The learned PCIT erred in holding that the amount of Rs. 51,68,235 remitted to the four non-resident parties as per show cause notice dated 17.02.2021, be disallowed as per the provisions of section 40(a)(i) of the Act by treating the same as Fees for Services [FTS] taxable in the hands of the appellant as per the provisions 9(1)(vii) and Article 12 of the DTAA between India and Germany.*

The appellant prays that the learned PCIT was not justified in treating-

- a) *the Advance Management Fees (non-refundable) and Euler Hermes Application Fees paid to a non-resident German party aggregating to Rs. 9,66,566;*
- b) *the balance Management Fees and Commitment Fee to the non-resident German party aggregating to Rs. 33,15,734;*
- c) *the Exhibition Charges paid to an UAE party of Rs. 4,53,614; and*
- d) *the Export Commission paid to an UAE party of Rs. 4,32,321*

as FTS and disallowing the same under section 40(a)(i) and it be held that on the facts and in the circumstances of the case and in law and

the provisions of applicable DTAAs, the same are not taxable in India and disallowance under section 40(a)(i) be deleted.

4. *The learned PCIT has erred in directing the learned Assessing Officer to recompute the total income of the appellant and issue revised notice of demand.*

The appellant prays that the aforesaid directions of the PCIT be held as bad in law and accordingly be quashed.

Your appellant craves leave to add to, amend, alter, vary, omit or substitute the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal as they may be advised.”

BRIEF FACTS OF THE CASE

3. Facts giving rise to the present appeal are that in this case, the assessment u/s 143 of the Income Tax Act, 1961 (“the Act”) was framed vide order dated 13.12.2018. Thereby, the Assessing Officer (“AO”) assessed income of the assessee at Rs.21,15,08,860/-. Subsequently, the Ld. Pr. CIT after examining the records proceeded to initiate assessment proceedings u/s 263 of the Act. Accordingly notice u/s 263 of the Act was issued to the assessee and thereafter, the assessment order was revised, holding that an amount of Rs.51,68,235/- which was remitted to the four non-residents parties are to be disallowed as per provision u/s 40(a)(i) of the Act.

4. Aggrieved against this, the assessee preferred appeal before this Tribunal.

5. At the outset, Ld. Counsel for the assessee submitted that Ld. Pr.CIT issued first notice on 04.01.2021 to the assessee. In response thereto, a reply was filed on 15.01.2021 by the assessee. Thereafter, a show cause notice dated 17.02.2021 was issued to the assessee and the explanation was required to be submitted before 24.02.2021. He contended that the reply could not be filed by

the assessee due to Covid-19 pandemic situation. He contended that Ld. Pr. CIT ought to have given some more time to the assessee.

6. Ld.CIT DR opposed these submissions and supported the orders of the authorities below.

7. In re-joinder, Ld. Counsel for the assessee submitted that apart from violation of principle of natural justice, the impugned order suffers from jurisdictional error.

8. We have heard Ld. Authorized Representatives of the assessee and the Revenue and perused the material available on record. We find that there is no dispute with regard to the fact that Covid-19 Pandemic situation has badly affected the lives of people of India. It is seen from the records that Ld. Pr. CIT had issued a show cause notice dated 17.02.2021 to the assessee. The relevant contents of the show cause notice issued to the assessee are reproduced as under:-

“2. Please refer to your reply dated 15.01.2021 where it has been explained that the 43 remittances were made to the non-resident, parties during the year under consideration. All the documents filed by your company are perused in the light of Sec. 9(1) of the IT Act 1961 and Article 12 Of DTAA between India & Germany and other related countries with, whom the transaction were made. The remittances were made. The remittances were made on account of purchase of goods, management fees, exhibition charges, testing charges, technical services and export commission. In the following cases the assessee company has deducted the tax at source as per provision of sec. 195 of the IT Act, 1961 treating the same remittances as FTS:

			TDS Amount	
3	Lonestar Alpha Laboratories, Oman	13,970	3,687	Testing charges
2	Fideurap GMBH, German	60,602.50	15,624	Technical Services
3	American Petroleum institute, USA	3,44,612	89,330	Technical Services
4	American Petroleum Institute, USA	6,59,566	1,70,977	Technical Services

3. However, in the following cases the tax has not been deducted at source while remitting amount to non-resident where the nature of payment falls in the purview of sec. 9(1) of IT. Act, 1961 on which TDS should have been done.

S. No	Beneficiary name	Amount in INR	Nature of payment
1	Landesbank Baden-Wuttemberg, Germany	9,66,566	Advanced management fee and Euler Hermes application fee for financing of purchase of machinery from Germany
2	DMG World Media Abu Dhabi Ltd., HAS	4,53,614	Exhibition charges
3	Landesbank Baden-Wuttemberg, Germany	46,768	Advanced management fee and commitment fee for financing of purchase of machinery from Germany,
4	Gulf Automation Servies & Oilfield Supplies, UAE	4,32,321	Export commission
		18,99,269	

4. Please show cause as to why the above amount of Rs. 18,99,269/ may not be disallowed as per provision of sec. 40(a)(i) of the PI' Act. 1961 treating the same as ITS taxable in the hands of remittee as per provision of sec. 9(l)(vii) of the IT Act as well as article 12 of DTAA between India & Germany and also with other countries.

5. Your reply should reach in this office on or before 24.02.2021.”

9. The Ld. Pr. CIT thereafter, passed impugned order presuming that there was no explanation by the assessee to offer.

10. The law is well settled that Ld. Pr. CIT is empowered u/s 263 of the Act to revise the assessment order if the twin conditions embodied in the provision are satisfied. The conditions being that the orders sought to be revised are erroneous and so far it is prejudicial to the interest of revenue. However, the law

also envisages that before exercising such power, Ld. Pr. CIT should give opportunity to the assessee for explaining his case. In the present case, we are of the view that Ld. Pr. CIT ought to have given another opportunity to the assessee for explaining the issues which are raised in the show cause notice dated 17.02.2021. Therefore, looking to the totality of the facts of the present case, we hereby set aside the impugned order and restore the matter to the file of Ld. Pr. CIT for adjudication afresh. The assessee would not seek any adjournment without any reasonable and valid grounds. It is further clarified that issue related to jurisdiction would be open to the assessee to agitate before Ld. Pr. CIT. Thus, grounds raised by the assessee are allowed for statistical purposes.

11. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 14th November, 2022.

Sd/-

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI