

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.890/DEL/2022
Assessment Year 2017-18

Asian Roller Bearings, 22/14, East Punjabi Bagh, New Delhi.	Vs.	ACIT, New Delhi.
TAN/PAN: AAMFA7968F		
(Appellant)		(Respondent)

Appellant by:	Shri Gautam Jain Adv. Shri Ajit Jha Adv		
Respondent by:	Shri P. Praveen Sidharth CIT-DR		
Date of hearing:	02	11	2022
Date of pronouncement:	23	11	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed at the instance of the assessee against the revisional order of the Id. Pr. Commissioner of Income Tax, Delhi-XV [‘Pr.CIT’ in short] dated 29.03.2022 passed under Section 263 of the Income Tax Act, 1961 [‘the Act’] whereby the assessment order passed by the Assessing Officer [AO] dated 04.12.2019 under Section 143(3) of the Act concerning Assessment Year 2017-18 was set aside for reframing the assessment order in terms of supervisory directions.

2. As per the grounds of appeal, the assessee has sought to challenge the jurisdiction assumed by the Pr.CIT under Section 263 of the Act and as a corollary, sought to impugn the revisional order passed by the Pr.CIT under Section 263 of the Act.

3. Briefly stated, an assessment order under Section 143(3) of the Act for Assessment Year 2017-18 in question was completed by the Assessing Officer accepting the income returned as assessed income vide order dated 04.12.2019. The case was selected for assessment under the category 'limited scrutiny'. Thereafter, the Pr.CIT in exercise of its revisional powers, issued show cause notice dated 01.03.2021 under Section 263 of the Act requiring the assessee to show cause as to why the assessment so framed under Section 143(3) of the Act should not be modified/set aside on the ground that such order is erroneous insofar as its prejudicial to the interest of the Revenue. The show cause notice issued by Pr.CIT in this regard is extracted hereunder for ready reference:

“Assessment, was completed u/s 143(3) of the I.T. Act, 1961 for the A.Y. 2017- 18 by erstwhile ACIT, Circle 44(1), New Delhi on 04.12.2019. Subsequent, to the assessment, it was noticed that the assessment order was erroneous and prejudicial to the interest of revenue for the following reason.

“On perusal of the record it is found that the assessee has received unsecured- loan of Rs. 5,10,47,512/- from the person specified in section 40A(2)(b). However, during the course of assessment it was not examined that whether interest paid to these person at market rate & it is not excessive or unreasonable. Interest amount paid on unsecured loans was Rs. 67,73,783/-. Since, case was under limited scrutiny, this issue of unsecured loan from- the person specified in section 40A(2)(b) and interest paid thereon requires proper examination.

The assessee has shown purchase of Rs.21,66,01,850/- during the year which is less than invoice value of export shown in export import data. The case was selected under limited scrutiny on this

issue that purchase shown in the ITR is less than the invoice value of import shown in the Export Import Data. Assessee has explained that purchase includes to import transaction in previous year 2015-16 as goods in transit, these transactions are shown in F.Y. 2016-17 as per custom records. It has filed copy of ledger account of F.Y. 2015-16 which was accepted during the course of assessment proceedings. However, no independent verification was made to reconcile of purchase as per export import data”.

In view of the above observation, you are required to file reply with supporting evidence explaining as to why the assessment framed by erstwhile ACIT, Circle-44(1), New Delhi may not be modified or enhanced or cancelled.”

3.1 It was essentially alleged in the show cause notice that;

- (i) the Assessing Officer has not examined whether the expenditure incurred by way of interest on loans availed from substantiably interested concerns is excessive or unreasonable having regard to the corresponding market rate.
- (ii) the assessee has shown purchases in the books which are seen to be less than invoice value of Exports. The Assessing Officer has failed to make independent verification of the reconciliation made by the assessee in this regard.

3.2 The revisional commissioner thus alleged that there was no application of mind by the Assessing Officer on the issues noted above and no inquiry whatsoever was carried out. The Pr.CIT accordingly passed a revisional order under Section 263 and directed the Assessing Officer to frame the assessment in the light of directions given in the revisional order.

4. Aggrieved by the revisional actions of the Pr.CIT, the assessee preferred appeal before the Tribunal agitating

supervisory jurisdiction usurped by the Pr.CIT under Section 263 of the Act.

5. We have heard the rival submissions on the issue.

5.1 To begin with, we take note of the reasons for selecting the case in 'limited scrutiny' as per notice issued under Section 143(2) dated 28.09.2018. The following issues were identified for examination in the limited scrutiny:

- i. unsecured loans*
- ii. squared up loans*
- iii. Custom duty paid*
- iv. Sales turnover/receipts*

5.2 In this backdrop, with reference to the first objection namely correctness of transactions on the touchstone of Section 40A(2)(b) of the Act, the assessee contends that the aforesaid issue was clearly not subject matter of identification under limited scrutiny. Notwithstanding, the loans received from persons covered under Section 40A(2)(b) being relatives of the partner of the assessee-firm aggregating to Rs.1,21,00,000/- were duly providing substantiated by PAN and complete address along with confirmation. Therefore the assessee contends that in the absence of any mandate under limited scrutiny, the Assessing Officer was not entitled to enquire into fair value of interest chargeable and hence no error can be visualized in the action of the Assessing Officer for not expanding the scope of enquiry beyond the mandate given to him. We are inclined to agree with the plea of the assessee. The assessment was made under limited scrutiny on specific points. The aforesaid issue of verification qua Section 40A(2)(b) raised by the Pr.CIT does not form part of the scope of

enquiry under Section 143(2) of the Act. Thus, the Assessing Officer does not appear to having committed any error to stop himself on the points noted for limited scrutiny. The action of the Assessing Officer for not making alleged inquiry on the fair value of interest rate charged to assessee thus cannot be leveled as erroneous. Secondly, the Pr.CIT in the show cause notice has proceeded on the premise that interest rate should be comparable with the market rate whereas Section 40A(2)(b) only talks of fair market value. The Pr.CIT has not pin-pointed any glaring abnormality in the interest rate charged to the assessee by the sister concern/relatives. The issue of determination fair market value under Section 40A(2)(b) is highly subjective and debatable. There is nothing on record to observe that interest paid to the connected entities patently defies the prevalent customary market rate. Rather, the determination of fair rate of interest payable is highly subjective and dependent on host of factors. A generic and non-descript direction of such type, if permitted, would render every assessment year susceptible to revisional proceedings. Thus, looking from any perspective, the action of the Pr.CIT cannot be countenanced on this score in the present revisional proceedings.

6. Adverting to the allegation towards independent verification of reconciliation of purchases appearing as per import export data vis-à-vis purchases recorded in the books, it is admitted position that some inquiry was made by the Assessing Officer in this regard and reply/reconciliation of the assessee was considered. The assessee contends that the replies were furnished towards variation in the purchases both before the Assessing Officer as well as before the Pr.CIT. It was pointed out that certain transactions were shown as 'goods in transit' by the assessee in

the previous F.Y. 2015-16 [AY 2016-17] but the bill of entry for such goods in transit were generated in subsequent F.Y. 2016-17, i.e., Assessment Year 2017-18 and hence these transactions were included in import export data in the current year, i.e., Assessment Year 2017-18 whereas the transactions were reported by the Assessee in Assessment Year 2016-17. Reconciliation in this regard was admittedly provided to explain the difference and there is no escapement of income by itself.

7. The Pr.CIT has not commented on the veracity of such reconciliation but has only alleged that independent verification should have been made by the Assessing Officer. There is nothing on record which may give rise to a cause for extended inquiry. The approach adopted by the Pr.CIT, in our view, is highly untenable. The assessee has explained the difference in purchases at the first instance and the explanation offered is in tune with accounting practices and is thus plausible. The Pr.CIT himself is not made any minimal inquiry towards such accounting differences before embarking upon giving such sweeping directions. The directions of the Pr.CIT appear to be a mere *ipsi dixit*. Needless to say, the directions to disturb a completed assessment, requires to be exercised with greater circumspection. In the absence of any definitive reason for the need to make such extended inquiry, the wisdom of the Assessing Officer functioning as quasi judicial officer should not be ordinarily disturbed. While coming to such conclusion, we also are alive to the contention on behalf of the assessee that the accounts are audited and where such facts examined and found satisfactory should be ordinarily accepted which the Assessing Officer done in the instant case in the absence of any trigger to think differently.

8. In totality, we find traction in such plea. The action of the Pr.CIT in this issue also fails.

9. The revisional order of the Pr.CIT is thus quashed.

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

Order pronounced in the open Court on 23/11/2022.

Sd/-

[CHANDRA MOHAN GARG]
JUDICIAL MEMBER

DATED: /11/2022

prabhat

Sd/-

[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER