

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA

[Before Dr. Manish Borad, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 636/Kol/2018
Assessment Year : 2013-14

M/s. C & E Ltd. (PAN: AACCC 5418 K)	Vs.	Pr. CIT, Kolkata-4, Kolkata
Appellant		Respondent

Date of Hearing	01.12.2022
Date of Pronouncement	15.12.2022
For the Assessee	Shri Srikumar Banerjee, FCA
For the Revenue	Shri Tushar Dhawal Singh, CIT

ORDER

Per Shri Sonjoy Sarma, JM:

This appeal filed by the assessee for A.Y. 2013-14 is directed against the order dated 06.02.2018 passed u/s 263 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by the Pr. CIT, Kolkata-4, Kolkata which is arising from the assessment order dated 28.03.2016 passed by DCIT, Circle-10(1), Kolkata. The assessee has raised the following grounds of appeal:

"1. That the learned Pr. Commissioner of Income Tax has erred in law and in fact by passing an order under section 263(1) in accordance with the Explanation 2 (c) whereas no order/ direction has been made to the AO as envisaged in Explanation 2(c).

2. That the learned Pr. Commissioner of Income Tax has erred in law and in fact by passing an order under section 263(1) in accordance with the Explanation 2(c) whereas he has not mentioned anywhere in the order the deficiency of the AO as envisaged in Explanation 2(c).

3. That the learned Pr. Commissioner of Income Tax has erred in law and in fact by passing an order under section 263 particularly when the issue was claiming of excess deduction u/c 80IC and it was proved beyond doubt that no excess claim was made as it was a case of substantial expansion.

4. That the learned Pr. Commissioner of Income Tax has erred in law and in fact by passing an order under section 263 which was not related with the issues raised in the show cause notice for initiate the proceedings under section 263.

5. That the learned Pr. Commissioner of Income Tax has erred in law and in fact by forming opinion that order passed by AO is erroneous and at the same time he sets aside the order which means he is not sure whether order passed by AO is erroneous.

6. That the learned Pr. Commissioner of Income Tax has erred in law and in fact by particularly when the issue is set aside to the AO to judge whether it is erroneous and at the same time he opined that order passed by AO is erroneous and prejudicial to the interest to the revenue.

7. That the learned Pr. Commissioner of Income Tax has erred in law and in fact as because as he remanded the issue to the AO and before that he cannot form an opinion that the order is erroneous and prejudicial to the interest of revenue which is self contradictory.”

2. The brief facts of the case are that the assessee is a private limited company engaged in leather and chemicals and other ancillary business. During the assessment year in question, the assessee filed its return of income declaring total income of Rs. 30,38,300/- after claiming deduction of Rs. 1,39,62,749/- under Chapter VI-A for the assessment year 2013-14. The return was filed on 28.09.2013 and the case of the assessee was selected for scrutiny through CASS. Notice u/s 143(2) and 142(1) was issued upon the assessee. The ld. AO after considering the submission of the assessee made certain addition / disallowance and assessed the income of assessee at Rs. 1,72,45,790/-. Subsequently, the ld. PCIT called for assessment record and invoked jurisdictional revisionary power provided under 263 of the Act. The ld. PCIT in its revisionary order observed that tax audit report in point no. 26 that the assessee has claimed deduction u/s 80IC amounting to Rs. 1,39,56,248.58/- in respect of Unit IV being 7th year. However, the assessee had not filed 10CCB in support of the claim during the course of assessment proceeding and thus ld. PCIT issued show cause notice u/s 263 of the Act to the assessee. The reply was filed by the assessee in response to the said show cause notice which is reproduced as under:

“...1. The proceeding under Section 263 is initiated on the ground that the relevant assessment year was 7th year of assessment. Hence 30% deduction should be allowed instead of 100% which was allowed by the learned assessing officer. Section 263 proceeding is initiated without considering the fact that it was a case of substantial expansion. In case of substantial expansion, the deduction should be 100%.

2. The assessee company is unable to find out the excess depreciation as alleged in notice amounting to Rs. 97,69,375/- being the difference between Rs. 1,39,56,249/- and 41,86,874/-.

3. It has also mentioned in the aforesaid letter that during the course of assessment, the assessee had not filed 10CCB in support of the claim. Form 10CCB was not filed as it was not asked for. However, we now enclose 10CCB for the assessment year 2013-14 for your kind perusal records. Page number 1 to 6.

4. We wish to draw your kind attention on the relevant page number 5 in which it was mentioned that there was a substantial expansion. The date of substantial expansion mentioned in 10CCB was 13.02.2012. Relevant financial year 2011-12 and the assessment year was 2012-13.

5. The year of substantial expansion the assessee company had filed 10CCB and other related documents relating to substantial expansion for the assessment year 2012-13. The necessary evidence is page number 7 & 8.

6. We also enclose 10CCB for the assessment year 2012-13 being the initial year of substantial expansion for your kind perusal records. Page numbers 9 to 14.

7. Assessment year 2013-14 is the 2nd year of substantial expansion. First year was 2012-13.

8. In the initial year of substantial expansion (AY 2012-13), the learned assessing officer had accepted the substantial expansion and passed the order under 143(3) after giving the 100% deduction. The same is not in dispute.

9. We also enclose the assessment order of 2012-13 for your kind perusal and records. Page Number 15 to 19.

10. The learned assessing officer had correctly accepted the substantial expansion which had accepted in the initial year and passed the order under Section 143(3) in the 2nd year of expansion (Ay 2013-14) after giving the 100% deduction.

11. The learned assessing officer had also correctly accepted the substantial expansion which had accepted in the initial year and passed the order under section 143(3) in the 3rd year of expansion (AY 2014-15) after giving the 100% deduction.

12. We also enclose the assessment order of 2014-15 for your kind perusal and records. Page numbers 20 to 29.

13. We also enclose 10CCB for the AY 2014-15 for your kind perusal and records. Page number 30 to 36.

It is crystal clear from the aforesaid facts on record and is evidenced by documents. That the learned assessing officer had rightly giving deduction 100% not only in the relevant assessment year but also in the initial assessment year and in the subsequent years as it is a case of substantial expansion.

Hence question of excess depreciation as alleged in the aforesaid notice under section 263 does not arise.

In view of the above, we pray to your honour to drop the proceedings under section 263 initiated by you.....

4. *The assessee in his submission claimed that in respect of a particular unit substantial expansion has taken place in terms of provision u/s 80IC(8)(ix). However, the AO had made no enquiry to ascertain the genuineness of the claim of the assessee regarding substantial expansion. Allowing the claim without going into the details of items constituting substantial specific and. Thus, the issues discussed above remained unverified and order passed u/s 143(3) of the Income Tax Act, 1961 on 28.03.2016 suffers lack of enquiry/inadequate verification causing the order passed u/s 143(3) of the Act erroneous so far as prejudicial to the interest of revenue.*

5. *The power of revision by the CIT p/s 264 of the Act is very wide and it is in the nature of supervisory jurisdiction. The power u/s 263 can be exercised even in cases where the issue is debatable and such power is not comparable with the power of rectification of mistake u/s 154 of the Act. It is well settled that incorrect assumption of facts or application of law satisfies the requirement of law i.e. order being erroneous and prejudicial to the interest of revenue. The order passed by the AO without application of mind or order showing apparent error of reasoning of the order where the AO simply accepts where the assessee stated in his return of income and fails to make the enquiries which are called for in the facts and circumstances of the case will also call for intervention u/s 263 of the Act by the CIT/Pr. CIT. It is a trite law that the disclosure of facts by the assessee in the return of income and/or in the course of assessment proceedings cannot give immunity from revisional jurisdiction of the CIT/PR. CIT u/s 263. In this context, it may be mentioned here that in the case of Commissioner of Income Tax, Central-I, Kolkata vs. Maithan International, it was held by Calcutta High Court [2015] 56 taxmann.com 283 (Calcutta) that*

“It is not the law that the Assessing Officer occupying the position of an investigator and adjudicator can discharge his function by perfunctory or inadequate investigation. Such a course is bound to result in erroneous and prejudicial too and therefore revisable. Investigation should always be faithful

and fruitful. Unless all fruitful areas or enquiry are pursued the enquiry cannot be said to have been faithfully conducted.”

The Hon’ble Supreme Court, further, in the case of Rampyari Devi Saraogi vs. CIT (1968) 67 ITR 87 (SC) and Smt. Tara Devi Agarwal Vs. CIT(1973) 88 ITR 323 (SC) has held that in absence of proper enquiries, the assessment order would become erroneous and prejudicial to the interest of the revenue.

The Hon’ble Delhi High Court in the case of GEE VEE Enterprise vs. Addl. Cit (1975) 99 ITR 375 has also held as under:

“the reason is obvious. The position and function of the income tax officer is very different from that of a Civil Court. The statements made in a pleading proved by the minimum amount of evidence may be accepted by a Civil Court in the absence of rebuttal. The Civil Court is neutral. It simply gives decision on the basis of pleading and evidence which comes before it. The income tax officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of return which is apparently in order but calls for further enquiry. It is his duty to ascertain the truth of facts stated in the return when the circumstances of case are such as to provoke an enquiry. The meaning to be given to the word “erroneous” in section 263 emerges out of this context. It is because it is incumbent on the income tax officer to further such an enquiry prudent that the word “erroneous” in Section 263 includes the failure to make such an enquiry. The order becomes erroneous because such an enquiry has not been and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct.”

In view of the facts and the legal position stated above, I am of the view that the order passed on an incorrect assumption of facts or incorrect application of law and without making requisite inquiries will satisfy the requirement of the order being erroneous and prejudicial to the interest of the revenue within the meaning and scope of Section 263 of the Income Tax Act, 1961.

The aforesaid decisions postulate that when the officer is expected to make an inquiry of a particular item of income and different he does not make an inquiry as expected, that would be a ground for the Commissioner to interfere with the order passed by the Officer since such an order passed by the Officer is erroneous and prejudicial to the interests of the Revenue (K. A. Ramaswamy Chittiar vs. CIT (1996) 220 ITR 657).”

3. However, at the time of hearing, the assessee has failed to satisfy the ld. PCIT in support of its claim, therefore, the ld. PCIT held that the impugned assessment order dated 28.03.2016 framed u/s 143(3) of the Act is erroneous and prejudicial to the interest of revenue and thus he directed the ld. AO pass fresh assessment order after considering the observation made in the impugned order of the ld. PCIT.

4. Aggrieved by the above order, the assessee is now in appeal before this Tribunal raising various grounds. Out of which several grounds were general and consequential in nature. The main grievance of the assessee in its grounds of appeal are challenging the invocation of jurisdiction u/s 263 of the Act and also challenging the direction issued by the ld. PCIT for setting aside the assessment order framed by the ld. AO.

5. At the time of hearing, the ld. AR appeared before us and submitted that the order passed by the ld. PCIT is bad in law and relevant claim of the assessee in respect of deduction u/s 80IC amounting to Rs. 1,39,56,248.58/- was duly examined by the ld. AO during the assessment proceeding. Therefore, in the present case, there is no need to examine the case afresh by the AO in terms of revisionary order passed by ld. PCIT u/s 263 of the Act. The ld. AR further submitted that the assessee had filed written submission before the ld. PCIT in response to show cause notice issued to the assessee where all the facts were submitted to substantiate assessee's claim for such deduction. However, the claim of the assessee was not considered and the ld. PCIT framed the following revisionary order by observing as follows:

"6. I have carefully considered the submission made on behalf of the assessee and perused the material available on record and found that the issues pointed out in the show cause needs verification as merely accepting submission without calling for relevant material/evidences during the course of assessment proceedings the AO failed to examine the above referred issue. After having considered the position of law and facts and circumstances of the instant case, I am of the considered opinion that the assessment order passed by the AO is erroneous insofar as it is prejudicial to the interest of revenue in accordance with the Explanation 2(c) below section 263(1) of the Act. Accordingly, the issue is set aside to the table of AO on specific point mentioned in para 2 above. The AO is directed to provide reasonable opportunity to the assessee company to produce documents and evidences which it may choose to rely upon for substantiating its own claim. Thereafter a fresh assessment order may be passed in accordance with the relevant provisions of law."

6. In response to such submission made by the ld. AR, the ld. DR vehemently opposed the submission made by the ld. AR. Further, he supported the order passed

by the Id. PCIT. We from the perusal of the impugned order noticed that the assessee has claimed Rs. 1,39,56,248.58/- in respect of deduction u/s 80IC of the Act. However, the assessee had not filed 10CCB in support of the claim during the course of assessment proceeding and the fact has been alleged by the Id. PCIT in his notice issued to the assessee. During the course of proceedings u/s 263 before the Id. PCIT, assessee has failed to file any supporting evidence to substantiate the claim that the AO has examined the facts while framing the assessment order. On perusal of the assessment order, it reveals that no such issues came for consideration before the Id. AO at the time of framing such assessment order and it cannot be ascertained whether any such fact as well as information were called for by the AO regarding the issue raised / as referred in show cause notice u/s 263 of the Act.

7. Considering the above facts and circumstances of the case, we are unable to find any such document on record which could show that this issue regarding deduction of claim u/s 80IC of the Act before the AO was examined. Thus, the Id. PCIT has rightly held that the order of the Id. AO u/s 143(3) of the Act is erroneous and prejudicial to the interest of revenue. We, therefore, find no infirmity in the impugned order passed u/s 263 of the Act by the Id. PCIT setting aside the assessment order dated 28.03.2016 and directing the AO to frame the assessment afresh after considering the observations made in the impugned order. Thus the grounds of appeal raised by the assessee are dismissed.

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

Order is pronounced in the open court on 15.12.2022

Sd/-

(Manish Borad)
Accountant Member

Biswajit, Sr. PS

Sd/-

(Sonjoy Sarma)
Judicial Member

Dated: 15.12.2022

Copy of the order forwarded to:

1. Appellant- M/s. C & E Ltd., 95, Park Street, 2nd Floor, Kolkata – 700 016.
2. Respondent – Pr. CIT, Kolkata-4, Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata