

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 1207/MUM/2021
Assessment Year: 2016-17**

Wealthy Millennium Investment
& Trading Pvt. Ltd.,
520, Maker V, Jamnalal Bajaj
Marg, Nariman Point,
Mumbai-400021.
PAN No. AAACW 3434 F
Appellant

Pr. CIT-1,
Room No. 330, 3rd floor,
Aayakar Bhavan, Maharshi
Karve Road, Mumbai-400020.
Vs.
Respondent

Assessee by : Ms. Shruti Agarwal, AR
Revenue by : Mr. Byomakesh Pradipta Kumar
Panda, CIT-DR

Date of Hearing : 28/12/2022
Date of pronouncement : 29/12/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against the revision order dated 31.03.2021 passed by the Ld. Pr. Commissioner of Income-tax -1, Mumbai (in short 'the PCIT') for assessment year 2016-17, raising following grounds:

***"GROUND NO. 1: INVOKING REVISION PROCEEDINGS US 263 OF
THE ACT WITHOUT JURISDICTION:***



1. *On the facts and in the circumstances of the case and in law, the learned CIT erred in invoking the provisions of section 263 of the Act and directing to revise the order passed by the Assistant Commissioner of Income Tax, Central Circle 2(3), Mumbai ("the AO") on the alleged ground that the AO did not make any verification of facts and there was no application of mind by the AO while completing the assessment.*
2. *He failed to appreciate and ought to have held that the AO had duly made the enquiry on the issue of disallowance W/s 14A, and thereafter chose to not make any addition. Therefore, it is not a case of "lack of inquiry"*
3. *The Appellant prays that the action of the CIT in invoking jurisdiction us 263 of the Act is ab inito or otherwise void.*

WITHOUT PREJUDICE TO GROUND I ABOVE

GROUND NO. I: INVOKING REVISIONARY PROCEEDINGS US 263 OF THE ACT IN ABSENCE OF ERROR OR PREJUDICE:

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT erred invoking the provisions of section 263 of the Act to revise the order passed by AO on the alleged ground that the order was erroneous and prejudicial to the interest of the revenue.*
2. *He failed to appreciate and ought to have held that the Appellant has suo moto made a disallowance in its return of income as per section 14A r.w.r. 8D of the Income Tax*



Rules, 1962 ("the Rules"), and no further disallowance is warranted

- 3. The Appellant prays that it be held that the order passed by AO is not erroneous and accordingly the action of Ld. CIT in invoking the provisions of section 263 is void ab intio and bad in law.*

WITHOUT PREJUDICE TO GROUND I & II ABOVE

GROUND NO. III: PROVISIONS OF SECTION 144 R.W.R. 8D CANNOT BE INVOKED WITHOUT RECORDING AN OBJECTIVE SATISFACTION:

- 1. On the facts and in the circumstances of the case and in law, the Ld. CIT erred in directing the A to invoke the provisions of section 14A r.w.r. 8D without appreciating that to do so, an objective satisfaction with a justifiable reason is to be recorded for rejecting the computation of disallowance made by the Appellant.*
- 2. The Appellant prays that the direction of Ld. CIT to invoke the provisions of section 14A r.w.r. 8D be quashed.*

2. Briefly stated, facts of the case are that in the case the assessment u/s 143(3) of the Act was completed by the Assessing Officer on 06.12.2018 u/s 143(3) of the Income-tax Act, 1961 (in short 'the Act') accepting the return of income, which was filed by the assessee on 15.10.2016 declaring total income at ₹ Nil. The Ld. PCIT called for the record and after examination of the record, he was of the view that the Assessing Officer did not carry out the



requisite inquiry on the issue of disallowance under the provision of section 14A of the Act. Accordingly, he issued show cause notice to the assessee and after considering the submission of the assessee, the Ld. PCIT held the assessment order passed by the Assessing Officer as erroneous in so far as prejudicial to the interest of the Revenue observing as under:

“6. I have carefully considered the submissions made by the assessee and have also gone through the facts of the case and do not find any force in assessee submission for the following reasons:

6.1 The assessee has argued that the Assessing Officer had made enquiries before passing the assessment order under consideration, but on perusal of records it can be seen that the assessee has assessee has claimed exempt income on account of interest income of Rs.81,63,809/- and dividend income Rs.23,34,076/-, but there is no corresponding disallowance made by the Assessing Officer as per the provisions of section 14A r.w.r 8D of the Income Tax Act, 1961.

6.2 Also, the Assessing Officer while finalizing the impugned order under section 143(3) failed to adequately verify the applicability of provisions of section 14A r.w.r 8D of the Act.

6.3 Further to this, the assessee has argued against the applicability of section 263 in this case. The Assessing officer while passing the assessment order under



consideration failed to make proper enquiries and verification as per the provisions of law which were applicable This attracts the provisions of section 263, therefore the contention of the assessee is not acceptable, and the provisions of section 263 are squarely applicable in this case.

7. Considering the facts of this case, it is apparent that the assessment made by the Assessing officer on the issues raised in the Show Cause Notice, needed examination and verification. As per explanation 2 to section 263 of the I.T. Act -For the purpose of this section , it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, if, in the opinion of the Principal Commissioner or commissioner-

a) the order is passed without making inquiries or verification which should have been made;

(b) The order is passed allowing any relief without inquiring into the claim

8. The assessment order passed on 30.12.2018 under section 143(3) for A.Y. 2016-17 is found to be erroneous in so far as it is prejudicial to the interest of the revenue. The AO needs to examine the above issues and should make inquiries and necessary verification



9. *It has also been held in many cases that the Commissioner is not necessarily required to record a final conclusion on the point on the issue in hand. An order found erroneous will generally be prejudicial to the interest of revenue, if it has implication of revenue escapement.*

10. *Considering the same, in exercise of powers conferred us.263 of the Income Tax Act, 1961, I set-aside the order made u/s. 143(3) of the I. T. Act, 1961 passed on 30.12.2018 on the issues discussed above. The A.O. is directed to reframe the assessment afresh after giving due opportunity to assessee before passing his order. The A.O. will complete the assessment in the light of the discussion made in this order after considering the prevailing Law.”*

3. Before us, the Ld. Counsel of the assessee has filed a paper book containing pages 1 to 192.

4. The Ld. Counsel referred to queries raised by the Assessing Officer during the assessment proceedings and submitted that assessee has duly responded all the queries and therefore, allegation making no inquiries by the Assessing Officer are baseless and thus order of the Ld. PCIT needs to be set aside.

5. On the other hand, the Ld. Departmental Representative (DR) referred to the Paper book pages and submitted that the assessee failed to respond queries raised by the Assessing Officer and



therefore, without verifying or inquiry on the issue of disallowance u/s 14A of the Act, the order passed by the Assessing Officer has been correctly held by the Ld. PCIT as erroneous in so far as prejudicial to the interest of the Revenue.

6. We have heard rival submission of the parties and perused the relevant material on record. We find that the assessee in its submission/paper book has reproduced the questionnaire, which were raised by the Assessing Officer during the assessment proceedings on paper book page 8 to 12. On page 12 at question No. 17, the Ld. Assessing Officer has asked the assessee to furnish details of expenses incurred in relation to earning exempted income along with working of disallowance of expenses as per section 14A r.w.r. 8D. The Ld. Counsel of the assessee referred to the reply of the assessee in respect of questionnaire raised by the Assessing Officer which is available at page 16 to 18 of paper book. However, we find that no response has been filed by the assessee in respect of working of disallowance against exempted income. Despite being specifically asked during the course of the hearing, the Ld. Counsel of the assessee could not substantiate that there was any response, which was filed by the assessee specifically regarding working of disallowance towards earning exempted income. The Ld. Counsel only referred that in the return of income the assessee had made disallowance in respect of section 14A of the Act. In view of the above, it is evident that no inquiry or verification has been carried



out by the Ld. Assessing Officer on the issue of disallowance u/s 14A of the Act which he ought to have carried out in the facts and circumstances of the case. The Assessing Officer while framing assessment has dual role, first as an investigator, he has to carry out inquiry/verification and gather evidences on the issue before him, then secondly, he has to act as adjudicator and decide the issue judiciously after appreciating the evidence. If he fails in his duty of investigator and don't make enquiry which should be carried out the fact and circumstances of the case, in our opinion, the Ld. PCIT is justified in holding the assessment order as erroneous in so far as prejudicial to the interest of the Revenue. Therefore, the grounds raised by the assessee are accordingly dismissed.

7. In the result, the appeal filed by the assessee is accordingly dismissed.

Order pronounced in the open Court/under Rule 34(4) of the ITAT Rules, 1963 on 29/12/2022.

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 29/12/2022
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant



2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Sr. Private Secretary)
ITAT, Mumbai