

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH : COCHIN**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.5/Coch/2021
Assessment Year : 2016-17

M/s. Asianet Satellite Communications Pvt. Ltd., 2A, 2 nd Floor, Carnival Technopark, Technopark, Kazhakuttom, Karyavattom, P. O., Thiruvananthapuram. PAN : AAECA 5548 E	Vs.	PCIT, Thiruvananthapuram.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Raghunathan S, Advocate
Revenue by	:	Shri. M. Rajasekhar, CIT(DR)

Date of hearing	:	05.12.2022
Date of Pronouncement	:	21.12.2022

ORDER

Per Padmavathy S, Accountant Member

This is an appeal against the order of PCIT, Thiruvananthapuram, under section 263 of the Income Tax Act, 1961 (hereinafter called 'the Act'), dated 17.11.2020, for Assessment Year 2016-17. The assessee raised the following grounds:

Ground No. 1 - Revision proceedings have been initiated under section 263 on account of issues that are neither erroneous nor prejudicial to the interests of revenue

- 1.1. *The learned PCIT has erred in not considering the fact that the issues relied on for initiating the revision proceedings neither appears to be a mistake in law nor prejudicial to the interests of revenue. The learned PCIT has erred in initiating the revision proceedings under section 263 without taking into consideration the settled position of law that such proceedings can be invoked only if the order passed by the AO is both erroneous and prejudicial to the interests of the revenue*
- 1.2. *On the facts, and in the circumstances of the case, and in law, the learned PCIT has wrongly assumed that the AO has not applied his mind and has erred in not dealing with the objections raised by the Appellant on the validity of notices issued for invoking jurisdiction under Section 263 of the Act.*
- 1.3. *On the facts, and in the circumstances of the case, and in law, the learned PCIT has erred in setting aside the assessment made under section 143(3) of the Act with a direction to redo the assessment after verifying the facts and giving **opportunity to be heard** to the Appellant, ignoring the fact that details were submitted during the **course of** the assessment proceedings and only after due satisfaction to the enquiries, allowed the expense towards interest on delayed payment of service tax/ VAT/ TDS as deductible expenses under section 37(1) of the Act, considering the payment to be compensatory in nature.*

Ground No. 2 —Without prejudice, interest on delayed payment of service tax/ VAT/ TDS is an allowable deduction under section 37 of the Act

- 2.1 *On the facts, and in the circumstances of the case, and in law, the learned PCIT has erred in concluding that, interest on delayed payment of service tax/ VAT/ TDS amounting to INR 1,07,06,000 is not an allowable deduction under section 37 of the Act and hence to be disallowed and added back to the total income.*

2.2 *On the facts, and in the circumstances of the case, and in law, the learned PCIT has erred in not appreciating the facts that, interest on delayed payment of service tax/ VAT/ TDS is a deductible expenses under section 37(1) of the Act, since the payment is compensatory in nature and not any expense towards infringement of any law or an offence prohibited by law. Further there are various judicial precedents supporting the aforesaid contention of the Appellant.*

Ground No. 3 - Relief

3.1. *The Appellant respectfully prays that directions be given to grant all such relief arising from the above grounds, quash the revision proceedings as bad in law and void ab initio and also all relief consequential thereto; and*

3.2. *The Appellant craves leave to add to, or alter, by deletion, substitution, modification or otherwise or withdraw all or any of the Grounds of Appeal herein and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing.*

2. The assessee is a company, filed its return of income for Assessment Year 2016-17 on 13.10.2016, declaring Nil income. The case was selected for scrutiny through CASS and the notice under section 143(2) of the Act was duly served on the assessee. The AO completed the assessment by making a disallowance of Rs.72,12,446/- towards employees' contribution to PF/ESI after the due date vide order dated 24.12.2018. The AO subsequently issued a notice u/s.154 proposing to rectify the mistake with regard to the disallowance of interest on delayed remittance of Service Tax / VAT/ TDS which is part of the finance cost as per schedule 26 of the financial statements. The assessee filed reply giving the breakup the interest paid as given

below and also made submissions stating that the interest paid is compensatory in nature and hence no disallowance is warranted.

Account Head	Amount
Entertainment Tax (Mangalore)-Interest	3,186
Interest on TDS	98,53,799
Service Tax Interest (Tvm)	8,49,279
Total	1,07,06,264

3. The AO did not pass any final order u/s.154. In the meanwhile the PCIT, on verification of assessment records, noticed that the same issue where the assessee has debited an amount of Rs.1,07,06,000/- towards interest on delayed payment of service tax/VAT/TDS. The PCIT issued a show cause notice to the assessee by stating that interest on delayed payment is not an allowable deduction under section 37 of the Act and hence should be disallowed. The assessee filed a reply stating that the impugned amount debited under finance cost is deductible under section 37(1) of the Act and is of compensatory nature. The assessee relied on the decision of the Hon'ble Supreme Court in the case of Prakash Cotton Mills Pvt. Ltd., Vs. CIT (1993) 201 ITR 684 and Mahalakshmi Sugar Mills Co vs CIT (1980) 123 ITR 429 (SC) in this regard. The PCIT did not accept the submissions of the assessee and proceeded to set aside the order of the AO under section 143(3) of the Act with a direction to redo the assessment by relying on the decision of the Apex Court in the case of Bharat Commerce Industries Ltd vs CIT. The relevant extract of the order of the PCIT is as given below:

“7. In the present case the payment of Rs.1,07,06,000 towards interest

on delayed payment of service tax/VAT/TDS was not in any way an expenses incurred wholly or exclusively for the purpose of assessee's business. The assessee's contention on this issue is hence not acceptable

8. After considering all aspects and also after examining the assessment records of the assessee. I find that the assessment order dated 24.12.2018, was completed without due verification and application of mind in the manner it ought to be, resulting in an order erroneous and prejudicial to interests of revenue.

9. The following judicial decisions need to be considered in this context.

I. Assessment made on

1. wrong assumption of facts or
 2. on incorrect application of law or
 3. without due application of mind or
 4. without following the principles of natural justice
- would be 'erroneous'

[CIT Vs. Jawahar Bhattacharjee (2012) 341 ITR 434 (Gau.)(FB)]

II. Failure to apply the correct provision of law as may be applicable in given facts of the case will be resulting in an erroneous order **[CIT Vs. Emery Stone Manufacturing Co.(1995) 213 ITR 843 (Raj)]"**

4. The learned AR submitted that interest paid for delayed payment of Service Tax/VAT/TDS is not penal in nature and therefore should be allowed as a deduction. The learned AR submitted that Co-ordinate Bench in the case of ITO Vs. Lakshadweep Development Corporation Ltd., has held that interest on delayed payment of VAT and TDS is only compensatory and not penal in nature. The learned AR also submitted that the AO has initiated proceeding under section 154 of the Act on the same issue of interest on delayed payments of statutory dues and no order was passed by the AO. It is therefore the

submission of learned AR that when proceedings under section 154 of the Act are pending, PCIT cannot initiate revision proceedings under section 263 of the Act. In this regard, the learned AR relied on the decision of Mumbai Bench of the ITAT in the case of Lotus Energy India Ltd., Vs. CIT ITA No.4355/Mum/2011 dated 14.12.2016. The learned AR further submitted that the details pertaining to the finance cost has been submitted before the AO and the AO has applied his mind while concluding the assessment under section 143(3) of the Act and therefore there is no error or prejudice in the order of the AO.

5. The learned DR submitted that the PCIT has held that the interest on statutory dues of Rs.1,07,06,000/- are not expenses incurred wholly or exclusively for the purpose of assessee's business. The PCIT has invoked revisionary powers for the reason that the AO has not verified the details of the interest on delayed remittance of statutory dues and therefore the PCIT has correctly held the assessment order to be erroneous and prejudicial to the interest of the revenue. The learned AR relied on the decision of Bengaluru Bench of ITAT in the case of M/s.Jindal Aluminium Limited vs DCIT (ITA No.31/Bang/2019, order dated 25.08.2021).

5. We heard the rival submissions and perused the material on record. The main reason for the PCIT to hold the order of the AO to be erroneous and prejudicial to the interest of the revenue is that the AO has not verified the allowability of the interest claimed by the assessee on the delayed remittance of service tax/VAT/TDS. The PCIT did not accept the contention of the assessee that the interest on

delayed payment of tax/VAT/TDS was incurred wholly and exclusively for the purpose of business and accordingly should be allowed as a deduction u/s.37(1). The PCIT further held that the AO has not carried out proper verification with regard to the allowability and accordingly had held that the AO had not applied his mind before allowing the same during the course of assessment. From the perusal of the records, it is noticed that the assessee while filing the details of tax deducted at source has provided details including the interest paid on delayed remittance (page 47 and page 150 of paper book). However there has not been any specific query pertaining to the impugned expenses in the notices issued by the AO u/s.142(1) and also there is no mention in the order of assessment in this regard. Hence we are unable to appreciate the contention of the assessee that the AO has verified the details and applied his mind with regard to the issue under consideration. It may be said that the Income Tax Act nowhere provides the exact modalities to be followed to verify a specific claim made by the assessee and it is the prerogative of the AO to decide the extent of verification. However, it is necessary for the AO to record the extent of verification carried out by him and to record that he has taken a considered view on the matter by proper application of mind while allowing the claim of the assessee in the matter. Therefore, in our view, the PCIT is justified in invoking the provisions of section 263 of the Act on the ground that there is lack of enquiry on the part of the AO. The PCIT, while passing the order under section 263 of the Act, had stated that the impugned expenses is not incurred wholly and exclusively for the purpose of business of the assessee and therefore

cannot be allowed as a deduction. However, we are of the considered view that the issue of allowability of the impugned expenses have to be looked at afresh and has to be decided in accordance with law. We therefore modify the order u/s.263 with a direction to the AO to examine the issues afresh taking an independent view in accordance with law uninfluenced by the observations of the PCIT. It is ordered accordingly.

9. In the result, appeal is allowed in favour of the assessee

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N. V. VASUDEVAN)
Vice President

Sd/-
(PADMAVATHY S)
Accountant Member

Bangalore,
Dated: 21.12.2022.
/NS/*

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.