

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.198/Ind/2021
Assessment Year: 2015-16

Abhay Kumar Jain, Old Bus Stand, Begumganj Raisen	<u>बनाम/</u> Vs.	Pr. CIT-2 Bhopal
(Appellant / Assessee)		(Respondent / Revenue)
PAN: AFQPJ 0679 F		
Assessee by	Shri Ashish Goyal, AR	
Revenue by	None	
Date of Hearing	25.08.2022	
Date of Pronouncement	30.09.2022	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by revision-order dated 25.11.2019 passed by Ld. Pr. Commissioner of Income-Tax-2, Bhopal (in short "Ld. PCIT") u/s 263 of the Income-tax Act, 1961 (in short "the act"), which in turn arises out of assessment-order dated 25.04.2017 passed by Ld. DCIT-5(1), Bhopal (in short "Ld. AO") u/s 143(3) of the act for Assessment Year 2015-16, the assessee has filed this appeal.

2. This appeal was required to be argued by Ld. CIT-DR from revenue side, but when the matter was called for hearing, none appeared on behalf of revenue. It is observed that the revenue has been seeking regular

adjournments. Vide 1st letter dated 12.08.2022, adjournments have been sought for cases fixed on 16.08.2022 to 18.08.2022 on medical-ground of Ld. CIT-DR. Thereafter, vide 2nd letter dated 18.08.2022 (accompanied by a certificate of Dr. Manish Nema), adjournments have been sought for cases fixed on 22.08.2022 to 23.08.2022 on medical-ground. Again vide 3rd letter dated 23.08.2022, adjournments have been sought for the cases fixed on 24.08.2022 to 25.08.2022 on medical-ground and in the same letter it is also mentioned that the charge had been given to a different CIT-DR, but interestingly, it is also mentioned that the new CIT-DR is attending training at IIM, Ahmedabad and therefore unable to represent. It is also observed that in the 2nd letter dated 18.08.2022 and 3rd letter dated 23.08.2022, although request has been made to grant adjournments in “following cases” or “cases as per list” but no details of cases for which adjournments were required is actually furnished. The revenue has not taken care to make a suitable arrangement to represent its cases. Initially for a few days, the ITAT has allowed adjournment-requests but thereafter it was not possible to entertain such requests any more due to discomfort to the litigants and their counsels. Therefore, the adjournment-request of revenue is not accepted in this appeal. We proceed to dispose of appeal after hearing the Ld. AR and material available on record.

3. The registry has informed that the order u/s 263 is claimed to have been served on 27.11.2019 and the appeal is filed on 14.10.2021 after a delay of about 1 year and 261 days and, therefore, the appeal is time-barred. Ld. AR submitted that the assessee has filed an application supported by an affidavit duly sworn seeking condonation of delay. On perusal of these documents and as submitted by Ld. AR, it is observed that initially the notice u/s 263 dated 19.09.2019 was served upon assessee through physical mode and, therefore, the physical-notice reached safely to the assessee and the assessee was able to file a reply on 13.11.2019 as required. Thereafter, after filing this reply, no further communication was made to assessee in physical mode. Even the order u/s 263 dated 25.11.2019 was served on E-mail ID on 27.11.2019 and hence it did not

reach to assessee. It is further stated by assessee that all communications relating to the proceeding of consequential assessment-order, passed in pursuance of the revision-order, were also sent to the same E-mail ID and they too did not reach to the assessee. Hence the assessee could not file any reply to the revenue authorities. Thereafter, the final assessment-order was passed ex-parte on 16.09.2021 and the same was also served on the same E-mail-ID. The assessee has submitted that the E-mail ID used in all above services was pagrawal_1965@yahoo.com which was created by the Chartered Accountant of assessee, Mr. Pankaj Agrawal, years back for use by his own staff for correspondence of clients. Since the assessee was unaware of this E-mail ID, all communications served by department in connection with revision-proceeding (as well as consequential assessment-proceeding) never reached to assessee. Therefore, the assessee was not able to take requisite steps in time. Ld. AR submitted, as noted earlier, that the assessee had promptly filed reply dated 13.11.2019 in response to the notice u/s 263 dated 19.09.2019 because the same was served in physical mode, but could not participate in subsequent proceedings because the communications made by revenue through the aforesaid E-mail. Ld. AR submitted that this clearly shows that the assessee is having participative attitude. Ld. AR further pointed out that it is after passing of consequential assessment-order that the Chartered Accountant, Shri Pankaj Agarwal, who created the aforesaid E-Mail ID, informed the assessee about the revision-order as well as consequential assessment-order. Thereafter, the assessee obtained true copies of all orders and arranged to file this appeal. Ld. AR also submitted that although the total delay is about 1 year and 261 days but, after exclusion of Covid-19 pandemic period, the net delay remains 47 days only. Ld. AR further submitted that due to aforesaid delay, the assessee does not stand to derive any benefit. Relying upon judgment of Hon'ble Supreme Court in **Collector, Land Acquisition vs. Mst. Katiji 167 ITR 471 (SC)**, Ld. AR prayed for condonation of delay. We have considered these submissions of which are averred on duly sworn affidavit as well. Taking into account that the assessee was having sufficient cause

behind the delay, we are persuaded to condone the same and the appeal is proceeded for hearing.

4. By means of various grounds raised in appeal-memo, which we do not reproduce for the sake of brevity, the only grievance of assessee is that the revision-order passed Ld. PCIT u/s 263 alleging the assessment-order passed u/s 143(3) as erroneous and prejudicial to the interest of revenue, is unwarranted and unjustified.

5. Brief facts are such that the assessee filed return of income on 02.11.2015, which was selected for "Limited Scrutiny" through CASS. Ld. AO issued statutory notices u/s 143(2)/142(1) from time to time which were duly complied with by the assessee. Finally, assessment was completed u/s 143(3) after making certain additions. Thereafter, Ld. PCIT examined the records of assessment-proceeding and framed a view that the assessment-order is erroneous as well as prejudicial to the interest of revenue. Accordingly, Ld. AO initiated action u/s 263 which culminated into passing of revision-order dated 25.11.2019 holding that the assessment-order was erroneous and prejudicial to the interest of revenue; setting aside the assessment-order and also directing the Ld. AO to make assessment afresh. Aggrieved by such revision-order, the assessee has filed present appeal and now before us.

6. Ld. AR drew our attention to the show-cause notice dated 19.09.2019, wherein the Ld. PCIT has mentioned reasons of revision-proceeding as under:

"2. From the case records of assessee for A.Y. 2015-16, it was noticed that the case of assessee was selected for the following reasons under the limited scrutiny:-

(1) Large other expenses claimed in the Profit and Loss A/c

(2) High Ratio of refund to TDS.

Against total receipts of Rs.11.79 crores, the assessee has claimed other expenses of 7.03 crores. There is nothing in Assessment order or on record to show that this point has been considered. One of the expenses under the head other expenses is petty contractor expenses amounting to Rs.6.84 crores. The AO neither require nor brought anything on record to examine and verifying the claim of the assessee.

The AO adhocly disallowed Rs.3,85,587/- out of total expenses of Rs.11.43 crores allowing other expenses of the assessee without any verification resulting into High Refund.

The assessee is a government contractor and as per Accounting Standard-7, the contractor required to follow percentage completion method for revenue recognition. The instant case, assessee is following project completion method or Hybrid method which is not examined by the AO.

Total material purchase of the assessee is Rs.2.19 crores out of which 1.21 crore is still standing as sundry creditor which need verification in light of the Huge refund claim by the assessee. Other expenses which needs verification is labour welfare and salary. AO should have called for labour lincese, PF challans, salary register, attendance register for verification. AO should have examined the payment of royalty charges and assessee is involved in mining and the profit is clearly understated.

On perusal of case record and assessment order dated 25.4.2017, it is observed that the assessing officer has failed to address the reasons for assessment under limited scrutiny for verifying the revenue recognition method followed by assessee. Further as per 26(i)(B)(b) of 3CD Report (the details of the same have been mentioned in Annexure No.5) for the year ended 31st March 2015, the VAT of Rs.24,26,692/- was not paid and no record was found in the case filed regarding payment of VAT on or before filing the return of income for the A.Y.2015-16 .Thus VAT amounting to Rs. 24,26,692/- was required to be

disallowed and added back to the assessee's income under section 43B at the time of regular assessment which was not done.

3. Assessment in the said case, u/s 143(3) dated 25.04.2017, was finalized without considering the above mentioned facts. This omission on part of the AO, renders the order erroneous as well as prejudicial to the interests of revenue. Therefore, I propose to invoke power vested u/s 263 of the Income-tax Act, 1961 in respect of the order referred to above."

7. Analysing the contents of aforesaid notice, Ld. AR made a preliminary submission, which we would like to narrate at the outset. According to Ld. AR, the Ld. PCIT has mentioned that the case of assessee was selected for the following reasons under "limited scrutiny":

(1) Large other expenses claimed in the Profit and Loss A/c

(2) High Ratio of refund to TDS.

Ld. AR carried us to the scrutiny-notice u/s 143(2) placed at Page No. 33 of the Paper-Book and demonstrated that the Point No. (2) was "Refund claim" and not "High ratio of refund to TDS" as mentioned by Ld. PCIT. According to Ld. AR, this point is going to make a substantial difference in adjudication of this appeal and therefore it must be kept in view that the reason of "limited scrutiny" was "Refund claim" and not "High ratio of refund to TDS".

8. Then, Ld. AR made a detailed submission, point by point, on various reasons cited by Ld. PCIT as basis which warranted revision. Ld. AR also carried us to the Paper-Book which runs over 112 pages to demonstrate as to how those reasons, as taken by Ld. PCIT, had already been examined by Ld. AO or they were outside the scope of 'limited scrutiny'. We summarise below the crux of submissions of Ld. AR:

	Reason advanced by Ld. PCIT	Submission of Ld. AR
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(i)	<p>Against total receipts of Rs.11.79 crores, the assessee has claimed other expenses of 7.03 crores. One expenditure is “petty contractor expenses” amounting to Rs.6.84 crores. The AO neither require nor brought anything on record to examine and verifying the claim of the assessee. The AO adhocly disallowed Rs. 3,85,587/- out of total expenses of Rs. 11.43 crores allowing other expenses of the assessee without any verification resulting into High Refund.</p>	<p>In Point No. 3 of letter dated 06.03.2017 captioned as “Other Expenses” (Paper-Book Page No. 39), the assessee supplied complete item-wise details of expenditure of Rs. 7,03,37,980/- in a tabular form to Ld. AO. Just below the Table, the assessee also submitted that since the Income-tax Return form did not have separate rows/columns for each item, the assessee had to club all those items and fill a single figure of Rs. 7,03,37,980/- in “Other Expenses”. Ledger accounts of those expenses were also filed.</p> <p>Complete ledger A/c of “Petty Contractor Exp.” alongwith bills and vouchers were filed. TDS was also deducted out of payments made to contractors. Copies of all documents as filed to Ld. AO are verifiable at Page No. 39, 40, 45 to 58 and 59 to 61 of the Paper-Book. These documents were again filed in letter dated 15.03.2017 (Paper-Book Page No. 62).</p> <p>Ld. AO scrutinized and verified those details and documents. Only thereafter he concluded that some expenses were not verifiable and hence made 10% disallowance.</p>
(ii)	<p>The assessee is required to follow percentage completion method for</p>	<p>“Method of revenue recognition” was not a subject-matter of “limited</p>

	<p>revenue recognition but the assessee has followed project completion method or Hybrid method which is not examined by the AO.</p>	<p>scrutiny” at all, therefore the AO did not have any authority or duty to examine this point. Reliance is placed on decision of ITAT Indore in Rakesh Khandelwal Vs. PCIT, ITA No. 204/Ind/2019 where it has been held that revision jurisdiction u/s 263 cannot be invoked <i>qua</i> the items which were beyond the scope of limited scrutiny.</p> <p>Even otherwise, present case relates to AY 2015-16 when there was no specific provision in Income-tax Act, 1961 for % completion method. It is only from 01.04.2017 that the Govt. prescribed % completion method by introducing section 43CB through Finance Act, 2018. Prior to that, an assessee was having choice of % completion or project-completion method as held by ITAT, Mumbai in Trident Estate (P) Ltd. (2021) 127 Taxman.com 360.</p>
(iii)	<p>Total material purchase of the assessee is Rs. 2.19 crores out of which 1.21 crore is still standing as sundry creditors which need verification in light of the Huge refund claim by the assessee.</p>	<p>“Outstanding sundry creditors” is nothing to do with “refund claim”. This was not a subject-matter of “limited scrutiny” at all, therefore the AO did not have any authority or duty to examine this point. Reliance is placed on decision of ITAT Indore in Rakesh Khandelwal Vs. PCIT, ITA No. 204/Ind/2019 where it has been held that revision jurisdiction u/s 263 cannot be invoked <i>qua</i> the items which</p>

		<p>were beyond the scope of limited scrutiny.</p> <p>Despite being no necessity, Ld. AO has examined this point and the assessee has filed complete details by way of Annexure-4 to the letter dated 06.03.2017 (Paper-Book Page No. 40) under the caption "Sundry Creditors". The said Annexure-4 contains names and addresses of creditors alongwith closing balance as on 31.03.2013; closing balance as on 31.03.2014; opening balance as on 01.04.2014, payments made during the year 2014-15 and closing balances as on 31.03.2015.</p>
(iv)	Other expenses which needs verification is labour welfare and salary. AO should have called for labour license, PF challans, salary register, attendance register for verification.	This point was not a subject-matter of "limited scrutiny", therefore the AO did not have any authority or duty to examine this point. Reliance is placed on decision of ITAT Indore in Rakesh Khandelwal (Supra) .
(v)	AO should have examined the payment of royalty charges and assessee is involved in mining and the profit is clearly understated.	Ld. PCIT has made an incorrect observation. The assessee is engaged in govt. contractorship business and not at all in mining business.
(vi)	AO has failed to address the reasons for assessment under limited scrutiny for verifying the revenue recognition method	This point is already covered in Point No. (ii) above.

	followed by assessee.	
(vii)	As per 26(i)(B)(b) of 3CD Report, VAT of Rs. 24,26,692/- was not paid and no record was found in the case filed regarding payment of VAT on or before filing the return of income. Thus VAT amounting to Rs. 24,26,692/- was required to be disallowed and added back to the assessee's income u/s 43B which was not done.	<p>This point was also not a subject-matter of "limited scrutiny", therefore the AO did not have any authority or duty to examine this point. Reliance is placed on decision of ITAT Indore in Rakesh Khandelwal (Supra).</p> <p>Furthermore, there was no VAT liability outstanding as on 31.03.2015, which is very much clear from the Balance-Sheet placed at Page No. 25 of the Paper-Book. Unfortunately, the auditor has wrongly mentioned outstanding liability of VAT in Tax Audit Report. The assessee is a Govt. contractor where VAT is deducted by Govt. at source and paid to VAT department. The assessee does not owe any liability of VAT in fact. This point was also brought to the notice of Ld. PCIT during revision-proceeding, but the Ld. PCIT has brushed aside the submission of assessee for no reason.</p>

9. With aforesaid submissions at length, Ld. AR strongly contested that the Ld. AO has made sufficient and due enquiries as per scope of "limited scrutiny" and there is neither any lack of enquiry on the part of Ld. AO nor the assessment-order is erroneous or prejudicial to the interest of revenue in any manner. Hence, the revision-order is not in terms of section 263 of the act and must be quashed.

10. We have considered the submissions of Ld. AR and also carefully perused the documents pointed out by Ld. AR. After a mindful consideration

of the detailed submissions as narrated above, which we do not want to repeat again for the sake of brevity, we agree with the Ld. AR that the Ld. AO has made sufficient enquiries during the course of assessment-proceeding as per the selection of case for "limited scrutiny". We observe that the various issues cited by Ld. PCIT, as discussed above, have either been adequately examined by Ld. AO or they were beyond the scope of "limited scrutiny". Being so, we are of the view that the present case did not give rise to revision-proceeding. Hence, the action taken and order passed by Ld. PCIT does not satisfy the requirement of section 263. Accordingly, the grounds raised by assessee in present appeal are allowed, the revision-order is quashed and the original assessment-order is restored.

11. In the result, this appeal of Assessee is allowed.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 30/09/2022.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 30.09.2022

Patel/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*

1.	Date of taking dictation	13.9.22
2.	Date of typing & draft order placed before the Dictating Member	18.9.22.....
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the fair order is placed before the Dictating Member for pronouncement	
5.	Date on which the file goes to the Bench Clerk	
6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	
8.	Date of dispatch of the Order	