

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**
**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. Nos. 275 to 281/Asr/2017
Assessment Years: 2007-08 to 2013-14

M/s Healthaid Foods Specialist Pvt. Ltd., A-170, Ranjit Avenue, Amritsar Vs. Pr. Commissioner of Income Tax (Central), Ludhiana

[PAN: AAACH 4001M]

(Appellant)

(Respondent)

Appellant by : None

Respondent by: Sh. Rohit Mehra, CIT- DR

Date of Hearing: 10.02.2023

Date of Pronouncement: 15.02.2023

ORDER

Per Bench:

These seven instant appeals of the assessee were filed against the order of the learned Principal Commissioner of Income-tax (Central), Ludhiana(in brevity of PCIT)- are identical and having common order for all assessment years that were passed u/s.263 of the Income Tax Act, 1961 (in brevity “the Act”), dated 17.03.2017 by revising the respective assessment orders, passed by the learned

DCIT, Central Circle, Amritsar (in brevity by AO), order passed u/s. 153A r.w.s 143(3) of the Act involving proceedings u/s. 263 of the Act. At the outset, the relevant factual backdrop as well as the issues involved in all the cases are identical. We, therefore, treat the Assessee's appeal, ITA no. 280/ASR/2017 for the Assessment Year 2012 – 2013 as the lead case.

2. When the appeal was called for hearing, no one appeared on behalf of assessee to represent his case. There is no application for seeking adjournment either. On perusal of record, we find that the hearing is scheduled on 09/02/2023. Previously the dates were fixed number of times. Considering the issue, the cases were refixed on 10/02/2023. But none was present on behalf of the assessee and no adjournment petition was filed before the bench. In view of the above and considering the nature of dispute, we proceed to dispose the appeal *ex-parte qua* the assessee after hearing the learned DR and on the basis of material available on the record.

ITA No. 280/ASR/2017, AY 2012-13

3. The assessee has taken the grounds of appeal. But later filed the additional amended grounds of appeal which are reproduced as below:

“Additional Amended Grounds of Appeal

This is an appeal against the order dated 17.03.2017 passed by the Worthy Pr. Commissioner of Income Tax (Central) Ludhiana under section 263 of the Income Tax

Act, 1961 for the assessment year 2012-13 where worthy Pr. Commissioner of Appeals (Central) has made the following additions:

- 1) The question for the consideration before this Hon,ble Bench is whether the Pr. CIT(Central) is competent to re-adjudicated the same issue when the issue has duly been considered and adjudicated by the AO while making the assessment and there is no lack of enquiry on the part of the AO.*
- 2) The question for the consideration of this Hon'ble Bench is whether the assessment order can be said to be erroneous and prejudicial to the interest of revenue where the AO has taken one of the possible views with which the Pr. CIT(Central) does not agree and has substituted his opinion for the opinion of the AO by rephrasing the evidence on record. Hence, the action of the Pr.CIT(Central) is setting aside the order of the AO against the parameters of revisional jurisdiction of the Commissioner of Income Tax as provided u/s. 263 of the Act and the order is liable to be quashed.*
- 3) The ld. Pr. Commissioner of Income Tax (Central), Ludhiana has grossly erred in facts and law in assuming jurisdiction u/s. 263 and cancelling order on the ground that the AO has failed to examine the payment of salary to family members with reference to qualification, experience, services rendered and genuineness of salary paid. Whereas the statement of the family members was recorded and all these issues have been examined and assessment were framed u/s. 153A of the Act after due application of mind.*
- 4) The ld. Pr. Commissioner of Income Tax (Central), Ludhiana has erred in facts and law in assuming jurisdiction u/s. 263 and cancelling order passed u/s. 153A/143(3) without examining the assessment records, whereas the investment in Plant and Machinery and Buildings at Ajnala Road and New Focal Point were completely examined at the time of examination of books of accounts of the Appellant and its family members.*
- 5) The Ld. Pr. Commissioner of Income Tax (Central), Ludhiana has erred in the facts and law in assuming jurisdiction u/s. 263 and cancelling order passed u/s.*

153A/143(3) ignoring the fact that the credit worthiness and genuineness of transaction of Unsecured Loans have been examined at the time of assessment proceedings as all the depositors were family members and were assessed u/s. 153A/143(3) of the Act.

- 6) *The Id. Pr. Commissioner of Income Tax (Central), Ludhiana has erred in facts and law in assuming jurisdiction u/s. 263 and cancelling order passed u/s. 153A/13(3) ignoring the facts and the seized documents were totally explained vide reply dated 18.12.2014 at the time of the assessment proceedings u/s. 153A/143(3) of the Act.*
- 7) *That the observation made are against facts and do not afford any legal justification to the order passed. The explanations given and the details filed have not been properly looked into the provisions have not been properly appreciated and judicially interpreted. The order passed is unjust and unlawful.*
- 8) *That the Appellant craves leave to amend, alter or delete any of the above grounds till the appeal remains undisposed off.”*

4. The brief fact of the case is that the Id. PCIT has initiated notice u/s 263 of the Act for setting aside the order of the Id. AO which is detected erroneous and prejudicial to the interest of the revenue. Search and seizure operations u/s. 132 of the act and survey u/s. 133A of the act were conducted on the business premises of the assessee as well as residential premises of Directors. The assessee company is engaged in the business of manufacturing of Desi Ghee and Milk products etc. During the search/survey operation assessee admitted that there was a discrepancy of Rs. 30.00 lacs as per the documents impounded/seized from the various premises. The assessee has voluntarily disclosed an additional income at Rs. 2.8

crores over and above the normal income for impugned assessment year. In revision proceedings u/s. 263 the ld. PCIT found that there was no investigation in assessment related to issues involved in case of assessee which are as follows:-

- i. *Stock declared in bank amount of Rs. 29.9 crores and value of stock as per books of accounts at Rs. 22.7 crores. There was no investigation by the ld. AO about the difference in stock.*
- ii. *In inventories and stock like ghee, WMP, SMP were found short to the extent of Rs.3,24,87,625/- which appears to have been sold outside the books of accounts, accordingly addition of Gross Profit of undisclosed sales has not been made by the AO.*
- iii. *As per report of ADIT (INV)-I, Amritsar reported that the ladies which were getting salary from the company are household ladies and in any way were not connected to the business affairs. But the ladies Mrs. Monisha Arora and Mrs. Ankita Arora withdrawing salary from the assessment company. The ld. AO has failed to examine this issue with reference to qualification, experience, services rendered and genuineness of the salary paid to these persons.*
- iv. *As per ld. PCIT, the ld. AO has failed to examine the investment in land, building, Plant & Machinery by the assessee in support of the documentary evidence. Mere supply of the ledger accounts do not serve the purposes.*
- v. *The ld. AO was failed to examine the unsecured loans from different entities. The credit worthiness and genuineness of the transaction was not verified during the assessment proceedings. So there is no investigation in relation to the loan creditors of the assessee.*
- vi. *The Ld. PCIT also pointed out that documents found and seized during the search, digital evidence found and seized during the search has not been thoroughly examined whether they are accounted or not account.*

Considering the discrepancies in the assessment proceedings, the Id. PCIT was setting aside the order of the assessment for assessment year 2007-08 to 2013-14 for reassessment. Being aggrieved assessee filed appeal before us by challenging the order of section 263 of the Act.

5. The assessee had filed written submissions and paper book which was kept in the record. By perusal the assessment order, the relevant part of the order is reproduced as below:-

“09. Since the assessee has himself tried to cover up this discrepancy in this year, the same is being considered here itself although it is a repetitive one in the various assessment years. Besides the sales in this year are also the maximum account statements, the assessee has disclosed an additional income of only Rs. 2.80 core, for which however he has not been able to furnish the quantitative details. However, this does not cover the circular trading undertaken through the sister concern. It is seen that out of the total sales of Rs. 120.8 crores in this year, sales of about Rs. 30 crore were made through the sister concerns of the assessee for which the complete details as per questionnaires have not been filed. Considering all these facts the disclosure of Rs. 2.80 cores made by the assessee is on the lower side and does not cover the complete discrepancies in this case. Accordingly, by estimating the profits @1% o of the sales of Rs. 30 crores diverted through the sister concerns, an addition of Rs. 30 lacs is being made in this case on account of suppressed profits of the sales through sister concerns. Penalty proceedings u/s 271AAA are being initiated on the undisclosed income of the assessee.

10. Accordingly, the Income of the assessee is computed as under:

Returned Income

= Rs. 2,84,60,341/-

Add: Addition as above

= Rs. 30,00,000/-

Total Income

= Rs.3,14,60,341/-

6. The Id. DR for revenue vehemently argued & relied on the order of revenue authorities.

7. We consider the submissions and peruse the documents available in the record, and considered the orders of both the Revenue Authorities. In assessment order the Id. AO only restricted the investigation on the basis of disclosure made by the assessee. There is no of investigations in the point of stock, genuineness of salary payment to the ladies, out of books sales, genuineness and credit worthiness of the loan received by the assessee from parties & verification of investment in fixed assets. In assessment, the Id AO only to cover up the issue as disclosed by the assessee, during the search/survey proceedings. Due to absence of investigation in assessment, the order is called erroneous. Also order of assessment is prejudicial to the interest of revenue. The Id. PCIT had correctly considered the issues in the order passed u/s.263 of the Act. Hence, we are inclined in the observations made by the Id. PCIT in his order. Therefore, under these circumstances, we do not find any valid reason to interfere with the order passed by learned PCIT. Accordingly, the impugned order passed u/s.263 of the Act is upheld.

8. Considering this, ITA appeal no. 280/Asr/2017 is dismissed & the ITA 280/Asr/2017 is *mutatis mutandis* applicable for other appeal of the assessee also.

9. In the result, the appeal of the assessee ITA Nos. 275 to 281/Asr/2017 are dismissed.

Order pronounced in the open court on 15.02.2023

Sd/-
(Dr. M. L. Meena)
Accountant Member

Sd/-
(Anikesh Banerjee)
Judicial Member

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Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(A),
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T
- (6) The Guard File

True Copy
By Order