

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'F' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 1411/Mum/2022 (A.Y. 2017-18)

Sprint Advisory Services Pvt. Ltd. Knowledge House, Shyam Nagar Off Jogeshwari-Vikhroli Road Jogeshwari East, Mumbai-400060. PAN : AAJCS0579E (Appellant)	Vs.	PCIT-3 Room No. 612 6 th Floor Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
--	-----	---

Assessee by	Shri Vipul Joshi & Ms. Rashmi Vyas
Department by	Shri Ankush Kapoor
Date of Hearing	29.03.2023
Date of Pronouncement	18.04.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the revision order dated 29.3.2022 passed by learned PCIT-3, Mumbai and it relates to A.Y. 2017-18. The assessee is challenging the validity of revision order passed by learned PCIT.

2. The facts relating to the case are stated in brief. The assessment in the hands of the assessee for the year under consideration was completed by the Assessing Officer on 25.12.2019 under section 143(3) of the Act. On examination of the assessment record, the learned PCIT noticed that the assessee has issued share capital to the three companies including foreign company. The assessee has issued at par in aggregate 2,71,43,546 number of shares having face value of Rs. 10/- each. Though the Assessing Officer has issued notice under section 133(6) of the Act to the above said companies, according to learned PCIT they have not given nature and source

of investments made by them, meaning thereby, the learned PCIT took the view that the Assessing Officer has not examined the share capital receipts properly under section 68 of the Act. The Learned PCIT also noticed that the assessee has made investment of Rs. 738.62 crores but did not make the disallowance under section 14A of the Act. The Learned PCIT also noticed that the Assessing Officer had raised a specific query on disallowance under section 14A of the Act and assessee has replied that it has not earned any exempt income and hence no disallowance under section 14A was made. According to learned PCIT, the Assessing Officer has accepted the above said contention of the assessee without properly examining the issue in accordance with the circular issued by the CBDT. Accordingly, the learned PCIT took the view that the assessment is erroneous and prejudicial to the interests of revenue and accordingly initiated revision proceedings under section 263 of the Act. After hearing the assessee, the learned PCIT concluded that the assessment is erroneous in so far as it is prejudicial to the interest of revenue. Accordingly, he set aside the assessment order and directed the Assessing Officer to pass a fresh assessment order on both the issues discussed above.

3. Aggrieved, the assessee has filed this appeal before the Tribunal.

4. Learned AR submitted that the Assessing Officer has examined both the issues during the course of assessment proceedings. In this regard, the learned AR invited our attention to the notice dated 10.11.2019 issued under section 142(1) of the Act. He submitted that question No. 5 raised in the above said notice related to the disallowance to be made under section 14A of the Act and question Nos. 6.4 to 6.7 were related to the share capital issued by the assessee. The Learned AR submitted that the assessee has given due replies to the Assessing Officer with regard to the above said both the issues and the AO has accepted them.

5. With regard to the disallowance to be made u/s 14A of the Act, the Ld A.R submitted that the assessee did not earn any exempt income and hence no disallowance u/s 14A of the Act as per decisions rendered by various High Courts. Hence the view taken by the AO is a possible view. With regard to share application money, he submitted that major amount of share application money was collected from two Indian entities, viz., M/s. Future Corporate Private Limited and M/s. Future Enterprises Limited. He submitted that both these companies are group concerns of the assessee. He further submitted that the Assessing Officer has issued notices under section 133(6) of the Act to both the above said two companies calling for details. He submitted that both the above said share applicants have replied to the notices issued by the Assessing Officer under section 133(6) of the Act confirming the investments made by them in the assessee-company. Further they have also furnished copies of their income tax return alongwith financial statements and copies of their bank accounts. Hence it cannot be said that the AO has not made proper enquiries with regard to this issue. Accordingly, the learned AR submitted that the Assessing Officer has examined both the issues and has taken possible view of the matter. Accordingly, he contended that the impugned assessment order cannot be considered as erroneous and prejudicial to the interest of Revenue.

6. On the contrary, the learned DR submitted that the Assessing Officer has not followed the Circular issued by the CBDT with regard to the disallowance to be made under section 14A of the Act, he submitted that the assessee had offered explanation that no disallowance u/s 14A is called for since it did not earn any exempt income. However, the CBDT circular states that the disallowance is required to be made even if the assessee did not earn exempt income. He submitted that the CBDT circular is binding on the AO. With regard to share application money received by the assessee, the Ld D.R submitted that the Assessing Officer has not properly examined the documents furnished by the share applicants in order to find out the

creditworthiness for making impugned investments in the assessee-company. He submitted that both the share applicant companies did not earn much income commensurate with the amount of investment made and this fact has not been examined by the AO. Accordingly, the learned DR submitted that the AO has not conducted proper inquiry in respect of both the issues. Accordingly, he contended that the Ld PCIT was justified in holding that the impugned assessment order is erroneous and prejudicial to the interest of revenue.

7. In the rejoinder, the Ld A.R submitted that the AO has accepted the claim that no disallowance is called for u/s 14A of the Act on the basis of decisions rendered by Hon'ble High Courts. With regard to the share application money, he submitted that both the share applicants had enough resources for making the impugned investments and hence their profitability is not relevant for examining their credit worthiness.

8. We heard rival contentions and perused the record. The scope of revision proceedings initiated under section 263 of the Act was considered by Hon'ble Bombay High Court, in the case of *Grasim Industries Ltd. V CIT (321 ITR 92)* by taking into account the law laid down by the Hon'ble Supreme Court in the case of *Malabar Industrial Co Ltd (243 ITR 80)*. The relevant observations made by Hon'ble Bombay High Court are extracted below:

“Section 263 of the Income-tax Act, 1961 empowers the Commissioner to call for and examine the record of any proceedings under the Act and, if he considers that any order passed therein, by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue, to pass an order upon hearing the assessee and after an enquiry as is necessary, enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment. The key words that are used by section 263 are that the order must be considered by the Commissioner to be “erroneous in so far as it is prejudicial to the interests of the Revenue”. This provision has been interpreted by the Supreme Court in several judgments to which it is now necessary to turn. In *Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83*, the Supreme Court held that the provision “cannot be invoked to correct each and every type of mistake or error committed by the Assessing

Officer” and “it is only when an order is erroneous that the section will be attracted”. The Supreme Court held that an incorrect assumption of fact or an incorrect application of law, will satisfy the requirement of the order being erroneous. **An order passed in violation of the principles of natural justice or without application of mind, would be an order falling in that category.** The expression “prejudicial to the interests of the Revenue”, the Supreme Court held, it is of wide import and is not confined to a loss of tax. What is prejudicial to the interest of the Revenue is explained in the judgment of the Supreme Court (headnote) :

“The phrase ‘prejudicial to the interests of the Revenue’ has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law.”

The principle which has been laid down in Malabar Industrial Co. Ltd. [2000] 243 ITR 83 (SC) has been followed and explained in a subsequent judgment of the Supreme Court in CIT v. Max India Ltd. [2007] 295 ITR 282.”

The Hon’ble Supreme Court has held that the existence of twin conditions, viz., the assessment order should be erroneous and it should be prejudicial to the interests of revenue, should be shown in the revision order passed u/s 263 of the Act. If there are two possible views and the AO has taken one of the possible views, then the order cannot be considered to be prejudicial to the interests of revenue.

9. In the instant case, it was the contention of the assessee that it did not earn exempt income and hence no disallowance u/s 14A of the Act is called for. The above said contention of the assessee is supported by decisions rendered by various High Courts. The assessee has relied upon the decision rendered by Hon’ble Delhi High Court in the case of CIT vs. Holcim India (P) Ltd (272 CTR 1282)(Delhi) and also other decisions. With regard to the contention on the binding nature of circulars issued by CBDT, the assessee

has placed reliance on the decision rendered by Hon'ble Supreme Court in the case of Commissioner of Central Excise, Bolpur vs. M/s Rattan Melting & Wire Industries (Civil Appeal No. 4022 of xxxx dated 14th October, 2018), wherein the Hon'ble Supreme Court has held that the decision rendered by High courts would prevail over the Circular issued by CBDT. In this case, the AO has accepted the contention of the assessee that no disallowance u/s 14A of the Act is called for when no exempt income was earned on the basis of decisions rendered by High Courts. Accordingly, we have to hold that the assessment order cannot be considered to be erroneous and prejudicial to the interests of revenue on this issue.

10. With regard to the Share application money received by the assessee, we notice that the assessee has issued shares at Par, i.e., no share premium was received. Secondly, it was issued to group companies only, i.e., it is case of transfer of funds between group companies. Thirdly, we notice that the assessee has furnished all the details in order to discharge the onus placed upon it u/s 68 of the Act. After that, the AO has also issued notices u/s 133(6) of the Act to the two share applicants and both the share applicants have also duly responded to the notices by furnishing confirmation, bank statements, financial statements etc. The replies so given by the investor companies did not contradict with the submissions made by the assessee. With regard to the credit worthiness, as rightly contended by Ld A.R, one has examine the availability of the funds/resources with the investor companies for making impugned investments rather than their profitability. It is not the case of Ld PCIT that the investor companies did not have resources, which has actually escaped the attention of the AO. Hence, in the facts of the present case, it cannot be said that the AO did not make proper enquiries. Accordingly, the view taken by the AO on this issue is also a possible view.

11. In view of the foregoing discussions, we are unable to agree with the view taken by Ld PCIT on both the issues and accordingly hold that the

impugned assessment order cannot be considered to be erroneous and prejudicial to the interests of revenue. Accordingly, we quash the impugned revision order passed by Ld PCIT.

12. In the result, the appeal filed by the assessee is allowed.

Pronounced in the open court on 18.4.2023.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(B.R. BASAKARAN)
Accountant Member

Mumbai; Dated : 18/04/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS