

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.175/Ind/2022
Assessment Year: 2017-18

Jankilal 12, Chimanganj Mandi Agar Road, Ujjain	बनम/ Vs.	Pr.CIT-1 Indore
(Appellant / Assessee)		(Respondent / Revenue)
PAN: ACZPJ 2632 A		
Assessee by	Shri Manoj Fadnis, AR	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing	08.02.2023	
Date of Pronouncement	18.04.2023	

आदेश / O R D E R

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

Feeling aggrieved by revision-order dated 25.02.2022 passed by learned Pr. Commissioner of Income-Tax, Indore-1 [**“Ld. PCIT”**] u/s 263 of Income-tax Act, 1961 [**“the Act”**], which in turn arises out of assessment-order dated 05.02.2019 passed by learned ITO-1(1), Ujjain [**“Ld. AO”**] u/s 143(3) of the act for Assessment-Year [**“AY”**] 2017-18, the assessee has filed this appeal on the grounds raised in Appeal-Memo.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. The registry has informed that that present appeal is filed after a delay of 45 days and therefore time-barred. Ld. AR prayed that the assessee

has filed an application supported by an affidavit for condonation of delay. He submitted that the delay has occurred due to Covid-19 Pandemic. He further submitted that the present appeal was filed on 10.06.2022 and the last date for filing of appeal pursuant to the decision of Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020 read with Misc. Applications** was 29.05.2022; therefore the delay is only of about 12 days. Ld. AR submitted that even the delay of 12 days has occurred due to non-availability of manpower and disruption of business caused by Covid-19. Ld. AR very humbly submitted that there is a small delay of few days and that too because of the reason beyond assessee's control; hence the same may be condoned. We confronted the Ld. DR who did not show any objection. In view of this, we condone the delay and proceed for hearing.

4. Briefly stated the facts are such that the assessee submitted return of income of relevant AY 2017-18 on 31.10.2017 which was subjected to scrutiny assessment. Finally, the Ld. AO completed the assessment u/s 143(3) at the returned income. Subsequently, the Ld. PCIT examined the record of assessment-proceeding and viewed that the assessment-order passed by Ld. AO is erroneous in so far it is prejudicial to the interest of revenue, which attracts revisionary-jurisdiction u/s 263. Accordingly, Ld. PCIT issued a show-cause notice 27.01.2022 u/s 263 of the act.

5. By the aforesaid show-cause notice, the assessee was asked to explain as to why the assessment-order may not be revised. In response thereto, the assessee made a detailed submission to Ld. PCIT which is re-produced in Para No. 3 of the revision-order.

6. However, none of those submissions impressed the Ld. PCIT. Ultimately, Ld. PCIT passed revision-order mentioning eight (8) issues that were not examined/enquired by Ld. AO; these issues as concluded in Para No. 4.1 to 4.8 of the revision-order and are being re-produced below for a ready reference:

“4. I have gone through the assessment records, contents of the show cause notice as well as submission filed on behalf of the assessee. It is observed that the AO in the present case completed the assessment as per the returned income without verifying various aspects relevant to the assessment, the details of which are as under:

4.1. On perusal of P&L A/c, it is seen that the assessee had debited an amount of Rs. 1,14,43/- under the head Security Expenses. On further perusal of Col. 21(b) (ii) of the Audit Report in form 3CD, it is evident that the auditors had qualified mentioning that TDS has not been made on Security Services payment amounting to Rs. 1,14,433/- made to Sagar Security Services. In submission dated 12th November, 2019, the assessee has stated that as the payee has duly considered this income in return and has paid due taxes thereon, you are not an assessee in default u/s 201(1) of the Act and hence no disallowance has been made u/s 40(a)(ia) of the Act and that certificate to this effect will be submitted shortly. However, no such certificate in Form No 26A as required to be furnished as per the provisions of Rule 31ACB rws 40(a)(ia) and section 201 of the Act has been submitted by the assessee till the completion of assessment. Therefore payment made to Sagar Security Service amounting to Rs. 1.14.433/- was required to be disallowed.

4.2. On perusal of return of income it is seen that The assessee has claimed deduction of Rs 11,87,697/ u/s 80IB of the Act. The assessee vide submission dated 12/11/2019 has stated that he has constructed cold storage building for another business in the name of Dwarkadhish Cold Storage and is eligible to claim deduction u/s 80IB and accordingly has claimed from this year. Further, the assessee Vide, submission dated 21/11/2019 has also stated that the assessee has fulfilled various conditions for claiming deduction w/s 80IB and submitted a copy of audit report in Form No. 10CCB as per Rule 18BBB which was not submitted earlier along with ROI. The assessee has placed reliance on various judicial decisions on furnishing of Form No. 10CCB during the course of assessment proceedings and before completion of assessment if the same has not been furnished along with ROI.

On perusal of the P&L A/c and computation of total income, it is observed that the assessee has claimed excess deduction u/s 80IB by an amount of Rs. 31,234/-. As per the P&L A/c the profit derived from Dwarkadhish cold storage is Rs. 11,87,697/- which include Rs. 31,234/ as interest income received on deposits. The assessee in the computation of total income has reduced this income from the net profit and offered the same under the head income from other sources. Thus, the profit for the purpose of claim of deduction u/s 80IB was also required to be reduced to that extent so the claim of deduction. However, it is evident that the the assessee has claimed deduction of Rs. 11,87,697/- which is also not correct and accordingly an addition to the tune of Rs. 31,234/- was required to be made to the total income.

4.3. On perusal of record, it is found that there has been a fall in GP as well as NP but the reasons for the same and the basis of valuation of closing stock have not been called for and verified. Sundry creditors of Rs. 92,35,758/-,

Transportation expenses of Rs. 35,43,689/- and nature of sundry balances written off amounting to Rs. 14,80,172/- has not been verified.

4.4. On perusal of bank statements, it is found that there are huge cash deposits in all the bank accounts on various dates. However, the sources and availability of cash on hand for such deposits has not been verified from cash book. It is also seen from the balance sheet that an amount of Rs. 29.67,528/- is shown as interest on term loan payable in the Sch. B of Secured Loans. The assessee vide submission dated 12/11/2019 has stated that The assessee has already paid the outstanding interest on term loan before due date of filing of return and no amount is disallowable u/s 43B, However, no documents/evidences in support has been submitted by the assessee nor verified by the A.O. during course of assessment proceedings.

4.5. It is also evident that the assessee had received interest income from bank on FDR and other deposits and after netting off interest expenses to the tune of Rs. 31,50,370/- has been debited to P &L A/c. However, detailed interest a/c has not been submitted and no enquiry had been made to verify as to whether all the interest income has been properly incorporated in the interest a/c while netting off.

4.6. It is also evident that the assessee has given loans and advance to the tune of Rs. 3,98,540/- to Smt, Vandana Aelani. It was not verified as to whether any interest has been charged on this loans and advances or not? If no interest has been charged. Proportionate disallowance out of interest expenses would have been warranted.

4.7. The assessee, in submission dated 21/11/2019 and 27/11/2019 has referred to submission dated 09/02/2019 made earlier. But no such submission is found placed on records, Further, the auditors in the audit report in Form No. 3CD has not mentioned correct PANs of Sagar security Services and Neelam Construction (in whose case unsecured loan of Rs. 10,00,000/ has been repaid during the year) and random/dummy hypothecated PANs have been mentioned. No investigation was carried out to get correct PAN.

4.8. Details of family members and household withdrawals made by the assessee has not been called and verified. Thus, the issue of sufficiency of withdrawals made for household expenses by the assessee and his family members have not been verified. Therefore, neither the assessing officer has made complete verification of facts nor there is complete submission filed by the assessee substantiating the correctness of the claim in respect of the above transactions for AY 17-18.”

7. Ld. PCIT also observed that since the section 263 has been amended and Explanation 2, as reproduced below, had been introduced therein, the assessment-order is deemed to be erroneous-cum-prejudicial to the interest of revenue if the same had been passed without inquiries or verification which should have been made:

“Explanation 2 – “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 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;*
- (c)*
- (d) ...”*

8. Finally, the Ld. PCIT concluded that the Ld. AO has not carried out the inquiry/verification which he should have done and hence the assessment-order is erroneous in so far as it is prejudicial to the interest of revenue. Accordingly, the Ld. PCIT passed revision-order u/s 263 whereby the assessment-order was set aside to the file of Ld. AO with a direction to re-frame assessment.

9. Aggrieved by such revision-order, the assessee has filed this appeal.

10. By means of various grounds raised in the Appeal Memo which are not being reproduced for the sake of brevity, the appellant-assessee requires us to adjudicate whether or not the revision-order passed by Ld. PCIT u/s 263 is valid in the eyes of law?

Submission of Ld. AR:

11. Ld. AR made detailed submissions on all issued raised by Ld. PCIT. His submissions are summed up below:

- (i) First of all, Ld. AR carried us to Page No. 2 of the assessment- order where the AO has categorically mentioned *“The case of the assessee was selected for the reason that “Lower amount disallowed u/s 40(a)(ia) in ITR in comparison to tax audit report and regarding deduction and deposit of TDS”*. Then, Ld. AR also carried us to Para No. 2 of the revision-order where the learned PCIT has clearly mentioned *“The case was selected for scrutiny under CASS whereof the reason was “Lower amount disallowed u/s 40(a)(ia) in ITR*

in comparison to tax audit report” and “First year of deduction claimed u/s 80IA/80IAB/80IAC/80IB/80IC/80IBA/80ID/80IE”. Then, referring to the revision-order, Ld. AR demonstrated that out of eight (8) issues raised by Ld. PCIT in revision-order re-produced earlier, only three (3) issues as mentioned in Para No. 4.1, 4.2 and 4.7, were within the scope of scrutiny conducted by AO and all other issues were beyond his scope. Therefore, the assessment-order cannot be termed as erroneous *qua* those other issues.

(ii) That the issue raised by Ld. PCIT in Para No. 4.1 and 4.7 of the revision-order relates to the disallowance u/s 40(a)(ia). Ld. PCIT observed that (a) the auditors have reported assessee’s failure to deduct TDS out of an expenditure of Rs. 1,14,433/- under the head “security expenses” paid to M/s Sagar Security Services; (b) That the assessee has not submitted certificate in Form No. 26A in terms of section 201(1) read with Rule 31ACB so as to come out of TDS default; and (c) That the assessee has not supplied correct PAN of M/s Sagar Security Services. Therefore, the expenditure of Rs. 1,14,433/- attracted disallowance u/s 40(a)(ia) which the AO has not made.

Apropos to this issue, Ld. AR drew our attention to Point No. 5 of the notice u/s 142(1) dated 05.09.2019 issued by AO (Page No. 147 to 148 of the Paper-Book) wherein the AO has specifically queried the assessee to furnish details of impugned payment of Rs. 1,14,433/- and the assessee filed a reply as well. Thus, according to Ld. AR, the AO has made enquiry on this point. Then, Ld. AR carried us to Page No. 132 of the Paper-Book where a Ledger A/c of “Security Expenses” is placed. Referring to the same, Ld. AR argued that although the assessee made a total payment of Rs. 1,14,433/- against security expenditure, but the same was not paid to M/s Sagar Security Services; it was in fact paid to 2 different security guards i.e. Rs. 58,500/- to Guard-1 and Rs. 55,933/- to Guard-2. Since none of the payment exceeded the threshold limit of Rs. 1,00,000/- prescribed u/s 194C for TDS, the assessee was not obligated to deduct TDS. Ld. AR has also filed an affidavit of assessee dated 03.02.2023 containing following averments:

- “1. That the assessee has taken services of Sagar Security Services for F.Y. 2016-17 only. The services of this organisation was discontinued after that.*
- 2. That the PAN of Sagar Security Services as per our record is ACAFS8261M.”*

Lastly, Ld. AR firmly submitted that the impugned expenditure relates to the business of assessee for which 100% deduction u/s 80-IB is claimed and allowed; therefore even if the expenditure is disallowed, it will enhance the business-income and consequently 100% deduction available to assessee would also get enhanced; thus ultimately there would be no impact on taxable income of assessee. Hence, the exercise becomes revenue-neutral and no prejudice is caused to the revenue.

(iii) The issue raised by Ld. PCIT in Para No. 4.2 of the revision-order relates to deduction u/s 80-IB. Ld. PCIT has made twin-observations (a) that the auditor's certificate in Form No. 10CCB was not filed alongwith return of income, it was filed in the course of assessment-proceeding; and (b) the quantum of deduction claimed u/s 80-IB is excessive as the assessee has earned interest income of Rs. 31,234/- from deposits and wrongly treated the same as part of business-income eligible for deduction u/s 80-IB.

Apropos to observation (a), Ld. AR drew us to Page No. 47 to 49 of the Paper-Book where a reply letter dated 21.11.2019 filed by assessee during assessment-proceeding is placed. Referring to the same, Ld. AR demonstrated that during assessment-proceeding, the assessee has given a detailed explanation on the eligibility conditions of section 80-IB. Further, in Para No. 4 of the said reply, the assessee has submitted plethora of decisions to convince the Ld. AO that the Form No. 10CCB filed during the course of assessment-proceeding is also a sufficient compliance for claiming deduction. Ld. AR submitted that the AO has carefully considered this submission of assessee and thereafter being satisfied, allowed deduction to assessee. Thus, there was a complete satisfaction of AO on this point. Referring to the revision-order, Ld. AR went on submitting that the PCIT

has, though raised this point in show-cause notice and re-iterated the same in Para 4.2 of the order, but ultimately he has found weightage in the submission of assessee and did not object to the eligibility of deduction but only questioned the quantum of deduction in observation (b).

Apropos to observation (b), Ld. AR relied upon the decision in **CIT Vs. Chambal Fertilizers & Chemicals Ltd. (2018) 95 taxmann.com 314 (SC)** wherein the Hon'ble Supreme Court has dismissed the departmental SLP against the decision of Hon'ble Rajasthan High Court holding that the interest earned on short-term deposits of business-money has to be treated as income earned from business and therefore eligible for deduction u/s 80-IA. Ld. AR submitted that the present case involves sections 80-IB which is at par with section 80-IA; hence the assessee's case is squarely covered by the decision of Hon'ble Supreme Court/Rajasthan High Court and interest income has been rightly treated as eligible for deduction u/s 80-IB. Ld. AR also submitted that even if there be two views on this point, the AO has followed one of the permissible view and therefore also the order can't be said to be erroneous in view of the decision of Hon'ble Supreme Court in **Malabar Industrial Co. Vs. CIT 243 ITR 83 (SC)**.

12. Finally, Ld. AR placed reliance on the decision of Hon'ble jurisdictional High Court in the case of **H.H. Maharaja Raja Pawan Dewas Vs. CIT (1983) 15 Taxman 363** where it was held that order of AO should not only be erroneous but also prejudicial to the interest of revenue for invoking section 263. Ld. AR submitted that firstly the assessment-order is not erroneous and secondly it is not prejudicial to the interest of revenue, hence the revision-action taken by Ld. PCIT is not valid in terms of section 263.

Submission of Ld. DR:

13. Per contra, Ld. DR supported the revision-order. His submissions are summed up below:

(i) Regarding issues raised by Ld. PCIT other than those in Para No. 4.1, 4.2 and 4.7, Ld. DR could not rebut the submission of Ld. AR that those issues were beyond the scope of scrutiny.

(ii) Regarding the issue of disallowance u/s 40(a)(ia), Ld. DR vehemently supported the revision-order and argued that the entire payment was made to M/s Sagar Security Services and the security Guard-1 and Guard-2 were deployed by M/s Sagar Security Services under the contract entered into by assessee. Ld. DR submitted that even if the payments were handed over/made to security guards, it was for and on account of M/s Sagar Security Services; therefore the entire payment of Rs. 1,14,433/- exceeded the threshold limit for TDS. Ld. DR submitted that the assessee has failed to submit Form 26A also. Therefore, it is clear case which attracts disallowance u/s 40(a)(ia).

(iii) Regarding the issue of deduction u/s 80-IB in relation to interest income, Ld. DR dutifully supported the revision-order but could not contradict the submissions of Ld. AR.

Our analysis:

14. We have considered rival submissions of both sides and perused the orders of lower-authorities and the documents placed in the Paper-Book in the light of applicable provisions of law. After a careful consideration, we observe as under:

(i) That the issues raised by PCIT other than those in Para No. 4.1, 4.2 and 4.7 are outside the scope of scrutiny proceeding. Therefore, the scrutiny assessment-order framed by AO cannot be termed as erroneous *qua* those issues.

(ii) Regarding disallowance u/s 40(a)(ia), we observe from perusal of “Security Expenses A/c” placed at Page No. 132 of the Paper-Book that in all entries, the assessee has himself mentioned “Paid to Sagar Security for

Guard-1” or “Paid to Sagar Security for Guard-2”. Thus, the payments have been made to M/s Sagar Security and not to individual security guards. Further, in affidavit dated 03.02.2023 filed before us (reproduced earlier) the assessee has clearly mentioned “1. *That the assessee has taken services of Sagar Security Services for F.Y. 2016-17 only. The services of this organisation was discontinued after that.*” Thus, the assessee clearly admits that he has taken services of Sagar Security Services. It is further noteworthy that the auditors have also reported that the assessee has not deducted TDS out of payment of Rs. 1,14,433/- and such an observation by auditors cannot be taken lightly. We also find that the assessee himself promised during the course of assessment-proceeding to Ld. AO to submit Form No. 26A in terms of section 201(1) but, however, did not submit ultimately. Thus, looking from all evidences, we arrive at a conclusion that the assessee was liable to deduct TDS but the same has not been deducted. That brings us to conclude that the disallowance u/s 40(a)(ia) was attracted. But then we go further and find merit in the submission of Ld. AR that the impugned expenditure was pertaining to the business of assessee for which 100% deduction u/s 80-IB is claimed and allowed; therefore even if the expenditure is disallowed, it will enhance the business-income and consequently 100% deduction available to assessee; thus ultimately there would be no impact on taxable income of assessee. Hence, the exercise become revenue-neutral and no prejudice is caused to the revenue.

(iii) Regarding deduction u/s 80-IB, there is no dispute over the eligibility of assessee to claim deduction. As far as the allowability of deduction in relation to interest income of Rs. 31,234/- is concerned, the assessee has merit in submission that the same qualified for deduction in view of decision in **CIT Vs. Chambal Fertilizers & Chemicals Ltd. (2018) 95 taxmann.com 314 (SC)**. Further, it is also an acceptable stand of Ld. AR that even if there be two views on this point, the AO has followed one of the permissible views and therefore also the assessment-order can't be said to

be erroneous in view of the decision of Hon'ble Supreme Court in **Malabar Industrial Co. Vs. CIT 243 ITR 83 (SC)**.

15. In view of above discussion and for the reasons stated therein, we are persuaded to hold that in the present case, none of the eight issues raised by Ld. PCIT make the assessment-order erroneous-cum-prejudicial to the interest of revenue. Therefore, the revision-order passed by Ld. PCIT in the present case is not a valid order. We, thus, quash the revision-order and restore the original assessment-order passed by Ld. AO. The assessee succeeds in this appeal.

16. Resultantly, this appeal of assessee is allowed.

<i>Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on/...../2023</i>
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<i>Order pronounced in the open court on 18/04/2023</i>

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 18.04.2023

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