

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri K. Narasimha Chary, Judicial Member

ITA No.69/Hyd/2022		
Assessment Year:2016-17		
Shri Harish Kumar Muralidhar Harwani, Hyderabad PAN:AAYPH0485N (Appellant)	Vs.	Income Tax Officer Ward 3(1) Hyderabad (Respondent)
Assessee by:	Shri P. Murali Mohan Rao, CA	
Revenue by:	Shri Rajendra Kumar, CIT(DR)	
Date of hearing:	21/03/2023	
Date of pronouncement:	28/04/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 26.03.2021 of the learned Pr.CIT -1, Hyderabad, relating to A.Y.2016-17.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the validity of the order passed u/s 263 of the I.T. Act by the PCIT-I.

3. Facts of the case, in brief, are that the assessee is an individual and engaged in the business of trading of liquor. He filed his return of income for the A.Y 2016-17 on 30.09.2016 declaring total income at Rs. 6,43,040/-. The case was selected

for complete scrutiny through CASS and accordingly statutory notices u/s 143(2) and 142(1) were issued to the assessee along with the questionnaire. The assessee, in response to the said notices furnished the requisite information from time to time. The Assessing Officer, after verifying the details filed by the assessee, completed the assessment u/s 143(3) on 13.12.2018 accepting the returned income.

4. Subsequently, the learned PCIT called for the record and noted that the assessee filed his return of income admitting total income at Rs.6,43,040/-. The gross total income of the assessee comprises Rs.Nil from house property, Rs.5,97,000/- from salary, Rs.18,96,125/- from business, Rs. Nil from capital gains and Rs.19,90,573/- from other sources. He noted that the case was selected for complete scrutiny under CASS to verify the “low income from TCS receipts-liquor”. However, the Assessing Officer completed the assessment u/s 143(3) of the Act and accepted the returned income of Rs.6,43,040/-.

5. The learned PCIT observed that the assessee is in the business of liquor and for the year relevant to the A.Y 2015-16 he has purchased liquor from the Telangana State Govt. to the tune of Rs.2,21,49,529/- and accordingly has declared loss of Rs.18,96,125/- out of liquor trading activity. According to him, the Assessing Officer ought to have verified the books, purchase bills and sale bills etc., since the case was selected for complete scrutiny and the reason was low income. He observed that the Assessing Officer has called for only a note on low-income from the assessee and accepted the same without verifying its genuineness. He observed that the jurisdictional Tribunal in a number of cases has already laid down the principle that 3% to

5% of the cost of goods sold would be reasonable income in liquor trade, when the books are rejected or non-verifiable. The explanation of the assessee for low income was that this is the first year of operation and the commercial operation started late in the financial year. However, according to the PCIT, the explanation given by the assessee should not have been accepted by the Assessing Officer. He further noted that the assessee has substantial turnover and after taking into account, the license fee of Rs.51,29,000/-, there is no gross profit. In fact, there is a loss. This according to him is not acceptable.

6. He further observed that the assessee has introduced capital of Rs.1,25,95,000/- and withdrawn Rs.74,95,000/- and no explanation was called for by the Assessing Officer regarding the source of such capital. He should have examined this aspect also. He was of the opinion that the order passed by the Assessing Officer has become erroneous and prejudicial to the interest of the Revenue. He therefore, issued a notice u/s 263 of the I.T. Act and asked the assessee to explain as to why the order passed by the Assessing Officer u/s 143(3) dated 13.12.2018 should not be set aside as per the provisions of section 263 of the I.T. Act. The assessee objected to the initiation of the proceedings u/s 263 of the I.T. Act and relied on various case laws. The assessee also furnished certain explanation regarding the loss from liquor business and the source for the introduction of fresh capital.

7. However, the learned PCIT was not satisfied with the arguments advanced by the assessee and set aside the assessment passed by the Assessing Officer u/s 143(3) on 30.12.2018 by invoking the provisions of section 263 of the I.T.

Act and directed the Assessing Officer to redo the assessment as per law after giving due opportunity of being heard to the assessee.

8. Aggrieved with such order of the learned PCIT the assessee is in appeal before the Tribunal.

9. The learned Counsel for the assessee referring to page 11 & 12 of the Paper Book drew the attention of the Bench to the copy of notice issued u/s 142(1) by the Assessing Officer dated 19.11.2018 and submitted that as per the said notice, the Assessing Officer had asked the assessee to furnish the details of unsecured loans/deposits taken during the year including squared up loans in the given proforma. Referring to page 13 of the paper book, he drew the attention of the Bench to the reply given by the assessee by giving the particulars of the details of unsecured loans. Referring to page 14 of the paper book, he drew the attention of the Bench to the notice issued u/s 142(1) of the I.T. Act where the Assessing Officer has asked complete details of the bank statements and to furnish the cash flow statement to which the assessee furnished the details. Referring to page 9 of the paper book, he drew the attention of the Bench to the details furnished by the assessee before the Assessing Officer such as copy of computation along with ITR Acknowledgement, copy of financials for the A.Y 2016-17, tax audit report/Form 3CD report along with Annexure and the details of Bank A/c held by the assessee. Referring to page 10 of the paper book, he drew the attention of the Bench to the details given by the assessee such as Note on Low Income from TCS Receipts, License Fee-CPE Telangana Ledger copy along with challan copies and copy of Form No.26AS. He accordingly submitted that the Assessing

Officer on the basis of various details filed by the assessee such as the reasons for low income and the details of unsecured loans has accepted the returned income and the books of account were never rejected.

10. Referring to the decision of the Hon'ble Punjab & Haryana High Court in the case of PCIT vs. Kanin (India) reported in (2022) 141 taxmann.com 83, he submitted that the Hon'ble High Court in the said decision has upheld the order of the Tribunal quashing the 263 proceedings where revision order was passed by Principal Commissioner holding that assessment made by Assessing officer was erroneous and prejudicial to interest of revenue as Assessment Order had been passed without making inquiries or verification, however, Principal Commissioner was not in a position to point out as to what inquiries or verification should have been made but had not been made by Assessing Officer so as to make the case fall within Explanation 2(a) to section 263.

11. Referring to the decision of the Coordinate Bench of the Tribunal in the case of M/s. Southern Realtors & Towers (P) Ltd vs. Dy.CIT vide ITA No.607/Hyd/2018 for the A.Y 2013-14, order dated 6.12.2018 he submitted that the Tribunal in the said decision has held that the CIT cannot direct the Assessing Officer to redo the assessment without pointing out the errors committed by the Assessing Officer and without giving a finding as to how the assessment order is erroneous.

12. Referring to the following decisions, he submitted that the revisional powers cannot be exercised on the ground that the

Assessing Officer should have gone deeper into the matter or should have made a more elaborate discussion:

- i) PCIT vs. Anindta Steels Ltd (2022) 137 Taxmann.com 203 (Calcutta) (High Court)
- ii) CIT vs. Hindustan Marketing & Advertising Co. Ltd (2011) 196 Taxmann.368 (Delhi) (High Court)
- iii) CIT vs. Goyal Private Family Specific Trust (1987) 35 Taxmann.522 (Allahabad) High Court
- iv) CIT vs. Ganpat Ram Bishnoi (2006) 152 Taxmann.242 (Raj.) High Court
- v) Malabar Industries Co. Ltd (109 Taxmann.66) Supreme Court
- vi) Spectra Shares & Script (P) Ltd (36 Taxmann.348) A.P High Court
- vii) Development Credit Bank (196 Taxmann 329) Bombay High Court
- viii) D.G. Housing Projects Ltd (20 Taxmann 587) Delhi High Court
- ix) Divya Jyothi Steels Ltd (20 Taxmann 587) ITAT Hyderabad
- x) Pravardhan Seeds P Ltd (ITA 667/Hyd/2017) ITAT Hyderabad
- xi) Futuretech Industries vs. DCIT – ITA No.1009/Hyd/2013 – ITAT Hyderabad
- xii) Glade Steel (P) Ltd v. Income Tax Officer ITA/723/2015, ITAT Hyderabad
- xiii) Bhavani Jewellers – ITA 1004/Hyd/2013 – ITAT Hyderabad
- xiv) Manisha Agri Biotech P Ltd – ITA 233/Hyd/2014, ITAT Hyderabad

- xv) Zelan Projects : Ltd – ITA No.1361/Hyd/2013 – ITAT Hyderabad
- xvi) Visu International Ltd – ITA 394/Hyd/2016- ITAT Hyderabad

13. Referring to the decision of the Mumbai bench of the Tribunal in the case of Reliance Payment Solutions Ltd vs. PCIT reported in (2022) 136 Taxmann.com 277, he submitted that the revisional powers u/s 263 cannot be invoked merely because the Assessing Officer did not give specific reasons for accepting assessee's detailed submissions.

14. The learned Counsel for the assessee also relied on the following decisions:

- a) Sri V. Rajasekhar vs. Income Tax Officer in ITA No.1357/Hyd/2018 – ITAT Hyderabad
- b) Brahma Center Dev. (P) Ltd vs. PCIT in ITA No.4341 & 4342/Del/2019 – ITAT Delhi.
- c) Kanin ((India) vs. PCIT (141 Taxmann. Com 83) High Court of Punjab & Haryana.
- d) M/s. Southern Realtors & Towers Pvt. Ltd vs. DCIT in ITA No.607/Hyd/2018 – ITAT Hyderabad
- e) M/s United Rail Road Consultants (P) Ltd vs. DIT in ITA No.745/Hyd/2023 – ITAT Hyderabad

15. The learned Counsel for the assessee submitted that according to the PCIT, the profit in the liquor trade has been determined at 3% to 5% when books of account are rejected. However, in the instant case, the books of account are not rejected, therefore, the question of estimation of income does not

arise. He submitted that the PCIT cannot force the Assessing Officer to forcibly increase the profit of the assessee by rejecting the book results without any valid reasons.

16. The learned DR, on the other hand heavily relied on the order of the learned PCIT. He submitted that when the case was selected for complete scrutiny, the Assessing Officer was supposed to go deep into the matter and should have passed a detailed speaking order by giving the reasons for low income shown by the assessee and the increase in the capital. However, no such examination was done by the Assessing Officer. Therefore, it is a clear case of non-application of mind by the Assessing Officer for which the order has become erroneous and prejudicial to the interest of the Revenue. Therefore, the PCIT was fully justified in assuming the jurisdiction u/s 263 of the I.T. Act and thereby setting aside the same to the file of the Assessing Officer to redo the assessment.

17. So far as various decisions relied on by the learned Counsel for the assessee are concerned, he submitted that all the decisions are distinguishable and not applicable to the facts of the present case.

18. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned PCIT and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case completed the assessment u/s 143(3) accepting the returned income of Rs.6,43,040/- after considering various replies given by the assessee to the queries issued by him. We find the learned PCIT invoked the jurisdiction

u/s 263 on the ground that when the case was selected for complete scrutiny and the reason was low income, the Assessing Officer should have collected all the relevant details and should have applied his mind before accepting the low income from liquor trade and the introduction of capital for which the order has become erroneous and prejudicial to the interest of the Revenue.

19. It is the submission of the learned Counsel for the assessee that the Assessing Officer during the course of assessment proceedings had called for the requisite details and the assessee has filed the relevant material before the Assessing Officer. The Assessing Officer after going through the relevant details has accepted the returned income and therefore, the order is neither erroneous nor prejudicial to the interest of the Revenue and therefore, the PCIT should not have invoked the jurisdiction u/s 263 of the I.T. Act. It is also his submission that the PCIT cannot direct the Assessing Officer to conduct inquiries in a particular manner and forcibly arrive at a profit which the assessee has never earned.

20. We find some force in the above argument of the learned Counsel for the assessee in so far as the first issue is concerned i.e. low income from liquor business. A perusal of the page 6 of the paper book, which contains profit & loss a/c, shows that there was no opening stock and assessee has made purchase of Rs.2,21,49,870/- and made sales of Rs.2,29,45,094/- with closing stock of Rs.30,29,962/- and accordingly has declared gross profit of Rs.38,25,186/-. The profit & loss a/c shows the payment of license fee of Rs.51,29,000/- and the assessee has shown nominal expenses under various other heads. After

crediting the commission of Rs.2,63,765/- and the rent of Rs.7,49,742/- and scrap sales of Rs.9,75,258/- the assessee has declared net profit of Rs.92,641/-. The profit and loss account shows that this is the first year of the business and the assessee has debited a huge amount of license fee for the liquor trade which is not in dispute. The assessee during the course of assessment proceedings has furnished a cash flow statement and bank statement, note on low income from TCS, details of bank deposits etc. The Assessing Officer, on the basis of those details accepted the returned income and passed the order. Under these circumstances, it is to be examined as to whether the order passed by the Assessing Officer has become erroneous and prejudice to the interest of the Revenue so as to enable the PCIT to invoke jurisdiction u/s 263 of the I.T. Act.

s

21. We find the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd vs. CIT (2000) 243 ITR 83 (S.C) has held that 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 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.

22. We find the Coordinate Bench of the Tribunal in the case of M/s. Southern Realtors & Towers (P) Ltd vs. Dy.CIT (Supra) has observed as under:

“7. Further, we also agree with the contention of the learned Counsel for the assessee that the CIT cannot direct the AO to redo the assessment without pointing out the errors committed by the AO and without giving a finding as to how the assessment order is erroneous. From the literal reading of the order u/s 263, we find that the CIT pointed out certain discrepancies and then subsequently reproduced the assessee’s submissions and then directed the AO to redo the assessment. Thus, there is no finding whatsoever, as to whether the assessee’s contentions were acceptable to him or not and as to how the assessment order is erroneous. Therefore, the revision order passed by the Pr. CIT is not sustainable. The assessee’s appeal is accordingly allowed.

23. Since in the instant case, the assessee has furnished the requisite details to substantiate its low income from liquor business and the Assessing Officer, after considering the details, has taken a possible view, therefore, the learned PCIT, in our opinion, is not justified in invoking the jurisdiction u/s 263 of the I.T. Act. Further the Coordinate Benches of the Tribunal as pointed out by the learned PCIT are adopting profit rate of 3% to 5% profit from liquor trade only when the books are rejected. However, in the instant case, the books of account, which are duly audited and furnished before the Assessing Officer, were never rejected and therefore, the observation of the PCIT that the Assessing Officer should have adopted profit rate of 3% to 5% from liquor trade cannot be sustained. We, therefore, hold that the PCIT is not justified in invoking jurisdiction u/s 263 on the first issue i.e. low income from liquor trade.

24. However, there is also another issue on which the learned PCIT has held the order to be erroneous and prejudicial to

the interest of the Revenue for which he has invoked the provisions of section 263 of the I.T. Act i.e. non-verification of introduction of capital of Rs.1,25,95,000/- and withdrawal of Rs.74,95,000/-. A perusal of the reply given by the assessee before the PCIT clearly shows that the case was selected for complete scrutiny and accordingly notices u/s 143(2) and 142(1) were issued. However, the Assessing Officer has not asked a single query to the assessee about the introduction of capital of Rs.1,25,95,000/- and withdrawal of Rs.74,95,000/-. When the case was selected for complete scrutiny, it was incumbent upon the Assessing Officer to call for the details about the introduction of huge capital of Rs.1,25,95,000/- and withdrawal of Rs.74,95,000/-. Since the Assessing Officer in the instant case has not called for any information on the issue of introduction of capital of Rs.1,25,95,000/- and withdrawal of Rs.74,95,000/- and since there is nothing on record to show that the assessee has explained the source of introduction of such capital, therefore, the order of the Assessing Officer on this issue has become erroneous and prejudicial to the interest of the Revenue and therefore, the PCIT, in our opinion, was fully justified in invoking revisional power u/s 263 of the I.T. Act. We, therefore, uphold the order of the PCIT invoking the jurisdiction u/s 263 of the Act on the second issue i.e. introduction of capital of Rs.1,25,95,000/- and withdrawal of Rs.74,95,000/-. The various decisions relied on by the learned Counsel for the assessee do not support his case on this issue, since neither the Assessing Officer has asked a single query on this vital issue, nor the assessee has filed any details explaining the issue of such capital introduction. We therefore, uphold the order of the PCIT invoking jurisdiction u/s 263 on the issue of introduction of capital of Rs.1,25,95,000/- and

withdrawal of Rs.74,95,000/-. The grounds raised by the assessee are accordingly disposed of.

25. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 28th April, 2023.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
--	--

Hyderabad, dated 28th April, 2023

Vinodan/sps

Copy to:

S.No	Addresses
1	Shri Harish Kumar Muralidhar harwani C/o P Murali & Co. C.As, 6-3-655/2/3 Somajiguda, Hyderabad 500082
2	Income Tax Officer Ward 3(1) Hyderabad
3	Pr. CIT -1 ,Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order