

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 938/Mum/2021 (A.Y. 2015-16)

Fancy Glass Industries Private Ltd.

1204, Naman Midtown
Senapati Bapat Marg,
Elphinstone Road, (W)
Mumbai-400 013

PAN:AAACF5500H

..... Appellant

Vs.

PCIT,-6

501, Aayakar Bhavan,
M. K. Road
Mumbai-400 020

..... Respondent

Appellant by : Shri Ketan Vajani
Respondent by : Shri Ankush Kapoor, CIT DR

Date of hearing : 20/03/2023
Date of pronouncement : 15/05/2023

ORDER

PER GAGAN GOYAL, A.M.:

This appeal by assessee is directed against the order of Ld.Principal
Commissioner of Income Tax- 6, Mumbai (for short "Ld. PCIT") dated 30.03.2021

u/s. 263 of the Income Tax Act, 1961 (for short 'the Act') for A.Y. 2015-16. The assessee has raised the following grounds of appeal:

"OBJECTION AGAINST INVOKING PROVISIONS OF SECTION 263 OF THE INCOME TAX ACT 1961

(a) On the facts and in the circumstances of the case, the Principal Commissioner of Income-tax, hereinafter referred to as the "Pr. CIT, has erred in invoking the provisions of section 263 of the Income tax Act, 1961 in the case of the appellant and in directing the assessing officer to make a fresh assessment in the case of the appellant.

(b) On the facts and in the circumstances of the case, the Pr. CIT has failed to appreciate the fact that the assessing officer has made detailed inquiries as regards the difference between the contract receipts as per Income-tax Return and Service tax Returns of the appellant and that the assessment order was passed after considering all the details furnished by the appellant as a result of such detailed inquiries.

(c) Without prejudice to the above, the Pr. CIT has erred in not appreciating the fact that all the figures have been duly reconciled and explained again during the revision proceedings before the Hon. Pr. CIT and that on the basis of the submissions made by the appellant in the revision proceedings, it is clear that there is no error in the assessment order and also there is no prejudice to the interest of revenue on account of the assessment order passed by the assessing officer.

(d) The appellant respectfully submits that the assessment order in its case is neither erroneous nor prejudicial to the interest of revenue and accordingly the provisions of section 263 of the Act cannot be invoked in its case. In view of this, the appellant prays that the order dated 30 March, 2021 passed u/s. 263 of the Act shall please be quashed and the assessment order dated 13-12-2017 passed u/s. 143(3) of the Act shall please be restored."

1. Brief facts of the case are that assessee filed its return of income on 28.09.2015 declaring total income at Rs. 21,25,410/-, thereafter case was selected for **limited scrutiny**. Assessee primarily engaged in the business of installation and fitting aluminum glass windows at construction sites.

2. Case was selected for limited scrutiny because of the fact **that assessee has claimed T.D.S. amounting to Rs. 2, 61,494/- without offering the corresponding income for Taxation**; hence a show cause was issued that why the amount of T.D.S. claimed should not be disallowed. After considering assessee's submission AO, accepted the returned income but disallowed the claim of T.D.S. claimed by the assessee amounting to Rs. 2,61,494/-. This assessment order was accepted by both the sides on the terms of assessment order.
3. Thereafter, the office of Ld. PCIT, Mumbai-6 issued a notice u/s. 263 of the Act vide Dated: 15.02.2021. Ld. PCIT has an apprehension of under booking of revenue hence treated the order as Erroneous in so far as Prejudicial to the Interest of Revenue for the purposes of section 263 of the Act.
4. We have gone through the order of AO, copy of notice issued u/s. 263 of the Act, Order of Ld. PCIT u/s. 263 of the Act and submissions of the assessee. In our observation case of the assessee was selected for the purposes of **that assessee has claimed T.D.S. amounting to Rs. 2,61,494/- without offering the corresponding income for Taxation**. This issue was elaborately discussed by the AO in his order and assessee was able to substantiate the reasons for the same, still claim of the assessee w.r.t. TDS was disallowed and both the sides agreed for assessment order's terms. As far as a reason for limited scrutiny was concerned there is no further inquiry was warranted/ authorized.
5. Still, Ld. PCIT has chosen the case as Erroneous in so far as Prejudicial to the Interest of Revenue for the purposes of section 263 of the Act. We have gone through the submissions before us through paper book, filed before the AO and Ld. PCIT Also, wherein, assessee was amply clear in terms of reconciliations of various differences like revenue booked in ROI vs. Service Tax Return and ROI vs. Maharashtra VAT Return and ITNS-TDS vs. 26AS and ROI vide page nos. 30, 66-69 and 29 respectively.

6. For ready reference we are reproducing the charts of reconciliations submitted by the assessee as under: **(Insert page nos. 29,30 and 66-69).**

FANCY GLASS INDUSTRIES PVT LTD										
AY 2015-2016 RECONCILIATION OF TDS WITH 26AS AND ROI										
Sr No	Name	As Per TDS		26 AS		ROI		TDS	Remark	TOTAL (A + B)
		Works Contract / Item / Income	TDS	Works Contract / Item / Income	TDS	Works Contract / Item / Income (A)	Service Tax + VAT (B)			
A	Union Bank of India	40,113.00	4,011.00	40,113.00	4,011.00	40,113.00		4,011.00		40,113.00
B	Shree Naman BCC Coop Society	89,71,471.00	1,79,430.00	89,71,471.00	1,79,430.00	1,12,45,143.00	14,07,334.00	1,79,430.00		1,79,430.00
C	VIT Infra Pvt Ltd	18,15,943.00	36,311.26	18,15,943.00	36,311.26	15,05,032.48	3,11,889.51	36,311.26	123099 is opening balance/receivable	18,15,922.00
D	Beem Laboratories Pvt Ltd - Pioneer Agro	2,22,022.00	4,440.44	2,22,022.00	4,440.44	1,97,900.00	24,522.00	4,440.44		2,22,022.00
E	Vishva Developers	71,05,534.00	1,42,110.28	71,05,534.00	1,42,110.28	67,67,156.72	8,97,412.28	1,42,110.28		76,64,569.00
F	Nandani Hotel Pvt Ltd	7,84,325.00	15,686.50	7,84,325.00	15,686.50	17,44,364.61		15,686.50		17,44,364.61
G	Bharat Infra	18,10,043.00	36,200.86	18,10,043.00	36,200.86	16,10,209.18	2,09,101.61	36,200.86		18,13,311.00
H	Real Gem	2,78,125.00	5,562.50	2,78,125.00	5,562.50	2,22,513.00	28,497.00	5,562.50	10,112/- + 33,034/- labour	2,81,010.00
I	Wallfare Holdings	6,30,232.00	12,604.64	6,30,232.00	12,604.64	2,63,847.56	36,020.44	12,604.64	3,59,193 is advance	2,99,868.00
J	Park View Developers	98,57,992.00	1,97,159.84	98,57,992.00	1,97,159.84	91,99,538.04	17,55,919.96	1,97,159.84		1,04,55,458.00
K	Ecstasy Realty Pvt Ltd	2,53,00,000.00	5,06,000.00	2,53,00,000.00	5,06,000.00	1,43,28,234.14	19,56,090.86	5,06,000.00	91,67,613 is advance	1,62,84,325.00
L	Milano Structure	42,53,022.00	85,020.54	42,53,022.00	85,020.54	37,79,824.44	4,73,202.56	85,020.54		42,53,022.00
M	Banglari Norman Pvt Ltd	18,10,735.00	36,214.70	18,10,735.00	36,214.70	11,47,521.05	3,66,017.95	36,214.70	old 10,10,735/-	15,13,539.00
N	Stranght Systems Pvt Ltd	24,17,953.00	48,359.06	24,17,953.00	48,359.06	21,58,941.41	4,08,966.59	48,359.06	old 7,17,800/-	35,67,508.00
O	Taksha Spaces	34,13,939.00	70,745.00	34,13,939.00	70,745.00	31,46,453.43	6,02,021.57	70,745.00	retention - 213323/-, till 12 sept 2015 TDS was not reflected in 26AS	37,48,665.00
P	katun Fabrics	24,12,433.00	48,248.66	24,12,433.00	48,248.66	21,19,602.61	2,96,646.39	48,248.66		29,16,099.00
Q	Madira Estate and Developers Pvt Ltd	2,99,761.00	5,995.22	2,99,761.00	5,995.22			5,995.22	advance	
R	Fabira Glass Center	1,92,000.00	1,92,000.00	1,92,000.00	1,92,000.00			1,92,000.00	rent	1,92,000.00
S	Ventus	1,44,28,255.00	2,88,565.10	1,44,28,255.00	2,88,565.10	1,29,35,448.18	16,64,903.62	2,88,565.10		1,46,00,352.00
T	Shree Homes	26,15,707.00	52,314.14	26,15,707.00	52,314.14	6,10,581.00	83,357.00	52,314.14	PI was raised client has deducted TDS on (Plat No. 1163720 and advance of Rs.179856)	6,93,938.00
U	Shree Naman P Ltd	55,808.00	1,106.16	55,808.00	1,106.16	45,302.76	17,410.24	1,106.16	8657/- and 2528/- labour	62,719.00
V	Castle Realtors	5,15,512.00	8,310.24	5,15,512.00	8,310.24	2,98,937.37	1,73,754.63	8,310.24	labour 130984/-	4,70,732.00
W	Lotus Enterprises	4,47,149.00	8,942.98	4,47,149.00	8,942.98	4,22,872.05	56,024.95	8,942.98	3522 labour	4,78,897.00
X	Plumtree Housing	5,09,615.00	10,112.30	5,09,615.00	10,112.30	4,49,771.40	55,843.60	10,112.30		5,09,615.00
Y	Alco Steel	5,00,000.00	10,000.00	5,00,000.00	10,000.00			10,000.00	advance 500000	
Z	Rich Bharat Doshi					8,31,902.85	1,13,844.15			9,47,247.00
AA	Ravi Estates & Hotel Pvt Ltd	2,52,750.00	5,045.00	2,52,750.00	5,045.00			5,045.00	opening	
AB	JRM Shares and Stock Brokers	4,10,200.00	8,204.00	4,10,200.00	8,204.00	3,64,894.80	45,305.20	8,204.00		4,10,200.00
AC	Parthoon Infrastructure Pvt Ltd					7,827.00				7,827.00
		9,12,43,244.00	18,45,900.42	9,12,43,244.00	17,76,155.42	7,66,37,332.13	1,04,73,966.91	17,76,155.42		8,70,71,185.61
Add Trading Sales						36,750.00				36,750.00
Less Rent						7,64,79,082.10				7,64,79,082.10
Less Int on FDR						1,92,000.00				1,92,000.00
Less Int on FDR						40,113.00				40,113.00
Add : Labour Charges						2,00,759.00				2,00,759.00
Sales as per Profit and Loss						7,66,41,728.10				7,66,41,728.10
Add : VAT						38,25,729.00				38,25,729.00
Add Service Tax						61,09,484.00				61,09,484.00
						8,65,76,941.10				8,65,76,941.10

FANCY GLASS INDUSTRIES PVT LTD
AY 15-16 - SERVICE TAX RECONCILIATION ITNS AND RETURNS AND ROI

Gross Value of Services seen as per Service Tax Returns as mentioned in ITNS	A	8,79,94,564.00
<u>Gross Value of Services as per the Income Tax return as filed by the assessee</u>		
Works Contract (HY 1+HY 2) (38899378+3710352 - Cr note 198850)	7,64,10,880.00	
Rent	1,92,000.00	
Labour	1,97,625.00	7,68,00,505.00
		<u>1,11,94,059.00</u>

Advances received by the assessee by mistake shown under the head services rendered in service tax return - ledgers are provided

Alco Steel	5,00,000.00 (Slab at 5% VAT + 8.65% Service Tax) 500000*100/113.652	4,39,939.46
Neelam Hotel Pvt Ltd	5,82,630.00	5,12,643.86
Pioneer Housing	3,79,104.00	3,33,565.62
Vikas Enterprises	3,70,000.00	3,25,555.20
Wadhwa Estates & Developers Pvt Ltd	2,99,762.00	2,63,754.27
Wadhwa Holding Pvt Ltd	3,53,193.00	3,10,767.08
Shreeji Homes (231312+492520)	7,23,832.00	6,36,884.52
Estacy	95,13,751.00	83,70,949.04
	<u>1,27,22,272.00</u>	<u>1,11,94,059.06</u>



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FORM 303 (See rule 23)
CLASSIFICATION of Assessment of tax under MVAT Act, 2002

XI-147/78/17-18

Order No.	ASCOMUM-VAT-D-329/1718-453210			Assessment Year	2017-2018
MVAT RC No. (TIN)	2786005541V	Holding CST RC	2786005541C	Pin Code	400008
Name of the Dealer	FANCY GLASS INDUSTRIES PRIVATE LIMITED				
Address Block / Flat	43	Name of Premises / Building / Village	FOR S ROAD		
Street / Road	R S NIMHAR MARG				
City	MUMBAI	Area	MUMBAI		
Assessment Period From	31-Mar-2015	Notice In Form	F-301	Order Section	U/S 23(2)
Books of account/s produced	All books of Account			Accounting Method Mercantile	

TABLE 1: Computation of net turnover of sales liable to tax

1. Particulars	As per Return/s (Rs)	As determined (Rs)
Gross turnover of sales including taxes as well as turnover of non sales transactions like value of branch/ consignment transfer, job work charges, etc.	80,647,331.00	80,647,331.00
Deduct		
1 Value of Goods Returned (inclusive of sales tax) including reduction of sales price on account of rate differential and discount	14,762.00	14,762.00
2 Net Tax amount (Tax included in sales shown in gross turnover above less Tax included in 1 above)	3,625,730.00	3,625,730.00
3 Sales u/s 8(1) including central sales tax and value of branch / consignment transfers outside the State	0.00	0.00
4 Value of branch / consignment transfers within the State on which tax is paid by agent	0.00	0.00
5 Deductions under section 5 and/or 6A of "Earlier Act" i/e section 5(1) (g)	0.00	0.00
6 Sales of tax-free goods u/s 5	0.00	0.00
7 Sales of taxable goods fully exempted u/s 8(4)	0.00	0.00
8 Labour or Job work charges	0.00	0.00
9 Sales of taxable goods fully exempted u/s 4(4)	0.00	0.00
10 Sales of taxable goods fully exempted u/s 8 (other than sales under section 8(1) & 8(4))	0.00	0.00
11 Amount paid by way of price for sub-contract	0.00	0.00
12 Other reductions / deductions	6,357,870.00	6,357,870.00
13 Balance: Net Turnover of Sales liable to tax	76,448,969.00	76,448,969.00

2. Computation of tax payable under the MVAT Act

Sr No	Rate of tax	As per Return/s (Rs)		As determined (Rs)	
		Turnover of sales liable to tax (Rs)	Tax Amount (Rs)	Turnover of sales liable to tax (Rs)	Tax Amount (Rs)
1	5.00	76,405,219.00	3,820,261.00	76,405,219.00	3,820,260.95
2	12.50	43,750.00	5,469.00	43,750.00	5,468.75
	Total	76,448,969.00	3,825,730.00	76,448,969.00	3,825,729.70

[Signature]

PART-II Computation of Turnover of purchases eligible for set-off					
Particulars		As per Return/s (Rs)	As determined (Rs)		
Total turnover of purchases including taxes, value of branch / consignment transfers received and job work		69,254,703.00	69,254,703.00		
Deduct					
1	Value of Goods Returned (inclusive of sales tax) including reduction of sales price on account of rate difference and discount, difference and discount	102,254.00	102,254.00		
2	Imports (High seas purchases)	6,791,401.00	0.00		
3	Imports (Direct imports)	0.00	6,791,401.00		
4	Inter-State purchases	5,629,223.00	5,664,236.00		
5	Inter-State branch / consignment transfers received	0.00	0.00		
6	Within the State branch / consignment transfers received as agent	0.00	0.00		
7	Labour or job work charges	0.00	0.00		
8	Within the State purchases of taxable goods from un-registered dealers	0.00	0.00		
9	Within the State purchases of taxable goods from registered dealers not eligible for set-off	567,735.00	567,735.00		
10	Within the State purchases of taxable goods fully exempted from tax u/s 8 other than purchases under section 8(1)	0.00	0.00		
11	Within the State purchases of tax-free goods (u/s) 5	0.00	0.00		
12	Other allowable deductions / reductions	9,432,348.00	13,196,319.00		
13	Balance: Within the State purchases of taxable goods from registered dealers eligible for set-off	46,731,742.00	43,032,756.00		
PART-III Tax Rate wise breakup of within state purchase from registered dealers eligible for set-off					
Sr No	Rate of tax	As per Return/s (Rs)		As determined (Rs)	
		Turnover of sales liable to tax (Rs)	Tax Amount (Rs)	Turnover of sales liable to tax (Rs)	Tax Amount (Rs)
1	4.00	1,329,497.00	53,180.00	0.00	0.00
2	5.00	20,691,043.00	1,044,553.00	0.00	0.00
3	8.00	6,111.00	489.00	0.00	0.00
4	12.50	20,605,115.00	2,600,764.00	0.00	0.00
Total		43,032,756.00	3,698,986.00	0.00	0.00
PART-IV Computation availability of credit and payment of sales tax					
Particulars		As per Return/s (Rs)	As determined (Rs)		
A. Total credit available					
1	Set off admissible	1,977,676.00	1,970,924.70		
2	Amount paid along with returns	0.00	723,999.00		
3	Advance payment or payments otherwise than returns	0.00	0.00		
4	Refund adjustment order No.	0.00	0.00		
5	TDS under WCD	1,236,657.00	1,196,265.00		
6	Tax paid Total	0.00	1,620,264.00		
7	Total credit available	3,940,372.00	3,691,208.70		
B. Tax payable / Refund admissible					
1	Sales Tax payable	3,625,730.00	3,625,729.70		

2	Less: Aggregate of credit available	3,940,372.00	3,891,208.70	
3	Less :-Sales Tax deferred / exempted	0.00	0.00	
4	Balance:- Sales Tax payable	(114,642.00)	0.00	
5	Excess credit, if any	0.00	65,479.00	
	Deduct			
i)	Adjustment towards CST payable	0.00	0.00	
ii)	Adjustment towards ET payable under Maharashtra tax on Entry of Goods into Local Areas Act 2002	0.00	0.00	
iii)	Adjustment towards ET payable under Maharashtra tax on Entry of Motor Vehicle into Local Areas Act	0.00	0.00	
6	Balance amount payable / refundable			
6a	Balance amount payable	0.00	0.00	
6b	Balance amount refundable	0.00	65,479.00	
	Add			
7	Interest			
8	Penalty			
9	Amount forfeited being sum collected in contravention of section 60	3,820,261.00	0.00	
10	Total Amount payable (excluding deferred tax)	0.00	0.00	
11	Refund admissible	0.00	65,479.00	
12	Refund already granted	0.00	0.00	
13	Balance refund admissible	0.00	65,479.00	
14	Add: Interest under section 52, if any	0.00	7,857.00	
15	Net balance dues, if any	0.00	0.00	
16	Net refund, if any	0.00	73,336.00	
C. Details of Payments made				
Period		Challan/ CIN No	Date of Payment	Amount (Rs.)
From	To			
01-Apr-2014	30-Jun-2014	60792603	21-Jul-2014	583,369.00
01-Jul-2014	30-Sep-2014	71054359	21-Oct-2014	140,630.00

Assessment Order u/s 23 of the Maharashtra Value Added Tax Act, 2002.

Notice in F-301 issued and served on properly to the Dealer. Smt. N.K. Saboo, C.A. attended and produced books of accounts, sale-purchase statement, Invoices, F-704, B/S, TDS certificate F-402 same is verified and required documents are kept on record.

The dealer is a Wholesale of Construction Material (Sand, Gravel etc).

GTO of its sale is determined at Rs. 86632569/-. Tax coll. At Rs.3825730/-. Labour charges at Rs. 6357870/-. Bal. taxable at Rs. 76448969/-. which is taxed @5 percent and 12.50 percent. Vat payable comes at Rs. 3825730/-. Less Tax paid with Return at Rs. 723999/-. Bal. Vat payable comes at Rs. 3101731/- same is adjusted against VAT ITC.

GTO of purchases determined at Rs.69152449 /-. Less Import/High Seas Purchase at Rs. 6791401/-. Less OMS purchases at Rs. 5564238/-. Less Vat Input at Rs. 3698966/-. Less Others at Rs.9497333/-. RD no set-off Rs.567735/-. Bal. at Rs. 43032756/- is RD purchases and same is taxed @ 4, 5, 8 and 12.5 percent. Total ITC comes at Rs.3698985/-. Less Tax not eligible for set off at Rs. 6750/-. Total ITC comes at Rs.3692235/- same is ITC data matched. Less Reduction u/r 53(3) at Rs. 1721310/-. Bal. ITC at Rs.1970925/- Add. TDS Form-402 at Rs. 1196285/-. Bal. total ITC comes at Rs. 3167210/-. Less VAT dues adjusted at 3101731/-. Bal. ITC comes at Rs. at Rs.65479/- is refundable. Add interest given u/s 52 at Rs. 7857/-. Total refund comes at Rs.73336/- and same is allowed. Assessment order is passed.

7. Based on above reconciliations chart produced by the assessee before the AO and Ld. PCIT, we don't see any reason to confirm the order of Ld. PCIT passed u/s. 263 of the Act as there is no order which can be said to be Erroneous in so far as Prejudicial to the Interest of Revenue for the purposes of section 263 of the Act. We further observe that accounting practice followed by the assessee is regularly deployed policy and being consistently maintained by the assessee and there is no possibility of either tax evasion or tax deferment.

8. In the result order of the Ld. PCIT passed u/s. 263 is set aside and order of AO passed u/s. 143(3) is confirmed as per the terms therein.

9. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 15th day of May, 2023.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER
Mumbai, दिनांक/Dated: 15/05/2023

Mahesh R. Sonavane

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

BY ORDER,

//True Copy//

(Dy. /Asstt. Registrar)
ITAT, Mumbai