आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 91/RPR/2022
निर्धारण वर्ष / Assessment Year : 2017-18

Maruti Clean Coal and Power Limited
Ward No. 42, Building No.14, Civil Lines
Near Income tax Colony
Raipur(C.G.)
PAN : AADCM4810C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Pr. Commissioner of Income Tax,
Raipur-1 (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by	:	Shri Salil Kapoor, Advocate & Shri Amarbir Singh Walia, CA
Revenue by	:	Shri V.K.Singh, CIT-DR

सुनवाई की तारीख / Date of Hearing : 27.04.2023
घोषणा की तारीख / Date of Pronouncement : 29.05.2023

आदेश / ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the assessee is directed against the order passed by the Pr. Commissioner of Income Tax, Raipur-1 (for short 'Pr. CIT') u/s.263 of the Income Tax Act, 1961 (for short 'Act') dated 03.02.2022, which in turn arises from the order passed by the A.O. u/s.143(3) of the Income-tax Act, 1961 (for short 'Act'), dated 27.12.2019 for A.Y. 2017-18. The assessee has assailed the impugned order on the following grounds of appeal before us:

> 1. That, the notice dated 03.02.2022 issued under Section 263 of the Income Tax Act, 1961 ('Act'), and the order dated 25.03.2022 passed under the said Section for Assessment year 2017-18 ('A.Y. 17-18') are illegal, bad in law and without jurisdiction.
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> 2. That, the notice by the PCIT issued under Section 263 of the Act does not show that the Assessing Officer (herein referred as 'AO') committed any error in passing the assessment order under Section 143(3) of the Act. Therefore, the jurisdiction assumed by the Principal Commissioner of Income Tax (herein referred as 'PCIT') under Section 263 of the Act is illegal and bad in law. Hence, the order passed under Section 263 is liable to be quashed.
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> 3. That the order passed under Section 143 (3) of the Act by the Assessing Officer is neither erroneous nor prejudicial to the interest of Revenue and as such the order passed by the PCIT order under Section 263 of the Act in cancelling the assessment is illegal and bad in law.
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> 4. That the PCIT has failed to appreciate that the issue referred in his order under Section 263 of the Act has been duly considered and the view taken by the Assessing Officer is a plausible view. All necessary enquires/investigations /verification relating to the issue referred in the order of the PCIT under Section 263 of the Act were made by the AO while framing the assessment under 143(3) of the Act. Thus, the notice issued and the impugned order are beyond the preview of Section 263 of the Act and hence, the order passed under Section 263 is liable to be quashed.

5. That, in view of the facts and circumstances of the case and in law, the PCIT has failed to appreciate that no disallowance is called for where employee's share of contribution is paid before the due date of filing the return under Section 139(1) of the Act. Therefore, the disallowance, as suggested by PCIT amounting to Rs. 22,41,8327-, has been correctly not made by AO under Section 143(3) of the Act as the same was allowable.

6. That, in view of the facts and circumstances of the case and in law, the PCIT has failed to appreciate that the Finance Act, 2021 amendment is prospective in nature and is applicable from AY 2021-22 only and thus has no application to the facts under consideration for this AY 17-18.

7. That, the order passed by the PCIT under section 263 of the Act is clearly without application of mind. Hence, the notice issued and order passed under section 263 of the Act are liable to be quashed.

8. That, all the facts and circumstances of the case and the material available on record have not been properly considered by the PCIT while passing the order under Section 263 of the Act. The impugned order is illegal, arbitrary and bad in law.

9. That, the observations made are unjust, illegal, arbitrary, bad in law, highly excessive and based on surmise conjecture.

10. The Appellant craves leave to alter, amend or withdraw all or any objections herein or add any further grounds as may be considered necessary either before or during the hearing.

2. Succinctly stated, the assessee company which is engaged in the business of washing and trading of coal was subjected to survey proceedings under Sec. 133A of the Act on 25.09.2016. Subsequently, the assessee company had e-filed its return of income for AY 2017-18 on 16.11.2018, declaring a loss of (-) Rs. 3,46,03,38,237/-. The case of the assessee was thereafter selected for scrutiny assessment u/s. 143(2) of the Act.

3. Original assessment was framed by the AO vide his order passed u/s. 143(3) of the Act, dated 27.12.2019, wherein the assessees claim for

deduction of employees share of contribution towards Employees State Insurance (ESI) of Rs. 7,97,240/- was disallowed by the AO. Accordingly, the AO after making the aforesaid disallowances scaled down the assessees claim of loss to an amount of (-) Rs.3,45,95,40,997/-.

4. After culmination of the assessment proceedings, the PCIT, Raipur-1 called for the assessment records of the assessee company. The PCIT held a conviction that as the AO had wrongly allowed the assessees claim for deduction of employees share of contribution towards Provident Fund (PF) of Rs.22,41,832/- (out of Rs.32,82,668/-) which was deposited beyond the due date prescribed under the said Employee Welfare Act, therefore, the same had rendered the order passed by him u/s. 143(3) of the Act, dated 27.12.2019 as erroneous in so far it was prejudicial to the interest of the revenue u/s. 263 of the Act. Accordingly, the PCIT called upon the assessee to show cause as to why the order passed by the A.O u/s 143(3) of the Act, dated 27.12.2019 may not be revised by him. As the reply filed by the assessee did not find favor with the PCIT, therefore, he vide his order passed u/s.263 of the Act dated 25.03.2022 set-aside the order passed by the AO u/s. 143(3) dated 27.12.2019, and directed him to pass a fresh assessment order after affording a proper opportunity of being heard to the assessee.

5. The assessee being aggrieved with the order passed by the Pr. CIT u/s.263 of the Act dated 25.03.2022 has carried the matter in appeal before us.

6. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their contentions.

7. As is discernible from the assessment order, the AO while framing the assessment had observed that as per Section 2(24)(x) of the Act, any sum received by the assessee from its employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employee's State Insurance Act,1948 (34 of 1948); or any other fund for the welfare of such employees was the income of the assessee, deduction of which was allowable u/s.36(1)(va) of the Act only if the said amount was credited to the employees account with the relevant fund before the "due date". The A.O taking cognizance of the fact that the assessee company had delayed the deposit of the employees share of contributions of ESIC, i.e. had deposited the same after the "due date" prescribed under the ESI Act, thus, disallowed the aggregate of such delayed deposits amounting to Rs.7,97,240/-.

8. On a perusal of the records, it transpires that the Pr. CIT observed that though the assessee had also delayed the deposit of employees share of contributions of provident fund of Rs.22,41,832/-, i.e. had deposited the said amount beyond the "due date" prescribed under the Provident Fund Act, but the same was not disallowed by the A.O u/s.36(1)(va) r.w.s. 2(24)(x) of the Act. Accordingly, the Pr. CIT on the basis of his aforesaid observations, being of the view that the failure on the part of the A.O to disallow u/s 36(1)(va) r.w.s 2(24)(x) of the Act the aforesaid amount of Rs.22,41,832/-, i.e. the delayed deposit of employees share of contributions towards PF had rendered the assessment order passed by him as erroneous in so far it was prejudicial to the interest of the revenue, thus set aside his order with a direction to him to examine the aforesaid issue after affording a proper opportunity of being heard to the assessee.

9. It is the claim of the Ld. Authorized Representative (for short 'AR') for the assessee, that as the A.O in the course of the assessment proceedings, had after exhaustive deliberations and raising queries on the issue in hand accepted the assessee's claim for deduction of employees share of contributions of PF, therefore, the Pr. CIT in exercise of his revisional jurisdiction could not have dislodged the said plausible view so arrived at by him. The Ld. A.R in order to buttress his claim had taken us through the relevant pages of the paper book. Apart from that, it was submitted by the Ld. AR that as the employees share of contribution towards PF was

deposited by the assessee company though beyond the date prescribed under the relevant Employees Welfare Act but prior to the "due date" of filing of its return of income under sub section (1) of Section 139 of the Act, therefore, the said amount was duly allowable as a deduction u/s.43B of the Act. It was submitted by the Ld. AR that the aforesaid claim of the assessee, i.e. allowability of deduction of the employees share of contribution, which though was deposited beyond the "due date" prescribed under the relevant Act but before the "due date" of filing of the return of income under sub-section (1) of Section 139 of the Act was supported by the judgment of the Hon'ble Supreme Court in the case of CIT v. Alom Extrusions Limited (2009) 319 ITR 306 (SC) a/w. host of judicial pronouncements of various Hon'ble High Courts. On the basis of his aforesaid contentions, it was the claim of the Ld. AR that now when the A.O going by the aforesaid settled position of law had arrived at a possible and a plausible view and allowed the assessee's claim for deduction of employees share of contributions of Rs.22,41,832/- which was undeniably deposited before the "due date" of filing its return of income under sub-section (1) of Section 139 of the Act, therefore, the said view so arrived at by him could not have been dislodged by the Pr. CIT u/s. 263 of the Act. It was the claim of the Ld. AR that as the Pr. CIT had traversed beyond the scope of the jurisdiction vested with him u/s.263 of the Act, therefore, the order passed

by him was liable to be set-aside and the assessment order passed by the A.O be restored.

10. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

11. After having given a thoughtful consideration to the issue in hand, we are unable to persuade ourselves to subscribe to the contentions advanced by the Ld. AR. Before proceeding any further, we may herein observe, that in a case where an A.O had arrived at a possible and plausible view, then as per the settled position of law the same cannot be dislodged by the Pr. CIT in exercise of his jurisdiction u/s.263 of the Act. On the aforesaid settled position of law there is no dispute. However, we are afraid that the facts involved in the present case are found to be placed on an absolutely different footing. Although it is the claim of the Ld. AR that the A.O had consciously allowed the assessee's claim for deduction of employees share of contribution towards PF, which though were deposited beyond the "due date" prescribed under the relevant Act but before the "due date" of filing of its return of income under sub-section (1) of Section 139 of the Act, but we find the said contention of the Ld. AR to be absolutely misconceived and incorrect. As observed by us hereinabove, the A.O had at no stage formed a view that the delayed deposit of the employees share of contribution in the employees welfare funds, i.e beyond the prescribed dates contemplated

under the relevant Acts/Rules but prior to the "due date" provided under sub-section (1) of Section 139 of the Act was to be allowed as a deduction. On the contrary, the A.O had categorically observed, that as per Section 36(1)(va) of the Act, the deduction is allowable to the assessee only if it had made payment of the employees share of contributions in the employees account with the relevant funds before the "due date" under the relevant Act/Rules. It is on the basis of his aforesaid observation that the A.O had disallowed u/s 36(1)(va) r.w.s 2(24)(x) of the Act the delayed deposit by the assessee of the employees share of contributions of Rs. 7,97,240/- towards ESIC. For the sake of clarity, the relevant observations of the A.O are culled out as under:

> "It is clear that the sum of Rs.7,97,240/- has been deposited after the due date prescribed under the relevant Acts. As per Section 2(24) (x) of the Act, any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees State Insurance Act, 1948 (34 of 1948), or any other fund for the welfare of such employees is income of the assessee provided the deduction is allowable u/s 36(1)(va) of the Act. **According to Section 36(1)(va) the deduction is allowable to the assessee only if the assessee made the payment of employees contribution to the employees account in the relevant fund before the due date under relevant Rule/Act**. In this case it is apparent that the assessee failed to make the payment to the employees account in the relevant fund before the due date. Therefore, the collected employees contribution of ESIC is income of the assessee as per Section 2(24)(x) of the Act and no deduction is found to be available to the assessee as per provision of Section 36(1)(va) of the Act. Therefore, Rs.7,97,240/- is added back to the total income of the assessee."
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> (emphasis supplied by us)

On the basis of the aforesaid facts, we are of the considered view, that the A.O while framing the assessment, held a clear conviction that the assessee's claim for deduction of employee's share of contribution towards employees welfare funds was only to be allowed if the same were deposited by the assessee in the relevant funds before the "due date" as prescribed under the relevant Act/Rules; and had at no stage ever formed a view that the same were to be allowed even where the same was though deposited beyond the "due date" under the relevant Act/Rules but prior to the "due date" prescribed under sub-section (1) of Section 139 of the Act. As the A.O had not arrived at any such view as had been canvassed by the Ld. AR, i.e. allowability of the assessee's claim for deduction of the delayed deposit of employees share of contribution in the relevant labor welfare funds, i.e. such amounts which were deposited beyond the prescribed date contemplated under the relevant Act/Rules but within the "due date" of filing return of income under sub-section (1) of Section 139 of the Act, therefore, we are unable to concur with him that the Pr. CIT in the garb of his revisional jurisdiction u/s.263 of the Act had sought to dislodge a possible and a plausible view that was arrived at by the A.O. On the contrary, we are of the view that though the A.O while framing the assessment was clear in his mind that the assessee's claim for deduction of employees share of contributions towards employees welfare funds was only to be allowed if the said sum was deposited within the "due date" prescribed under the relevant

Act/Rules, but inadvertently he had confined the disallowance only to the extent of delayed deposit of ESI and not those made towards PF. In our considered view, the Pr. CIT had rightly observed that as the failure of the A.O in not disallowing the delayed deposit by the assessee of employees share of contributions towards PF of Rs.22,41,832/- clearly militates against his own view that had formed the very basis for disallowing the delayed deposit of the employees share of contributions of ESI u/s.36(1)(va) r.w.s. 2(24)(x) of the Act, therefore, the same had rendered his order as erroneous in so far it was prejudicial to the interest of the revenue u/s.263 of the Act.

12. We, thus, finding no infirmity in the view taken by the Pr. CIT who had rightly set-aside the order passed by the A.O u/s.143(3) of the Act dated 27.12.2019, wherein he had directed the A.O to re-adjudicate the aforesaid issue afresh after affording a proper opportunity of being heard to the assessee, uphold his order.

13. Resultantly, the appeal filed by the assessee being devoid and bereft of any merit is dismissed in terms of our aforesaid observations.

Order pronounced in open court on 29th day of May, 2023.

Sd/-	Sd/-
ARUN KHODPIA	**RAVISH SOOD**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 29th May, 2023
**#Thirumalesh/SB

<u>आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :</u>

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT, Raipur-1 (C.G)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.