

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 3707/DEL/2019
[Assessment Year: 2014-15]

Chemester Food Industries Pvt. Ltd Vs.
Premises No. 111, Rectangle One
Saket, New Delhi

The Pr. CIT-2
New Delhi

PAN : AAFCC 5417 M

[Appellant]

[Respondent]

Date of Hearing : 06.06.2023
Date of Pronouncement : .06.2023

Assessee by : Shri Ranjan Chopra, CA

Revenue by : Ms. Parmita M. Biswas, CIT-DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is directed towards the order of the PCIT-2, New Delhi, dated 29.03.2019 framed u/s 263 of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] pertaining to A.Y. 2014-15.

2. The grievances of the assessee read as under:

“1. That the orders of the Ld. PCIT u/s 263 directing the Assessing Officer to frame the assessment afresh is illegal, erroneous, perverse and thus uncalled for and therefore ought to be quashed.

2. That the Appellant disputes the very initiation of the proceedings u/s 263 of the Income Tax Act, 1961 ('the Act') by Ld. Pr. CIT by setting aside assessment orders passed by the Ld. AO u/s 143(3), despite Pr. CIT having himself admitted in the notice issued u/s 263 that the Appellant had filed loan confirmation, bank statement and return of income of lenders to substantiate their genuineness and creditworthiness during the original assessment proceedings u/s 143(3).

3. That the Ld. PCIT erred on facts and in law, in invoking the provisions of section 263 of the Act, ignoring that the Ld. AO had already specifically required the Appellant to prove the identity & creditworthiness of the genuineness of impugned unsecured loans Appellant from Anukul Commercial Pvt Ltd (Rs.31,00,00,000) and Dhansamridhi (Rs.15,16,71,781) by issuing written notices.

4. The Ld. PCIT erred in not appreciating the fact that the written notices of the Ld. AO were duly replied in writing by the Appellant along with documentary evidences and the Ld. AO after having examined the said replies and after due application of mind had neither felt the need for further enquiry nor had drawn any adverse inference. Therefore, the Assessment Orders passed by the Ld. AO could not be considered erroneous and thus, was out of purview of revision u/s 263 of the Act as the jurisdiction under

section 263 of the Act cannot be assumed by Ld. PCIT for making roving enquiries on the issues that were already enquired into and examined by the Ld. AO and had already reached finality.

5. The Appellant craves leave to add, alter, amend or forgo any grounds of appeal at the time of hearing.”

3. Vide letter dated 16.09.2019, the assessee further raised the following ground of appeal:

“That the learned Pr. CIT has erred in initiating proceedings u/s 263 of Income Tax Act, when the impugned assessment u/s 143(3) was framed in the name of M/s Chemester Food Industry (name of the amalgamating firm) which was non-existing when assessment order was passed. The notices issued u/s 142(1) & 143(2) pursuant to which the Assessing Officer assumed jurisdiction to make an assessment u/s 143(3) was issued in the name of M/s Chemester Food Industry a non-existent firm was invalid, hence initiation of assessment proceeding against the non-existing firm was void ab initio. The appellant disputes the very initiation of the proceedings u/s 263 of the Income Tax Act, 1961 by Ld. Pr. CIT of setting aside assessment order passed.”

4. Representatives of both the sides were heard at length. Case records carefully perused. Judicial decisions relied upon by the rival representatives duly considered.

5. The additional ground taken by the assessee goes to the root of the matter. Therefore, we will address to it first.

6. Vide letter dated 01.04.2014, which was received by the Office of the ACIT, Circle -3, Amritsar on 02.04.2014, the assessee brought to the notice the following:

“Date: 01.04.2014

***The Deputy Commissioner of
Income Tax Circle - III, Room
No. 355, Aayakar Bhawan
Maqbool Road, Amritsar -
143001, Punjab***

***Sub : Intimation regarding dissolution of Firm/Change in the
Constitution of the Establishment***

Dear Sir/Madam,

In reference to the above, We M/s Chemester Food Industry would like to inform you that w.e.f- 01/04/2014, we had transferred existing business to M/s Chemester Food Industry Pvt ltd by way of takeover procedure as provided in Section 47 (xiii) of the Income Tax Act, 1961 vide takeover cum succession deed on a going concern basis.

Further, all the partners of the Firm will act as the Director in the Company as well and all agreements, deeds, suits pleads etc. in the

name of M/s Chemester Food Industry would continue in the name of M/s Chemester Food Industry Private Limited as well.

Accordingly you are hereby requested to take note of the same and make necessary changes/updation in your records.

In this connection, we are enclosing herewith Pan Card, takeover/succession deed, Certificate of Incorporation, MOA & ADA, Dissolution Deed-and Dissolution Certificate (Form C), Director's & Shareholder's details of Chemester Food Industry Pvt Ltd for your perusal and necessary records.

Thanking you

(Neeraj Agarwal) “

7. Without giving any cognizance to the afore-stated letter, the Assessing Officer issued notice dated 05.07.2016 in the name of the firm Chemester Food Industry u/s 142(1) of the Act requiring the assessee to produce the accounts/documents. The following questionnaire was attached with the notice:

Notice for hearing for Assessment proceedings u/s 143(3) vide notice u/s 143(2) served.



OFFICE OF THE DEPUTY COMMISSIONER OF INCOME-TAX
Circle-3, Room No.355, Second Floor, Central Revenue Building, Maqbool Road,
Amritsar,-143001 Phone-0183-2506857(9464604168)

No. ACIT/C-3/ASR/2016-17

Dated: - 5-7-2016

To,

[PAN- AADFC9539P]

M/s Chemester Food Industry
201- 202, Pankaj HouseH Block Market 2nd Floor
Sarita ViharNew Delhi
Delhi 110076 C/o ShVijay Umat C.A Amritsar.

Sir /Madam

Sub- Assessment proceedings u/s 143(3) in your case for the assessment year 2014-15 - Reg

Please refer to the pending assessment proceedings in your case for the said assessment year vide notice u/s 143(2) already served. You are requested to furnish the evidences on the following points and matters on the fixed date of hearing at 14-7-2016 at 11 AM duly signed and verified in the prescribed manner along with supporting original documents / accounts books and evidences. Notice u/s 142(1) enclosed.

- 1 Party wise details of purchases (above Rs 10 lac) made with quantity and quality of material purchased with identity names and complete address of the parties.

Name of the Party & Address	PAN. No.	Opening Balance	Quantity	Quality /item of material	Closing Balance
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- 2 Copy of purchase account.

- 3 Party wise details of sales (above Rs 10lac) made with quantity and quality of material purchased with identity names and completes address of the parties and their certified copies of accounts.

- 4 Itemise details of opening and closing stock and sale /purchase /consumption with quantity, quality and value of each item of each item of raw material

- 5 Itemise details of opening and closing stock and sale /purchase /with quantity, quality and value of each item of each item of finished goods.

- 6 Statements of all bank accounts maintained during the year with bank reconciliation statement and confirmation from the bank including confirmation of interest paid.

- 7 Details of export sales (certified from government export authority) and expenses as under for year under consideration and last 2 years.

Assessment year	Item /quality	Quantity sold	Sale Amount	Export expense
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- 8 Unit of electricity consumed during the year under consideration with comparison of last 2 years with bills of electricity and other direct and indirect expenses with names and complete addresses, PAN of the persons (above Rs 5 lac) with comparison for lat 2 years.

- 9 Details of any penalty/fine imposed by any authority.

- 10 Please prove the identity, genuineness and creditworthiness in all of all unsecured loans received during the year with all evidences with bank statement and creditworthiness of payees as under

Sr	Name of the persons	Amount
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no		
1	Dhansamridhy finance p ltd	Rs151671781/-
2	Anukul Commercial P ltd	Rs 310000000/-
	Total	Rs461671781/

11 In respect of all sundry creditors above (10 lac) please furnish details in the following format.

Name of the Party & Address	PAN.No.	Opening Balance	Purchases made	Payments	Closing Balance
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12 In respect of all sundry debtors above 10 lac, please furnish the following format, if applicable:-

Name of the Party & Address	PAN.No.	Opening Balance	Sales made	Payments	Closing Balance
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13 Please furnish copy of TDS account and TDS payable account in your books and furnish following details(including payment made to non-residents or to a foreign co) as per form no 15 CA

Name and complete addresses of the Person to whom payment made /credited	Pan of the deductee	Nature of payment / credit	Amount paid/ credited	Date of payment /credit	Amount of TDS	Date of Deposit of TDS	Nature of expenditure capital /revenue	Whether debited to P & L account.
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All the above details should be accompanied with adequate supporting evidences. Case is fixed for hearing as above.

Yours faithfully,

[Charan Dass]
Deputy Commissioner of Income Tax,
Circle - 3, Amritsar



8/11/2016

8. The assessee filed detailed reply, specifically giving details sought by the Assessing Officer vide the aforementioned notice.

9. The reply of the assessee is placed at pages 49 and 50 of the paper Book.

10. Not satisfied with the reply of the assessee, the Assessing Officer once again issued notice dated 18.07.2016 in the name of Chemester Food Industry asking the assessee to furnish complete details of all unsecured loans received during the year from the following parties:

- (i) Dhansamridhi Finance Private Limited - Rs. 15,16,71,781/-
- (ii) Ankul Commercial Pvt. Ltd - Rs. 31,00,00,000/-

11. The assessee filed reply which is placed at page 51 of the Paper Book and furnished the necessary details in respect of the two parties. Thereafter, assessment order was framed u/s 143(3) of the Act in the name of the firm Chemester Food Industry order dated 20.12.2016.

12. As mentioned elsewhere, the assessee has categorically intimated that the firm has been dissolved and was succeeded by Chemester Food Industry. Alongwith the said letter, the assessee has enclosed PAN Card, take over/sanction deed, certificate of incorporation, Memorandum and Article of Association, Dissolution

deed and Dissolution Certificate, contractors and shareholders details of the company Chemester Food Industry.

13. The Deed of Resolution of partnership, which was furnished alongwith letter to the Assessing Officer placed at pages 39 to 43 of the Paper Book wherein under clause (1) it has been specifically mentioned *“That the parties hereto hereby dissolve the said partnership firm w.e.f 31.03.2014 after business hours”*.

13. In the said deed, it has also been specifically mentioned that business be reorganized by transfer of existing business by way of takeover procedure as provided in Section 47(Xiii) of the Act on a going concern basis vide takeover cum succession deed dated 22.03.2014 to a newly formed company under the Companies Act, 1956 M/s Chemester Food Industry. The said takeover-cum-succession deed was also furnished to the Assessing Officer alongwith letter dated 01.04.2014.

14. These clinching evidences were very much before the Assessing Officer who grossly failed to take cognizance of the documents and proceeded in framing the assessment u/s 143(3) of the Act in the name of a non existing person.

15. The Hon'ble Supreme Court in the case of Maruti Suzuki India Ltd 107 Taxmann.com 375 has held that :

“Issuance of jurisdictional notice and assessment order thereafter passed in the name of non-existing company i.e. amalgamating company having ceased to exist as a result of approved scheme of amalgamation is a substantive illegality and not a procedural violation of nature adverted to in section 292B and hence being without jurisdiction was to be set aside.”

16. The Co-ordinate Bench in the case of Westlife Development Ltd in ITA No. 688/Mum/2016, vide order dated 24.06.2016, under similar facts and circumstances, has held that:

“The proceedings initiated u/s 263 seeking to revise the original assessment order is off shoot of the primary proceedings and therefore, these may be termed as 'collateral proceedings' and jurisdictional aspects of the order passed in the primary proceedings can be examined in the collateral proceedings also”

and went on to hold that since the assessment order is held to be non-est, assumption of jurisdiction u/s 263 of the Act is bad in law.

17. Since the assessment order has been framed in the name of a non-existing entity, the same deserves to be quashed and as the assessment order is non-est, assumption of jurisdiction u/s 263 of the Act by the PCIT is bad in law and, therefore, the order framed by the PCIT u/s 263 of the Act is set aside and the proceedings quashed.

18. Since we have decided the appeal on the point of law, we do not find it necessary to dwell into the merits of the case.

19. Before parting, the ld. DR had vehemently stated that all the decisions relied upon by the assessee relates to amalgamation of company whereas the facts of the case in hand are that of succession of partnership firm by a company and, therefore, the case laws are distinguishable on facts.

20. We do not find any merit in these submissions of the ld. DR as the issue has been addressed to and decided is whether the order framed in the name of a non existing entity can be subject to revision u/s 263 of the Act.

21. In the result, the appeal filed by the assessee in ITA No. 3707/DEL/2019 is allowed.

The order is pronounced in the open court on 09.06.2023.

Sd/-

**[ANUBHAV SHARMA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 09th JUNE, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	