

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE MS. SUCHITRA R KAMBLE, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.100/Ind/2022
Assessment Year: 2017-18

M/s Danish Health Care Private Limited, 76/27, Maxi Road, Industrial Area, Ujjain	<u>बनम/</u> Vs.	Pr. CIT-1, Indore
(Appellant / Assessee)		(Respondent / Revenue)
PAN: AAECD5554F		
Assessee by	Ms.Ruchira Negi, Ld. AR	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing	22.03.2023	
Date of Pronouncement	15.06.2023	

आदेश / O R D E R

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

Feeling aggrieved by revision-order dated 07.02.2022 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 26.12.2019 passed by learned ITO-2(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 this appeal has been filed after a delay of 26 days and therefore time-barred. Ld. AR prayed that the delay has occurred due to Covid-19 Pandemic. Ld. AR further placed reliance on the order of Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020 read with Misc. Applications**, by which suo motu extension of the limitation-period for filing of appeals w.e.f. 15.03.2020 under all laws has been granted and hence there is no delay in fact. We confronted Ld. DR who agreed to the submission of Ld. AR. In view of this, the appeal is proceeded with for hearing, there being no delay in fact.

4. Brief facts leading to present appeal are such that the assessee filed return of income on 30.10.2017 at a total income of Rs. 2,70,357/- which was subjected to scrutiny assessment through notices u/s 143(2)/142(1). Finally, the AO completed assessment u/s 143(3) vide order dated 26.12.2019. 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. The reason of framing such a view, as mentioned by Ld. PCIT in show-cause notice dated 05.01.2022 and also reproduced in Para No. 3.1 to 3.9 of the impugned revision-order, are nine (9) issues which were not examined/enquired by Ld. AO. These issues shall be discussed in later part of this order.

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. The Ld. PCIT further 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) ...”*

7. Finally, the PCIT concluded that the 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 AO with a direction to re-frame assessment after examining impugned issues.

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

9. 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?

10. Ld. Representatives of both sides made a lengthy discussion on various issues one by one. We sum up the arguments and contentions of both sides as also our analysis issue-wise as under:

(i) Regarding issue raised in Para No. 3.1 of show-cause notice:

Ld. PCIT observed that the AO did not mention anything regarding allowing carry forward of unabsorbed losses of current year as well as of earlier years. Further, the AO called for explanation vide notice u/s

142(1) dated 27/08/2019, in response to which the assessee filed submission dated 04/09/2019 stating “we will explain this point in next reply” but no reply or explanation is found on record on this issue. Thus, the AO has failed to verify this issue.

In this regard, Ld. AR carried us to a sheet titled “Computation of Total Income” filed by assessee (Paper Book Page No. 148 to 149) wherein the details of unabsorbed brought forward, set off and carried forward losses are mentioned. Ld. AR submitted that these details were held on the departmental record.

Per contra, Ld. DR submitted that the impugned sheet merely exhibits the figures of losses but the AO’s duty was to enquire into the same and verify, which has not been done.

On a careful consideration, we find that although the figures of losses are mentioned in impugned sheet but it is not established that the AO has verified the same. Further, the PCIT has rightly noted that when the AO raised a query with regard to this issue, the assessee in its submission dated 04/09/2019 committed to file an explanation but there is no such explanation on record. Ld. AR could not contradict this finding of PCIT which means there was no explanation submitted by assessee to AO. Faced with this situation, we are not convinced that the AO has examined this issue as required. Therefore, we agree that the PCIT has rightly invoked revisionary jurisdiction *qua* this issue.

(ii) Regarding issue raised in Para No. 3.2 of show-cause notice:

Ld. PCIT observed that the assessee made cash deposit of Rs. 2,60,000/- in IDBI Bank and Rs. 26,000/- in Axis Bank during demonetisation period but no details/explanation has been called for and verified by AO. The assessee has multiple bank accounts but the

statement of only one bank, namely Allahabad Bank C/C A/c, is held on record. Thus, the AO has not verified transactions in other bank accounts.

In this regard, Ld. AR submitted that the AO asked the assessee to furnish copies of all bank accounts vide Point No. 3 of notice dated 27.08.2019 u/s 142(1) (Paper-Book Page No. 25) and the assessee filed copies of bank accounts vide Point No. 3 of reply dated 04.09.2019 (Paper Book Page No. 27). Further, in Point No. 4 of the same reply, the assessee also mentioned that there were no substantial deposits in cash in bank accounts, the cash generated in routine business was only deposited. Then, Ld. AR also drew our attention to a copy of the “Notes to Financial Statements for the year ended 31.03.2017” forming part of audited accounts under Companies Act, 2013 (Page No. 129 of the Paper-Book) wherein the assessee-company had reported complete details of Specified Bank Notes deposited during demonetisation-period. Ld. AR submitted that the impugned details are statutory details in terms of Notification issued by Ministry of Corporate Affairs and these were very much available with the AO at the time of assessment.

Per contra, Ld. DR strongly contended that the replies given by assessee to AO were very much vague and in any case the AO has not carried out any verification of the bank accounts claimed to have been submitted by assessee.

On a careful consideration, we agree with the submission of Ld. DR. We also note that mere reporting of details in the financial statements of assessee to comply with the Notification of Ministry of Corporate Affairs does not mean that the AO has verified the deposits or sources thereof. Therefore, we agree that the PCIT has rightly invoked revisionary jurisdiction *qua* this issue.

(iii) Regarding issue raised in Para No. 3.3 of show-cause notice:

Ld. PCIT observed that there is a fall in NP but the reasons for same have not been called for and verified by AO. Further, the assessee-company being manufacturer is required to maintain quantitative details of raw materials, finished products and by products, etc. but the Column No. 35(b) of the Tax Audit Report shows “Nil” details. The closing stock of Rs. 2,10,09,046/- remains unverified by AO. Further, the AO has not verified Other expenses, Sundry Creditors of Rs. 3,89,998/-, Trade payable of Rs. 3,13,53,253/-, Fixed assets of Rs. 23,58,560/- and Preliminary expenses of Rs. 1,36,065/-.

In this regard, Ld. AR has made a simple submission that the books of account of assessee were produced before AO and the same were subjected to thorough examination. Ld. AR submitted that even if the AO does not mention each and every item of enquiry in the assessment-order, it cannot attract revision action. To support this, Ld. AR relied upon the decision of Hon'ble ITAT, Mumbai in **Reliance Payment Solutions Ltd. Vs. Pr. CIT (2022) 136 taxmann.com 277**.

Per contra, Ld. DR drew our attention to assessment-order and strongly contended that it is just a half-page/two-paragraphs order and does not demonstrate any enquiry whatsoever having been done by AO. Ld. DR submitted that the assessment-order even does not speak the bare minimum point that the books of account were perused by AO. Ld. DR further argued that there is no detail called for by AO with respect to the various items noted by PCIT. Hence, Ld. DR contended, the revision is valid for this issue.

On a careful consideration, we do not have any hesitation in accepting the submissions of Ld. DR. The records clearly show that no enquiry or verification has been done by AO qua the items noted by PCIT. We do not have any quarrel with the decision cited by Ld. AR but the said

decision does not support assessee's case for the reason that it is not simply a case of non-discussion by AO in assessment-order, it is a case where no enquiry has in fact been done by AO. Had the AO done any enquiry and not made discussion in the assessment-order, the decision would have saved the assessee but it is not so in present case. Therefore, we agree that the PCIT has rightly invoked revisionary jurisdiction *qua* this issue.

(iv) Regarding issue raised in Para No. 3.4 of show-cause notice:

Ld. PCIT observed that the assessee debited interest on late payment of TDS of Rs. 370/- which was penal in nature and disallowable but the AO has not made any disallowance.

Ld. AR submitted that interest on TDS is not penal in nature and the amount involved is also insignificant.

Per contra, Ld. DR submitted that interest on late payment is certainly penal in nature as per decision of ITAT, Indore itself. Further, the quantum of amount, howsoever insignificant, can't take away the revisionary power of PCIT.

On a careful consideration, we agree with the submission of Ld. DR and consequently we hold that the PCIT has rightly invoked revisionary jurisdiction *qua* this issue.

(v) Regarding issue raised in Para No. 3.5 of show-cause notice:

Ld. PCIT observed that the assessee made cash payment of Rs. 28,000/- to M/s Nakoda Corporation on 04.08.2016 and Rs. 35,000/- to M/s H.M. Shah & Co. on 17.09.2016. However, the AO has not made any disallowance.

In this regard, Ld. DR straightaway carried us to Para No. 4.4 / Page

No. 7 of revision-order wherein the PCIT has categorically noted that the assessee admitted this error/mistake in submission before him. Ld. AR could not rebut this finding noted by PCIT. Faced with this situation, we agree that the PCIT has rightly invoked revisionary jurisdiction *qua* this issue.

(vi) Regarding issue raised in Para No. 3.6 of show-cause notice:

Ld. PCIT observed that the assessee had not deposited employee contribution of Rs. 16,598/- to employee welfare funds (PF/ESI) by the due dates but the AO has not made any disallowance u/s 2(24)(x) read with section 36(1)(va).

Ld. AR fairly agreed that the assessee has not deposited employees' contribution before due dates and in view of decision of Hon'ble Supreme Court in ***Checkmate Services (P.) Ltd. [2022] 143 taxmann.com 178 (SC)***, the same is disallowable. Faced with this situation, we agree that the PCIT has rightly invoked revisionary jurisdiction *qua* this issue.

(vii) Regarding issue raised in Para No. 3.7 of show-cause notice:

Ld. PCIT observed that the assessee has declared brokerage/commission payment of Rs. 71,200/- but TDS had been made out of Rs. 59,000/- only. The AO has not verified the reason of non-deduction on differential amount. Further, in the Balance-Sheet, Rs. 5,931/- is appearing against TDS payable but the AO has failed to verify whether the same had been paid or not before filing of return u/s 139(1).

Ld. AR submitted that this issue is a mere suspicion of PCIT. The assessee had deducted TDS wherever it was deductible and not deducted TDS on differential amount of Rs. 12,200/- which did not attract TDS provision. Further, the Column No. 26(B) of Tax Audit

Report (Paper Book Page No. 140) clearly exhibits that the assessee deposited TDS of Rs. 5,931/- on 18.04.2017. Therefore, the PCIT has wrongly involved this issue as a basis for revision. Ld. DR could not rebut the submissions of Ld. AR.

On a careful consideration, we agree with the submission of Ld. AR and hold that this issue does not attract any revisionary jurisdiction.

(viii) Regarding issue raised in Para No. 3.8 of show-cause notice:

Ld. PCIT observed that on perusal of Balance-Sheet, it is found that the assessee had taken loans/advances of Rs. 30,36,164/- from directors and Rs. 15,90,575/- from others. The AO has not examined this issue in terms of section 68 of the act.

Ld. AR straightaway submitted that it is a wrong finding made by PCIT, in fact it does not match with assessee's audited statements. Ld. DR could not rebut the submissions made by Ld. AR. Faced with this situation, we agree with the submission of Ld. AR and hold that this issue does not attract any revisionary jurisdiction.

(ix) Regarding issue raised in Para No. 3.9 of show-cause notice:

Ld. PCIT observed that the assessee has given advances of Rs. 14,28,533/- but no verification has been done whether the same are business advance, whether any interest has been charged or not, whether any advance given to it directors having substantial interest from the angle of section 2(22)(e), whether any proportionate disallowance out of interest expenses was called for or not?

Ld. AR submitted that this observation made by PCIT is also baseless. It is not known as to how PCIT made this observation. Ld. DR could not rebut the submission of Ld. AR. Faced with this situation, we agree with the submission of Ld. AR and hold that this issue does not

attract any revisionary jurisdiction.

11. In view of above, we are of the view that the Ld. PCIT was justified to invoke revisionary action *qua* certain issues but not all issues as discussed in foregoing paragraph. Being so, we are persuaded to modify and thus partly uphold the revision-order passed by PCIT to the extent it relates to the issues for which the revision was validly done as narrated above. The assessee succeeds partly in this appeal.

12. Resultantly, this appeal of assessee is allowed partly.

Order pronounced in the open court on 15/06/2023.

Sd/-

(SUCHITRA R KAMBLE)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 15.06.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore*