

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'A', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 550/Kol/2021
Assessment Year : 2017-18

M/s. P.M. Cold Storage Private Limited	Vs.	Pr. CIT -1, Kolkata
PAN: AAABS 1664 A		
Appellant		Respondent

Date of Hearing	22.06.2023
Date of Pronouncement	27.06.2023
For the Assessee	Shri Rip Das, FCA
For the Revenue	Shri Subhendu Datta, CIT, DR

ORDER

Per Sonjoy Sarma, JM:

By way of this appeal, the assessee has challenged the correctness of the order passed by the ld. Pr. Commissioner of Income Tax-1, Kolkata (in short 'ld. PCIT') dated 06.10.2021 u/s 263 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') for A.Y. 2017-18. Grounds of appeal raised by the assessee are as follows:

"1) For that the order passed U/s 263 is bad in law to the extent that the Ld CIT was not satisfied with the view adopted by ld AO and hence issued show cause notice. The fact remains that on the very subject issue of show cause notice U/s 263, enquiry was made by ld AO who after discussion and being satisfied with the case records, accepted the returned income. As such, Ld CIT was not justified in invoking provisions of section 263 to this extent.

2) For that it is well settled law that just because the order of AO is silent to the extent of enquiry made or his observations there on, provisions of section 263 cannot be invoked. There lies a difference between lack of enquiry and inadequate enquiry and as law holds, provisions of section 263 cannot be invoked for inadequate enquiry. The fact remains that enquiry was conducted and ld AO upheld one

of the possible views. AS such, the order passed under section 263 is bad in law and fit to be quashed.

3) For that all the assessment orders passed in general by the Income Tax Department passed as per SOP issued by the CBDT Board in regard with deposits of Demonetized currency during the financial year 2016-17, therefore, question of inadequate submission by the Assessee in assessment proceeding is baseless and the order passed under section 263 is bad in law and fit to be quashed.

4) For that the assessee company submitted its reply in response to the show-cause notice issued by the Hon'ble PCIT-1 Kolkata and evidences are on record, therefore, without considering reply of the Assessee the order passed under section 263 is bad in law and fit to be quashed.

5) For that other grounds in detail will be argued at the time of hearing.”

2. Succinctly the factual panorama of the case is that assessee before us is a company and had filed its return of income for the A.Y. 2017-18 on 29.10.2017 declaring total loss of Rs. (-) 9,83,055/- scrutiny assessment u/s 143(3) of the Act was finalized on 26.12.2019 by accepting the return of income shown by the assessee company. On perusal of the scrutiny records, it was observed by the Id. PCIT that one reason for selection of the case under scrutiny was abnormal increase in cash deposits made during the period of demonetization as compared to the pre demonetization period. The cash deposit in the bank from 01.04.2015 to 07.11.2015 and 08.11.2015 to 30.12.2015, month-wise cash sales were examined and same were analyzed in the same period of F.Y. 2016-17 relevant to A.Y. 2017-18. However, assessee could not able to justify such abnormal enhancement of cash sales and stated in the submission that “... the assessee company for the purpose of capital expenses on Cold storage withdrawn amount of

Rs.6,53,00,000/- during the period of 01-04-2016 to 31.12.2016 and the same were remain un-utilized due to some troubles in the local area. The opening cash in hand was of Rs. 46,58,464/-, the assessee company was having demonetization currency note of Rs. 1000/- & 500/- of the tune of Rs.5.51,17.000/- at the time of announcement of demonetization. The amount of demonetization currency having source being withdrawn from bank accounts itself were deposited in the bank account as stated herein". However, claim of assessee was not justifiable to ld. PCIT as because assessee's total income during the year was Rs.(-9,83,055/-, sales turnover was Rs. 34,13,351/- and other income was Rs.8,59, 887/- aggregating to Rs.42,73,238/-. Assessee could not furnish the source of loans, mode of payment etc. and he viewed that no proper enquiry was done by the AO on this issue.

3. Therefore, ld. PCIT observed that the assessment order passed u/s 143(3) of the Act for the A.Y. 2017-18 on 29.12.2017 is erroneous and prejudicial to the interest of revenue and, therefore, ld. PCIT directed the Assessing Officer to recomputed and determine the aggregate total income of the assessee company after considering observation made by the ld. PCIT in his revisionary order. Therefore, the assessment order u/s 143(3) of the Act dated 29.10.2017 for the A.Y. 2017-18 in assessee's case was set aside by ld. PCIT with the direction to Assessing Officer to frame the assessment de novo.

4. Aggrieved by the order of ld. PCIT, assessee is in appeal before the Tribunal.

5. The authorized representative of the assessee appears before the Tribunal and stated that the issue raised by the ld. PCIT had been adequately enquired and dealt upon by the Assessing Officer and framed the assessment order u/s 143(3) of the Act by accepting the return of income filed by the assessee. Therefore, the order passed by the Assessing Officer neither erroneous nor prejudicial to the interest of revenue. The ld. counsel also stated that revisionary order u/s 263 of the Act was passed in haste and hurry. Moreover, the assessee did not get appropriate notice, therefore, assessee could not submit material evidence before the ld. PCIT. The ld. counsel stated that one more opportunity should be given to the assessee to submit material and evidence before the ld. PCIT.

6. On the other hand, ld. DR for the revenue submitted that Assessing Officer has passed a cryptic order and there is no mention in the assessment order about examination of the issue raised by the ld. PCIT. Therefore, the order passed by the ld. CIT(A) should be upheld.

7. We have heard the rival submission of the parties and have gone through the material placed on record. We note that para 4 of the revisionary order u/s 263 of the Act, the ld. PCIT stated as follows:

“Show-Cause notice u/s 263(1) of the I T Act 1961 dated 19.08.2021 was sent to the assessee through e-mail at the e-mail ID available on ITBA as well as by post but no response has been made by the assessee till date.”

8. From the above findings of ld. PCIT, it is abundantly clear that assessee company could not represent the matter as it was not getting the appropriate notice from the ld. PCIT. Therefore, we note that assessee has not getting sufficient time to file material evidences before the ld. PCIT since that point of time due to NCLT Proceeding and Resolution professional was appointed by the Hon'ble NCLT to look into the matters of the assessee company. For this reason, proper representation could not be done on behalf of the company. Therefore, it is established that ld. PCIT has passed the order ex-parte against the assessee. We from the findings of the ld. PCIT in his order u/s 263, it is vivid that ld. PCIT has given direction to the Assessing Officer to frame fresh assessment order whereas ld. PCIT in his revisionary order raised specific issue to examine abnormal deposit of cash made during the period of demonetization by the Assessing Officer. Hence, the direction given the Assessing Officer is not in accordance with specific issue identified by ld. PCIT. Therefore, we note that assessee did not get adequate opportunity to file the relevant material evidences and documents before ld. PCIT during the revision proceedings and hence the revision order u/s 263 of the Act was passed by the ld. PCIT in hurry. Besides that ld. PCIT has directed the Assessing Officer to frame the entire assessment afresh which is not acceptable as the issue identified by the ld. PCIT was abnormal increase of cash deposit during the demonetization period and direction would have been given by ld. PCIT only for examination of the same. We note that the Hon'ble Supreme Court in *M.S. Gill vs The Chief Election Commission* 1978 AIR SC 851 held "The dichotomy between administrative and quasi-judicial function vis-à-

vis the doctrine of natural justice is presumably obsolescent after Kraipak (A.K. Kraipak vs UOI AIR 1970 SC 150) which makes the water-shed in the application of natural justice to administrative proceedings. The rules of natural justice are rooted in all legal systems and are not any new theology. They are manifested in the twin principles of *nemo judex in parte sua* (no person shall be a judge in his own case) and *audi alterem partem* (the right to be heard). It has been pointed out that the aim of natural justice is to secure justice. Considering the above facts, we note that assessee has not given sufficient opportunity of being heard and could not plead his case successfully before the ld. PCIT, hence it is a violation of principle of natural justice. We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest its case. Therefore, we deem it fit and proper to set aside the order of the ld. PCIT and remit the matter back to the file of the ld. PCIT to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 27.06.2023.

Sd/-

(Manish Borad)
Accountant Member

Sd/-

(Sonjoy Sarma)
Judicial Member

Dated: 27.06.2023
Biswajit

Copy of the order forwarded to:

1. Appellant- M/s. P.M. Cold Storage Private Limited, 1A, Madan Mohan Burman Street, Kolkata-700 007.
2. Respondent – Pr.CIT -1, Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata