

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.113/RPR/2016  
निर्धारण वर्ष / Assessment Year : 2011-12

M/s. Bhilai Jaypee Cement Limited  
14B, F Pocket, Maroda,  
Bhilai.  
PAN : AADCB1675Q

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Pr. Commissioner of Income Tax-2,  
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : None  
Revenue by : Dr. Simran Bhullar, CIT-DR

सुनवाई की तारीख / Date of Hearing : 28.06.2023  
घोषणा की तारीख / Date of Pronouncement : 10.07.2023

**आदेश / ORDER****PER RAVISH SOOD, JM:**

The present appeal filed by the assessee company is directed against the order passed by the Pr. Commissioner of Income Tax-2, Raipur (for short 'Pr. CIT') u/s. 263 of the Income Tax Act, 1961 (for short 'Act') dated 23.03.2016, which in turn arises from the order passed by the A.O. u/s.143(3) of the Act dated 04.03.2014 for A.Y.2011-12. The assessee has assailed the impugned order on the following grounds of appeal before us:

“1. On the facts and circumstances of the case and in law, the Pr. Commissioner of Income Tax-2, Raipur, has erred in setting aside the assessment order passed by AO;

2. On the facts and circumstances of the case and in law, the Pr. Commissioner of Income Tax-2, Raipur, has erred in holding that the assessment order dated 04/03/2014 is erroneous in so far as it is prejudicial to the interest of revenue;

3. The order passed by the Pr. Commissioner of Income Tax-2, Raipur u/s 263 of the Act is liable to quashed for the violation of principles of natural justice as:

i) He has not taken into account the submissions of the appellant;

ii) He has not passed a speaking order;

iii) He has relied on irrelevant considerations;

iv) He has not allowed proper opportunity of hearing;

4. The order passed by the Pr. Commissioner of Income Tax-2, Raipur u/s 263 of the Act is liable to quashed being in violation of binding instructions of CBDT issued vide Instruction No.7/2014 dated 26.09.2014.

5. On the facts and circumstances of the case and in law, the Pr. Commissioner of Income Tax-2, Raipur, has erred in

passing order u/s. 263 of the Act on different grounds than given in show cause notice in relation to security deposits without confronting the same to the appellant.

6. On the facts and circumstances of the case and in law, the Pr. Commissioner of Income Tax-2, Raipur, has erred in holding that in relation to security deposits, AO had made no enquiry even though no such enquiry was warranted or required to be made on the facts of the case.

7. On the facts and circumstances of the case and in law, the Pr. Commissioner of Income Tax-2, Raipur, has erred in holding that in relation to depreciation on Railway Siding, the order passed by AO was erroneous as he did not make enquiry to find out whether Railway track was laid inside or 'Outside the factory premises.

8. The appellant craves leave to add, delete, amend or modify all or any of grounds of appeal and to make written and oral submissions at the time of hearing.”

2. Succinctly stated, the assessee company which is engaged in the business of manufacturing of clinker and cement had e-filed its return of income, declaring a loss of Rs.(-) 219,26,42,619/- (including unabsorbed depreciation of Rs.169,75,07,494/-). Case of the assessee company was thereafter selected for scrutiny assessment through CASS.

3. The A.O while framing the assessment vide his order passed u/s.143(3) of the Act dated 04.03.2014 scaled down the total loss of the assessee company to Rs.218,83,44,659/-, as against its returned loss of Rs.219,26,42,619/-, observing as under:

“5. Under reporting of income:

On careful examination of Form 26AS, it was observed that the assessee company had not considered some of the amount of income paid/credited by the deductors as evident from the TDS

statement. The details of such receipts are given in the following table:

Sl.	Name of deductor	Income paid/credited (Rs.)	Amount of TDS	Remarks
1.	Bhilai Jaypee Cement Ltd.	762413/-	76240/-	Explained: Income pertains to Enexo Technology. However, the assessee wrongly put its own PAN
The assessee's explanation for Sl. 1 appears to be justified since the name of the deductor and that of the deductee is one and same in the Form 26AS.				
2.	Jay Prakash Associates Ltd.	16545/-	1655/-	Income not offered and TDS not claimed.
3.	Union Bank of India	40107/-	4011/-	-do-
4.	CSPDCL	3927540/-	392754/-	TDS claimed but income not offered to tax.
5.	State Bank of Patiala	274218/-	27422/-	-do-
6.	Axis Bank Ltd.	1165235/- <u>1159664/-</u> (diff) 5571/-	116524/-	TDS claimed but income to the extent of Rs.5,571/- not reported.
Total (Sl.2 to 6) Income Not reported		42,63,981/-	---	TDS of Rs.5,666/- not claimed in the return is allowed in the facts as per Form 26AS

In respect of income of Rs.16,545/- indicated at Sl.2, the Ld. A/R simply stated without assigning any reason that such income did not pertain to the assessee company. So far as income of Rs.40,107/- at Sl. 3 is concerned, the Ld. A/R merely stated that the FDRs were placed with Sales Tax Authority but did not offer any explanation regarding non-inclusion of the same in the computation of income. With regard to income of Rs.39,27,540/- mentioned at Sl. No.4 i.e. interest received from Chhattisgarh State Power distribution company Ltd. (CSPDCL), the Ld. A/R stated that this

income was offered to tax in the next year i.e. AY 2012-13 on the ground that such interest was adjusted with the electricity bill for the month of April 2011. In respect of interest income of Rs.2,74,218/- from State Bank of Patiala at SI. 5, the Ld. A/R merely stated that the income was offered in the AY 2012-13, without providing any explanation for not including such income in the year under scrutiny. With regard to interest income of Rs.5,571/- at Si. 6 from Axis Batik, the Ld. A/R stated that it was a clerical mistake and requested that such income May be added back.

It can be seen that the Ld A/R has not offered any cogent reason and justification for non-inclusion of income as evident from Sl. 2, 3, 5 & 6. In respect of interest income at Sl. 4 of 3 table, the Ld A/R. has given his argument which does riot appear to be acceptable on the ground that the assessee maintains its books of account on Mercantile basis, and the interest had indeed accrued and was credited on 31/03/2011 for which TDS was deducted u/s.194A of he Act. Interestingly, the assessee company claimed credit of such TDS without offering the correspondng interest income of Rs.39,27,540/- in the return of income for the AY 2011-12. There was no plausible reasons to defer the taxation of income of Rs. 39,27,540/-, on cash system of accounting, in the subsequent year particularly when the hybrid system. of accounting is not permissible u/s 145 of the Income Tax Act, 1961. In 'view of this, the understatement of income to the tune of Rs.42,63,981/- is added back, as evident from Form 26AS. Simultaneously, further credit of TDS of Rs, 5,666/- is also allowed. Penalty u/s. 271(1)(c) of the Act has been initiated separately.

**6. Excess claim of additional depreciation:**

The assessee-company commissioned the clinker manufacturing unit at Babupur in December, 2009. Subsequently, the cement grinding unit at Bhilai was commissioned in June, 2010 i.e. during the previous year relevant to the assessment year 2011-12, presently under scrutiny. The assessee claimed, among others, additional depreciation on plant and machinery installed at the cement grinding plant at Bhilai. Details of plant and machineries along with the cost of the same and the date of put to use were provided for verification during the course of hearing. On careful perusal of these details it was observed that certain items like rice cookers, Television, mobile phones etc. were classified as plant and Machinery for which additional depreciation was also claimed by the assessee. On being asked to justify the claim, the Ld. AR furnished a written submission on 18/02/2014 admitting the mistake that there was excess claim of additional depreciation to the tune of Rs.33,979/-. It was, therefore, requested that the same should be

disallowed. Keeping in view the facts and circumstances of the case, excess claim of additional depreciation of Rs.33,979/- is disallowed and added back.”

4. The Pr. CIT after culmination of the assessment proceedings called for the assessment records of the assessee company. The Pr. CIT observing that the A.O during the course of assessment proceedings had failed to apply his mind and carry out proper enquiries, thus, called upon the assessee company to show cause as to why the order passed by him u/s.143(3) of the Act, dated 04.03.2014 may not be revised u/s.263 of the Act on the following issues:

“1. There was outstanding unsecured loan amounting to Rs.21,53,64,890/- as on 31.03.2011 as reported in Annex-7 of 3CD report, which was not shown in B/S. This resulted in unexplained cash credit u/s.68 of IT Act of Rs.21,53,64,890/-.

2. Depreciation for railway siding worth Rs. 13,34,72,417/- as claimed @7.5% [50% of 15%] and an additional depreciation @10% [50% of 20%] as plant and machinery and block depreciation. Since railway siding does not come under the block-plant and Machinery but under Roads & Bridges block, excess depreciation claimed at Rs.16,66,76,552/-, resulted in under assessment of the same.”

In reply, it was submitted by the assessee company that the actual amount of outstanding unsecured loan that was accepted was Rs.18,32,63,349/-, and the same formed part of Schedule-G of its balance sheet wherein the liabilities and provisions were reflected under the head current liabilities. Apropos its claim of depreciation/additional depreciation on railway sidings, it was submitted by the assessee that as

per the Company Act, 1956, Sch-XIV (Section 205 & 206)- Item No.15, the same were a part of plant and machinery. The assessee in support of his contention had placed reliance on two decisions, viz. (i) Kalinga Tubes Ltd. (1974) 96 ITR 20 (Orissa); and (ii) Visveswarayya Iron and Steel Ltd. (1993) 199 ITR 98 (Karn.). However, the aforesaid contentions of the assessee company did not find favour with the Pr. CIT. It was observed by the Pr. CIT that the A.O while framing the assessment had not called for any confirmatory letter for the outstanding liabilities for verification. In fact, it was noticed by the Pr. CIT that the assessee's counsel had admitted that the A.O had not called for any confirmation letter for the outstanding liabilities. Accordingly, the Pr. CIT held the assessment order passed by the A.O u/s.143(3) dated 04.03.2014 as erroneous in so far it was prejudicial to the interest of the revenue, observing as under:

“6. For the above findings, on going through the assessment file of the assessee it is observed that the aforesaid both the issues mentioned in Para 2 have not been examined by the A.O. In fact, during the course of revision proceedings, the assessee's counsel fairly admitted that the A.O had not called for any confirmation letter for outstanding liabilities advance or deposits etc.

For point No.2, the A.O has also not made enquiry to find out whether the railway track is laid inside or outside the factory premises at the time of the assessment and had accepted the assessee's submission without applying the relevant provisions for allowing depreciation on railway track.

For the above findings, rely upon the following decisions of the Hon'ble Supreme court and High Court —

i. The Hon'ble Supreme Court in the ease of Tara Devi Agrawal. Vs. CIT in 88 ITR 373 (1972) held that :

"Where a stereotype order is passed which simply accepts what the assessee has said in the return and jurls to make enquiries which are called for in the circumstances of the case so made will be erroneous and prejudicial to the interest of revenue and the Commissioner has jurisdiction to cancel the assessment.

ii. The Hon'ble Supreme Court in the case of Ram Pyari Devi Saragi Vs. CIT (1968) 67 ITR 84 (SC)

"where the assessment is made in undue haste and without enquiry it will be erroneous and prejudicial to the interest of revenue."

iii. The Hon'ble Supreme Court of M.P in the case of CIT Vs. Deepak Kumar Gaya 299 ITR 433 has held under "where from order of Assessing Officer had don(' only a semblance of enquiry and that too, in very slipshod manner and Assessing Officer had accepted version of assessee without proper enquiry, as a result of which substantial amount of taxable income was not brought to tax, Commissioner rightly held assessment order as erroneous and prejudicial to the interest of revenue."

7. In view of the facts and circumstances of the case, I am satisfied that the assessment order passed u/s 143(3) on 04.03.2014 is erroneous in so far it is prejudicial to the interest of revenue on the above points and therefore, set aside the assessment order passed by the AO. Further, I direct the AO to make proper enquiry in accordance to the provisions of Sec.68 and 32 of the I T Act, 1961, after giving an opportunity of being heard to the assessee and determine correct income of the year under consideration."

5. The assessee being aggrieved with the order passed by the Pr. CIT u/s.263 of the Act dated 23.03.2016 has carried the matter in appeal before us. As the assessee appellant despite having been intimated about the hearing of appeal had failed to put up an appearance before us, therefore, we are constrained to proceed with and dispose off the appeal as

per Rule 24 of the Appellate Tribunal Rules, 1963, i.e after hearing the revenue respondent and perusing the orders of the lower authorities.

6. We have heard the Ld. Departmental Representative (for short 'DR'), perused the orders of the lower authorities and the material available on record.

7. We have given a thoughtful consideration to the order of the Pr. CIT and are persuaded to subscribe to the same. We, say so, for the reason that a bare perusal of the assessment order reveals that the A.O had without carrying out any enquiry and verification on both the aforesaid two issues in question, viz. (i) outstanding unsecured loan : Rs.21,53,64,890/-; and (ii) claim for depreciation @7.5% a/w. additional depreciation @10% on railway siding : Rs.16,66,76,552/-, had summarily accepted the same. The summarily acceptance of the aforesaid issues by the A.O, i.e. without carrying out any verification, as observed by the Pr. CIT and, rightly so, had rendered the assessment order passed by him u/s.143(3) of the Act, dated 04.03.2014 as erroneous in so far it was prejudicial to the interest of the revenue u/s.263 of the Act. On a perusal of the order of the Pr. CIT, it transpires that the assessee company during the course of the assessment proceedings had neither discharged the onus that was cast upon it as regards proving, viz. (i) identity of the party; (ii) creditworthiness of the party to advance money/security deposit/supply of machinery etc.; and

(iii) genuineness of the transaction w.r.t the outstanding unsecured loans in question; nor the A.O had made any enquiry w.r.t the said issue as per the mandate of Section 68 of the Act. In fact, during the course of revision proceedings, it was noticed by the Pr. CIT that the assessee's counsel had fairly admitted that the A.O while framing the assessment had not called for any confirmation letter for the outstanding liabilities under consideration. It was also observed by the Pr. CIT that the A.O while framing the assessment had not made any enquiry to find out whether the railway tracks were laid inside or outside the factory premises, and had accepted the assessee's submission without applying the relevant provisions for allowing depreciation on the same.

8. Having given a thoughtful consideration to the observations of the Pr. CIT on both the aforesaid issues, we concur with the view taken by him that the failure of the A.O to carry out necessary verifications on both the aforesaid issues had rendered the assessment order passed by him u/s.143(3) dated 04.03.2014 as erroneous in so far it was prejudicial to the interest of the revenue u/s.263 of the Act. We, thus, in terms of our aforesaid deliberations approve the view taken by the Pr. CIT and uphold his order. Thus, the **grounds of appeal** raised by the assessee are dismissed in terms of our aforesaid observations.

9. In the result, appeal of the assessee is dismissed in terms of our aforesaid observations.

Order pronounced in open court on 10<sup>th</sup> day of July, 2023.

Sd/-  
**ARUN KHODPIA**  
**(ACCOUNTANT MEMBER)**

Sd/-  
**RAVISH SOOD**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 10<sup>th</sup> July, 2023  
SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-2, Raipur (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.