

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.379/PUN/2023
निर्धारण वर्ष / Assessment Year : 2018-19

Tade Powertech Private Limited, J-91, MIDC, Kupwad Block, Kupwad, Sangli- 416436. PAN : AABCP1363K	Vs.	PCIT-1, Pune.
Appellant		Respondent

Assessee by : Shri Amol R. Kulkarni
Revenue by : Shri Prakash Mane

Date of hearing : 21.06.2023
Date of pronouncement : 11.07.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Pr. Commissioner of Income Tax-1, Pune ['PCIT'] dated 15.03.2023 passed u/s 263 of the Income Tax Act, 1961 ('the Act') for the assessment year 2018-19.

2. Briefly, the facts of the case are that the appellant is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacturing of Electrical Equipments and RMU Panels. The Return of Income for the assessment year 2018-19 was filed on 26.10.2018 declaring total

income of Rs.Nil. Against the said return of income, the assessment was completed by the Assessing Officer vide order dated 23.02.2021 passed u/s 143(3) of the Act accepting the returned income.

Subsequently, the Id. PCIT, on review of the assessment record, formed an opinion that the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interests of the Revenue, as the Assessing Officer had failed to examine the allowability of prior period of expenditure of Rs.44,39,675/-. Accordingly, a show-cause notice u/s 263 was issued on 27.02.2023. In response to the said show-cause notice, the appellant had filed a detailed explanation saying that the expenditure of Rs.44,39,675/- though shown as “prior period expenditure” was actually liability for the said expenditure was materialized during the previous year relevant to the assessment year 2018-19. The appellant also explained the circumstances as to how the interest expenditure of the period from 01.07.2016 to 09.05.2017 had crystallized during the previous year relevant to the assessment year under consideration, as extracted by the Id. PCIT vide para 5 of the impugned order. However, the Id. PCIT had opined that merely because the liability had crystallized during the previous year

relevant to the assessment year 2018-19 does not alter the fact that the liability pertaining to the period from 01.07.2016 to 09.05.2017 and, accordingly, directed the Assessing Officer to disallow the interest expenditure of Rs.44,39,675/-.

3. Being aggrieved, the appellant is in appeal before us in the present appeal contending that the ld. PCIT ought not to have exercised the jurisdiction u/s 263 of the Act, inasmuch as, the assessment was taken up for limited scrutiny assessment. The ld. PCIT ought not to have passed the impugned order without considering the fact that the liability for expenditure was crystallized during the previous year relevant to the assessment year under consideration.

4. Without prejudice to the above, he further submits that the ld. PCIT, without giving any finding that the liability was not crystallized during the previous year relevant to the assessment year under consideration, ought not to have exercised the jurisdiction u/s 263 of the Act placing certain judicial precedents.

5. On the other hand, ld. CIT-DR supports the order of the ld. PCIT.

6. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the validity of

assumption of jurisdiction u/s 263 by the ld. PCIT. The Parliament had conferred the power of revision on the Commissioner of Income Tax u/s 263 of the Act in case the assessment order passed is erroneous and prejudicial to the interests of revenue. In order to invoke the power of revision, the above two conditions are required to be satisfied cumulatively. References in this regard can be made to the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT, 243 ITR 83 (SC) and in the case of CIT vs. Max India Ltd., 295 ITR 282 (SC). The error in the assessment order should be one that it is not debatable or plausible view. In a case where the Assessing Officer examined the claim took one of the plausible views, the assessment order cannot be termed as an "erroneous".

7. Now, we proceed to examine whether the assessment order passed by the Assessing Officer is erroneous or not. Admittedly, the interest expenditure of Rs.44,39,675/- was shown as a part of prior period expenditure in the Profit & Loss Account. It is settled position of law that the treatment given in the books of account does not determine the allowability or otherwise of expenditure under the provisions of Income Tax Act. It is contention of the appellant that the interest expenditure of Rs.44,39,675/- though pertaining to the

period from 01.07.2016 to 09.05.2017 liability was crystallized on 09.05.2017 by virtue of the agreement entered with Phoenix ARC Pvt. Ltd.. The facts relating to the crystallization of liability was explained by the assessee company, which are set out by the Id. PCIT in the impugned order. The Id. PCIT had not disputed this fact of crystallization of liability but he only opined that it would have not any impact, as it does not change the situation as that the expenditure belonging to the period prior 01.04.2017. The fact that the Id. PCIT had not disputed with the contentions of the appellant that the liability had crystallized during the previous year relevant to the assessment year under consideration is apparent from the observation made by him in para 6 of his order that the assessee's contention that said liability of Rs.44,39,675/- was materialized, quantified in A.Y. 2018-19 does not alter the fact that the said liability pertained to the period 01.04.2017 to 09.05.2017 i.e. prior to the A.Y. 2018-19 which even the assessee has admitted. It is settled position of law that a liability arising on a contractual obligation is entitled to be deduction in the assessment year relevant to the previous year in which the liability is crystallized. Therefore, there is no material on record to show that in the absence of any material on record, to show that the interest expenditure of

Rs.44,39,675/- is not allowable expenditure and the assessment order cannot be termed as “erroneous”. Therefore, in the absence of satisfaction of conditions stated supra, the ld. PCIT cannot exercise the power of revision u/s 263 of the Act. Thus, the grounds of appeal filed by the assessee stand allowed.

8. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 11th day of July, 2023.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 11th July, 2023.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “B” बेंच,
पुणे / DR, ITAT, “B” Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.