

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 467/Ind/2018
Assessment Year: 2013-14

M/s.Vision Infinity Limited, 78, Jaora Compound, Indore	<u>बनाम/</u> Vs.	PCIT-2, Bhopal
(Assessee / Appellant)		(Revenue / Respondent)
PAN: AABCV8498B		
Assessee by	Ms.Nisha Lahoti & Shri Vijay Bansal, CA & ARs	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing	19.04.2023	
Date of Pronouncement	12.07.2023	

आदेश/O R D E R

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

Feeling aggrieved by revision-order dated 28.02.2018 passed by learned Pr. Commissioner of Income-Tax, Bhopal ["Ld. PCIT"] u/s 263 of Income-tax Act, 1961 ["the Act"] which in turn arises out of assessment-order dated 12.02.2016 passed by learned ACIT-3(1), Bhopal ["Ld. AO"] u/s 143(3) of the Income-tax Act, 1961 for Assessment-Year ["AY"] 2013-14, the assessee has filed this appeal.

2. Originally the assessee filed certain grounds in Form No. 36; subsequently filed additional grounds on 29.01.2019; lastly once again filed modified grounds on 14.01.2021 with a copy acknowledged by the office of Ld. DR. When we confronted Ld. DR *qua* the grounds, he did not advance any objection. Hence, with the congruence of both sides, the last grounds

filed on 14.01.2021, re-produced hereunder, are taken for adjudication:

Annexure

Modified Grounds of Appeal

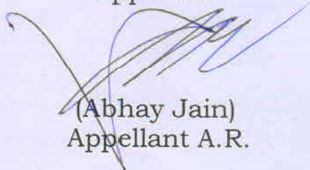
The appeal is filed with following grounds:

1. That, on the facts and in the circumstances of the case and in law, the Ld. Pr. CIT erred in holding in her order u/s 263 that the assessment order of the Ld. ACIT-3(1), Bhopal dt.13.02.2016 for AY 2013-14 is erroneous and prejudicial to the interest of revenue. The order of the Pr. CIT is liable to be quashed being arbitrary, unjust and unfair.
2. That, on the facts and in the circumstances of the case and in law, the Ld. Pr. CIT erred in giving a finding that assessment order dt. 12.02.2016 was passed by the ACIT without making enquiry into the surrendered amount of Rs. 4.90 Cr. The order of Pr.CIT is without any justification, arising from a vague ground, and deserves to be set aside.
3. That, on the facts and in the circumstances of the case and in law, the Ld. Pr. CIT erred in relying on the statement of the MD without appreciating that his statement recorded u/s 133A, in the absence of any independent corroborative evidence has no evidentiary value. The basis of proceedings u/s 263 is legally not tenable and liable to be rejected.
4. That, on the facts and in the circumstances of the case and in law, the Ld. Pr. CIT erred in ignoring the fact that expenses of Rs. 70, 20 and 40 Lakhs, under various heads, were duly examined by the ACIT and suitable disallowance out of the same was made. Thus the ground taken by the PrCIT for invoking s. 263 is flimsy, non-existent and devoid of any merit.

5. That, the Ld. Pr. CIT has erred on facts and in law in holding that surrendered amount of Rs. 1.80 crores each pertains to the entries on the back side of page no. 47 of BS-3 and back side of page no. 97 of BS-2.
6. That, on the facts and in the circumstances of the case and in law, the Ld. Pr. CIT erred in holding that addition of Rs.4.90 Cr. is called for in AY 2013-14 without there being any evidence in this regard. The finding is based on surmises, conjecture and is far-fetched; the same is liable to be quashed.
7. That, on the facts and in the circumstances of the case and in law, the Ld. Pr. CIT erred in not dealing with various case laws relied upon by the assessee.
8. That, on the facts and in the circumstances of the case and in law, the Ld. Pr. CIT erred in not giving due thought to replies of the assessee dt.12.02.2018 and 19.02.2018; issues raised thereby were not addressed by the Pr. CIT. The order of the Pr. CIT, passed in a summary manner, is unjust, unfair and violates principles of natural justice.
9. That the Ld. Pr. CIT has erred on facts and in law in relying upon clause (a) to Explanation to (inserted by Finance Act 2015 w.e.f. 01.06.2015) of Sec. 263 (1) of IT Act.
10. The appellant craves leave to add, amend, alter, modify or withdraw any ground of appeal.

Date: 14.01.2021
Indore

Appellant


(Abhay Jain)
Appellant A.R.

3. Heard the learned Representatives of both sides at length and case-records perused.

4. The assessee is a company engaged in the business of commercial coaching, software development and shares trading. The return of relevant AY 2013-14 under consideration was filed on 01.10.2013 at a total income of Rs. 75,62,480/- 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 12.02.2016 at a total income of Rs. 82,75,869/- after making certain disallowances. Subsequently, Ld. PCIT examined the record of assessment-proceeding and viewed that the assessment-order passed by AO is erroneous in so far it is prejudicial to the interest of revenue which attracts revisionary-jurisdiction u/s 263. Accordingly, Ld. PCIT issued a show-cause notice dated 30.01.2018 which is re-produced below for a ready reference:

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M/s Vision Infinity Ltd.
PAN: AABCV8498B
A.Y. 2013-14



Government of India
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
Office of the PRincipal Commissioner of Income Tax -2
3rd FLOOR, METRO WALK BUILDING, BITTAN MARKET, E-5, ARERA COLONY,
BHOPAL (MP)-462016
Bhopal

F.No.Pr.CIT-2/BPL/Tech./263/ Vision Infinity /201~~8~~-1~~8~~

Dated:30.01.2018

PAN : AABCV8498B

To,

M/s Vision Infinity Ltd.
184,Zone-1, M.P. Nagar,
Bhopal
(Through Principal Officer of the Company)

Sir,

Sub: Notice u/s 263 of the Income Tax Act, 1961 – A.Y. 2013-14, show cause – Reg.

Please refer to the order u/s 143(3) dated 13/02/2016, passed by DCIT- 3(1) Bhopal, for A.Y. 2013-14 whereby total income was assessed at Rs. 82,75,870/-

Perusal of order u/s 143(3) dated 13/02/2016 reveals following:-

1. The assessee had filed its return of income on 01.10.2013 for A.Y. 2013-14 declaring total income of Rs. 75,62,480/-. The case was selected for scrutiny by CASS and assessment order was passed on 13.02.2016 with assessed total income of Rs. 82,75,870/-.
2. A survey u/s 133/A of the Income Tax Act was conducted on 29/10/2014 at the office premises of the assessee. During the course of survey, some incriminating documents were found and impounded. Discrepancies found, were confronted to Shri Prakash Singh, Managing Director of the assessee company. Shri Prakash Singh accepted the discrepancies contained in the impounded documents in his statement dated 29/10/2014 and surrendered a total amount of Rs. 4,90,00,000/- for F.Y. 2012-13 (A.Y. 2013-14) and agreed to pay taxes thereon. On perusal of the records, it is found that the assessee company has neither revised its ITR for A.Y. 2013-14, nor paid taxes on the surrendered amount of Rs. 4,90,00,000/-. During the course of assessment proceedings, the above mentioned surrendered income was not considered by the then AO and assessment was made at total assessed income of Rs. 82,75,570/- vide order u/s 143(3) of the IT Act, 1961, dated

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M/s Vision Infinity Ltd.
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13.02.2016.

3. On perusal of the P&L account in Income-tax return of AY 2014-15, it was found that the assessee has debited large expenses under various heads. During the course of survey u/s 133A dated 29/10/2014, the assessee was asked to prove these expenses with their respective bills and vouchers. Shri Prakash Singh, Managing Director of the assessee company, failed to do so and accepted the discrepancies in his statement dated 29/10/2014 and surrendered a total amount of Rs. 4,90,00,000/- for F.Y. 2012-13 i.e. A.Y. 2013-14. The details of the discrepancies found under various heads of expenditures debited in P&L account and surrender thereon are mentioned below:

S.No.	Discrepancies found	Surrendered Amount(In Rs.)
1.	Expenses of Rs. 1.70 Crores under the head 'Advertisement' could not be verified during the course of Survey	70,00,000/-
2.	Expenses of Rs. 32 Lakhs under the head 'Distribution Exp.' could not be verified during the course of Survey	20,00,000/-
3.	Expenses of Rs. 2.48 Crores under the head 'Salary and wages' could not be verified during the course of Survey	40,00,000/-
4.	On-money payment of cash out of books of Rs. 1.8 Crores to the sellers for purchase of immovable property	1,80,00,000/-
5.	Cash received of Rs. 1.80 Crores in the form of Unsecured Loans and interest thereon, not disclosed in the books of accounts	1,80,00,000/-
	Total	4,90,00,000/-

In respect of Point 4 of the above table, there was a surrender of Rs. 1.8 Crores as on-money cash payment for purchase of immovable property, this surrender was based on the entries on backside of page no. 47 of BS-3, impounded during the course of the survey proceedings. In respect of Point 5 of the above table, surrender of Rs. 1.8 Crores was made based on the entries written on backside of page no. 97 of BS-2, impounded during the course of the survey.

4. Further, on perusal of the last para of the statement dated 29.10.2014, recorded during the survey proceedings, it was found that the assessee had offered the aforementioned additional income for taxation under different heads, for the F.Y. 2014-15, i.e., A.Y. 2015-16. On perusal of the records, it is found that the assessee company did not revise its ITR for A.Y. 2013-14 or A.Y. 2015-16. The assessee company also failed to pay any

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M/s Vision Infinity Ltd.
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A.Y. 2013-14

taxes on the surrendered amount of Rs.4,90,00,000/-.

5. During the course of assessment proceedings for A.Y. 2015-16, it was noticed by the then AO that though the assessee surrendered the amount of Rs. 4.9 Crores in A.Y. 2015-16, the document i.e. ITR wherein various expenses were found debited in P&L account, pertained to A.Y. 2013-14. This document was an evidence against the assessee company, which formed the basis of additional disclosed income. The document, on the basis of which additional undisclosed income of Rs. 1.8 Crores was offered for taxation, was in respect of Undisclosed Unsecured Loans. There was no mention on this document, as to which of the year, these transactions pertained. However, on the basis of the statement recorded during the course of survey proceedings, the same was also accepted as a transaction related to A.Y. 2013-14.
6. Assessment in the case, vide order u/s 143(3), dated 13.02.2016, was finalized without considering the facts related to above mentioned undisclosed income of Rs. 4.9 Crore. This omission on part of the AO, renders order u/s 143(3) dated 13.02.2016 passed by the Deputy Commissioner of Income-tax-3(1) Bhopal, for A.Y. 2013-14, erroneous as well as prejudicial to the interest of revenue. therefore, I, propose to invoke powers vested u/s 263 of the Income Tax Act, 1961 in respect of the order referred to above. You are hereby given an opportunity of being heard as per section 263(1) of the Income Tax Act to present yourself in person or through an authorized representative on 06/02/2018 at 11.30 AM, to explain your case. A soft copy of the reply is also required to be furnished on the date of hearing fixed in your case. In case, no reply is received by stipulated date, it will be presumed that you have nothing to say in the matter and a decision will be taken on the basis of records available in this office.

Yours faithfully,



Mridula Bajpai
(Mridula Bajpai)
Pr. Commissioner of Income Tax-2
Bhopal

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 vide letter Reply dated 12.02.2018 and 19.02.2018 which is re-produced by Ld. PCIT in Para No. 3 of revision-order.

6. However, Ld. PCIT was not impressed by submissions of assessee. Therefore, he passed revision-order as under:

"4. I have gone through the assessment records and the submissions made by the assessee. I am of the considered view that the assessment in this case was finalized without ascertaining in a reliable manner, the facts relating to the above-mentioned undisclosed income of Rs. 4.9 crore. The assessee's contentions quoted above, are not acceptable as the AO failed to conduct due and proper inquiries into the facts that the assessee had surrendered the

amount of Rs. 4.9 Crores in A.Y. 2015-16 and the document, on the basis of which additional undisclosed income of Rs. 1.8 Crores was offered for taxation, was in respect of undisclosed unsecured loans. However, on the basis of the statement recorded during the course of survey, the same was also accepted as a transaction relating to A.Y. 2013-14.

5. In this case the assessment was made without conducting due and proper inquiry and this resulted in loss to the revenue and is thus prejudicial to the interests of revenue. This view also gets support from the following ^{deverend} cases:-

- (a) *Ram Pyari Devi Saraogi vs CIT (1968) 67 ITR 84 (SC)* the Hon'ble Supreme Court has held that assessment made in undue haste and without making inquiries which are called for the circumstances of the case is erroneous and prejudicial to the interest of revenue. .
- (b) *Malabar Industrial Co. Ltd. v. CIT(2000) 243 ITR 83 (SC)* Hon'ble Supreme Court has held that non-application of mind by the assessing authority on a particular issue, renders the assessment order susceptible to revision.
- (c) *CIT v Bhagwan Das (2005) 272 ITR 367 (All.) (HC)*, the Hon'ble High Court has held that non-application of mind by the Assessing Officer was prejudicial to the interest of the revenue.
- (d) *Pratap Footwear v ACIT(2003) SOT 638 (Jabalpur) (Trib.)* the Hon'ble Tribunal has held that non-application of mind by the Assessing Officer was prejudicial to the interest of revenue.
- (e) *CIT v. Jawahar Bhattacharjee [2012] 341 ITR 434 (Gauhati) (HC) (FB)*, The Hon'ble High Court has held that error in assessment order arising by ignoring relevant material or on incorrect assumption of facts or incorrect application of law – Amenable to revision u/s 263.
- (f) *[2017] (Himachal Pradesh)/[2017] 298 CTR 393, Virbhadra Singh (HUF) Vs. Principal Commissioner of Income-tax (Himachal Pradesh)*: Where no inquiry was conducted by Assessing officer in passing assessment order after accepting revised return filed by assessee, Commissioner was well within his power under section 263 to direct fresh assessment;

It is an established law that when an assessment order which is passed under section 143(3) of the I.T. Act, it is expected that the Assessing Officer will make due and proper inquiries to find out the correct assessable income of the assessee and not take the facts placed by the assessee on their face value. If the Assessing Officer fails to make proper inquiries, and ^{fails} ~~has~~ to take into account all

for VISION
Infinity Ltd.


(Managing Director)

M/s Vision Infinity Ltd.
PAN: AABCV8498B
A.Y. 2013-14

material placed on record then such order is considered erroneous and pre-judicial to the interest of revenue.

As per Clause (a) to explanation 2 (inserted by finance act 2015 w.e.f.1.6.2015) of section 263(1) of I.T. Act which reads as under:-

For the purposes of this, 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)

After careful examination of the facts placed on record and the written submissions filed by assessee, and the legal position discussed as above, I am satisfied that assessment order dated 13/02/2016 passed by DCIT- 3(1) Bhopal, for A.Y. 2013-14, is erroneous and prejudicial to the interest of revenue on the issues mentioned above. Accordingly, the assessment order passed by the Assessing Officer: DCIT- 3(1) Bhopal, u/s 143(3) on 13/02/2016 is set aside to be framed de novo. The Assessing Officer is further directed to pass the assessment order afresh, after affording proper opportunity of being heard to the assessee.



Sd/-
(Mridula Bajpai)
Pr. Commissioner of Income Tax-2
Bhopal

Copy to:-

1. DCIT- 3(1) Bhopal. He is directed to serve the order on the assessee and send acknowledgement to this office for record.
2. The assessee through the A.O.

(Signature)
(Ashutosh Mishra)

Income Tax Officer-(Tech.)
For Pr. Commissioner of Income Tax-2,
Bhopal

for **VISION**
Infinity Ltd.

(Signature)
(Managing Director)

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7. Aggrieved by such revision-order, the assessee has filed this appeal. By means of various grounds raised in present appeal, as already re-produced in the beginning, the appellant-assessee basically requires us to adjudicate whether or not the revision-order passed by Ld. PCIT u/s 263 is valid in the eyes of law?

8. On perusal of revision-order, we find that the PCIT has made revision of assessment solely for the reason that the assessee did not offer the income of Rs. 4.90 crore as surrendered in the statement of Shri Prakash Singh, director of assessee. Therefore, at first, we would like to re-produce below the impugned statement (copy filed by Ld. AR at Page No. 23 to 25 of Paper-Book dated 19.01.2021) which are the very basis of revisionary action taken by Ld. PCIT and would be relevant in subsequent discussions:

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वित्त वर्ष 2012-13 में publicity & Distribution के Head के अंतर्गत रूपमा 32 लाख का खर्चा किया गया है। जिसका खर्च के दौरान Voucher से किया नहीं हो पाया इसका स्पष्टीकरण दें।

3- वित्तीय दुरुि के फाल्गु पुद्द Vouchers Book का वृ 1/2 में आने से छूट गये जिन्हे तिर में रु 20 लाख आम्कार के लिए Surrender कराया है।

वित्तीय वर्ष 2012-13 में चेतन केटीए पर रु 2 करोड 48 लाख दिया गया है जो कि रसीद के हुल्मा में ज्यादा है एवम् सर्वे के दौरान मध पाया गया कि ज्यादातर कर्मचारी आपके कामलिम में कार्यरत नहीं है। इसका स्पष्टीकरण दें।

वित्तीय वर्ष 2012-13 के दौरान भेरे कामलिम में पुद्द कर्मचारी सेले में जिन्हे पृथकालिन कार्यरत नहीं थे परन्तु उन्हें पूरे वर्ष के लिए चेतन प्रदान कर दी गई जिन् तुरुि को मानते हुये में रु 40 लाख का Surrender करना पडता है। जिस पर आम्कार देने को तैयार हूँ।

वित्त वर्ष 2012-13 में जमीने की रवरीदी में रु. 1.80 करोड 180 लाख में भुगतान किया गया है जिसका कोई किरण आप उपलब्ध नहीं कर पाये इसका स्पष्टीकरण दें।

रु. 1 करोड 80 लाख वित्त वर्ष 2012-13 में जो नकद भुगतान किया गया है उसको out of Books मानते हुये भी फर के लिए Surrender कर रहा है।

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वित्त वर्ष 2012-13 में Unsecured loan के रूप में आपने ₹ 85 लाख Balance Sheet में दिखाया गया है जबकि सर्वे के दौरान लूज चेपर टैब पैड में कुछ रुपये / फोटो 80 लाख नकद में लिखा गया तथा उस पर ब्याज दिया गया है इसका स्पष्टीकरण दें।

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उपरोक्त ₹ 1 फोटो 80 लाख में डाय Unsecured loan व ब्याज के रूप में नकद का लेन देन है इसे अनयोचित आप के रूप में स्वीकार करता हूँ तथा इस पर देय ब्याज देने को तैयार हूँ।

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इसके अलावा M/s Vision Infinity Ltd. के कोर में कोई अन्य जानकारी यदि देना चाहे तो बतावें ?
जी नहीं मुझे कोई अन्य जानकारी नहीं देनी है।

उक्त बयान में बिना किसी दबाव के स्वयं सौच-समझकार इलाहाबाद करा रहा हूँ।

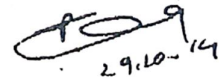


For VISION INFINITY

(आदेश राय)
(AADESH RAI)

सहायक आयकर आयुक्त-3(1)
Assistant Commissioner of Income Tax-3(1)
भोपाल / BHOPAL

प्रश्न क्र-1 में प्रश्न क्र-3 के संवध में मैं विभिन्न मदों में जो अधोचित आय सॉर्टर को उसे मैं वर्तमान वित्तीय वर्ष 2014-15, पर निर्धारण वर्ष 2015-16 में सॉर्टर कर रहा हूँ। आगामी कुछ महीनों में सर्वोत्तम डेबन के रूप में कर चुकान का वचन दे रहा हूँ। यह वचन मैं बिना 5% भय, दबाव अर्हद काटावरण में दिया हूँ।


29.10.14

फ.ग.र.

9. Referring to Ground No. 9, Ld. AR raised an initial objection that the PCIT has invoked Explanation 2 to Section 263 and on that basis termed the assessment-order as erroneous which is totally illegal for the simple reason that the said Explanation was introduced through Finance Act, 2015 w.e.f. 01.06.2015 and it is judicially held to be applicable prospectively; thus not applicable to AY 2013-14 under consideration. Therefore, Ld. AR contends strongly that the present revision-order passed on the basis of said Explanation which was not applicable, is patently illegal. Though we agree that the present case involves AY 2013-14 and the Explanation 2 to section 263 was not applicable to said year as per certain judicial rulings. But irrespective of the said Explanation, we can test whether the assessment-order passed by AO was erroneous-cum-prejudicial to the interest of revenue or not and if it was, then revision is sustainable and if not, then revision would not be sustainable. Needless to mention that even in absence of said Explanation, the function of AO is not only of adjudicating authority but also of investigator. Therefore, we are not persuaded to agree with the simpliciter argument of Ld. AR that the revision-order is straightforward illegal. Such pleading of Ld. AR is hereby rejected.

10. Ld. AR submitted that the PCIT has passed revision-order on the sole premise that the AO has not examined the surrender of Rs. 4.90 crore made in the statement of Shri Prakash Singh, Managing Director of assessee, during survey. In this regard, before embarking upon various components of surrender of Rs. 4.90 Crore, Ld. AR made some initial remarkable submissions which would like to record. *Firstly*, it is submitted that the survey was started at 4 P.M. on 29.10.2014 and ended at about 9 am on 30.10.2014. The statements of Shri Prakash Singh, Managing Director, were recorded without mentioning time under mental pressure and duress and this fact was also brought to the notice of Ld. PCIT vide letter dated 12.02.2018 in response to notice u/s 263. Ld. AR submitted that the survey was conducted on 29.10.2014 falling within previous year 2014-15 relevant to AY 2015-16 but in the statements recorded, initially the surrender has

been obtained for AY 2013-14 but in the closing paragraph, the same was obtained for AY 2015-16. *Secondly*, it is submitted that the AO passing the assessment-order, Mr. Aadesh Rai, was a part of survey-team and he himself recorded the impugned statement of Shri Prakash Singh during survey on 29.10.2014 (re-produced earlier in Para No. 8 of this order) which is very much evident from seal and signature of Mr. Aadesh Rai on last page of statement. Therefore, the AO was very much aware of the surrender made by assessee during survey and has cautiously not made any addition out of surrendered income at the time of completing assessment. *Thirdly*, it is also submitted that in several rulings it has been vehemently held that no addition can be made on the basis of mere surrender during survey unless the same is corroborated by tangible and positive material. Since in the present case there was no tangible, positive or corroborative material to support surrender, the AO has rightly refrained from making any addition while completing assessment.

11. Having narrated so, Ld. AR made a lengthy discussion on various components of surrender of Rs. 4.90 crore item by item. Ld. DR too made his vehement submissions to defend the contentions of Ld. AR. We sum up the arguments and contentions of both sides:

(i) to (iii) Regarding surrender out of Advertisement expenditure(Rs. 70,00,000), Distribution expenditure (Rs. 20,00,000), Salary & Wages (Rs. 40,00,000):

Ld. AR submitted that during assessment-proceeding, the AO issued a detailed query-letter dated 08.06.2015 u/s 142(1) containing as many as 25 queries on various points related to the assessment of assessee, copy placed at Page No. 86 to 89 of Paper-Book dated 14.05.2019. Ld. AR invited our attention to following specific queries raised by AO pertaining to expenses:

(a) In Point No. (a), the AO required the assessee to produce

books of account and documents.

- (b) In Point No. 5(a), the AO required the assessee to furnish the details of all expenses and TDS therefrom in a particular format.
- (c) In Point No. 16, the AO required the assessee to give a detailed comparative chart of all expenses individually above Rs. 1,00,000/- for AY 2010-11, 2011-12 and 2012-13.
- (d) In Point No. 23, the AO required the assessee to give the details of all cash payments more than 20,000/- in a particular format.
- (e) At the end of notice, under the heading "N.B", the AO gave certain specific instructions to assessee, namely *"Come with all bills and vouchers of expenses to verify the genuineness of expenditure claimed. Bring books of account for verification. It is important to note that no copy of account, apart from those asked for, should be attached in response to above questionnaire. The information should be arranged point-wise as in the questionnaire and if any point is unanswered or is not applicable then it should be mentioned in the respective point alongwith reasons. The ordering of answers should be same as the questionnaire."*

Ld. AR submitted that the assessee produced books of account and filed written submission which the AO considered and examined (Para No. 2 of assessment-order). Further, the AO has categorically noted that he verified P&L A/c; perused the bills and vouchers; and also confronted the representatives of assessee Shri Ashok Chawla and Shri Ambrish Shukla with the discrepancy; and thereafter made a disallowance of 10% out of

certain expenses (Para No. 4 of assessment-order).

Thus, Ld. AR contended, it is totally wrong and baseless to say that the AO has not examined expenses.

Without prejudice, Ld. AR also carried us to the copy of impugned statement already re-produced by us in earlier paragraph. Referring to last para of statement, Ld. AR demonstrated that Shri Prakash Singh has offered to surrender the income relating to Point No. 1 to 3 of his statement (out of which Point No. 2 and 3 related to surrender on two accounts, namely Advertisement Expenses and Distribution Expenses) in AY 2015-16 and not in AY 2013-14. This undisputed fact arising from the last para of statement is also admitted by Ld. PCIT in Point No. 4 of show-cause notice but then the PCIT goes on observing that the assessee did not revise return for AY 2013-14 or 2015-16 and did not pay tax on surrendered income. Ld. AR strongly contended that when the sole basis of revision done by PCIT is the surrender made by assessee, then the revision could be of AY 2015-16 and not of AY 2013-14. Therefore, on this very count, the PCIT has wrongly made revision of AY 2013-14 *qua* advertisement expenses and distribution expenses.

Per contra, Ld. DR submitted that the impugned query-letter dated 08.06.2015 issued by AO is a general query-letter in which the AO has raised routine queries relating to assessment but the AO has not raised any specific query *qua* the survey. He submitted that the AO has nowhere discussed the points of survey in assessment-order which clearly shows that the AO has not examined the expenses out of which surrender was made. Ld. DR submitted that the assessment-order is cryptic and the AO has mechanically disallowed just 10% of expenses. On the issue of AY 2013-14 or 2015-16, Ld. DR admitted that in last

para of statement Shri Prakash Singh made surrender for AY 2015-16 but contended that in reply to preceding Q.No. 2 to 3 of statement, specific surrender was made for AY 2013-14. Ld. DR submitted that last para is not relevant, the preceding Q.No. 2 to 3 are more specific and relevant.

(iv) Regarding surrender of On-money payment for purchase of property (Rs. 1.80 Crore):

Ld. AR submitted that the surrender of Rs. 1.80 crore was based on entries on backside of BS-3 / Page No. 47 impounded by survey-team, copy placed at Page No. 60 in the Paper-Book dated 14.05.2019. Ld. AR drew our attention to same and submitted that the said document does not mention any date or year of cash payment but the authorities allege that the cash payment relates to purchase of land at village Barai made through cheque of Rs. 2,58,37,500/- mentioned in the very said document just above the impugned noting of cash-payment. Therefore, during hearing on 19.04.2023, Ld. AR filed a copy of registered sale-deed of purchase of said land at Barai (with an acknowledgement of copy served upon the office of Ld. DR on 17.04.2023) and argued that the said land was purchased for Rs. 2,42,50,000/- in the year 2013-14 relevant to AY 2014-15 and not in AY 2013-14. Ld. AR demonstrated that the deed was executed and registered on 26.08.2013. Ld. AR referred to Page-1 of the deed and pointed out that prior to execution of registered-deed, the assessee made a registered-agreement for purchase of land on 21.06.2013 with a token payment of Rs. 21,50,000/-. Thus, the deal of land itself was agreed on 21.06.2013. And thereafter all subsequent payments were made on 04.07.2013, 05.07.2013, 13.07.2013, 16.07.2013, 24.07.2013 and 20.08.2013. All these payments have been

made through DD / cheque. Thereafter, the assessee incurred a total cost of Rs. 15,87,500/- through cheque on stamps and registration. Thus, the total cost of land amounted to Rs. 2,58,27,500/- which exactly tallies with the noting of cheque-payment made on the seized document and the same is duly recorded in the books of account of assessee, copy of ledger A/c extracted from books of assessee is submitted alongwith copy of registered-deed. With these facts and evidences, Ld. AR submitted that when the purchase transaction itself was made in AY 2014-15, how can cash-payment, even if assumed to have been made, relate to AY 2013-14? Ld. AR submitted that the impounded document does not contain any date or year and the PCIT is wrong in assuming the same as related to AY 2013-14. Therefore, the revision of AY 2013-14 *qua* this issue is patently wrong and unsustainable.

Per contra, Ld. DR submitted that the cash payment was made in the financial year 2012-13 relevant to AY 2013-14 though the registration might have been done in next AY 2014-15.

(v) Regarding surrender of Unsecured loans and interest thereon (Rs. 1.80 Crore):

Ld. AR submitted that the surrender of Rs. 1.80 crore was based on entries on backside of BS-2 / Page No. 97 impounded by survey-team, copy placed at Page No. 66 in the Paper-Book dated 14.05.2019. Ld. AR drew our attention to same and submitted that the said document does not mention any date or year and this undisputed fact is clearly admitted by PCIT himself in Para No. 5 of the show-cause notice but then the Ld. PCIT goes on observing that in the statement recorded during survey, the same was accepted as transaction related to AY 2013-14.

Ld. AR also submitted that the surrender of Rs. 1.80 crore taken

from assessee is not even corroborated mathematically by any amount or aggregate of amounts noted in the said document. However, the main entry of Rs. 1.70 crore (noted in the document) is in the name of one Shri Jagdish Thakur. Therefore, during assessment-proceeding, the AO issued summon dated 27.02.2015 u/s 131 to Shri Jagdish Thakur and recorded his statements on 03.03.2015, copy of statement placed at Page No. 78 to 85 of Paper-Book dated 14.05.2019. Ld. AR referred to Q.No. 5 and 15 which are re-produced below:

“प्र. 5 क्या आपके द्वारा ब्याज पर ऋण दिया जाता है ? यदि हाँ तो किस दर पर यह ऋण प्रदान किया जाता है, आपके द्वारा जिन्हें भी ऋण प्रदान किया गया है उनका पूर्ण विवरण दे ।

उ. 5 जी मेरे द्वारा किसी भी प्रकार का ऋण प्रदान नहीं किया जाता है ।

प्र.15 आपको सर्वे की कार्यवाही के दौरान जब्त की गयी डायरी को दिखाया जा रहा है जिसमें आपके द्वारा प्रदान किये गये ऋण रू. 1.7 करोड (loan given by you of Rs. 1.7 Cr. @5.5% per month) का उल्लेख है, इस विषय पर आपका क्या कहना है ।

उ.15 यह कि मेरे द्वारा ऐसी कोई भी राशि नहीं दी गयी है और ना ही इस राशि के संबंध में मुझे कोई जानकारी भी नहीं है ।

Referring to same, Ld. AR contended that even in the independent verification done by AO during scrutiny-assessment, Shri Jagdish Thakur has clearly denied having given any loan to assessee. Therefore, the surrender made during survey under mental pressure has no value.

Without prejudice, Ld. AR further argued that the allegation of department is that the assessee has taken cash-loan and not

given cash-loan. Ld. AR submits that she fails to understand as to how there can be income of assessee if at all there was a cash-loan taken? Ld. AR submitted that at the best it could be an undisclosed income of the given but certainly it cannot be an income of assessee-receiver.

Per contra, Ld. DR relied upon the surrender made by Shri Prakash Singh and argued that once he has made surrender, the AO must have made addition.

12. We have considered rival submissions of both sides. After a careful consideration, we find several merits in the submission put forward by Ld. AR. At first, we take note of the fact that the survey was started at 4 P.M. on 29.10.2014 and ended at about 9 am on 30.10.2014 and the statements of Shri Prakash Singh, Managing Director, were recorded without mentioning time. It is also notable that the survey was conducted on 29.10.2014 falling within previous year 2014-15 relevant to AY 2015-16 but in the statements recorded, initially the surrender is made/obtained for AY 2013-14 but in the closing paragraph, certain components of surrender have been made/obtained for AY 2015-16. Coupled with this, we also find on perusal of documents, that the AO, Mr. Aadesh Rai, was involved at three stages, (i) firstly he was a part of survey-team and he himself recorded the impugned statement of Shri Prakash Singh, Managing Director, making surrender; (ii) secondly during assessment-proceeding, Mr. Aadesh Rai himself summoned Shri Jagdish Thakur on 03.03.2015 u/s 131 of the act and examined qua the cash-loan of Rs. 1.70 crore alleged to have been taken by assessee which was one component of surrender; and (iii) thirdly, Mr. Aadesh Rai himself was the AO who passed the impugned assessment-order revised by Ld. PCIT. Therefore, the AO, Mr. Aadesh Rai was very much aware of the surrender made by assessee and has also taken step to examine the surrendered income during scrutiny-assessment. At the same time, we also find sufficient weightage in the submission of Ld. AR that no addition could have been

made on the basis of mere surrender during survey in absence of any tangible or positive material. Therefore, the AO has rightly refrained from making any addition in assessment-order qua the surrender.

13. We have also looked into the submissions made by learned Representatives of both sides qua the components of surrender and after a careful consideration, we note our analysis as under:

- (i) Regarding surrender out of Advertisement expenditure (Rs. 70,00,000), Distribution expenditure (Rs. 20,00,000), Salary & Wages (Rs. 40,00,000), we observe that the AO has raised specific queries relating to genuineness of expenses through notice u/s 142(1) and the assessee has filed details/documents and produced the books of account which were duly verified as categorically mentioned by AO in Para No. 2 and 3 of assessment-order. We further observe that after due consideration, the AO has made 10% disallowance of certain expenses. Thus, prima facie there is an investigation done by AO. Even otherwise, we also find that in the last para of statement, Shri Prakash Singh made surrender for AY 2015-16 and not for AY 2013-14. When it is so, the AO is justified in not making any addition on this count in AY 2013-14. Therefore, the revision on this issue cannot be said to be valid.
- (ii) Regarding surrender of on-money payment of Rs. 1.80 crore, we firstly find that the impounded document does not contain any date or year which is an undisputed fact. Then, we find that the land at village Barai, for which there is allegation of cash-payment of on-money, had been purchased during AY 2014-15 and not during AY 2013-14 which is very much evident from the date of agreement, dates of payment of consideration and date of execution of sale-deed embodied in the registered sale-deed placed on record. Ld. DR could neither prove that the impounded document contained any date of alleged on-money payment nor could rebut or contradict the documentary evidences

which clearly shows purchase-deal having taken place in AY 2014-15; Ld. DR has simply made an unsubstantiated statement that the on-money must have been paid in AY 2013-14. Faced with such a situation, we do not find any valid basis to justify addition in AY 2013-14. Therefore, the revision qua this issue is also not valid.

- (iii) Regarding surrender of Rs. 1.80 crore, we firstly find that no date or year is mentioned in the impound document which is again a fact admitted by PCIT himself. Secondly, we also find that the main entry of Rs. 1.70 crore noted on the document, is in the name of one Shri Jagdish Thakur for which the AO issued summon dated 27.02.2015 u/s 131 to Shri Jagdish Thakur and recorded his statements on 03.03.2015 wherein he has clearly denied having given any cash-loan to assessee. Thirdly, we find merit in the submission of Ld. AR that if at all the assessee has taken cash-loan, how can it be treated as an income of assessee-receiver? Ld. DR could not rebut or contradict these points raised by Ld. AR. Therefore, the revision on this count is also not valid.

14. With regard to the contention raised by Ld. DR that the assessment-order is silent on the impugned surrender, in our considered view the writing of assessment-order is a task of AO and the same is neither controlled nor helped by assessee. In fact, the assessee has no hand or mind in writing the assessment-order. Being so, we are afraid to accept the pleading of Ld. DR that the assessment-order could be said to be erroneous-cum-prejudicial for that reason alone. This view is also fortified by the decision taken by Hon'ble ITAT, Mumbai in **Reliance Payment Solutions Ltd. Vs. Pr. CIT (2022) 136 taxmann.com 277** where it was accepted that merely because the Assessing Officer did not write specific reasons for accepting the explanation of the assessee cannot be reason enough to invoke powers under section 263, and non-mentioning of these reasons do

not render the assessment order "erroneous and prejudicial to the interest of the revenue".

15. In view of above discussion and for the reasons stated therein, we are persuaded to hold that the facts of the present case do not warrant application of section 263. Therefore, the revision-order passed by Ld. PCIT is not a valid order. We, thus, quash the revision-order and restore the original assessment-order passed by AO. The assessee succeeds in this appeal.

16. Resultantly, this appeal is allowed.

Order pronounced in the open court on 12.07.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक/Dated : 12.07.2023.

CPU/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*