

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

[Before Shri Rajesh Kumar, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 189/Kol/2023
Assessment Year : 2018-19

Pataka Industries Pvt. Ltd. PAN: AABCP 5057 C Appellant	Vs.	ACIT, Circle-7(1), Kolkata Respondent
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Date of Hearing	26.06.2023
Date of Pronouncement	14.07.2023
For the Assessee	Shri Anil Kochar, Advocate
For the Revenue	Shri Abhijit Kundu, CIT, DR

ORDER

Per Sonjoy Sarma, JM:

The assessee has filed an appeal against the order of Id. Pr. CIT-1, Kolkata dated 31.01.2023 for the assessment year 2018-19 wherein the assessee has raised following grounds of appeal:

- 1. For that the Ld. PCIT, Kolkata-1 erred in assuming jurisdiction u/s 263 of the Income Tax Act, 1961 on alleged grounds.*
- 2. For that there was no error in the order of assessment framed by the A.O. which would justify the initiation of proceedings u/s 263 of the Act by the Ld. PCIT.*
- 3. For that the Ld. PCIT, Kolkata-1 erred in holding that the assessment order dated 04.03.2021 passed by the A.O. is erroneous in so far as it is prejudicial to the interest of revenue.*
- 4. For that the inference drawn by the Ld. PCIT, Kolkata-1 without considering the appellant's explanation in respect of show cause notice issued u/s 263 of the Act is baseless, wrong and contrary to facts of the*
- 5. For that the Ld. PCIT, Kolkata-1 ought to have properly considered the submissions of the appellant and the reference to the judicial pronouncements before rejecting the contentions raised by the appellant.*

6. For that the Ld. PCIT, Kolkata-1 erred in passing an order u/s 263 of the Act without pointing out as to in what respect the order passed u/s 143(3) of the Act on 04.03.2021 is erroneous and prejudicial to the interest of

7. For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.

2. The fact emerges from the impugned order of ld. PCIT are as under:

'From the scrutiny of the assessment records, it was observed from Note-28, Other Expenses of the profit and loss account for the year ended on 31st March, 2018 that the assessee had claimed an amount of Rs.1,28,95,729/- towards Registration Exp. for Pataka House. Since, these expenses are of the nature of capital expenditure, therefore, these expenses are not allowable as revenue expenses of the assessee as per the provisions of section 37(1) of the I T Act, 1961. The said expenses of Rs. 1,28,95, 728/- claimed by the assessee towards Registration Exp. for Pataka House and allowed by the department is thus irregular.

Jurisdictional Principal Commissioner of Income Tax was satisfied that it was a case of erroneous assessment in so far as it was prejudicial to the interests of the revenue. Show cause notice u/s.263 of the Act was issued vide this office letter ITBA/COM/F/17/2021-22/957) dated 30.11.2022 which was also sent through the available email id as well as by post. The assessee was requested to file an explanation as to why the provisions of section-263 of the Act should not be invoked in this case and the assessment completed by the Assessing Officer should not be Revised/ modified or set-aside."

3. In response to show cause notice dated 30.11.2022, assessee filed its submission which is as under:

"5: In this connection, assessee's submission may kindly be noted as under:

(a) An amount of Rs. 1,28,95,728/- has been debited in the accounts under the nomenclature 'Registration Expenses for Pataka House. The assessee is the owner of the building called Pataka

House situated at 57B, Mirza Ghalib Street Police Station- Park Street, Post Office- Park Street, Kolkata 700 016. The building comprises of Ground + 5 Floors. During the year, the assessee made out a Lease Deed in favour of M/s Trent Ltd, a company within the meaning of the Companies Act 2013, having its registered office at Bombay House, 24 Homi Mody Street, Fort, Police Station - Azad Maidan, Post office- General Post Office, Murnbai 400 001 in respect of commercial space more particularly mentioned in the Deed of Lease dated 22.10. 2017 as under -

(b) ALL THAT commercial space measuring 11428 sq. n. (Eleven Thousand Four Hundred Twenty Eight) built up area on the 2nd floor, thereby totaling 33792 sq. ft. (Thirty Three Thousand Seven Hundred and Ninety Two) built up area, having road frontage towards Mirza Ghalib Street of approximately 103 running feet in the building situated at 57B, Mirza Ghalib Street Post Office- Park Street, Police Station- Park Street, Kolkata - 700 016 more particularly delineated and bordered with RED ink in the plans annexed hereto and marked with Letters "A" A1" and "A2".

(c) As required the assessee entered into a Deed of Lease for a period of 27 years in respect of the aforesaid commercial space beginning from 22.10.2017 till 27.10.2044.

(d) As required under the Transfer of Property Act the Lease Deed was got registered and for this purpose an amount of Rs. 2,47,76,208/- was paid towards Stamp Duty. The Lessee reimbursed an amount of Rs. 1,18,80,479/- on account of registration charges and the balance of Rs. 1,28,95,729/- was borne by the assessee debited in the accounts.

(e) This amount of Rs. 1,28,95,729/ has been claimed as expenditure since the expenses towards registration of Stamp Duty has to be considered in the light of the provisions of Sec.37(1) of the Act.

6. In this regard following judicial pronouncements on this issue may kindly be taken note of: -

The Hon'ble Bombay High Court in the case of Cinecita Pvt. Ltd. 137 ITR 652 has held "The impugned expenditure did not involve any element of premium in the amount claimed as expenditure. It was

incurred only to draw up and get registered an effective and proper lease deed and would have remained the same irrespective of the period of lease as long as it was more than one year. Further the period of lease itself could not be decisive of the question whether the asset was of enduring nature. On these facts, the impugned expenditure was revenue in nature.

A similar view was taken by the Hon'ble High Court of Bombay in the case of Hoechst Pharmaceuticals Ltd. 113 ITR 877 and in the case of Octavious Steel and Co. Ltd. 221 ITR 810. Considering the nature of expenditure in the light of the judicial decisions, legal expenses have to be allowed u/s 37(1) of the Act. We order accordingly.

In view of the aforesaid, it is submitted that there is as such no irregularity in so far as the claim of the assessee made u/s 37(1) of the Act which consequently has been allowed by the A.O.

Proceeding so initiated may kindly be dropped and for which the assessee company shall be highly obliged."

4. During the course of hearing, ld. AR has prayed before us that while passing the revisionary order, ld. PCIT erred in exercising jurisdiction by initiating proceeding u/s 263 of the Act since the order of AO is neither erroneous nor prejudicial to the interest of revenue. The ld. AR submitted that an amount of Rs. 1,28,95,728/- has been debited in the assessee's books of account under the nomenclature of registration expenses for Pataka House and the assessee is the owner of the said building. During the year under consideration, assessee made out a lease deed in favour of M/s. Trent Ltd. and under the provision of transfer of Property Act for which lease deed was registered and for this purpose an amount of Rs. 2,47,76,208/- was paid towards stamp duty out of which lessee reimbursed an amount of Rs. 1,18,80,479/- on account of registration charges and balance amount of Rs. 1,28,80,479/- was

borne by the assessee. The assessee accordingly debited in its accounts the said expenses u/s 37(1) of the Act. The assessee placed all the facts before the ld. AO while filing its financial statement along with notes of account during the assessment proceeding and the AO after examination of these documents allowed these expenses by accepting the plea of the assessee. Therefore, the present initiation of proceeding u/s 263 by the ld. PCIT by holding that payment towards registration fees are not allowable as revenue expenses as per provision of section 37(1) of the Act is not proper and such view taken by the ld. PCIT liable to be set aside. The ld. AR to substantiate his claim relied on the two judicial pronouncements as under:

a. The Hon'ble Bombay High Court in the case of Cinecita Pvt. Ltd. 137 ITR 652 has held "The impugned expenditure did not involve any element of premium in the amount claimed as expenditure. It was incurred only to draw up and get registered an effective and proper lease deed and would have remained the same irrespective of the period of lease as long as it was more than one year. Further the period of lease itself could not be decisive of the question whether the asset was of enduring nature. On these facts, the impugned expenditure was revenue in nature.

b. A similar view was taken by the Hon'ble High Court of Bombay in the case of Hoechst Pharmaceuticals Ltd. 113 ITR 877 and in the case of Octavious Steel and Co. Ltd. 221 ITR 810. Considering the nature of expenditure in the light of the judicial decisions, legal expenses have to be allowed u/s 37(1) of the Act. We order accordingly.

5. He further submitted that since there is no such irregularity in so far as the claim of the assessee made u/s 37(1) of the Act is concerned as the ld. AO allowed the claim of the assessee after thorough examination of the facts. Therefore, proceeding was initiated by the ld. PCIT may kindly be dropped.

6. On the other hand, ld. DR supported the order passed by the ld. PCIT for initiation of revisionary proceeding u/s 263 of the Act.

7. We have heard both the parties and perused the material available on record. The bench noted that the scope of revisionary jurisdiction u/s 263 is very specific, limited and also different from appellate jurisdiction. Law contained in section 263 does not allow ld. PCIT to impose his view over judicious view adopted by the ld. AO unless the view adopted by the ld. AO is established to be not at all sustainable in law. The ld. AO in the present case on appreciation of the facts and using his judicial wisdom allowed sum of Rs. 1,28,95,729/- borne by the assessee towards registration of lease deed by debiting in the profit and loss account u/s 37(1) of the Act. The view of the AO in present case is also supported by *The Hon'ble Bombay High Court in the case of Cinecita Pvt. Ltd. 137 ITR 652 has held.* The impugned expenditure did not involve any element of premium in the amount claimed as expenditure. It was incurred only to draw up and get registered an effective and proper lease deed and would have remained the same irrespective of the period of lease as long as it was more than one year. Further the period of lease itself could not be decisive of the question whether the asset was enduring nature. On these facts, the impugned expenditure was revenue in nature. In the present case of the assessee was selected for scrutiny for following issues: (i) Short Term Capital Gain u/s 111A (ii) ICDS compliance and adjustment (iii) Verification of transaction (iv) Total income under Chapter VA of the Act. Therefore, it cannot be said that there was lack of enquiry

more particularly when detailed questionnaire was issued by the AO during the assessment proceeding and the ld. AO in the present case on perusal of facts held that Rs. 1,28,95,729/- borne by the assessee towards registration of lease deed debited in the profit and loss account u/s 37(1) of the Act is allowable as expenses. Therefore, it cannot be said that there was lack of enquiry on the part of AO on this issue. In this regard, we draw strength from the decision of Coordinate Bench in the case of Smt. Lata Phulwani (ITA No. 246/JP/2020). It is a settled law by now that where the AO has exercised the quasi judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be considered erroneous simply because the ld. PCIT does not feel satisfied with the conclusion. In this regard, we take into consideration the decision of Hon'ble Rajasthan High Court in the case of CIT vs Ganpat Ram Vishnoi, 296 ITR 292. Even otherwise, provisions of Section nowhere allow to challenge the judicial wisdom of the AO or to replace the wisdom in the guise of revision unless the view taken by the AO is not at all sustainable in law. We are of the view that extent of enquiry cannot be stretched to any level by forcing the AO to go through the assessment process again and again. We have also gone through the decisions of the Coordinate Bench in the cases Annu Agrotech Private Ltd. (ITA No. 9/JP/2021), apropos assumption of jurisdiction u/s 263 by the ld. PCIT laid down the following ratio:-

"1.14 (i). Every loss of Revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the Revenue. If the AO has adopted one of the two or more courses permissible in law and it has resulted in loss of revenue, or where two views are possible and AO has taken one view with which the PCIT does not agree, it cannot be treated as an erroneous order and it is prejudicial

to the interest of the Revenue, unless the view taken by the AO is totally unsustainable in law;

1.14 (ii). The law is well settled that the assessment order cannot be held to be erroneous simply on the allegation of inadequate enquiry. Unless there is an established case of total lack of enquiry;”

It is pertinent to mention here that assessment in the present case of the assessee firm for the year under consideration was carried out in the “faceless manner” by NFAC. It is a fact that any faceless assessment is carried out through a teamwork of assessment unit, technical unit, review unit, verification unit etc. Since different units are headed by Principal Commissioner of Income Tax, therefore, in a faceless regime, normally there cannot be a case of prejudice of lack of enquiry for the reason that there is application of mind by multiple officers of Department and not by a single officer and thus at the end of our discussion, we are of the view that the assessee firm had furnished the requisite information and the NFAC has completed the assessment after considering all the facts, therefore, the order passed by the AO cannot be termed as erroneous.

8. Therefore, after considering the totality of the facts of the case and keeping in view the legal position as discussed herein above, it is clear that the assessment order passed by the AO was after full enquiry and, therefore, the case does not fall within the clause (a) and (b) of Explanation 2 to Section 263 of the Act. Hence, the Id. PCIT has erred in assuming jurisdiction u/s 263 of the Act and the order passed by him stands quashed. Thus keeping view the above deliberations, the appeal of the assessee is allowed.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 14.07.2023.

Sd/-

Sd/-

(Rajesh Kumar)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 14.07.2023

Biswajit

Copy of the order forwarded to:

1. Appellant- Pataka Industries Pvt. Ltd., 97, Park Street, Kolkata-700016.
2. Respondent- ACIT, Circle-7(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata