

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI

BEFORE SHRI S RIFAUR RAHMAN, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No. 1409/Mum/2022
(Assessment Year: 2017-18)

Jumbo Electronics Corporation Pvt. Ltd. 104, The Summit Business Bay, Off Andheri-Kurla Road, Off western Express Highway, Opp. Cinemax/PVR Theatre, Andheri (East), Mumbai-400093	Vs.	Pr. Commissioner of Income Tax – 2 344, 3 rd Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai-400020
PAN/GIR No. AAACL5308H		
(Appellant)	:	(Respondent)
Assessee by	:	Ms. Krupa Gandhi/ Ms. Ayushi Modani/ Shri. Harshit Aggarwal, AR
Revenue by	:	Shri. Anksh Kapoor, DR
Date of Hearing	:	17.04.2023
Date of Pronouncement	:	13.07.2023

ORDER

PER KAVITHA RAJAGOPAL, J M:

1. This Appeal has been filed by the assessee challenging the order of Ld. PCIT passed u/s 263 of the IT Act, relevant to the assessment year 2017-18.
2. The assessee has challenged this appeal on following grounds:

GROUND NO. 1: IMPUGNED ORDER PASSED BY INVOKING PROVISIONS OF 263 OF THE ACT IS BAD IN LAW

1. On the facts and circumstances of the case and in law, Hon'ble Pr. CIT erred in invoking the provisions of section 263 of the Act and setting aside the assessment

order passed u/s 143(3) of the Act by ACIT (the AO") treating the same as erroneous and prejudicial to the interest of the revenue and directing the AO to pass a fresh order after examination of the facts of the case.

2. The Appellant prays that it be held that the impugned order passed by the AO is neither erroneous nor prejudicial to the interests of revenue and accordingly, the action of Hon'ble Pr. CIT of invoking provisions of section 263 of the Act be set aside.

WITHOUT PREJUDICE TO GROUND NO. I

GROUND NO. II: CASH DEPOSITS IN DEMONETIZATION PERIOD:

1. On the facts and circumstances of the case and in law, the Id. Pr. CIT erred in directing the AO to examine whether the cash deposits of Rs 78,67,500/- was in the form of SBN only and to further verify whether Rs. Rs. 43,83,606/- deposited by the Appellant during demonetization period was in the denominations of SBN or other denominations.

2. The Appellant prays that the direction of Hon'ble Pr. CIT to the AO to examine the source of cash deposited in the bank account during the demonetization period be deleted.

WITHOUT PREJUDICE TO GROUND NO. I

GROUND NO. III: DIFFERENCE IN GROSS RECEIPTS REPORTED IN SERVICE TAX RETURN, 26AS AND THAT REPORTED IN THE P&L A/C:

1. On the facts and circumstances of the case and in law, Hon'ble Pr. CIT erred in directing the AO to examine the difference in gross receipts as per Service tax Return, 26AS and P&L A/c on the ground that the Order was passed without necessary inquiries and verification.

2. The Appellant prays that the direction of Hon'ble Pr. CIT to the AO to examine the difference in gross receipts as per Service tax Return, 26AS and P&L A/c of the Appellant be deleted.

3. The brief facts are that the assessee is engaged in the business of retailing Electronic Items. The assessee had filed its return of income dated 30.10.2017 declaring total loss at ₹27,18,40,152/-. The assessee's case was selected for complete scrutiny under CASS and the assessment order dated 29.11.2019 was passed u/s 143(3) of the Act where the Ld. AO determined the total income at loss of ₹27,06,43,056/- thereby making an addition of ₹11,71,096/- being 10% of expenses claimed to have been incurred for the purpose of the assessee's business. Subsequently, the Ld. PCIT invoked the provisions of section 263 of the Act for the reason that the assessment order passed by the Ld. AO was erroneous in so far as it is prejudicial to the interest of the revenue for the reason that the Ld. AO has failed to make enquiry/verification as to whether the assessee's business was of the nature to accept Specified Business Notes (SBN) as per the Gazette Notification No. 2652 dated 08.11.2016 where the assessee has deposited ₹1,27,03,805/- by way of cash deposits during the demonetization period. The Ld. PCIT has also invoked the provisions of section 263 of the Act for the reasons that the Ld. AO has failed to enquire/verify that difference in the receipt as per service tax return and ITR filed by the assessee to the extent of ₹96,34,242/- has been reconciled by the assessee. The Ld. PCIT vide order dated 31.03.2022 has set aside the assessment order passed by the Ld. AO and directed the Ld. AO to frame de-novo assessment after conducting the requisite enquiries on the issue specified in the order of the Ld. PCIT.

4. The assessee in appeal before us, challenging the order of the Ld. PCIT. The Ld. Authorized Representative for the assessee contended that the Ld. AO during the assessment proceedings had sought for the detail pertaining to the cash deposits from

09.11.2015 to 31.12.2015 and 09.11.2016 to 31.12.2016. The Ld. AR further stated that vide reply dated 25.11.2019 the assessee had furnished details of the cash deposits made during the relevant period and brought our attention to page 72-73 of the paper book filed by the assessee, where the reply to the Ld. AO was given. The Ld. AR further stated that the Ld. AO has in fact sought for details of the cash deposits for the relevant previous year to make a comparison with that of cash deposits during the demonetization period. The Ld. AR further contended that the assessee was running retail outlets all over India and was regularly making cash deposits of sales made in all its branches. The Ld. AR further stated that the Ld. AO during the assessment proceedings u/s 143(3) has made detailed enquiry on the cash deposits and had not made any addition related to this issue for the reason that the assessee has reconciled its deposits along with documentary evidences. The Ld. AR also relied on the consequential assessment order passed u/s 143(3) r.w.s 263 wherein it was contended that no addition on this was made. The Ld. AR relied on various decisions to substantiate that at the most it can be a case of inadequate inquiry and not lack of inquiry.

5. The Ld. Departmental Representative on the other hand controverted the said fact and contended that though the Ld. AO had asked the assessee to furnish the details pertaining to cash deposits, the assessee has merely made statement that it had deposited ₹1,27,03,805/- during the demonetization period and there was no supporting documentary evidences submitted by the assessee to Ld. AO. The Ld. DR further stated that even before the Ld. PCIT, the assessee has not furnished any documentary evidences to establish source of the cash deposits which emphasizes that the assessee had no proof

to support its claim before the Ld. AO. The Ld. DR further stated that merely seeking for the detail does not hold that the Ld. AO has made inquiry of that issue. The Ld. DR relied on the order of the Ld. PCIT in holding the assessment order to be erroneous and prejudicial to the interest of revenue.

6. We have heard the rival submissions and perused the material available on record. It is evident that the Ld. AO vide show cause notice dated 13.11.2019 has sought for bank statement for the relevant previous year and the year under consideration for the purpose of explaining the source of cash deposits along with receipt of cash received from third parties along with names, addresses, pan, copies of return of income and nature of transactions together with supporting the evidences of the documents. The assessee vide its reply dated 25.11.2019 has given the details of total cash deposits during the relevant previous year and the relevant year under consideration. The assessee has further stated that the source of cash deposits during 09.11.2016 to 31.12.2016 was out of the cash sales in various outlets of the assessee company across India. The assessee has further stated that it had not received cash from third parties. Apart from this submission, we don't find any documentary evidences furnished by the assessee before the Ld. AO nor has the Ld. AO sought for further clarifications pertaining to the sales made by the assessee during the demonetization period. Even from the assessment order, there is no finding of the Ld. AO that the assessee has substantiated its claim that the said cash deposit was out of the sales done by the assessee company in all its branches across the country. The Ld.AO has also not enquired into the fact whether the said deposit was made in SBN or other denomination notes. It is also pertinent to point out that the Ld.AO

has also not verified whether the impugned amount deposited was from the sales made prior to 08.11.2016 or subsequent to notification of demonetization. The Ld.AO has also not made any enquiries from the bank whether the deposit was made with other denominations or SBNs.

7. From the above observation we are of considered view that the ld. PCIT(A) has rightly invoked provisions of section 263 in holding that the assessment order is erroneous and prejudicial to the interest of the revenue, for the reason that the Ld. AO has failed to verify the issue of cash deposits made during the demonetization period by the assessee. Apart from the reply given by the assessee to the Ld. AO. ,we do not find any evidence such as bills, vouchers, invoices, etc furnished by the assessee to substantiate that the source of cash deposits were from the sales made by the assessee company. We do not find any infirmity in the order of the Ld. PCIT on this ground and hence the ground no. 2 raised by the assessee holds no merit and therefore is dismissed.

8. Ground no. 3 pertains to difference in the gross receipts reported in the service tax return, the 26AS and the P&L account. It is observed that the Ld. PCIT in her order has specified the difference between the amount stated in 26AS and the amount as per the P&L account of the assessee and reported in the service tax return wherein it has been found that there was discrepancy in the figures shown by the assessee. The Ld. PCIT stated that gross receipts as per the service tax CBEC detail is ₹4,67,30,155/- whereas the gross receipts as per the assessee's P&L account is ₹3,70,95,913/-. It is observed that the AO has failed to make enquiry as to the said discrepancy amounting to ₹96,34,242/-. The

Ld. PCIT further stated that the gross receipt as per the form no. 26AS is ₹4,57,87,237/-. The Ld. PCIT has further iterated that though the AO has sought for details vide notice u/s 142(1) of the Act dated 03.07.2019, the assessee has only submitted the breakup of receipts as per form no. 26AS but not reconciled with the P&L account. The Ld. PCIT held that the Ld. AO has failed to make any inquiry or verification as to the said discrepancy of ₹86,91,324/- as per the form no. 26As and P&L account. The Ld. PCIT held the assessment order to be erroneous and prejudicial to the interest of the revenue on this issue as well.

9. The assessee is in appeal before us, challenging the order of Ld. PCIT in holding the assessment order to be erroneous on this ground. The ld. AR contended that with regard to the discrepancy in the service tax return and the audited financials the same has been settled by the assessee and that there is no discrepancy on this issue. The Ld. AR further stated with regard to the discrepancy in 26AS and P& L account receipts, it is observed that assessee has offered higher income than that reported in 26AS and that there was no revenue loss in this issue. The Ld. AR further contended that the Ld. AO during the assessment proceedings u/s 143(3) of the Act has sought for the details pertaining to the discrepancy in ITR and the rental receipts in 26AS for which the assessee has stated it had reconciled the same and Ld. AO did not make any addition on this ground as being satisfied with the assessee's submission. The Ld. AO further stated that the Ld. PCIT has no jurisdiction to invoke section 263 of the Act for the reason that the same was not erroneous and prejudicial to the interest of the revenue as there was no loss of the revenue in this issue.

10. The Ld. DR on the other hand controverted the said fact and relied on the order of the Ld. PCIT

11. We heard the rival submissions and perused the materials available on the record. On the issue of discrepancy found in the service tax return with that of the audited financials and form no. 26AS the Ld. PCIT invoked jurisdiction u/s 263 of the Act for that the reason that the Ld. AO has failed to make enquiry or verification on this issue. The Ld. PCIT has held that the assessee should have offered the turnover declared in the service tax return as income in P&L account which according to us is not sufficient reason to invoke section 263 of the Act where the Ld. AO after making an enquiry on this issue has taken one of the plausible view and has not made addition on the difference amount. It is also pertinent to point out that since the assessee has offered a higher income than what was reported in 26AS, there is no revenue leakage in this case. The twin conditions of section 263 of the Act as per the statute emphasizes that that the order passed by the Ld. AO should erroneous be and the same has to be prejudicial to the interest of the revenue, meaning thereby, there should have been loss of revenue.

12. In the present case in hand, on the issue of discrepancy in income declared by e assessee, we do not find any justification in invoking the provision section 263 of the Act, hence, we allow the ground no. 3 raised by the assessee to the extent of invoking u/s 263 of the Act, to the issue of difference in gross receipts reported in service tax return, the 26AS and the P&L account of the assessee. Ground no. 1 being general in nature requires no separate adjudication.

13. In the result the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 13.07.2023

Sd/-
(S Rifaur Rahman)
Accountant Member

Sd/-
(Kavitha Rajagopal)
Judicial Member

Mumbai;

Dated : 13.07.2023

Aniket Singh Rajput, Stenographer

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai