

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 225/JP/2023
निर्धारण वर्ष / Assessment Years : 2018-19

Pratap Technocrats Private Limited B-21, Shakti Bhawan, Shivaji Godara Colony, Jaipur.	बनाम Vs.	Principal Commissioner of Income Tax-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAICP 3621 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajeev Sogani (C.A.) &
Shri Rohan Sogani (C.A.)
राजस्व की ओर से / Revenue by : Shri Ajey Malik (CIT)

सुनवाई की तारीख / Date of Hearing : 21/06/2023
उदघोषणा की तारीख / Date of Pronouncement : 18/07/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee aggrieved from the order of the Learned Principal Commissioner of Income Tax, Jaipur-1 [here in after "Ld.PCIT"] for assessment year 2018-19 dated 27.03.2023 as per provisions of section 263 of the Income Tax Act (hereinafter "Act"). The order of the Ld. PCIT arise from the order passed by the National e-Assessment Centre, Delhi passed u/s 143(3) read with sections 143(3A) & 143(3B) of the Act dated 29.03.2021.

2. The assessee has marched this appeal on the following grounds:-

“1. In the facts and circumstances of the case and in law, Id. Principal commissioner of Income Tax has erred in assuming jurisdiction u/s 263 when the order of the Id. AO is neither erroneous nor prejudicial to the interest of the revenue. The action of the Id. Principal Commissioner of Income Tax is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the order passed u/s 263.

2. The assessee company craves its right to add, amend or alter any of the grounds on or before the date of hearing.”

3. The fact as culled out from the records is that that assessee has filed return of income on 31.10.2018 declaring total income at Rs. 24,87,27,450/-. Subsequently, the case was selected for limited scrutiny under CASS. During the year under consideration the assessee is having business income from the business of contractors, sub-contractors, construction, builders, engineers, civil, irrigations, telecom, tower services, etc. Notice u/s 143(2) of the IT Act was issued to the assessee on 22.09.2019, and served upon the assessee online. Notice u/s 142(1) of the Act accompanies with questionnaire was issued on 09.12.2020. In response to these notices' assessee submitted reply and evidences online as called for. The case was selected for limited

Scrutiny assessment under the E-assessment Scheme, 2019 on the issues:-

- i. Deduction from total income under Chapter VI-A
- ii. Refund claim

3.1 The reply of the assessee was examined in view of the reasons for selection of case for scrutiny. Based on the submission, documents filed in response to the statutory notices and material placed on record the explanation of the assessee on the issues was accepted by the Id. AO and the returned income was considered as assessed income.

4. On culmination of the assessment proceeding the Id. PCIT called for the assessment record and the Id. PCIT observed that the assessee had claimed deduction u/s. 80JJAA of the Act amounting to Rs. 3,01,18,395/-. The Id. PCIT also observed that the assessee had furnished Form 10DA on 05.02.2019. As per provisions of section 80JJAA, the Form 10DA should have been filed along with the return of income which was filed on 31.10.2018. Based on these facts the Id. PCIT noted that the form should have been treated as defective and deduction claimed by

the assessee u/s. 80JJAA of the Act should have been disallowed by the Id. AO. The Id. PCIT also noted that the CPC while processing the return u/s. 143(1) made an adjustment of Rs. 5,61,32,750/- to the total income of the assessee which has also not been considered while passing the order u/s. 143(3) of the Act by NeAC/FAO. Based on these observations the Id. PCIT of the view that the order passed in this case was erroneous in so far as it is prejudicial to the interest of the revenue and therefore, a show cause notice u/s. 263 of the Act was issued to the assessee. In compliance the assessee filed reply on 21.03.2023 & 24.03.2023. On the first issue relying on the various judgement the assessee submitted that availability of Form no. 10DA before completion of the assessment is sufficient compliance for claiming the deduction u/s. 80JJAA of the Act. So far as the second issue for adjustment made u/s. 143(1) of the Act the appeal was preferred and finally the for the second issue the appeal was allowed by the ITAT in favour of the assessee and therefore, based on the legal position there is no prejudiced cause to the revenue and considering these facts of the case assessee pleaded the order of the FAO/NeAC is neither erroneous nor prejudicial to the interest of the revenue. The assessee also submitted that assessment is completed by NeAC

under faceless regime where there as four units to check the quality of the assessment i.e Assessment Unit, Verification Unit, Technical Unit and Review Unit. Considering the purpose of the faceless assessment the subjected proceeding u/s. 263 is also devoid of merits as both the issues for which the order is not erroneous and prejudicial to the interest of the revenue. But the Id. PCIT relying on the decision of the Malabar Industrial Limited vs. CIT taken a view that the order is passed in casual manner and without verification of the issues discussed and therefore, she hold the order liable to revision under the explanation (2), clause (a) & (b) of section 263 of the Act.

5. Feeling dissatisfied from the order of the Id. PCIT, assessee preferred this appeal as per grounds so raised and reiterated in para 2 above. The Id. AR of the assessee in support of the grounds so raised, filed a detailed submission which is reproduced here in below:-

1. For the captioned assessment year, case of the assessee company was selected for scrutiny u/s 143(3) by the National e-Assessment Centre, Delhi(**NAC**). Thereafter, order dated 29.03.2021, was passed accepting the returned income of the assessee company. Subsequently, jurisdiction was assumed by the Id. PCIT u/s 263. In this regard, order dated 27.03.2023 was passed. Against the said

order of the Id. PCIT, present appeal has been preferred by the assessee company.

2. **ASSESSMENT PROCEEDINGS**

2.1. Case of the assessee company, for the relevant year, was selected for **LIMITED SCRUTINY** u/s 143(3) on the following issues:-

- i. Refund Claim
- ii. Deduction from Total Income under Chapter VI-A

2.2. Assessment was completed *vide* order u/s 143(3), dated 29.03.2021 by NAC, in a faceless manner. **[PB 1-2]**.

2.3. During the course of assessment proceedings, NAC sought various details and made exhaustive queries. On the basis of such details submitted, assessment was completed. **Returned Income was accepted and no addition was made.**

3. **ISSUE RAISED BY LD. PCIT FOR ASSUMING JURISDICTION U/S 263**

Revisionary jurisdiction u/s 263 was assumed by Id. PCIT on following two grounds:-

3.1 Form 10DA for claiming deduction u/s 80JJAA was filed on 05.02.2019, whereas, Form 10DA ought to be have filed along with the return of income i.e. 31.10.2018. Therefore, deduction claimed should have been disallowed.

3.2 CPC, during processing of return u/s 143(1), made adjustment of Rs. 5,61,32,750 to the total income. However, the same was not taken into consideration by the NFAC during passing of final assessment order u/s 143(3).

4. **SUBMISSIONS**

4.1 **FIRST ISSUE – DELAY IN FILING FORM NO. 10DA FOR CLAIMING DEDUCTION U/S 80JJAA**

4.1.i It is submitted that Form 10DA was filed on 05.02.2019, i.e. after the date of filing of return of income, but within the time allowed u/s 139.

4.1.ii Assessee company filed Form 10DA, even before receiving the notice u/s 143(2). Hence, before the order was passed on 29.03.2021, Form 10DA was on record.

4.1.iii Hence, assessee company was entitled for claiming deduction u/s 80JJAA. **It is pertinent to note that the requirement of filing Form 10DA, along with return of income is directory and not mandatory.**

4.1.iv Contention of the assessee company is supported by the following judicial pronouncements:

SUPREME COURT

CIT vs G. M. Knitting Industries (P.) Ltd. [2016] 71 taxmann.com 35 (SC)

“...2. We concur with the aforesaid view of the High Court and hold that even if Form 3AA was not filed along with return of income but the same was filed during the assessment proceedings and before the final order of the assessment was made that would amount to sufficient compliance. These appeals are, accordingly, dismissed....”

JURISDICTIONAL HIGH COURTS

ITO vs Novelty Garments (2002) 175 CTR (Raj) 306 [PB 38]

“...4. The admitted fact is that the assessment has been completed in the case in hand on 26-3-1998, and assessee had filed the auditor's report along with new format of Form No. 10CCAC on 29-8-1996, i.e., before completion of assessment order. The appeal is dismissed at admission stage....”

OTHER HIGH COURTS

a) **CIT vs Fortuna Foundation Engineers & Consultants (P.) Ltd. [2017] 81 taxmann.com 189 (Allahabad)**

“Headnote II: Section 80-IB of the Income-tax Act, 1961 - Deductions - Profits and gains from industrial undertakings other than infrastructure development undertakings (Housing Project) - Assessment year 2005-06 - Whether where assessee, claiming deduction under section 80-IB(10), did not file audit report in Form 10CCB along with return of income but filed same before assessment was complete, assessee could not be made to suffer for it - Held, yes [Para 44] [In favour of assessee]”

b) CIT vs AKS Alloys (P.) Ltd. [2012] 18 taxmann.com 25 (Mad.)

“...5. In so far as it relates to the substantial question of law (1) is concerned, namely, whether the filing of audit report in Form 10CCB is mandatory, it is well settled by a number of judicial precedents that before the assessment is completed, the declaration could be filed. In fact, the said issue came to be decided by the Karnataka High Court in the case in CIT v. ACE Multitaxes Systems (P.) LTD. [2009] 317 ITR 207 (Kar.), wherein it was held that when a relief is sought for under Section 80IB of the Act, there is no obligation on the part of the assessee to file return accompanied by the audit report, thereby, holding that the same is not mandatory. Therefore, it is clear that before the assessment is completed if such report is filed, no fault could be found against the assessee. That was also the view of the Delhi High Court in the case in CIT v. Contimeters Electricals (P.) Ltd. [2009] 317 ITR 249/178 Taxman 422 (Delhi), wherein the Delhi High Court, by following the judgements of the Madras High Court in CIT v. A.N. Arunachalam [1994] 208 ITR 481 / 75 Taxman 529 and in CIT v. Jayant Patel [2001] 248 ITR 199/ 117 Taxman 707 (Mad.) held that the filing of audit report along with the return was not mandatory but directory and that if the audit report was filed at any time before the framing of the assessment, the requirement of the provisions of the Act should be held to have been met.

6. That is also the consistent view of the other High Courts, including the High Court of Bombay in CIT v. Shivanand Electronics [1994] 209 ITR 63 / 75 Taxman 93 (Bom.), apart from Gujarat High Court in Zenith Processing Mills v. CIT [1996] 219 ITR 721 (Guj.) and Punjab and Haryana High Court in CIT v. Mahalaxmi Rice Factory [2007] 294 ITR 631/ 163 Taxman 565 (Punj. & Har).

7. The Calcutta High Court in the case in the CIT v. Berger Paints (India) Ltd. [2002] 254 ITR 503/[2003] 126 Taxman 435 (Cal.) has also

concurring with the said view which was followed by the Tribunal in this case.

8. *Mr. T. Ravikumar, the learned counsel for the appellant is not able to produce any other judgement contrary to the above said views consistently taken.*

9. *In the light of the above, by virtue of hierarchy of judgements which are against the Revenue, the substantial question of law (1) would not arise at all for consideration....”*

c) CIT v. A.N. Arunachalam [1994] 208 ITR 481/ 75 Taxman 529 (Madras)

“Headnote: Whether where return filed by assessee was not accompanied by audit report as required by section 80J(6A) although it was available to ITO before assessment was made, assessee could claim deduction under section 80J – Held Yes”

d) CIT vs Contimeters Electricals (P.) Ltd. [2009] 178 Taxman 422 (Delhi)

“...8. In view of this long line on decisions of various High Courts in considering the provisions of section 80J(6A) which are similar to the provisions of section 80-IA(7), we feel that the Tribunal has arrived at the correct conclusion that the requirement of filing the audit report along with the return is not mandatory but directory and that if the audit report is filed at any time before the framing of the assessment, the requirement of section 80-IA(7) would be met....”

e) CIT vs ACE Multitaxes Systems (P.) Ltd. [2009] 317 ITR 207 (Karnataka)

“Headnote: Section 80-IA of the Income-tax Act, 1961 - Deductions - Profits and gains from infrastructure undertakings - Assessment year 2003-04 - Sub-section (7) of section 80-IA does not cast any obligation on assessee that return must be accompanied by audit report [In favour of assessee]”

f) CIT vs Mahalaxmi Rice Factory [2007] 163 Taxman 565 (Punjab & Haryana)

“Headnote: Section 80J of the Income-tax Act, 1961 - Deductions - Profits and gains from new industrial undertakings, ships or hotels, etc. - Whether provisions of section 80J(6A) are directory only to

extent that in case audit report is not filed along with return, same can be filed any time before assessment takes place - Held, yes - Whether where assessee filed audit report after completion of assessment, assessee was entitled to get benefit of section 80J - Held, no”

g) Zenith Processing Mills vs CIT [1996] 219 ITR 721 (Gujarat)

“Headnote: Section 80J of the Income-tax Act, 1961 - Deductions - Profits and gains from new industrial undertakings, ships or hotels - Assessment year 1976-77 - Whether provision of section 80J(6A) to extent it requires furnishing of auditor's report in prescribed form along with return, is directory in nature and not mandatory - Held, yes - Whether assessee can be permitted to produce such report at later stage when question of disallowance arises during course of assessment proceedings - Held, yes”

h) CIT vs Shivanand Electronics [1994] 75 TAXMAN 93 (BOM.)

“Headnote: Section 80J of the Income-tax Act, 1961 - Deductions - Profits and gains from new industrial undertakings - Assessment years 1976-77 and 1977-78 - Whether for purpose of claiming relief under section 80J(6A), filing of audit report before ITO is mandatory - Held, yes - Whether filing of audit report along with return is mandatory - Held, no - Whether, if an assessee fails to file audit report along with return and files it subsequently but before completion of assessment, ITO will have power to accept same if he is satisfied that delay was for good and sufficient cause - Held, yes - Whether any duty is cast on ITO to ask an assessee, who has failed to file report of audit, to do so before rejecting his claim for relief under section 80J - Held, no”

JURISDICTIONAL ITAT

ITAT Jaipur in case of ITO vs. Marathon India Ltd. [2018] ITA No. 287/JP/2018 [PB: 31-37]

“...5. We have considered the rival submissions as well as the relevant materials on record. The AO has not disputed the eligibility of the assessee for deduction U/s 80IE of the Act being nature of business and undertaking of the assessee engaged in the manufacturing of goods or articles. Only reasons for disallowance of claim of deduction U/s 80IE of the Act by the AO is not filing of the audit report in form No. 10CCB along with the return of income. It is also not in disputed that the assessee filed the requisite tax

audit report in Form No. 10CCB during the course of assessment proceedings and before the assessment order was passed by the AO.

....

The order of Hon'ble Madras High Court has been affirmed by the Hon'ble Supreme Court in case of CIT vs. G.M. Knitting Industries (P.) Ltd.(supra). Accordingly, in view of the various binding precedent as relied upon by the Id. CIT(A) while allowing the claim of the assessee, we do not find any error or illegality in the impugned order of the Id. CIT(A). Hence, we uphold the impugned order of the Id. CIT(A). In the result, the appeal of the Revenue is dismissed...."

4.1.v Thus, availability of Form 10DA before completion of assessment is sufficient compliance of the law. **This legal proposition is upheld by Hon'ble Supreme Court and as many as 8 High Courts including the Hon'ble Jurisdictional High Court as submitted above.**

4.1.vi **Considering the settled legal position**, as also set out hereinbefore, of filing of form for claiming benefit not being mandatory but directory in nature, NFAC consciously accepting the claim of the assessee company.

4.1.vii Various judicial pronouncements, including the jurisdictional High Court judgement, were in the knowledge of NAC. Ratio laid by the jurisdictional High Court was binding on NAC. Thus, NAC, applying its wisdom, completed the assessment on the basis of prevailing judicial view. Thus, no error can be imputed in the order of NAC when it allowed the claim of Section 80JJAA in spite of Form 10DA filed late on 05.02.2019.

4.1.viii **Hon'ble ITAT, Jaipur Bench**, in the case of **Lata Phulwani, ITA No. 246/JP/2020**, *apropos* assumption of jurisdiction under Section 263 by the Id. PCIT, in a case of limited scrutiny held as under: -

- Case was selected for limited scrutiny for verification of share premium and was not converted into full scrutiny. Resultantly, Id. AO had no jurisdiction to enquire on issues other than Share Capital.
- Being a limited scrutiny, it was not the case that large number of complicated issues were involved or large number of documents were placed on record, rendering it probable for the Id. AO to miss certain facts/legal position. **[CLC – 4 to 25]**

4.2 SECOND ISSUE – ADJUSTMENT OF RS. 5,61,32,750 MADE WHILE PROCESSING THE RETURN U/S 143(1) HAS NOT BEEN TAKEN INTO CONSIDERATION BY THE NAC, WHILE PASSING ORDER U/S 143(3).

4.2.i The scrutiny case of the assessee company for the relevant year, was selected for limited scrutiny u/s 143(3) on the following issues:

- i. Refund Claim**
- ii. Deduction from Total Income under Chapter VIA**

4.2.ii The issue of late deposit of ESI/PF dues was not the issue under limited scrutiny. Therefore, the same could not be taken by NAC in the assessment u/s 143(3).

4.2.iii CPC disallowed the employee's contribution made to ESI and PF, amounting to Rs. 5,61,32,750 (1,34,13,172+ 4,27,19,578) on the ground that the assessee Company failed to deposit the same on or before the due dates as specified under the Employees State Insurance Act, 1948 and Employee's Provident Funds & Miscellaneous Act, 1952.

4.2.iv It is submitted that once any disallowance/addition is made in preceding assessment proceeding [143(1) in the instant case], the same disallowance/addition cannot be made in subsequent proceeding [143(3) in the instant case] as it will amount to double disallowance/ addition.

4.2.v Under the Income tax Act, 1961, proceeding u/s 143(1) and proceeding u/s 143(3) are separate. It is explicitly confirmed by the fact that no penalty can be levied u/s 270A for addition u/s 143(1) while penalty u/s 270A can be levied for addition u/s 143(3).

4.2.vi The present case was selected for limited scrutiny and accordingly NFAC confined itself to the issues involved for limited scrutiny. **Hon'ble Calcutta High Court** in the case of **PCIT v. Naga Dhunseri Group Ltd. [2023] 146 taxmann.com 424 (Calcutta)** held that in case of limited scrutiny, PCIT cannot invoke jurisdiction u/s 263. **[CLC – 1 to 3]**

4.2.vii **Hon'ble ITAT, Jaipur Bench**, in the case of **Annu Agrotech Private Limited, ITA No. 09/JP/2021**, laid down the ratio that in case of limited scrutiny, scope of examination of the AO is restricted towards the reason for which the case of the assessee was selected for limited scrutiny. AO cannot proceed to examine issues, which are beyond the scope of limited scrutiny. Resultantly, Section 263 cannot be invoked for such issues. **[CLC – 26-73]**

4.2.viii **Without prejudice to above**, it is submitted that the assessee Company filed an appeal against the processing u/s 143(1). The Hon'ble ITAT, after examining the issue on merit, allowed the appeal of the assessee Company and deleted the addition made in this regard *vide* order dated 22.02.2022. **[PB 3-30]**

Once, the issue is decided by court, the same issue is outside the jurisdiction of section 263.

4.3 In the above factual background, it is submitted that the assessment was completed after due application of mind and after appreciating the facts.

4.4 No error can be attributed to any assessment order which was passed after adequate enquiry and in accordance with the prevalent judicial view.

4.5 Where the Assessing Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion, such a conclusion cannot be considered erroneous simply because the Commissioner does not feel satisfied with the conclusion. Adopting one of the possible views is not an error.

4.6 Provision of section 263 nowhere allows to challenge the judicial wisdom of Id. AO or to replace his wisdom in the guise of revision unless the view taken by Id. AO is not at all sustainable in law. Extent of enquiry can be stretched to any level by forcing the AO to go through the assessment process again and again, however, this proposition is not authorised by the law. Reliance is placed on the decision of the **Hon'ble Jurisdictional High Court** in the case of **CIT vs. Ganpat Ram Bishnoi, 296 ITR 292 (Raj.)** wherein at para 11 of the Hon'ble Court held as under:

"Jurisdiction under section 263 cannot be invoked for making short enquiries or to go into the process of assessment again and again

merely on the basis that more enquiry ought to have been conducted to find something."

4.7 Assessment order can be revised under section 263 only if the twin conditions of **"error in the order"** and **"prejudice cause to the revenue"** coexist. **Hon'ble Supreme Court** in the case of **Malabar Industrial Co. Ltd [2000] 109 Taxman 66 (SC)** held that *"...A bare reading of this provision makes it clear that the prerequisite to exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the ITO is erroneous insofar as it is prejudicial to the interests of the revenue. The Commissioner has to be satisfied with twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the revenue. If one of them is absent - if the order of the ITO is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue - recourse cannot be had to section 263(1)..."*

4.8 It is further submitted that where the assessee has furnished the requisite information and the Assessing Officer has completed the assessment after considering all the facts, the order cannot be termed as erroneous. Reliance is placed on the following judicial pronouncements:

- 4.8.i **CIT v Ratlam Coal Ash Co (1988) 171 ITR 141 (MP)**
- 4.8.ii **Ashok Kumar Parasramka v ACIT (1998) 65 ITD 1 (Cal)**
- 4.8.iii **CIT v Mehrortra Brothers (2004) 270 ITR 157 (MP)**
- 4.8.iv **CIT v Parameshwar Bohra (2004) 267 ITR 698 (Raj)**
- 4.8.v **Paul Mathews & Sons v CIT (2003) 263 ITR 101 (Ker)**
- 4.8.vi **CIT v Arvind Jewellers (2003) 259 ITR 502 (Guj)**
- 4.8.vii **CIT v Hastings Properties (2002) 253 ITR 124 (Cal)**
- 4.8.viii **CIT v Goal (JP) (HUF) (2001) 247 ITR 555 (Cal)**
- 4.8.ix **CIT v Amalgamations Ltd. (1999) 238 ITR 963 (Mad)**
- 4.8.x **CIT v MacneillMagore Ltd. (1998) 232 ITR 945 (Cal)**

4.9 Moreover, assessment order dated 29.03.2021, was passed under E-Assessment Scheme, 2019. Under E-Assessment Scheme, 2019, the assessments are completed through the following units:

- 4.9.i Assessment Unit
- 4.9.ii Verification Unit
- 4.9.iii Technical Unit
- 4.9.iv Review Unit

Thus, after introduction of E-Assessment Scheme, 2019, assessments are not completed by individual assessing officers but are completed on a group basis using the wisdom of all the four units.

In this view of the matter, the possibility of any error and prejudice to revenue is reduced to negligible and therefore, the present proceedings assuming the order to be erroneous and prejudicial to the interest of the revenue, at the outset, is not justified.

4.10 The aforementioned factual and legal position was submitted to the Id. PCIT, during the course of proceedings before her. However, without any cogent basis, the contentions raised were disregarded and the order of the Id. AO was set aside. Id. PCIT simply mentioned, without any substantiation that the Id. AO failed to apply his mind on the material available on record and failed to invoke applicable provision of law.

In view of the above factual and legal position, Id. PCIT has grossly erred in assuming jurisdiction under section 263. Thus, the entire such proceedings initiated by the Id. PCIT deserves to be quashed.”

5.1 In addition to the written submission wherein the reliance was placed on various judgment but Id. AR specification drawn to our attention to the following case law to decide the issue on hand as to whether the order is in fact erroneous or prejudicial to the interest of the revenue :-

- Pratap Technocrats Pvt. Ld. Vs. ADIT & Ors in ITA No. 18 33, 24 to 26 and 28/JP/2022 dated 22.02.2022.
- ITO vs. M/s Marathon India Ltd. in ITA No. 287/JP/2018.

The Id. AR of the assessee filed the copy of the following judgment in support of the fact that when the case is selected for limited purpose the Id. PCIT cannot invoke the provision of section 263 for the other reasons:

S. No.	Particulars	Page No.	Quick Ref.
1	Copy of order in the case of Naga Dhunseri Group Ltd. [2023] 146 taxmann.com 424 (Calcutta)	1-3	3
2	Copy of order in the case of Lata Phulwani, ITA No. 246/JP/2020	4-25	12,15
3	Copy of order in the case of Annu Agrotech Private Limited, ITA No. 09/JP/2021	26-73	65,71

6. On the other hand, Id. DR representing the Revenue has supported the order of the Id. PCIT and submitted that the observation made by the Id. PCIT in para `6.1 are directly linked to deduction claimed by the assessee and therefore the provision of section 263 of the act has rightly been invoked by the Id. PCIT as Id. AO has not applied his mind on the various aspect of the condition deduction claimed by the assessee as prescribed for relevant deduction u/s 80JJAA of the Act. The Id. DR also submitted that the Id. FAO has not considered the adjustment made u/s. 143(1) of the Act while making the final order and

therefore, the Id. DR supported the finding of the PCIT and submitted that the order should be sustained.

7. We have careful consideration the factual matrix as well as argument advanced by both the parties and judicial decision relied upon by both the parties to drive home to their respective contentions raised in this appeal. It is not disputed that the assessment was selected for the limited scrutiny to examine the refund claim and deduction from total income under Chapter VIA of the Act. The FAO has issued notices and called for the details on both the issue and after examination of the record passed the order accepting the returned income of the assessee. The relevant finding recorded is reproduced for the sake of brevity of the facts

“3. The reply of the assessee has been examined in view of reason for selection of case for scrutiny. Assessee has not carried out any construction and development work pursuant to the order of Hon’ble Supreme Court of India.

4. On the basis of the assessee’s submissions, documents filed in response to statutory notices and material available on record, the explanation of the assessee on the issues is accepted. The Income of the assessee is assessed as per the computation sheet and sum payable is determined as per the demand notice.”

8. Thus, it is seen from the order of the FAO that FAO determined the income after considering the reply of the assessee

on the limited purpose of the scrutiny and has considered the explanations of the assessee. The bench also noted from the observation of the Id. PCIT that she has raised two issue that deduction has wrongly been allowed u/s. 80JJAA of the Act as the relevant Form No. 10DA has not been filed in time and the second that the adjustment u/s. 143(1) has not been made while finalizing the assessment. She has not doubted the eligibility criteria of the assessee and the issue she has observed that the relevant form was not filed in time. As regards the first issue the Id. AR of the assessee submitted that the issue being favorably decided by the various high courts and even the apex court has taken a view that the form if filed during the assessment proceeding the relevant deduction cannot be denied. Thus, on this issue the Id. FAO has taken a plausible view of the matter and Id. PCIT failed to observe any other error about the claim of the assessee and as regards the second issue the same was out of the preview of object of the scrutiny and thus, the order passed by the FAO is neither erroneous nor prejudicial to the interest of the revenue. Thus, we are of the considered view that the issue has been carefully examined by the FAO while passing the order u/s 143 of the Act and that too under the team based faceless assessment scheme

framed by the Board. There are plethora of decisions that when the Assessing Officer has considered the issue on hand and has taken a plausible view of the matter merely the Assessing Officer ought to have been verified the other facet on the issue and same is not mentioned in the order it does not tantamount that order is erroneous and prejudicial to the interest of the revenue and thus cannot support the invocation of provisions of Section 263 of the Act. In fact the provision of section 263 of the Act nowhere allow to challenge the judicial wisdom of the Id. AO or to replace the wisdom of the PCIT in the guise of revision unless the view taken by the Id. AO is not at all sustainable in the law. The extent of the enquiry can be stretched to any level by forcing the AO to go through the assessment process again and again and that case there cannot be an finality of the issue. Here in this case it is noted by the bench that on both the issue the judicial precedent are in favour of the assessee when the assessment is completed and the Id. AO has taken a plausible view of the matter and concluded the limited assessment on which except that the form no. 10 DA was not filed in time and for the other issue the ITAT has already granted the relief to the assessee on the adjustment made in the intimation u/s. 143(1) of the Act, therefore, on both the issue the

order of the FAO cannot be considered as erroneous or prejudicial. The co-ordinate bench of this tribunal in the case of Annu Agrotech Private Limited in ITA NO. 09/JP/2021 already taken a view that in case of limited scrutiny, scope of examination of the AO is restricted towards the reasons for which the case of the assessee was selected. AO cannot proceed to examine the issues, which are beyond the scope of the limited scrutiny. As regards the filling of the Form 10DA before the completion of the assessment the Id. AR placed on reliance on the various decision including the jurisdictional high court that the if the assessee files the form before completion of the assessment the resultant benefit cannot be denied. In the light of this facts so far as on the issue of form no. 10DA we do not find merits in the finding of the Id. PCIT and as regards the second issue the matter was already litigated before the ITAT and the resultant order has passed and therefore, we are of the view that the issues which are already settled on those issues there cannot be applied the provision of the section 263 of the Act. Not only that the order has been passed in this case by NeAC where there are as much as four units i.e. Assessment unit, Verification unit, Technical unit and Review unit.

9. The bench note that the prerequisite exercise of jurisdiction by the learned Principal CIT under section 263 of the Act is that the order of the AO is established to be erroneous in so far as it is prejudicial to the interest of the Revenue. The Id. PCIT has to be satisfied of twin conditions, namely (i) the order of the AO sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If any one of them is absent i.e., if the assessment order is not erroneous but it is prejudicial to the Revenue, provision of section 263 cannot be invoked. This provision cannot be invoked to correct each and every type of mistake or error committed by the AO; it is only when an order is erroneous as also prejudicial to Revenue's interest, than the provision will be attracted. An incorrect assumption of the fact or an incorrect application of law will satisfy the requirement of the order being erroneous. The phrase 'prejudicial to the interest of the Revenue has to be read in conjunction with an erroneous order passed by the AO. Every loss of revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the Revenue. It is pertinent to mention that 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 Pr. CIT 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. In this process even the AO has no power to review his own. In this regard, we draw strength from the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT (2000) 159 CTR (SC) 1: (2000) 243 ITR 83 (SC). We also draw strength from the decision of the Hon'ble Supreme Court in the case of CIT vs. Max India Ltd. (2007) 213 CTR (SC) 266: (2007) 295 ITR 282 (SC) wherein it was held that:

"The phrase 'prejudicial to the interests of the Revenue' in s. 263 of the IT Act, 1961, has to be read in conjunction with the expression 'erroneous' order passed by the AO. Every loss of revenue as a consequence of an order of the AO cannot be treated as prejudicial to the interests of the Revenue. For example, when the AO adopts one of two courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the AO has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the Revenue, unless the view taken by the AO is unsustainable in law."

10. Thus, based on this decision it is also noteworthy to mention that one of the pre-requisite before invoking S. 263 and the allegation of the Ld. PCIT is that there has been incorrect assumption of fact and law by the Assessing Officer. However, despite our deep and careful consideration of the material on record including the finding recorded in the subjected Assessment

order dated 29.03.2021 and in the findings recorded in the order under challenge, we do not find any incorrectness and incompleteness in the appreciation of facts made by the AO. In the light of these observations, we do not agree on this aspect to this extent with Ld. Pr. CIT. Even on facts we have discussed that on both the issue raised there is error or prejudice to the revenue. The facts stated in the written submission on both the issue is not disputed by the revenue. The AO has recorded his satisfaction in the assessment order that on the reasons of selection he has called for the details and after examination of the details has passed the order which we would find that the same is in accordance with the law and does not attract the clause (a) or (b) to explanation 2 of section 263 of the Act and thus, it is nothing but a change of opinion which is not permitted in the eyes of the law. In the light of the aforesaid discussion we hold that the order of the PCIT is not in accordance with the provisions of section 263 of the Act as the issue has already been examined by the FAO. We also note that there is no observation of the PCIT or that of the Id. DR which support that the order of the FAO is erroneous and prejudicial to the interest of the revenue and thus, this twin

conditions failed in this case and therefore, we vacate the order of the PCIT passed u/s. 263 of the Act.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 18/07/2023

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 18/07/2023

*Ganesh Kumar, PS

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

1. अपीलार्थी / The Appellant- Pratap Technocrats Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- PCIT, Jaipur-1, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 225/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar