

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 230/SRT/2023 (AY: 2018-19)
(Hearing in Virtual Court)

Inject Care Parenterals Pvt. Ltd., Plot No. 130, G.I.D.C., Silvassa Road, Vapi-396195. PAN: AABCI 0232 J	Vs.	Pr.C.I.T., Valsad.
APPELLANT		RESPONDEDNT

Assessee by	Shri Manish J. Shah, A.R.
Department by	Shri Ashok B. Koli, CIT-DR
Date of Institution of Appeal	10/04/2023
Date of hearing	18/07/2023
Date of pronouncement	18/07/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned Principal Commissioner of Income Tax, Valsad [in short the Id. Pr.CIT] dated 30/03/2023 passed under Section 263 of the Income Tax Act, 1961 (in short, the Act) for the Assessment Year (AY) 2018-19. The assessee has raised following grounds of appeal:

- "1. The Principal C.I.T erred in law and on fact in holding that assessment order passed u/s 143(3) dated 22/03/2021 is erroneous and prejudicial to the interest of revenue by invoking the provisions of Section 263 of the Act and thereby directing the Assessing Officer to carry out inquiries in terms of direction issued in his order passed u/s 263 of the Act.*
- 2. The Principal C.I.T erred in law in directing the Assessing Officer to carry out inquiries in respect of other issues which may be noticed during the assessment proceedings in pursuance of order u/s 263 of the Act without appreciating the law that Assessing Officer's jurisdiction in pursuance of order u/s 263 is limited to the issue specifically dealt with*

in the order passed u/s 263 which are considered by the Pr.CIT as erroneous and prejudicial to the interest of revenue.

- 2.1 *The Principal C.I.T ought to appreciate that Assessing Officer cannot decide any new issue which are not part of order u/s 263 in proceedings conducted in pursuance of the order passed u/s 263.*
3. *The Principal C.I.T erred in law and on fact in holding the order passed u/s 143(3) dated 22/03/2021 on the issue of addition to fixed assets and foreign exchange fluctuation gain as no opportunity of being heard was provided to the assessee on the above issues, which even does not form part of show cause notice issued u/s 263(1).*
4. *The appellant craves leave to add, amend or alter the aforesaid grounds of appeal at the time of hearing, if need arise."*

2. Brief facts of the case are that the assessee filed its return of income for A.Y. 2018-19 on 22/09/2018 declaring NIL income after claiming set off of current year and brought forward losses. The case was selected for scrutiny and assessment was completed under Section 143(3) r.w.s. 143A/143(3)(b) of the Act on 22/03/2021. The assessment order dated 22/03/2021 was revised by the Id. Pr.CIT by exercising his jurisdiction under Section 263 of the Act. Before revising the assessment order, the Id. Pr.CIT issued show cause notice dated 09/03/2023. In the show cause notice, the Id. Pr.CIT identified the issue of employees' contribution not deposited before due date. Contents of show cause notice is extracted in para 3 at page No. 3 and 4 of order of Id. Pr.CIT. The assessee filed its reply vide reply dated 13/03/2023. The entire copy of reply is extracted/scanned on page NO. 5 to 7 of order of Id. Pr.CIT. In the reply, the assessee submitted that while processing the return of income, the disallowance of ESI and PF of Rs. 1,45,356/- and other disallowance

under Section 37 of Rs. 57,022/- aggregating of Rs. 2,02,380/- was made in the order dated 04/11/2019. The assessee further submitted that thereafter case was selected for scrutiny and scrutiny assessment order was passed on 22/03/2021 assessing total income at Rs. 3.92 crores which is as per order under Section 143(1) dated 04/11/2019. The assessee specifically stated that there is no error of not making addition as appears (identified) in show cause notice under Section 263 and no income is left to be added. The Id. Pr.CIT accepted the contention of assessee as recorded in sub-para (i) on page No. 8 "In this case addition on account of provident fund has already been made." However, the Id. Pr.CIT on perusal of accounts of assessee noted that there was addition to the fixed asset at Rs. 1,00,76,668/-, however, in the audit report, the asset is shown at Rs. 1,00,11,594/-. The Id. Pr.CIT further noted that in the Profit & Loss account foreign exchange fluctuation gain had been shown at NIL, however, in assessee's account they have been shown at Rs. 10,12,685/-. Thus, the Id. Pr.CIT identified two more issues and noted that there is special example of long list which required further scrutiny on the part of Assessing Officer. The Assessing Officer did nothing and has accepted as such. The Id. Pr.CIT by referring certain decisions held that the assessment order passed on 22/03/2021 by the assessing Officer is erroneous in so far as prejudicial to the interest of revenue. The assessment order was set aside with the direction to the Assessing officer

to frame the assessment de novo after making proper enquiries by giving reasonable opportunity to the assessee. Aggrieved by the order of Id. Pr.CIT dated 30/03/2023, the assessee has filed present appeal before this Tribunal.

3. We have heard the submissions of the learned Authorised Representative (Id. AR) of the assessee and the learned Commissioner of Income Tax-Departmental Representative (Id. CIT-DR) for the revenue. The Id. AR of the assessee submits that he has not filed any paper book, as the show cause notice as well as reply of assessee is referred by the Id. Pr.CIT in verbatim in his order. The Id. AR of the assessee submits that contents of show cause notice clearly specified that the Id. Pr.CIT identified the issue of allowance/disallowance of employees' contribution of provident fund. On such issue, the assessee made its elaborate reply and stated that in assessment order passed under Section 143(1) dated 04/11/2019 has already made disallowance of such employees provident fund contribution and that no income is left to be added. The Id. Pr.CIT accepted such contention of assessee. However, the Id. Pr.CIT without issuing any show cause notice, revised the assessment order on two other issues i.e. one related to difference of addition of fixed asset during the year and another on account of foreign exchange fluctuation gain. Admittedly no show cause notice on such issues were issued by the Id. Pr.CIT, which is precondition for revising the assessment order under section 263. To

support such contention, the Id. AR of the assessee relied upon the decision of Hon'ble Bombay High Court in Pr.CIT Vs M/s Universal Music India Pvt. Ltd in ITA No. 238 of 2018 dated 19/04/2022 and Calcutta High Court in Pr.CIT in Damodar Valley Corporation (2023) 146 taxmann.com 421 (Calcutta). The Id. AR of the assessee submits that to cut short the controversy, admittedly, no opportunity was given to the assessee to explain the facts on other two issue, or to allow to file their reply on such issues identified by Id. Pr.CIT, therefore, the matter may be remanded back to the file of Id. Pr.CIT with the direction to grant liberty to the assessee to file their reply. As no other issue was identified by the Id. Pr.CIT, therefore, remand may be restricted only to those issues which is the basis of revision order.

4. On the other hand, the Id. CIT-DR for the revenue after hearing the submission of Id. AR of the assessee submits that he has no objection if the matter is remanded back to the file of Id. Pr.CIT to grant opportunity to the assessee on such issues.
5. We have considered the submissions of both the parties and perused the order of Id. Pr.CIT carefully. On careful perusal of order, we find that no show cause notice on the two issues i.e. one related to addition on account of fixed assets and other on account of foreign exchange fluctuation gain was issued by the Id. Pr.CIT. Thus, the order of Id. Pr.CIT is not justifiable on such issue being in violation of principal of natural

justice, otherwise it is a condition precedent in the language of section 263 itself. However, the Id. AR of assessee in all fairness made a prayer to restore the matter back on both the issues to the file of Id. Pr.CIT for granting them opportunity to explain both the issues. Therefore, considering such plea, we deem it appropriate to accept such contention and the matter is restored back to the file of Id. Pr.CIT to grant opportunity of hearing to the assessee on both the issues. It is made clear that no other issue was specifically touched by the Id. Pr.CIT, therefore, the Id. Pr.CIT shall restrict his jurisdiction only on issues of fixed asset as well as on foreign exchange fluctuation gain. Needless to direct that before passing the order, the Id. Pr. CIT shall grant reasonable opportunity of hearing to the assessee. In the result, ground of appeal raised by assessee are allowed for statistical purposes.

6. In the result, this appeal of assessee is allowed for statistical purposes.

Order pronounced on 18/07/2023 in open court at the time of hearing.

Sd-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 18/07/2023
**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. Pr.CIT
4. DR
5. Guard File

By Order

Sr. Private Secretary, ITAT Surat