

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. 122/Ind/2022
Assessment Year: 2017-18

Drishti Devcon Private Limited, 406, Pukhraj Corporate, Navlakha Bus Stand, Indore	<u>बनाम/</u> Vs.	The PCIT-1, Indore
(Assessee / Appellant)		(Revenue / Respondent)
PAN: AADCD9444P		
Assessee by	Shri Pankaj Shah, CA and Shri Soumya Bumb	
Revenue by	Shri P.K.Mishra, CIT DR	
Date of Hearing	03.05.2023	
Date of Pronouncement	25.07.2023	

आदेश/O R D E R

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

Feeling aggrieved by revision-order dated 23.03.2022 passed by learned Pr. Commissioner of Income-Tax, Indore ["Ld. PCIT"] u/s 263 of Income-tax Act, 1961 ["the Act"], which in turn arises out of assessment-order dated 29.12.2019 passed by learned DCIT/ACIT-2(1), Indore ["Ld. AO"] u/s 143(3) of the act for Assessment-Year ["AY"] 2017-18, the assessee has filed this appeal on following grounds:

1. *On the facts and circumstances of the case and in law the learned Principal Commissioner of Income-tax (PCIT) erred in revising the assessment on the issue of examining the advance from customers*

amounting to Rs. 30,01,82,150/- which also included opening balances on the alleged ground that the order is erroneous since complete enquiries have not been made as per him. The Appellant prays that the action of AO be held to be not erroneous and prejudicial to interests of revenue and the direction to examine the same again be set aside and quashed.

2. *On the facts and circumstances of the case and in law the learned Principal Commissioner of Income-tax erred in revising the assessment on the issue of examining the alleged contravention of Section 40(3) amounting to Rs 7,07,344/- on the alleged ground that the order is erroneous since complete enquiries have not been made as per him. The Appellant prays that the action of AO be held to be not erroneous and prejudicial to interests of revenue and the direction to examine the same again be set aside and quashed.*
3. *On the facts and circumstances of the case and in law the learned Principal Commissioner of Income-tax erred in revising the assessment on the issue of examining the alleged applicability of Sec 41(1) on trade payable amounting to Rs. 68,95,000/- on the alleged ground that the order is erroneous since complete enquiries have not been made as per him. The Appellant prays that the action of AO be held to be not erroneous and prejudicial to interests of revenue and the direction to examine the same again be set aside and quashed.*
4. *On the facts and circumstances of the case and in law the learned Principal Commissioner of Income-tax erred in revising the assessment on the issue of examining short term loans and advances amounting to Rs. 7,86,57,610/- on the alleged ground that the order is erroneous since complete enquiries have not been made him. The Appellant prays that the action of AO be held to be not erroneous and prejudicial to interests of revenue and the direction to examine the same again be set aside and quashed.*
5. *The Appellant prays that since the assessment order passed by the Id.AO was after making specific and full enquiries therefore the assessment order cannot be regarded as erroneous therefore the action of the PCIT in invoking provisions of section 263 and revising assessment order be held ab-initio and/or otherwise void and bad-in-law.*
6. *The Appellant prays that order passed u/s 263 of the Act ought to be in the facts and circumstances, struck down as null and void ab initio.*
7. *The Appellant craves leave to add, to alter and /or amend all or any of the foregoing grounds of appeal."*

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

3. Brief facts leading to present appeal are such that the assessee filed return of income of relevant AY 2017-18 which was subjected to scrutiny assessment. Finally, the AO passed assessment-order u/s 143(3). 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. The reason of framing such a view, as mentioned by Ld. PCIT in the show-cause notice dated 22.12.2021 was four (4) issues which were not examined/enquired by AO. These issues as noted by Ld. PCIT shall be dealt with in subsequent discussions.

4. By the aforesaid show-cause notice, the assessee was asked to explain as to why the assessment-order may not be revised. In response, the assessee made a detailed submission to PCIT which is re-produced in Para No. 3 of revision-order. However, none of those submissions impressed the PCIT. The Ld. PCIT further observed that since the section 263 has been amended and Explanation 2, as reproduced below, had been introduced therein, the assessment-order is deemed to be erroneous-cum-prejudicial to the interest of revenue if the same had been passed without inquiries or verification which should have been made:

“Explanation 2 – “For the purpose of this section, 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) ...”*

5. Finally, Ld. PCIT concluded that the AO has not carried out the inquiry/verification which he should have done and hence the assessment-order is erroneous in so far as it is prejudicial to the interest of revenue.

Accordingly, Ld. PCIT passed revision-order u/s 263 whereby the assessment-order was set aside to the file of AO with a direction to re-frame assessment after examining the issues noted by PCIT.

6. Aggrieved by such revision-order, the assessee has filed this appeal.

7. During hearing before us, the learned Representatives of both sides made detailed submissions on all four issues one by one. We would like to sum up their submission as also our analysis as under:

(i) Issue No. 1 – Advances of Rs. 30,01,82,150/- from customers not verified by AO:

Ld. PCIT noted that the assessee has shown advances from customers as on 31.03.2017 which the AO has failed to verify as to the correctness and genuineness.

In this regard, Ld. AR submitted that the AO has already passed consequential assessment-order dated 30.03.2023 pursuant to the revision-order (copy filed at Page No. 1 to 8 of the Paper-Book) wherein he has verified all advances and after a careful consideration, has not made any addition.

Ld. DR agrees to submission of Ld. AR.

Faced with this situation, we do not find any surviving grievance to assessee from this issue; therefore this issue becomes infructuous.

(ii) Issue No. 2 – Disallowable of Rs. 7,07,344/- u/s 40A(3):

Ld. PCIT noted that the ledger account of “Legal and Professional Expenses” submitted by assessee during assessment-proceeding showed cash-payment of Rs. 7,07,344/- in violation of section 40A(3) but the AO has passed assessment-order without verifying same.

In this regard, Ld. AR submitted that in the aforesaid consequential

assessment-order dated 30.03.2023, the AO has verified advances and after a careful consideration, he has not made any addition.

Ld. DR agrees to submission of Ld. AR.

Faced with this situation, we do not find any surviving grievance to assessee from this issue; therefore this issue also becomes infructuous.

(iii) Issue No. 3 – Non-moving creditors not examined:

Ld. PCIT noted that the assessee was having following creditors having no movements during the year but the AO has not made any enquiry to examine them from the angle of taxability u/s 41(1):

<i>Sr.No.</i>	<i>Name of the Party /Creditor</i>	<i>Amount as on 31/03/2017</i>	<i>Amount as on 31/03/2016</i>
1	Anjana Puranik	32,95,000/-	32,95,000/-
2	Udayram S/o Girdhari Lal	10,75,000/-	10,75,000/-
3	Hemendra	10,75,000/-	10,75,000/-
4	Jitendra	10,75,000/-	10,75,000/-
5	Other than acceptance	3,75,000/-	3,75,000/-

In this regard, Ld. AR submitted that in the aforesaid consequential assessment-order, the AO has verified all creditors and after a careful

consideration, he has made addition only of Rs. 3,75,000/- in respect of item No. 5 in the above Table; the AO has accepted all other creditors and not made any addition. With regard to the addition of Rs. 3,75,000/-, Ld. AR submitted that the AO has made addition on a different footing and not on section 41(1) as noted by PCIT. Therefore, Ld. AR argues that this issue raised by PCIT is also not valid.

Ld. DR supports the revision-order and opposes the submissions of Ld. AR qua item No. 5 of Rs. 3,75,000/-.

We find that there is no addition for creditors except for item No. 5 of Rs. 3,75,000/-. But in so far item No. 5 is concerned, the technicality pleaded by Ld. AR that the AO has not made addition u/s 41(1) but on a different footing does not help the assessee. This is so because one thing is very clear that the AO has not examined the creditor of Rs. 3,75,000/- relating to Item No. 5 during original assessment-proceeding and that is why, after examination in consequential assessment proceeding, he made addition. Therefore, the PCIT's revisionary action is partly valid *qua* this issue.

(iv) Issue No. 4 – Loans & Advances given by assessee:

Ld. PCIT noted that the assessee has given following loans and advances but the AO has failed to verify the opening balance, closing balance, movement during the year and the genuineness of the transactions during the year:

<i>Sr.No.</i>	<i>Particulars</i>	<i>Amount as on 31/03/2017</i>
<i>1</i>	<i>Advance to Land Owner</i>	<i>5,12,92,711/-</i>
<i>2</i>	<i>Advance brokerage</i>	<i>2,26,85,626/-</i>
<i>3.</i>	<i>Advance to Suppliers and Others</i>	<i>46,79,273/-</i>

In this regard, Ld. AR made two-fold submissions, namely (i) These are the loans given by assessee and not loans taken by assessee, hence there can't be any income of assessee; and (ii) In the aforesaid consequential assessment-order, the AO has verified these loans and has not made addition of any of these items [However, the AO has made an altogether different addition on account of disallowance of Rs. 61,55,125/- out of interest expenditure treating the same as capitalizable expenditure instead of revenue expenditure claimed by assessee].

Ld. DR agreed to the submissions of Ld. AR.

Faced with this situation, we do not find any surviving grievance to assessee from this issue; therefore this issue also becomes infructuous. Needless to mention that the disallowance of Rs. 61,55,125/- is out of consideration for us because this appeal is against revision-order which is nothing to do with that disallowance

made by AO.

8. In view of above discussion, we hold that out of four issues raised by Ld. PCIT, three are not surviving and hence they have become infructuous. Remaining one issue, namely Issue No. (iii) noted above, has survived partly and the same, as we have held, is valid also. Consequently, this appeal is allowed partly.

9. Resultantly, this appeal is partly allowed.

Order pronounced in the open court on 25/07/2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

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

Indore

दिनांक/Dated : 25.07.2023

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*