

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. 38/Ind/2022
Assessment Year: 2016-17

S.R. Digital TV and Broadband Private Limited, 335 Orbit Mall, A. B.Road, Indore.	<u>बनाम/</u> Vs.	PCIT, Indore
(Assessee / Appellant)		(Revenue / Respondent)
PAN: AAVCS1165L		
Assessee by	Shri S.S.Solanki, C.A.	
Revenue by	Shri P.K.Mishra, CIT DR	
Date of Hearing	02.05.2023	
Date of Pronouncement	31.07.2023	

आदेश / O R D E R

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

Feeling aggrieved by revision-order dated 31.03.2021 passed by learned Pr. Commissioner of Income-Tax, Indore-1 ["Ld. PCIT"] u/s 263 of Income-tax Act, 1961 ["the Act"], which in turn arises out of assessment-order dated 23.12.2018 passed by learned DCIT/ACIT-5(1), Indore ["Ld. AO"] u/s 143(3) of the Income-tax Act, 1961 for Assessment-Year ["AY"] 2016-17, the assessee has filed this appeal on the grounds raised in Appeal-Memo.

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

3. The registry has informed that that the present appeal was required to be filed by 31.05.2021 but the same was actually filed on 28.02.2022 after a delay of 274 days. The Ld. AR prayed that the delay has occurred due to Covid-19 Pandemic. The Ld. AR further placed reliance on the order of Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020 read with Misc. Applications**, by which suo motu extension of the limitation-period for filing of appeals w.e.f. 15.03.2020 under all laws has been granted and hence there is no delay in fact. We confronted the Ld. DR who agreed to the submission of Ld. AR. In view of this, the appeal is proceeded with for hearing, there being no delay.

4. Brief facts leading to present appeal are such that the assessee filed return of income declaring a loss of Rs. 76,74,598/- which was subjected to scrutiny assessment through notices u/s 143(2)/142(1). Finally, the AO completed assessment u/s 143(3) vide order dated 23.12.2018 after making addition of Rs. 28,27,070/-. Subsequently, Ld. PCIT examined the record of assessment-proceeding and viewed that the assessment-order passed by Ld. AO is erroneous in so far it is prejudicial to the interest of revenue which attracts revisionary-jurisdiction u/s 263. Accordingly, Ld. PCIT issued two show-causes notices, one dated 30.07.2019 and other dated 19.03.2021 raising certain issues which, in his view, were not enquired by AO. In response thereto, the assessee made submissions which are recorded by PCIT in revision-order.

5. However, none of those submissions impressed the Ld. PCIT who passed revision-order concluding thus:

"In view of above discussion, facts of the case and submissions of the assessee, the order passed by the AO for the AY 2016-17 is held to be erroneous as well as prejudicial to the interests of Revenue. The order passed by the AO on 23.12.2018 for the AY 2016-17 is set aside to the file of the AO to pass a fresh and speaking order on the issues outlined above in the order. The AO is also directed to not examine any other issues except the issues for which the assessment is set aside."

6. Aggrieved by such revision-order, the assessee has filed this appeal.
7. By means of various grounds raised in the Appeal Memo which are not being reproduced for the sake of brevity, the appellant-assessee requires us to adjudicate whether or not the revision-order passed by Ld. PCIT u/s 263 is valid in the eyes of law?
8. Ld. AR, starting the arguments on behalf of assessee, pointed out that the Ld. PCIT issued two show-causes notices dated 30.07.2019 and 19.03.2021 and raised certain issues but ultimately the revision was done for three (3) issues as concluded by PCIT on Page No. 8 of his order; therefore our adjudication has to be with reference to those three issues. Precisely, these issues are as under:
- (i) The return declaring loss was filed on 24.04.2017 which was not as per section 139(1)/(3), therefore the loss was not allowed to be carried forward as per section 80. The AO has failed to apply the provision of section 80 and allowed the loss to be carried forward.
 - (ii) The assessee was having cash in hand of Rs. 60,500/- as on 31.03.2015, the cash in hand on 31.03.2016 was Rs. 45,52,334/-. The AO raised query regarding swelling of cash in hand on 31.03.2016 vide questionnaire dated 24.11.2018 and the assessee filed reply dated 29.11.2018 but the AO failed to examine the sources of entries in the cash-book of assessee.
 - (iii) There were deposits of Rs. 1,08,69,500/- in the Bank A/c of assessee for which the assessee did not file details before AO and the AO has not made necessary investigation
9. Thereafter, the learned Representatives of both sides made a lengthy discussion on all three issues one by one. We sum up the arguments and contentions of both sides as also our analysis issue-wise as under:

(i) Issue No. 1 - Regarding carry forward of losses:

Ld. PCIT observed that the assessee has filed return declaring loss which is not in accordance with section 139(1)/139(3) and therefore the carry forward of loss is not allowed by section 80 but the AO has allowed.

In this regard, Ld. AR made a straightforward submission. He carried us to the notice of scrutiny u/s 143(2) dated 20.08.2018 issued by AO, copy placed at Page No. 32 of Paper-Book, and demonstrated that the assessee's case was selected for "limited scrutiny" on two points only, (i) Cash in hand, and (ii) Deduction and deposit of TDS. Therefore, the issue of carry forward of losses was beyond the scope of scrutiny conducted by AO. Ld. AR submitted that this is a settled view taken by Indore Bench of ITAT in numerous orders that any issue which is not a part of limited scrutiny cannot form part of revision u/s 263. Therefore, the revision qua this issue is not valid.

Ld. DR could not rebut the submission of Ld. AR. He only submitted that the AO ought to have converted the case of assessee from "limited scrutiny" to "full scrutiny" as per CBDT Circular.

After a careful consideration and on perusal of the scrutiny notice issued by AO u/s 143(2), firstly we find that the issue of carry forward of losses was not a part of limited scrutiny. Then, we find a strong merit in the submission of Ld. AR that an issue which was not subject-matter of scrutiny-assessment, cannot form part of revisionary action u/s 263. This is for the simple and precise reason that when the AO did not have any occasion to deal with such issue, then how the order passed by AO can be said to be erroneous qua that issue. The pleading made by Ld. DR that the AO ought to have converted assessee's case from "limited scrutiny" to "full scrutiny" is far-fetched for the present adjudication before us. Therefore, we are in full

agreement with the submission of Ld. AR that revision *qua* this issue is not valid.

(ii) Issue No. 2 – High cash balance on 31.03.2016:

Ld. PCIT observed that that the assessee was having cash in hand of Rs. 60,500/- as on 31.03.2015 which swelled to Rs. 45,52,334/- as on 31.03.2016. He further observed that the assessee deposited significant amount of cash during demonetisation period (demonetisation started on 08.11.2016 which was after 31.03.2016). He found that the AO has not enquired into the sources which built-up high cash in hand on 31.03.2016.

In this regard, Ld. AR submitted that the assessee is engaged in the business of cable network operations through several service providers having multi-locations/multi-counters. Therefore, the assessee is getting collections in cash from those service providers and has to hold such cash in hand on regular basis. He submitted that this is a very normal feature in the line of business carried on by assessee and there is nothing unusual. To illustrate this, he submitted that during immediately next financial year 2016-17 (the year of demonetisation), the assessee made a total cash deposit of Rs. 2,85,83,900/- in Bank A/c and thereafter in the next financial year 2017-18, the assessee made cash deposits of Rs. 10,11,98,624/- in Bank A/c (Page No. 4 of Written-Submission). Ld. AR submitted that the assessee was consistently holding high cash balance before demonetisation, during demonetisation and even after demonetisation which is clear from copy of cash-book for the financial year 2016-17 placed in Paper-Book at Page No. 46 to 55 although the holding of cash has reduced to some extent after demonetisation because of change in public habit from cash transactions to digitised transactions. So far as the lower quantum of cash in hand of Rs. 60,500/- as on 31.03.2015 is

concerned, Ld. AR submitted that during financial year 2014-15, the assessee was not having active business; the assessee's business operations got speed in the mid of the financial year 2015-16 due to which the cash balance as on 31.03.2016 was higher as compared to cash balance on 31.03.2015. Having explained these facts and reasons of high cash balance as on 31.03.2016, Ld. AR submitted that it is totally wrong to say that the AO has not enquired/investigated this issue during assessment-proceeding. He carried us to the following queries raised by AO through statutory notices u/s 142(1) and the replies filed by assessee:

(a) Vide Point No. (viii) of notice dated 24.08.2018, the AO raised following query:

"Please furnish the cash book and ledger account relevant to cash in hand shown."

In reply dated 29.08.2018, the assessee filed complete cash-book (Page No. 1 to 4 of Paper-Book).

(b) Vide Point No. 2 of notice dated 24.11.2018, the AO again raised following query:

"Unexplained cash in hand on 31.03.2016 which has increased significantly as compared to cash in hand declared by you as on 31.03.2015. In this context, neither you furnished any reply in response to notice u/s 142(1) issued earlier nor furnished any evidence/documents in support of justification of said cash in hand declared which shows that you are not keeping any valid reply/justification in support of said alleged cash in hand declared as on 31.03.2016."

In Point No. 3 of reply dated 29.11.2018 the assessee submitted following reply:

"That there were no active business operations in the FY 2014-15 and the active business operations started in mid of the previous year resulting significant increase in cash in hand as on 31.03.2016 as compared to the cash in hand as on 31.03.2015."

Further, the assessee re-filed Cash-Book.

(Page No. 38 to 45 of Paper-Book)

Per contra, Ld. DR submitted that the assessment-order passed by AO is silent on this issue, therefore the AO has either not made enquiries or made part enquiries. He contended that the AO has simply taken details from assessee and kept in file.

On a careful consideration, we firstly find that the AO has made enquiries and the assessee has also filed detailed replies which is evident from submission made by Ld. AR noted earlier. Therefore, it is wrong to say that the AO has not made enquiries. Further, the action of AO in accepting the replies / submissions of assessee does not lack bona fides and cannot be said to be faulty. Thus, everything hinges on the point as to whether the assessment-order can be said to be erroneous-cum-prejudicial to the interest of revenue merely for the reason that the AO has not discussed that issue in the assessment-order or in other words not written his assessment-order as a perfectionist. In our considered view, the writing of assessment-order is a task of AO and the same is neither controlled nor helped by the assessee. In fact, the assessee has no hand or mind in writing the assessment-order. Being so, we are afraid to accept the pleading of Ld. DR that the assessment-order could be said to be erroneous-cum-prejudicial for that reason. The Hon'ble ITAT, Mumbai in **Reliance Payment Solutions Ltd. Vs. Pr. CIT (2022) 136 taxmann.com 277** has held thus:

"9. Clearly, therefore, as long as the action of the Assessing Officer cannot be said to be lacking bonafides, his action in accepting an explanation of the assessee cannot be faulted merely because it could have been lawful to make mere detailed inquiries or because he did not write specific reasons of accepting the explanation. As for learned PCIT's observations regarding accepting the explanation "without appropriate evidence", there is nothing to question the bonafides of the Assessing Officer or to elaborate as to what should have been 'appropriate' evidence. The fact remains that the specific issue raised, in the revision order was specifically looked into, detailed submissions were made and these submissions were

duly accepted by the Assessing Officer. Merely because the Assessing Officer did not write specific reasons for accepting the explanation of the assessee cannot be reason enough to invoke powers under section 263, and non-mentioning of these reasons do not render the assessment order "erroneous and prejudicial to the interest of the revenue".

[Emphasis supplied]

Therefore, the revision *qua* this issue is also not valid.

(iii) Issue No. 3 – Cash deposit of Rs. 1,08,69,500/- in Bank A/c of assessee:

Ld. PCIT observed that there were cash deposits of Rs. 1,08,69,500/- in the Bank A/c of assessee during the year for which the assessee did not file details before AO and the AO has not made necessary investigation.

In this regard, Ld. AR firstly repeated this submission that the assessee is engaged in the business of cable network operations through service providers, many of whom are located in different cities like Datia, Harda, Shivpuri, Guna, etc. Those service providers directly deposited cash in Bank A/c of assessee from time to time and some portion of cash was deposited by assessee also out of cash balance held by it. Having explained this factual matrix, Ld. AR submitted that during assessment-proceeding, the AO made enquiries from assessee on this very issue through Point No. 2 of notice dated 07.12.2018 u/s 142(1) wherein the AO summarised date-wise details of deposits in a tabular format and asked the assessee to provide the nature and evidences thereof. In response, vide Point No. 1 of reply dated 17.12.2018, the assessee explained the factual matrix of such deposits

as narrated above and also filed complete details of sources of deposits, list of ledgers including nature of transactions and copies of ledger a/cs of the parties who made deposits. The details filed by assessee are filed at Page No. 180 to 224 of Paper-Book. Ld. AR also drew our attention to the assessment-order passed by AO (copy placed at Page No. 227 to 233 of Paper-Book). In Para No. 4.1, the AO has reproduced the contents of aforesaid notice dated 07.12.2018 and thereafter in Para No. 4.2, the AO has recorded his finding as under:

"4.2 In compliance thereto, the assessee filed reply of show cause on 17.12.2018 along with the required details and explanation which are examined and placed on record and no adverse inference is drawn."

Thus, Ld. AR demonstrated that the AO had not only made requisite enquiries but also recorded his satisfaction in the body of assessment-order itself.

Ld. DR relied upon the revision-order but, however, could not contradict the submission of Ld. AR.

On a careful consideration, we find that the AO has made enquiries qua the impugned issue and even made a specific recording in assessment-order that he had examined assessee's explanation and no adverse inference was drawn. When it so, there is no ambiguity as far as conduct of enquiry and AO's speaking order on this issue is concerned. At the best, one can only say that the Ld. PCIT wants to substitute AO's satisfaction by his own wisdom which in any case is not a permissible action in revision-proceeding as per settled law.

Therefore, the revision *qua* this issue is also not valid.

10. In view of above discussion, we are of the view that the Ld. PCIT was not justified to invoke revisionary action *qua* any of the issues. Being so, we are inclined to quash the impugned revision-order passed by Ld. PCIT and restore the original assessment order passed by AO. The assessee succeeds in this appeal.

11. Resultantly, this appeal is allowed.

Order pronounced in the open court on 31.07.2023.

sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

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

Indore

दिनांक /Dated : 31.07.2023.

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*