

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'B' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S.VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No.649/PUN/2023
Assessment Year : 2018-19

Sushil Industries, Plot No.72-73-74, MIDC, Ranjangaon, Tal. Shirur, Maharashtra – 412 220 PAN : AAYFS5434N	Vs.	The Pr.CIT-4, Pune
Appellant		Respondent

Assessee by Shri Kishor B. Phadke
Revenue by Shri Ajay Kumar Kesari

Date of hearing 31-07-2023
Date of pronouncement 01-08-2023

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order dt. 29-03-2023 passed by the ld. Pr.CIT, Pune-4 u/s.263 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2018-19.

2. Succinctly, the facts of the case are that the assessee has been engaged in the business of manufacturing of plastic injection moulded parts and MS press parts of refrigerators and washing machines. A return was filed, which was subsequently revised, declaring total income at Nil. The assessment was completed on 03-02-2021 also determining the total income at Nil. The ld. Pr.CIT, while exercising

his revisionary powers, observed that the AO failed to consider the issues germane to the assessment. He took note of certain issues in his order. One of such issues is about sale of scrap amounting to Rs.88,06,894/-. In this regard, the Id. Pr.CIT observed that Audit report Column No.34(a) clearly mentioned that the assessee had earned profit from alcoholic liquor, forest produce, scrap etc. at Rs.88,06,894/- (Net), on which Tax Collected at Source (TCS) at 1% amounted to Rs.88,069/-. He noticed that the AO had not examined as to whether such sale of scrap amounting to Rs.88.06 lakh was offered for taxation, since no break-up of sale was examined or called for. In addition, he also dealt with certain other issues, which the AO failed to examine. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

3. Having heard the rival submissions and perused the relevant material on record, it is seen from the Audit report in Form No.3CD, a copy placed at page 15 of the paper book, that the Auditor reported collection of tax at source amounting to Rs.88,069/- on the corresponding income of Rs.88,06,894/-, in column 34(a). Page 5 of the paper book is a copy of Profit and loss account of the assessee for the year under consideration. Apart from 'Other income', only one item has been shown as "Sales (net)" amounting to Rs.17,89,65,058/-. The Id. AR contended that the amount of Rs.88.06 lakh was a part and

parcel of the amount of `Sales`. On a specific query as to whether the AO enquired into this aspect, the answer was given in negative. This shows that though there was collection of tax at source by the assessee, there was a corresponding receipt from sale of scrap at Rs.88.06 lakh, which ought to have been included in the total sales of the assessee. There is no specific mention of this amount on the face of Profit and loss account. The AO did not enquire into this aspect of the matter and simply passed a five-lined assessment order observing that the case was selected for Complete scrutiny assessment on the issue of "Non furnishing of quantitative details". Thereafter, he records that "On above issue, no addition is made" and eventually notes that "the assessment of income is done as per computation sheet and the sum payable is determined as per the demand notice". Neither, there is any discussion about the scrap sale in the assessment order nor any such issue was taken up by the AO during the course of scrutiny assessment proceedings. This shows that an important aspect of the matter about the inclusion of scrap sale in the total sales, remained to be examined by the AO, which is a clear-cut case of non-application of mind. This action of the AO, in our considered opinion, rendered the assessment order erroneous and prejudicial to the interest of the Revenue. Explanation 2(a) to section 263 inserted by the Finance Act, 2015 w.e.f. 01-06-2015 also provides that where an order

is passed by the AO `without making inquiries or verification, which should have been made' shall be deemed as an erroneous order insofar as it is prejudicial to the interest of the Revenue. In view of the foregoing discussion, we are satisfied that the Id. Pr.CIT was right in holding the assessment order to be erroneous and prejudicial to the interest of the Revenue justifying revision.

4. In view of the fact that the assessment order is lacking in terms of section 263 on this first issue, being, the non-consideration of sale of scrap in the total revenue, there is no need to examine other issues that have been taken note of the Id. Pr.CIT in the revisionary order. To put it simply, if an assessment order is erroneous and prejudicial to the interest of the Revenue on at least one of the issues considered by the Id. Pr.CIT, the revision u/s.263 of the Act has to be countenanced.

5. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 01st August, 2023.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 01st August, 2023
सतीश

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The respondent
3. The Pr.CIT concerned
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,**// True Copy //**

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	31-07-2023	Sr.PS
2.	Draft placed before author	01-08-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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