

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

आ.अपी.सं / **ITA No.211/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2014-15)

Samriddhi Petroproducts Private Limited, Hyderabad. PAN : AARCS2499F.	Vs.	Income Tax Officer, Ward – 3(1), Hyderabad.
अपीलार्थी / Assessee		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Mohd. Afzal.
राजस्व द्वारा/Revenue by: Shri Jeevan Lal Lavidiya.

सुनवाई की तारीख/Date of hearing: 27.07.2023
घोषणा की तारीख/Pronouncement on: 31.07.2023

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order of Principal Commissioner of Income Tax, Hyderabad -1 dt.26.09.2022 invoking proceedings under section 143(3) of the Income Tax Act, 1961 for the assessment year 2014-15.

2. The grounds raised by the assessee read as under :

“1. The order of the learned Principal Commissioner of Income Tax is against the law, weight of evidence and probabilities of case.

2. The learned Pr.Commissioner erred in considering the order u/s 143(3) dt:12.09.2016, as erroneous and prejudicial to the interest of revenue.

3. The learned Pr.Commissioner erred in considering the date of order sought to be revised as dated 12.09.2016 (143(3)) and 31.12.2019, therefore, the order of the Pr.Commissioner is incorrect on facts and circumstances of the case.

4. The learned Pr.Commissioner ought to have appreciated that the earlier order of the Commissioner-3, Hyderabad was set aside by the ITAT in ITA No.87/Hyd/2020, dt: 29.06.2021, to consider the appeal afresh on meritstherefore, the learned PCIT in current proceedings ought to have restricted his proceedings to the show cause letter issued on 06.12.2018 and also to the order u/s 263 dt.28.02.2019.

5. The learned Pr.Commissioner erred in considering the issues which were not part of the original show cause notice and order u/s 263 and therefore, further erred in setting aside the order dt: 31.12.2019, whereas, against this order an appeal is pending before the First Appellate Authority for adjudication.

6. The learned Pr.Commissioner erred in not considering the grounds of appeal raised before the Hon'ble ITAT in respect of receipt of loans and also in respect of valuation of shares.

7. The learned Pr.Commissioner erred in not considering the submissions made during the course of 263 proceedings (consequent to ITAT order) wherein, it was demonstrated that while passing the original order dt: 28.02.2019, there is no application of mind by the Pr.CIT-3.

8. The learned Pr.Commissioner ought to have held that the order dt: 28.02.2019, is passed without considering the facts and circumstances available on record in respect of issues raised in the show cause letter dt: 06.12.2018.”

3. The brief facts of the case are that assessee is engaged in wholesale and retail trade of Auto LPG Gas, has filed its return of income for A.Y. 2014-15 on 22.11.2014 admitting total income of Nil. The case was selected for scrutiny under CASS. Accordingly, a notice u/s 143(2) and 142(1) of the Act were issued and duly served on the assessee. In response to the notice, assessee furnished information from time to time. After verification of the information provided by the assessee, Assessing Officer noticed that an amount of Rs.1,00,000/- was kept as provision for travel expenses and Rs.31,000/- for sales promotion. As the assessee failed to submit the evidence for the same, he added Rs.1,31,000/- to the income of the assessee. Thereafter, Assessing Officer noticed that assessee had claimed penalty payment to the Commercial Tax Department to the tune of Rs.15,000/- and petty cash expenses of Rs.70,571/- without any supporting documents. Hence, the Assessing Officer made total addition to Rs.2,16,571/- and completed the assessment on 12.09.2016.

4. The learned Principal Commissioner of Income Tax (PCIT), upon examining the records, observed that Assessing Officer failed to enquire into the following issues while completing the assessment :

1. *Valuation of the shares was done adopting discounted cash flow (DCF) method,*
2. *Assessee had estimated its domestic sales with an exorbitant increase from year to year,*
3. *Assessee obtained loans totaling to Rs.2,38,82,326/- from shareholders and other parties, the identity, genuineness and credit worthiness of the loan creditors and*
4. *Assessee also accepted loans / advances in cash in violation of the provisions of Section 269SS.*

4.1. The Id.PCIT also noticed that the assessee company borrowed loans from the following shareholders :

1.	<i>Ms. PriyamVada</i>	<i>10 lacs,</i>
2.	<i>Sri P. Sarath Chandra,</i>	<i>7 lacs,</i>
3.	<i>Ms. P. Subba Lakshmi</i>	<i>5 lacs,</i>
4.	<i>Ms. Uma Maheswaraam</i>	<i>1.10 lacs,</i>
5.	<i>Sri Venkata RamaBrahmam</i>	<i>5 lacs,</i>

4.2 The Id.PCIT further noticed that though assessee not even submitted their PANs either before the Assessing Officer or the Commissioner, however, Assessing Officer proceeded to complete the assessment by merely reducing the loss by Rs.2,16,571/-ignoring the issues referred in the reasons for selection of case for scrutiny. The Id.PCIT also noticed that during the course of proceedings before the AO consequent to earlier 263 order passed by the Commissioner against Sri P Sarath Chandra, the amount shown was Rs.7 lacs. Further in the consequential order passed dated 31.12.2019, after giving effect to the earlier 263 order of the Commissioner dated 28.2.2019, the total amount added under loans received was mentioned as Rs.4,10,47,326/-, which shows clear difference in the amounts involved on the loans taken.

4.3. Ld.PCIT in the second round further noticed that as the Assessing Officer failed to enquire into the above issues, while passing the assessment order dated 12.09.2016, therefore, the then Id.PCIT in earlier round had held that the order passed by the Assessing Officer was erroneous and prejudicial to the interests of the revenue and set aside the assessment order dated 28.2.2019 u/s 263 of the I.T Act 1961.

4.4. The assessee preferred an appeal before the ITAT, Hyderabad and the Tribunal passed order in ITA No.87/Hyd/2020 dt.29.06.2021 remitting the matter back to the file of PCIT with a direction to consider the case afresh on merits.

4.5 As directed by the Tribunal, a fresh notice dt.16.01.2023 was issued to the assessee. In response to the same, ld. AR of the assessee filed written submissions and contested initiating action u/s 263 of the Act after relying on various decisions of the Hon'ble High Court/Tribunals and requested to drop the proceedings.

4.6. Finally, after perusing the material on record, ld.PCIT held that the order of Assessing Officer dt.12.09.2016 was erroneous and prejudicial to the interests of Revenue and hence, he set aside the order of Assessing Officer with a direction to redo the assessment in accordance with law.

5. Aggrieved with the order of ld.PCIT, assessee is now in appeal before us.

6. Before us, ld. AR had submitted that in earlier round, ld.PCIT issued show cause notice dt.06.12.2018, as the Assessing Officer had failed to enquire into the following issues :

1. Valuation of the shares was done adopting discounted cash flow method,
2. Assessee had estimated its domestic sales with an exorbitant increase from year to year.
3. Assessee obtained loans totaling to Rs.2,38,82,3261- from shareholders and other parties, the identity, genuineness and credit worthiness of which is required to be verified.
4. Assessee also accepted loans / advances in cash in violation of the provisions of Section 269SS.

6.1 The ld. AR submitted that assessee could not appear before the ld.PCIT. Therefore, the ld.PCIT vide order dt.28.02.2019 has passed an order u/s 263 of the Act thereby set aside the order of Assessing Officer and directed the Assessing Officer to redo assessment by holding as under :

“4. On examination of records, it is noticed that in respect of allotment of the shares the assessee had estimated its domestic sales with an exorbitant increase from year to year and it is not forthcoming from the submissions whether the DCF method adopted by the assessee is correct or otherwise. The assessee, in support of the claim submitted a copy of valuation certificate which requires further examination. Further, the assessee has accepted loan/advance in cash in violation of provisions of section 269SS and has repaid loan/advance in violation of provisions of section 269T as per Form 3CD for which verification needs to be done with regard to the genuineness and creditworthiness of the loan stated.

5. In the light of above facts of the case and also considering the fact the Assessing officer did not examine case properly the issues as stated above, the assessment order passed U/s 143(3) dated 12.09.2016 for the A.Y.2014-15 is considered erroneous and prejudicial to the interest of revenue. Therefore the said order is set aside. The Assessing Officer is directed to redo the assessment in accordance with the law, after taking necessary action as discussed above and after allowing an opportunity of being heard.”

6.2 Feeling aggrieved with the order of ld.PCIT, assessee filed an appeal i.e., ITA No.87/Hyd/2020 wherein the Tribunal had set aside the order passed by the ld.PCIT and the Tribunal directed the assessee to appear again before the ld.PCIT and directed the ld.PCIT to decide the issue afresh. The relevant portion of the order of Tribunal reads as under :

4. We have heard the rival submissions and carefully perused the materials on record. On examining the facts of the case, We find merit in the submissions of the Ld. DR. The IA. Pr. CIT had posted the case on three occasions. However, none appeared on behalf of the assessee before the Ld. Pr. CIT on the dates of hearing. Therefore, the Ld. Pr. CIT was left with no other option except to adjudicate the appeal ex-parte. In this situation, We do not find much strength in the arguments advanced by the Id. AR. However, considering the prayer of the Ld. AR and the issues involved in the appeal, in the interest of justice, We hereby remit the matter back to the file of Ld. Pr. CIT in order to consider the appeal afresh on merits by providing one more opportunity to the assessee of being heard. At the same breath, We also hereby caution the assessee to promptly co-operate before the IA. IA. Pr. CIT in the proceedings failing which the Ld. Pr. CIT shall be at liberty to pass appropriate order in accordance with law and merits based on the materials on the record. It is ordered accordingly.”

6.3. Ld. AR submitted that in pursuant to the direction issued by the Tribunal and a fresh notice dt.16.01.2023 was issued to the assessee by the ld.PCIT. In response to the same, assessee filed reply before the ld.PCIT and the contentions of the assessee were duly recorded at Para 4 of the order passed by the ld.PCIT and the same is read as under :

“4. As directed by the Hon'ble Tribunal, a fresh Notice dated 16.01.2023 was issued to the assessee. In response to the same the Authorized Representative Sri Mohd. Afzal, Advocate and Sri Janardhan Reddy, General Manager (Finance) of the assessee company appeared on 31.01.2023, 09.02.2023, 23.02.2023 & 08.03.2023, and filed written submissions. The contentions of the tax payer are that;

(I) Valuation of shares was done adopting discounted cash flow (DCF) method, which was adopted as the assessee had freedom to opt the method of accounting and hence the Revenue cannot object,

(ii) All the loans received and repaid during the year under consideration were through bank, therefore, there is no violation of provisions of Section 269SS of the Act.

The A.R. further submitted that that the PAN details of the loan creditors and the persons to whom the loans have been repaid were mentioned in the 3CD report, which is not correct as mentioned at para 2 above.”

6.4. Id. AR further submitted that assessee was able to prove to the satisfaction of the Id.PCIT and the issues raised and therefore, the action on the part of Id.PCIT is incorrect. He had also submitted that as per form 3CD, the assessee has not accepted the loan in cash or paid loan amount in cash. He has drawn our attention to Sl.Nos.31(a) and 31(b) of Form 3CD placed at Pages 46 and 48 of the paper book, respectively, which are to the following effect :

“31(a) – Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year - No

31(b) - Particulars of each repayment of loan or deposit in an amount exceeding the limit specified in section 269T made during the previous year – Nil.”

6.5. The Id. AR had submitted that all the issues namely with respect to valuation of shares, loans and the alleged violation of provisions of section 269SS were examined by the Assessing Officer on the basis of the details provided by the assessee. Hence, no interference is called upon by the Id.PCIT and therefore, the order passed by the Id.PCIT is not in accordance with the law.

7. Per contra, ld. DR submitted that the original assessment order passed u/s 143(3) of the Act on 12.09.2016, was conspicuously silent on the points raised by the ld.PCIT vide Para 2 of the order of ld.PCIT passed u/s 263 of the Act on 28.02.2019, which was reproduced hereinabove. Ld. DR further submitted that once the AO has failed to enquire on the above said issues, therefore, order passed by the Assessing Officer becomes erroneous and prejudicial to the interests of revenue. He further submitted that the contention of the ld. AR that the issues have been satisfied and explained with respect to share application money, no abnormal increase in the turnover from year to year and no violation of section 268SS of the Act is incorrect and contrary to record, as neither any reply / document were filed to the satisfaction of Assessing Officer.

8. We have heard the rival submissions and perused the material on record. Undoubtedly, for the purpose of invoking jurisdiction under section 263 of the Act by the ld.PCIT, it is essential to prove that the order passed by the Assessing Officer was erroneous and prejudicial to the interests of the revenue. In the present case, the assessment order was passed by the Assessing Officer on 12.09.2016 and there is no whisper about all the issues which were the subject matter of the proceedings under section 263 of the Act. The Assessee has placed on record the notices issued u/s 142(1) of the Act on 18.08.2016 and at Page 54, the following questions were raised at Sl.Nos.9, 11 and 12.

“9. Please give details of unsecured loan introduced during the year 2013-14 relevant for the A.Y. 2014-15 along with addresses, I.T. Particulars and confirmations.

11. Please give details of share application money and sources for the above period.

12. Please give the details of unsecured loan in squared up during the year under consideration.”

9. However, none of the questions raised by the Assessing Officer pertains to the issues raised by the Id.PCIT in show cause notice. Even, our attention was not drawn to any of the replies given by the assessee in response to the above said questions raised by the Assessing Officer. In fact, no reply to the notice u/s 142(1) of the Act was placed on record explaining the questions raised. However, only a certificate issued by the Chartered Accountant was placed on record at page 56 of the paper book, certifying that Fair Value of Equity Shares of assessee company were calculated under discounted free cash flow method as per the notification and guidelines issued by the Reserve Bank of India was at Rs.215/- per equity share. However, no basis for arriving at the above said figures were available or provided to the Assessing Officer. Though, the assessee has right to choose the method of valuation either by discounted free cash flow method or NAV method, however, the Assessing Officer is well within its rights and have bounden duty to examine the application of method adopted by the assessee i.e., whether correct parameters were applied or not for proving at the transaction value. Ld.PCIT had pointed that there was exorbitant increase in the turnover of the assessee from year to year. However, no reasoning was given by the Assessing Officer or Id.PCIT before passing of the order. Similarly, the Assessing Officer has not examined the details of the share application

money and sources thereof. In fact, the ld. DR during the course of arguments has drawn our attention to the fact that most of the money for the share application was received prior to 16.09.2014. Ld. DR also contended that how it is possible to issue shares prior to the valuation of shares by following DCF method. Ld. DR further submitted that the order passed by the Assessing Officer is not a speaking order as no enquiries much less adequate enquiries were made by the Assessing Officer. We found no question was asked with respect to the acceptance of cash in violation of provisions of section 269SS of the Act.

10. In our view, it is the bounden duty of the Assessing Officer to make sufficient enquiries and it is not for the Assessing Officer to pass perfunctory order without raising any question on vital issues. In the present case, the issues have not been considered by the Assessing Officer. Therefore, we do not find any reason to interfere with the order of ld.PCIT. As the order passed by the Assessing Officer was erroneous and prejudicial to the interests of Revenue. Therefore, the appeal of the assessee is dismissed.

11. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 31st July, 2023.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 31st July, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	Samriddhi Petroproducts Private Limited, C/o. Mohd Afzal, Advocate, #402, Sherson's Residency, 11-5-465, Criminal Court Road, Red Hills, Hyderabad - 04.
2	The Income Tax Officer, Ward - 3(1), Hyderabad.
3	Pr.CIT - 1, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order