

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, AM AND  
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 1690/Mum/2023  
(Assessment Year: 2018-19)

Trafigura Global Services Pvt. Ltd. Unit No. 1101, A-Wing, Plot No. C, 66G Block, One BKC, Bandra Kurla Complex, Mumbai – 400 051	Vs.	PCIT-6 501, 5 <sup>th</sup> Floor, Aaykara Bhawan M. G. Road, Mumbai-400 020
PAN/GIR No. AABCT 0037 C		
<b>(Appellant)</b>	:	<b>(Respondent)</b>
<b>Assessee by</b>	:	Shri Madhur Agarwal
<b>Revenue by</b>	:	Shri Sanjay Deshmukh
<b>Date of Hearing</b>	:	11.08.2023
<b>Date of Pronouncement</b>	:	23.08.2023

**ORDER**

**Per Kavitha Rajagopal, J M:**

This appeal has been filed by the assessee, challenging the order of the learned Principal Commissioner of Income Tax ('Id.PCIT' for short), Mumbai-6 passed u/s.263 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2018-19.

2. The assessee has challenged the order of the Id. PCIT passed u/s. 263 of the Act on the ground that the assessment order passed by the Assessing Officer ('A.O.' for short) u/s. 143(3) of the Act was neither erroneous nor prejudicial to the interest of the Revenue and the assessee has also without prejudice challenged the order of the Id. PCIT on the ground that the legal expenses of Rs.2,99,54,061/- claimed by the assessee and allowed

by the A.O. was expended wholly and exclusively for the purpose of business of the assessee and was rightly allowed by the A.O. as 'business expenditure'.

3. The brief facts are that the assessee company being an Indian company is a captive service provider of its associated enterprises (AE) on a cost plus model. The assessee had filed its return of income on 27.11.2018, declaring total income at Rs.37,24,68,330/-. The assessee's case was selected for scrutiny and the assessment order dated 11.01.2021 was passed u/s. 143(3) of the Act where the Assessing Officer ('A.O.' for short) accepted the returned income filed by the assessee. The assessee company had entered into a lease agreement with Indiabulls Properties Private Limited (lessor) in respect of its premises at One Indiabulls (OIB) with a lock in period of 3 years and was in the process of shifting its office to OIB premises during Financial Year 2014-15. The assessee company claimed a cost of Rs.44,75,03,73/- incurred for fit outs and leasehold improvements at the new premises and stated that the said expenses was for architect's fees, consultancy, rent, legal fees, moving costs, etc. and the said amount was entered in the books as 'capital work in progress' (CWIP for short). Subsequent to this, the assessee terminated the lease agreement prematurely on 30.01.2015 for the reason that the said premises was not as per the companies securities standards and the assessee sued OIB claiming damages of Rs.153,61,46,905/-. OIB had also filed a counter suit against the assessee with a counter claim of Rs.307,30,19,684/- and the same was before the arbitration. The assessee had debited an amount of Rs.2,99,54,061/- towards legal expenses incurred for litigating its claim before the arbitration. The assessee's case was selected for scrutiny and the A.O. vide order dated 11.01.2021 passed the assessment order u/s. 143(3) of the Act accepting

the returned income filed by the assessee. The Id. PCIT invoked the provisions of section 263 of the Act for the reason that the assessment order was erroneous insofar as it was prejudicial to the interest of the Revenue and vide order dated 31.03.2023 set aside the assessment order on the issue of allowability of legal and other expenses amounting to Rs.2,99,54,061/- and thereby directing the A.O. to conduct denovo assessment.

4. The assessee is in appeal before us challenging the impugned order of the Id. PCIT.

5. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee has incurred the said expenditure for the purpose of litigating before the arbitration and the same amounted to the business expenditure of the assessee company. The Id. AR further contended that the assessee's case was selected for limited scrutiny assessment on the issue of deduction from total income under Chapter VIA and not for complete scrutiny. The Id. AR further contended that the issue of allowability of expenditure was not before the A.O. during the assessment proceeding and that the Id. PCIT lacked jurisdiction to invoke the provision of section 263 of the Act on the ground that the A.O. has not enquired into the impugned expenditure resulting in the assessment order being erroneous and prejudicial to the interest of the Revenue. The Id. AR relied on the decision of the co-ordinate bench in the case of *Shree Aniruddha Upasana Foundation vs. CIT (Exemption)* (in ITA No. 706/Mum/2022 vide order dated 19.09.2022).

6. The learned Departmental Representative ('Id.DR' for short), on the other hand, controverted the said fact and stated that the assessee had claimed exorbitant expenses

which are not justifiable. The Id. DR further stated that the A.O. has not enquired into the claim of the assessee thereby making the assessment order erroneous and prejudicial to the interest of the Revenue. The Id. DR relied on the order of the Hon'ble Calcutta High Court in the case of *Pr. CIT vs. Swati Bajaj* [2022] 139 taxmann.com 352 (Calcutta) and the decision of the Tribunal in the case of *Mrs. Minakshi Shivkumar Bansal vs. Pr. CIT* [2022] 139 taxmann.com 407 (Pune – Trib.). The Id. DR relied on the decision of the Hon'ble Apex Court in the case of *CIT vs. Paville Projects (P.) Ltd.* [2023] 149 taxmann.com 115 (SC), *CIT vs. ETA Travel Agency (P.) Ltd.* [2019] 109 taxmann.com 66 (Madras), *CIT vs. K. V. Nellaiappan* [2022] 135 taxmann.com 223 (Madras).

7. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has claimed business expenses amounting to Rs.2,99,54,061/- (towards legal and other expenses) incurred for the purpose of litigating with OIB Properties Pvt. Ltd. for the dispute pertaining to the contract entered into by the assessee with OIB for the commercial space leased out to the assessee. The assessee's case was selected for limited scrutiny assessment where the issue of the impugned expenditure was not the subject matter of scrutiny assessment and the A.O. passed the assessment order accepting the return filed by the assessee.

8. The Id. PCIT invoked the provision of section 263 for the reason that the impugned expenditure is neither a 'capital expenditure' nor a 'revenue expenditure' and the same ought not to have allowed by the A.O. thereby making the assessment order erroneous and prejudicial to the interest of the Revenue. It is pertinent to point out that the assessee's case was selected for limited scrutiny assessment for the issue of deduction

from total income under Chapter VIA for which notice u/s. 143(2) of the Act dated 22.09.2019 and notice u/s. 142(1) of the Act dated 26.11.2020 was issued and duly served upon the assessee. It is evident from the records of the assessment order that neither was it a case of complete scrutiny nor was the issue pertaining to the expenses incurred by the assessee was before the A.O. during the assessment proceeding u/s. 143(3) of the Act. We are conscious of the propositions laid down by the various courts wherein it was held that the A.O. cannot go beyond the scope for which the assessment proceeding was initiated and thereby restricted to make a roving enquiry, into issues not confronted to the assessee. The decision of the Tribunal in the case of *Shree Aniruddha Upasana Foundation* (supra) relied upon by the Id. AR supports this proposition of law. The decision relied upon by the Id. DR are contradictory in facts of the present case where the issue is not related limited scrutiny assessment and the same are distinguishable in facts of the present case and does not support the case of the Revenue. It is also trite to take support of the CBDT Instruction No. 7/2014 vide letter dated 29.12.2015 which states that the A.O. should restrict the enquiry only to the specific reason/issue for which the case was picked up for scrutiny in the case of 'limited scrutiny' and the relevant extract of the said instruction is cited hereunder for ease of ready reference:

*3. As far as the returns selected for scrutiny through CASS "3. CASS-2015 are concerned, two type of cases have been selected for scrutiny scruti in Year-- one is 'Limited Scrutiny' and other is the current Financial Year 'Complete Scrutiny'. The assesseees concerned have duly been intimated about their cases falling either in 'Limited Scrutiny' or 'Complete Scrutiny' through notices issued under secti on 143(2) of section tax Act, 1961 ('Act'). The procedure for handling the Income-tax 'Limited Scrutiny' cases shall be as under:*

*a. In 'Limited Scrutiny' cases, the reasons/issues shall be forthwith communicated to the assessee concerned.*

*b. The Questionnaire under section 142(1) of the Act in 'Limited Scrutiny' cases shall remain confined only to the specific reasons/issues for which case has been picked up for scrutiny.*

*Further, the scope of enquiry shall be restricted to the 'Limited Scrutiny' issues.*

*c. These cases shall be completed expeditiously in a limited number of hearings.*

*d. During the course of assessment proceedings in 'Limited Scrutiny' cases, if it comes to the notice of the Assessing Officer that there is potential escapement of income exceeding Rs. five lakhs (for metro charges, the monetary limit shall be Rs. ten lakhs) requiring substantial verification on any other issue(s), then, the case may be taken up for 'Complete Scrutiny' with the approval of approval shall be the Pr. CIT/CIT concerned. However, such an approval accorded by the by the Pr. CIT/CIT in writing after being satisfied about merits of the issue(s) necessitating Complete Scrutiny' in that particular case Such cases shall be monitored by the Range Head concerned. The procedure indicated at point pointss (a). (b) and (c) above shall no longer remain binding in such cases. (For the present purpose, 'Metro charges' would mean Delhi, Mumbai, Chennai, Kolkata, Bengaluru, Hyderabad and Ahmedabad)."*

9. It is also pertinent to point out that in case of limited scrutiny where the A.O. considers it necessary to conduct a comprehensive scrutiny, necessary approval from the concerned authority is mandatory. In the present case in hand, the Revenue has failed to substantiate that the issue related to the expenditure claimed by the assessee was before the A.O. during the assessment limited scrutiny proceeding nor it brought on record any fact to show that the A.O. had authority to go beyond the issue for which scrutiny assessment was initiated. The decision of the co-ordinate bench relied upon by the Id. AR in *Shree Aniruddha Upasana Foundation* (supra) has dealt with this issue extensively by citing the various instructions of CBDT on several occasions on this issue.

10. From the above observation, we are of the considered view that the assessment order passed by the A.O. for the purpose of verifying the limited issue is not considered to be erroneous insofar as it is prejudicial to the interest of the Revenue. The Id. PCIT lacks jurisdiction to invoke the provision of section 263 of the Act in the present case in hand. We, therefore, allow the grounds raised by the assessee.

11. In the result, the appeal filed by the assessee is allowed.

*Order pronounced in the open court on 23.08.2023.*

Sd/-

(Om Prakash Kant)  
Accountant Member

Mumbai; Dated : 23.08.2023

Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)  
Judicial Member

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai