

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं./ITA No.130/RPR/2023
निर्धारण वर्ष /Assessment Year: 2018-19

Rajendra Kumar Agrawal Gandhi Chowk Neora, Raipur (C.G.) 493114	Vs	Principal Commissioner of Income Tax, Raipur-1
PAN No. ACIPA 5919L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Praveen Goyel, CA
राजस्व की ओर से /Revenue by	:	Smt. Ila M. Parmar, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	21/08/2023
घोषणा की तारीख/ Date of Pronouncement	:	24 /08/2023

आदेश / ORDER

Per Arun Khodpia, AM :

The captioned appeal is filed by the assessee against the order passed by the Ld. Principal Commissioner of Income Tax, Raipur-1, dated 16.03.2023 u/s 263 of the Income Tax Act, 1961. The grounds of the appeal raised by the assessee are as under:

- “ 1. That on the facts and in the circumstances of the case and in law, the order passed by Id. Pr. CIT-1, Raipur u/s 263 of the Act dated 16/03/2023 is illegal and void- ab-initio,*
- 2. That on the facts and in the circumstances of the case and in law, the Id. CIT-1. Raipur failed to demonstrate that how the order passed by the AO is erroneous which caused prejudice to the revenue.*
- 3. That on the facts and in the circumstances of the case and in law, the Id. CIT-1. Raipur has stated in the order that no adverse inference is drawn on the issues raised in notice u/s 263, however, set aside the proceedings initiated u/s 263 of the Act, hence, the same is contradictory and incorrect.*
- 4. The appellant craves to add, alter or delete any of the grounds of appeal during the course of appellate proceedings,”*

2. The brief facts of the case are that the assessee being an individual and has filed his return of income on 10.10.2018. Subsequently, the case of the assessee was selected for complete scrutiny under the E-assessment scheme 2019 on the following issue:

(i) Details of assets and liabilities.

3. The Ld. AO framed the assessment u/s 143(3) and passed the order based on material available on record, replies submitted by the assessee and explanation of the assessee on the issue for which the scrutiny assessment was initiated. The assessment was completed on returned income of the assessee without making any addition on the same.

4. The case of the assessee was subsequently picked up by the Ld. PCIT by invoking provisions of section 263 for initiation of revisionary proceedings. Notice u/s 263 of the Act was issued on 03.05.2023 alleging that the order passed by the Assessing Officer u/s 143(3) dated 22.05.2021 is erroneous in so far as it is prejudicial to the interest of Revenue on the following grounds:

"2. The case of the assessee was selected for complete scrutiny under E-assessment Scheme, 2019. The case was completed u/s 143(3) of the Income Tax Act, 1961 vide order 22.02.2021 and total income was assessed at Rs 3,16,16,000/-.

3. On perusal of the case record revealed that the assessee has made provision for TDS payable in the P&L account. The same was not paid before the due date for furnishing of return of income specified in section 438 of the Act. Also, as per the provisions of sec. 438 of the Act, any sum payable by the assessee as an employer by way of TDS can be claimed as deduction from the business income only in the year of actual payment and not in the year when the liability to pay such expenses is incurred. Accordingly, the amount of provision of Rs. 9,01,670/- made on account of

TDS payable should have been disallowed and needed to have been added back as income of the assessee.

*4. Further, perusal of the case, it is noticed that the assessee has debited Audit Fee of Rs. 1,00,000 in the P&L account. However, neither in ledger account to whom Audit Fee paid nor any document is found making or crediting the payment. As per provision of section 1943 of the Act, assessee was liable to deduct TDS while making or crediting payment aggregating to Rs 30,000/- and above. Thus in accordance with provision of section 194J read with section 40(a)(ia) of the Act. 1961, the amount of Rs. 30,000/-(Rs 1,00,000*30%) deserve to be disallowed and needed to have been added back as income of the assessee.*

5. Further, it is noticed that the assessee has claimed deduction under chapter VI-A of Rs 1,37,035 in section 80C of the Act. On going through the case record, there is no receipt of payment found in the case record. Hence, deduction under chapter VI-A of Rs. 1,37,035 is to be disallowed and needed to have been added back as income of the assessee.”

5. The aforesaid issues raised by the Ld. PCIT were confronted to the assessee to submit his explanation on the same. In response, the assessee has submitted complete details pertaining to issues in dispute, on which the Ld. PCIT has observed that “*prima facie no adverse interference is drawn on this issue*” the observation of the Ld. PCIT pertaining to all the issues are extracted herein under:

“7 From the submissions of the assessee during proceedings u/s 263, it is observed that TDS payable of Rs. 9,01,670/- is actually classified under the head current liability in the balance sheet and the said amount has not been claimed as an expenses in the profit and loss account The liability of payment of TDS is governed by chapter XVII of Income Tax Act and the assessee is liable to make payment of such TDS by 7th of subsequent month and 30th of subsequent month in of deductions made in the month of March. It is observed that the opening balance of ledger account of TDS payable as on 01/04/2018 is 9.01 670/- and payment has been made in April 2018, which is within the due date in compliance with the applicable provision of the Act The copy of TDS Payable account for the month of April 2018 as submitted by the assessee is reproduced below :

Rajendra Kumar Agrawal

TDS PAYABLE
Ledger Account

1-Apr-18 to 30-Apr-18


Page 1

Date	Particulars	Vch Type	Vch No.	Debit	Credit
1-Apr-18	By Opening Balance				9,01,670.00
4-Apr-18	To STATE BANK OF INDIA POWER PACK A/C	Payment		72,489.00	
	To STATE BANK OF INDIA POWER PACK A/C	Payment		3,486.00	
	To STATE BANK OF INDIA POWER PACK A/C	Payment		4,28,939.00	
	To STATE BANK OF INDIA POWER PACK A/C	Payment		1,31,109.00	
	To STATE BANK OF INDIA POWER PACK A/C	Payment		14,044.00	
5-Apr-18	To STATE BANK OF INDIA POWER PACK A/C	Payment		1,34,346.00	
	To STATE BANK OF INDIA POWER PACK A/C	Payment		985.00	
14-Apr-18	To STATE BANK OF INDIA POWER PACK A/C	Payment		10,000.00	
25-Apr-18	To STATE BANK OF INDIA POWER PACK A/C	Payment		1,09,396.00	
30-Apr-18	By DEEPAK LAL AGRAWAL, NEORA	Journal			496.00
	To STATE BANK OF INDIA POWER PACK A/C	Payment		2,546.00	
	By AJAY KUMAR SONTHALIYA, RAIGARH	Journal			66.00
	To STATE BANK OF INDIA POWER PACK A/C	Payment			4,964.00
	By ASHISH SHARMA, NEORA	Journal			441.00
	To STATE BANK OF INDIA POWER PACK A/C	Payment			106.00
	By CHANDRA KUMAR RATHI, NEORA	Journal			563.00
	To STATE BANK OF INDIA POWER PACK A/C	Payment			4,996.00
	By DILIP KUMAR AGRAWAL, NEORA	Journal			18,666.00
	To STATE BANK OF INDIA POWER PACK A/C	Payment			3,733.00
	By GHANSHYAM PRASAD AGRAWAL, BILHA	Journal			247.00
	To STATE BANK OF INDIA POWER PACK A/C	Payment			1,559.00
	By GOVIND GUPTA, (M.P.)	Journal			499.00
	To STATE BANK OF INDIA POWER PACK A/C	Payment			120.00
	By KEDAR SHARMA, NEORA	Journal			756.00
	To STATE BANK OF INDIA POWER PACK A/C	Payment			51.00
	By NARESH KUMAR RATHI, NEORA	Journal			5,533.00
	To STATE BANK OF INDIA POWER PACK A/C	Payment			173.00
	By NITESH CANVASSORS JALPUR	Journal			96.00
	To STATE BANK OF INDIA POWER PACK A/C	Payment			1,180.00
	By PIYUSH AGRAWAL, NEORA	Journal			11,450.00
	To STATE BANK OF INDIA POWER PACK A/C	Payment			
	By RAHUL SHARMA, NEORA	Journal			
	To STATE BANK OF INDIA POWER PACK A/C	Payment			
	By RAJESH KUMAR SINGHAL, BILASPUR	Journal			
	To STATE BANK OF INDIA POWER PACK A/C	Payment			
	By RAKESH KUMAR GUPTA, (U.P.)	Journal			
	To STATE BANK OF INDIA POWER PACK A/C	Payment			
	By RAMESH KUMAR KUMBHAKAR, BILASPUR	Journal			
	To STATE BANK OF INDIA POWER PACK A/C	Payment			
	By SANTOSH KUMAR SHARMA, NEORA	Journal			
	To STATE BANK OF INDIA POWER PACK A/C	Payment			
	By SAUMIL NAYAK, JALPUR(M.P.)	Journal			
	To STATE BANK OF INDIA POWER PACK A/C	Payment			
	By SHIV NARAYAN CHATURVEDI, RAIPUR	Journal			
	To STATE BANK OF INDIA POWER PACK A/C	Payment			
	By UMA RATHI, NEORA	Journal			
	To STATE BANK OF INDIA POWER PACK A/C	Payment			
	By KRISHNAKANT MISHRA, NEORA	Journal			
	To STATE BANK OF INDIA POWER PACK A/C	Payment			
				9,03,344.00	9,57,365.00
	To Closing Balance			54,021.00	
				9,57,365.00	9,57,365.00

During the proceedings us 263, the assessee has also furnished the copies of challan of payment of TDS done in the Government account, which are placed on record. They are not being reproduced above for sake of brevity. Therefore, **prim-face no adverse inference.**

As regards non deduction of TDS on audit fee of Rx 100.000 the assessee has fee in the march 2018 and the TDS has and the TDS has actually been @ 10% and after deduction the same amount has been paid to government account on 14/04/2018 which is within the due date in compliance with the applicable provision During the proceedings u/s 263, the assessee has furnished the copy of challan, which was placed on red They are not being reproduced above for the sake of brevity. Therefore, **prima facie no adverse inference is drawn on this issue.**

As regards no proof of payment of LIC premium the assessee furnished the copy of LIC premium cap during the proceedings 263 The scanned copy of LIC payment receipt is reproduced below.

	भारतीय जीवन बीमा निगम LIFE INSURANCE CORPORATION OF INDIA	2697851																		
ब्रांच - Bilaspur	विलासपुर, झारखंड	BILASPUR - DIVISION																		
दिनांक - Date 23/03/2018-10:50	LIC OF INDIA, RK COMPLEX																			
कॉम्प्लेक्स - Tr.No. 30013	KHARORA ROAD, TILDA																			
कॉम्प्लेक्स - Tr.No. 30013	DIST. RAIPUR, C.O. 1																			
कॉम्प्लेक्स - Tr.No. 30013	Dist: 835116 Dist: 2697851																			
RENEWAL PREMIUM RECEIPT																				
प्राप्त किया के लिये साधन/धारा प्राप्त - Received with thanks Rs.	NTI Rs. *****137035.00	नकद और/या चेक द्वारा In cash and / or by cheque from																		
SRI RAJENDRA KUMAR AGRAWAL																				
कीमती/सुखी/श्री. Smt./Ms./Sri. Towards the following																				
<table border="1"> <tr> <td>प्रीमियम - Premium</td> <td>137035.00</td> <td>अग्रिम - Advance</td> <td>0.00</td> <td>कुल - Total</td> <td>137035.00</td> </tr> <tr> <td>अग्रिम - Advance</td> <td>0.00</td> <td>कुल - Total</td> <td>137035.00</td> <td></td> <td></td> </tr> <tr> <td colspan="2">TOTAL : Rs. 137035.00</td> <td colspan="4">Thirteen One lakh, thirty seven thousand thirty five only</td> </tr> </table>			प्रीमियम - Premium	137035.00	अग्रिम - Advance	0.00	कुल - Total	137035.00	अग्रिम - Advance	0.00	कुल - Total	137035.00			TOTAL : Rs. 137035.00		Thirteen One lakh, thirty seven thousand thirty five only			
प्रीमियम - Premium	137035.00	अग्रिम - Advance	0.00	कुल - Total	137035.00															
अग्रिम - Advance	0.00	कुल - Total	137035.00																	
TOTAL : Rs. 137035.00		Thirteen One lakh, thirty seven thousand thirty five only																		
LIC's GST Reg Number - 22AAACLO582H7/V																				
<p>चेक द्वारा भुगतान होने पर जारी की गयी प्रतीक चेक की रकम मिलने पर ही जारी होगी। Receipt of payment made by cheque is issued subject to realisation of the cheque.</p>																				
<p>SRI RAJENDRA KUMAR AGRAWAL 23/0 LATE SRI KISHAN LAL AGRAWAL 23/0 AMIT CHAWAL DEYOG NEORA DIST. RAIPUR, C.O. 1 Dist: 835116 Next Due - 03/2019</p>																				
<p>Pre Premium is received in Advance for due date mentioned above</p>																				

Therefore, ***prima-facie no adverse inference is drawn on this issue.***

6. With such observations, wherein the Ld. PCIT was found to be satisfied *prima facie* with the submissions and explanation of the assessee, however, in the decisions para i.e. para-8 of the Ld. PCIT has set aside the issues to the files of AO with a direction to pass a fresh assessment in speaking manner. Such observations of the Ld. PCIT are also extracted as under:

“8. In view of the above findings, the proceedings initiated u/s 263 of the I.T. Act, 1961 are hereby set aside to the AO with direction to pass a fresh assessment order in a speaking manner in the light of above discussion, after making all necessary enquiries required and after providing due and adequate opportunity of being heard to the assessee and after considering all the submissions, etc. made and counter-reply submitted by the assessee in a fair and judicious manner.”

7. Aggrieved with such set aside of the issues to the file of AO even after furnishing submissions by the assessee which were prima-facie conceded being satisfactory, therefore, no adverse interference is drawn by the Ld. PCIT, the assessee assailed such finding before us under the present appeal.

8. The Ld. AR of the assessee, at the outset, submitted that since the issues were never raised by the AO during the assessment proceedings, those were raised by Ld. PCIT under the revisionary provisions u/s 263; the assessee has furnished all the necessary information and also explained the genuineness of such transactions which were doubted by the Ld. PCIT and also Ld. PCIT has *prima facie* opined that he was convinced with the explanation of the assessee, under such circumstances the order of Ld. PCIT should have been for dropping the proceedings initiated u/s 263 and should not be with a decision to set aside the issues to the file of the Ld. AO for fresh assessment. Such decision is hardship on the assessee to explain all the issues which are already placed before the Ld. PCIT, therefore, there was no purpose for setting aside such issues to be assessed again by way of a fresh assessment. It is, therefore, the prayer that the order of the Ld. PCIT is liable to be set aside and the proceedings initiated u/s 263 itself shall be dropped.

9. The Ld. CIT-DR on behalf of the Revenue has placed her reliance on the order of the Ld. PDIT stating that even if the issues are set aside to the file of Ld. AO, there is no prejudice caused to the assessee. The assessee was granted proper and adequate opportunity of being heard and to submit his explanation again before the Ld. AO, therefore, the order of the Ld. PCIT shall be sustained.

10. We have heard the rival contention, perused the materials available on record. On perusal of the order of the Ld. PCIT(E), which shows that the order of Assessing Officer wherein certain issues were not discussed by the Ld. AO even under a complete scrutiny assessment, may be considered as erroneous but since there was no adverse interference which could have been drawn was pointed out by the Ld. PCIT, the order of the Ld. AO cannot be considered as prejudicial to the interest of the Revenue. Since, two ingredients required to invoke the provisions of section 263, so as to assume the powers conferred by the PCIT under the provisions of the said section i.e., the order of Ld. AO is erroneous in so far as prejudicial to the interests of the Revenue. Since, the Ld PCIT could not make out as to how the order of the Ld AO was prejudicial to the interest of revenue, the requirement of having the basic ingredients are not satisfied in the present case, the order of the Ld. PCIT u/s 263 cannot sustain, therefore, we are of the considered opinion that the order of Ld PCIT is unsustainable.

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

Order pronounced in the court on 24/08/2023.

Sd/-

Sd/-

(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 24/08/2023

Pramod Kumar, Sr. PS (on tour)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur