

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI  
BEFORE Shri C.M. Garg, Judicial Member  
AND  
Shri M. Balaganesh, Accountant Member**

**ITA No. 1054/Del/2022 (A.Y.: 2017-18)**

Maharishi Ayurveda Products Pvt. Ltd, Flat No. 40, Pocket-H, Ground Floor, Madanpur Khadar, New Delhi (Appellant)	Vs.	DCIT, Circle-16(1), Delhi  (Respondent)
<b>PAN: AACCM5403A</b>		

Assessee by :	Sh. Sanjay Garg, FCA Sh. Akarsh Garg, Adv
Revenue by:	Ms. Raja Rajeshwari R, Sr. DR
Date of Hearing	25/05/2023
Date of pronouncement	04/08/2023

**ORDER**

**PER C. M. GARG, J. M.:**

1. This appeal has been filed by the assessee against the order of the Id PCIT-4, Delhi dated 15.03.2022 for AY 2017-18.

2. The assessee has raised the following grounds of appeal:-

*"1. BECAUSE the "Pr. CIT" has erred in law and on facts in holding that the assessment order passed under section 143(3) dated 11.12.2019, was erroneous and prejudicial to the interest of revenue and setting aside the same to make de novo assessment.*

*2. BECAUSE the "Pr. CIT" has erred in law and on facts in holding that-*

*(i) in view of insertion of Explanation 2 to section 36(1)(va) by the Finance Act, 2021, the assessee has to make payment of employees contribution before the due date as per the relevant Act, however, the Assessing Officer has allowed the same;*

*(ii) assessee has not produced any evidence which proves that Assessing Officer examined the issue of cash deposits during demonetization period, as per the internal check list guidelines dated 09.08.2019 issued by the CBDT;*

*(iii) assessee had interest-bearing loan of Rs. 18 crores from NBFC on which interest of Rs. 3.66 crore was paid whereas it has given interest free loan and advances of Rs. 10,57,91,705/- to M/s Global Diamond Pvt. Ltd. and assessee merely stated that it had interest free funds of Rs. 48.15 crores, hence, Assessing Officer should have made enquiry whether loan was given for the benefit of the company or for the personal benefit of the director directly or indirectly.*

3. *BECAUSE in any case, in response to notice under section 263, the appellant had furnished all the relevant information duly supported by corroborative evidence and no discrepancy having been found or pointed out therein, the Pr. CIT should have vacated the proceedings as had been initiated by her under section 263 of the Act.”*

3. The ld counsel of the assessee submitted that the ld PCIT has erred in erred in law and on facts in holding that the assessment order passed under section 143(3) dated 11.12.2019, was erroneous and prejudicial to the interest of revenue and setting aside the same to make de novo assessment. He further contended that ld. PCIT has grossly erred in law and on facts in view of insertion of Explanation 2 to section 36(1)(va) by the Finance Act, 2021, the assessee has to make payment of employees contribution before the due date as per the relevant Act, however, the Assessing Officer has allowed the same. He also contended that the ld PCIT also went wrong in observing that assessee has not produced any evidence which proves that Assessing Officer examined the issue of cash deposits during demonetization period, as per the internal check list guidelines dated 09.08.2019 issued by the CBDT. The ld counsel vehemently pointed out that the facts of the case are that assessee had interest-bearing loan of Rs. 18 crores from NBFC on which interest of Rs. 3.66 crore was paid whereas it has given interest free loan and advances of Rs. 10,57,91,705/- to M/s Global Diamond Pvt. Ltd. and it had interest free funds of Rs. 48.15 crores, hence, the AO was correct and justified in not making any disallowance/ addition in this regard.

4. The ld counsel submitted that during the original assessment proceedings the AO made enquiries on all three issues mentioned in the notice at para 3 to 3.2 viz. (i) on the issue of cash deposits during the demonetization, (ii) the issue of delayed payment of employees contribution to ESI and PF and (iii) on the issue of interest bearing loan of Rs. 18 crores from NBFC on which interest of Rs. 3.66 was paid whereas the assessee has

given a loan and advances to M/s. Global Diamond Pvt. Ltd but not charged any interest thereof. The ld counsel submitted the copies of the audited annual accounts and reply of assessee dated 31.03.2017 that the medical representatives of the assessee working at various places/ locations were having imprest money, which was collected on account of demonetization and collectively deposited to the bank accounts of the assessee during the demonetization period. The ld counsel submitted that the AO issued various notices u/s 143(1) of the Act on 07.06.2019 and 20.10.2019 which were replied by the assessee on 18.11.2019 which clearly reveals the stands of the assessee pertaining to the delayed payment of employee's contribution to ESI and PF and issue of interest payment of Rs. 3.66 crores therefore, assessment order dated 11.12.2019 passed u/s 143(3) of the Act cannot be alleged as erroneous or prejudicial to the interest of revenue on account of inadequate or insufficient enquiry.

5. Replying to the above, the ld CIT DR drew our attention towards shows-cause notice and impugned revisionary order passed u/s 263 of the Act dated 15.03.2022 and submitted the copy of impugned assessment order dated 11.12.2019 clearly reveals that AO has completed scrutiny assessment order in a single paragraph without any deliberations on any issue including the three issues picked up by ld PCIT for revising original assessment order. The ld CIT DR submitted that merely because the AO has taken on record reply of assessee and some documentary evidences does not specify that the AO has made sufficient and adequate enquiry on all the three issues picked up by the ld PCIT for revising the assessment order. Therefore, it is clear case of no enquiry because taking on record documentary evidences and reply of the assessee does not comply with the duty of AO as an investigator and adjudicator. Therefore, the ld PCIT was right in quite justified in alleging that the assessment order was erroneous and prejudicial to the interest of the revenue and directing the AO reframe the assessment *de novo*.

6. On careful consideration of the above submissions from the copy of the notices available at pages A-C of the assessee's paper book reveals that the ld PCIT picked up three vital issues show-causing the assessee u/s 263

of the Act viz. the issue of cash deposit of Rs. 1.37 crores in the specific bank note during the demonetization period, delayed payment of employees contribution towards ESI and PF and payment of interest from loans and advances of Rs. 10,57,91,705/- to M/s. Global Diamond Pvt. Ltd. From the copy of the assessment order dated 11.12.2019 passed u/s 143(3) of the Act reveals that the AO has completed assessment order in one paragraph by observing that notice u/s 142(1) of the Act along with questionnaire relating to complete scrutiny were issued to the assessee as per dates recorded in the order sheet and in response to these notices assessee company furnished relevant details/ documents through, e filing portal and the case was completed under E-proceedings. Thereafter, the AO noted after examination of details filed, the returned current year loss of Rs. 4,65,56,579/- is accepted.

7. From the copy of assessment order, we note that there is no deliberation or adjudication by the AO on all the three issues picked up by the Id PCIT while invoking provisions of section 263 of the Act. However, we note that the copies of reply dated 31.03.2017 shows that the assessee in response to notice of the AO filed all possible details before the AO on the issue of cash deposit during the demonetization period which are available at pages 192-254 of the assessee's paper book. Further, from the notices dated 07.06.2019 and 22.02.2019 u/s 142(1) of the Act and two replies both dated 18.11.2019 available at pages 63 to 84 reveals that the AO issued questionnaire and notices and the assessee also filed reply along with details of loans and advances given in FY 2016-17 relating to AY 2017-18. Regarding the issue of delayed payment of employee's contribution to PF and ESI, there is no deliberation or adjudication by the AO in the impugned assessment order but we are in agreement with the contention of the Id counsel of assessee that when the AO passed assessment order on 11.12.2019, the issue was covered in favour of the assessee by the various case laws including preposition rendered by the Hon'ble Jurisdictional High Court of Delhi and judgment of Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd Vs. CIT (2022) 143 taxmann.com 278 (SC) was rendered in favour of the Revenue subsequently in the year 2022. Therefore,

on the third issue the assessment order cannot be alleged as erroneous and prejudicial to the interest of revenue.

8. In view of above, we reached to a logical conclusion that it is a clear case of adequate and sufficient enquiry by the AO on the above noted first and second issues. Therefore, the ld PCIT was not right and justified in invoking revisionary provisions of section 263 of the Act and in holding that the assessment order is erroneous and prejudicial to the interest of revenue. Therefore, impugned order u/s 263 of the Act is set aside. Accordingly, grounds of assessee are allowed.

9. In the result, the appeal is allowed.

Order pronounced in the open court on 04/08/2023.

**-Sd/-**  
**(M. Balaganesh)**  
**ACCOUNTANT MEMBER**

**-Sd/-**  
**(C. M. GARG)**  
**JUDICIAL MEMBER**

Dated: 04/08/2023  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi