

**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.78/RPR/2022**  
(Assessment Year: 2014-2015)

Aarti Sponge and Power Limited, Aarti House, Ashoka Ratna, Shankar Nagar, Raipur	Vs	The Pr. CIT, Raipur-1
<b>PAN No. :AAECA 7235 N</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारित की ओर से /Assessee by	:	Shri R. B. Doshi, CA
राजस्व की ओर से /Revenue by	:	Shri S. K. Meena, CIT-DR
सुनवाई की तारीख / <b>Date of Hearing</b>	:	21/08/2023
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	06/09/2023

**आदेश / ORDER**

**Per Arun Khodpia, AM :**

The assessee has filed this appeal against the order passed by the Pr. CIT, Raipur-1, dated 27.03.2021 for the assessment year 2014-2015, on the following grounds:-

- Ld. Pr. CIT erred in invoking the provisions of sec. 263 and in setting aside the assessment order for fresh enquiry. Order passed u/s 263 is unsustainable and is passed without properly appreciating the facts & evidences on record. The assessment order is neither erroneous nor prejudicial to the interest of Revenue.*
- Without prejudice to above ground, the revision order passed by Ld. Pr. CIT u/s 263 is barred by limitation and is liable to be quashed.*
- The appellant reserves the right to add, amend or modify any of the ground/s of appeal.*

2. Brief facts of the case are that the assessee is engaged in the business of manufacturing of steel and power. During the year the assessee earned income from commodity transaction & commission etc. The assessee filed its return of income electronically on 28.11.2014 by

declaring total income at Rs.4,32,77,990/-. The same was duly processed and statutory notices were issued to the assessee, in response to which the assessee filed its written submission. The AO completed the assessment making certain addition and disallowance u/s.14A of the Act at Rs.20,27,48,294/-.

3. Subsequently, the Pr. CIT invoking his powers conferred u/s.263 of the Act called for the assessment records and found that no enquiry has been made on the issues by the AO even non-application of mind before reaching any conclusion. Thus, the Id. Pr. CIT set aside the assessment so framed by the AO, holding that the assessment order is erroneous insofar as it is prejudicial to the interest of revenue.

5. Now, the assessee is in appeal before the Tribunal.

6. Ld. AR before us submitted that the assessee has filed all the relevant details, i.e, Income Tax Return for the financial year 2013-2014, copy of computation, copy of audited report, balance sheet, 3CD report along with the bank account details maintained by the assessee company. It was submitted by the Id. AR that in response to the query of the AO during the course of assessment proceedings, the assessee submitted that in ITR there are specified columns to show expenses but in balance sheet it has been shown many expenses and if there is no specific head then it is shown that the expenses in other expenses, therefore, this expense is shown on higher side. It was also submitted that the commodity transaction is already shown in the balance sheet. There is no direct expenses in relation to investment made in companies. In respect of other expenses, i.e., interest

is also not disallowable. It was also submitted that the assessee company has incurred expenditure by way of interest during the year which is directly attributable to the income of the previous year and difference of current assets and liability prove that fund is utilized in business. Further the contention of the Id. AR that during the year the assessee company has not made any investment in shares and all the shares are purchased in earlier years and from internal accruals or from share capital, therefore, the Id. AR submitted that there is no question for disallowances of any interest. However, the AO made addition of Rs.17,50,930/- under the provisions of Section 14A of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') read with Rule 8D of Income Tax Rules, 1962 and added the same to the total income of the assessee. Subsequently, the Pr. CIT invoking his powers conferred u/s.263 of the Act has set aside the order of AO directing the AO to for fresh adjudication, which is without jurisdiction, without application of mind and there is no error in the order of AO nor any prejudice to the interest of revenue has been established by any material on record. To support his contentions, Id. AR also filed his written submissions which read as under:-

***“Submission of the assessee  
Ground no. 1***

- i) Transaction in purchase/ sale of land is business activity of assessee. Such activity included in "incidental business" clause of Memorandum of Association.*
- ii) Income from business has suffered tax of 30% whereas capital gain is taxable @ 20%. No prejudice to Revenue.*
- iii) Even otherwise, no prejudice caused to Revenue. Entire sale proceeds of Rs. 8,63,83,100/- credited to "Revenue from operations", relevant entry at PN 69 of PB. Cost of land of Rs. 1,34,48,750/- debited to "cost of material consumed", relevant*

entry at PN 70 of PB. Difference being profit of Rs. 7.29.34.350/- already included in accounts.

Net profit of entire business of Rs. 4,12,81,541/- (Page no. 64 of PB) included in the computation. Result of land dealing included in the return also.

- iv) Even going by observation of Id. Pr. CIT, there would be business loss which would be adjusted against capital gain income u/s 71(2) and the total income in both the cases would be same.
- v) Prejudice not proved, for invoking sec. 263. both "error" and "prejudice" should be proved. Consequently, revision proceedings are illegal and not sustainable.

## 2. Unsecured loan

- i) All unsecured loan transaction verified by AO. Relevant query letter at PN 19 of PB. query no. 3 and reply of assessee at PN 23 to 32 of PB. relevant reply at PN 25. para no. 3 thereof.
- ii) **Fresh loan received from Angad Chemical Pvt. Ltd. only, of Rs.50,00,0007-. No other fresh loan received.** Copy of account filed before AO. placed at PN 98 of PB.

Loan repaid during this year itself. PN 98 of PB.

In view of this, no adverse view could be taken by the AO in respect of this loan, as held in Pr. CIT vs Ambe Tradecorp P. Ltd. (2023) 290 Tax man 471 (Guj.) & CIT Vs. Ayachi ' Chandrasekhar Narsangji 42 Taxmann.com 251 (Guj).

When no addition could be made, order of AO cannot be termed to be erroneous or prejudicial.

- iii) Nothing brought on record b\ Id. Pr. CIT to show how the lender Angad Chemical Pvt. Ltd. is branded as shell company. Arbitrary and unsubstantiated allegation levelled. Lender being a private company, no question of it being regulated by SF.BI & consequently, SFBI publishing any list containing name of lender appears to be impossibility.
- iv) Regarding the loans of Dhanlaxmi Vyapar P. Fid. (Rs. 1.05 crore) & Milan Tie-up Pvt. Ltd.

Adverse view expressed on repayment of loans. No possibility of treating the amount of repayment as income. Very basis of revision is invalid.

No fresh loan received during this year, same is verifiable from tax audit report, relevant clause of Form no. 3CD at PN 40 of PB. Clause no. 31 (a) of tax audit report (PN 40 of PB) shows no fresh loan received from these 2 parties.

- v) *Mere repayment of unsecured loans which is recorded in regular books and repaid out of regular source of income can never lead to inference of any income/ undisclosed income.*
- vi) *In respect of these two loans, nothing brought on record nor confronted to the assessee as to how these two companies are branded as shell companies. Arbitrary and baseless allegation. Both are private companies, not regulated by SF.BI and no question of SFBI publishing any list containing name of such unregulated entities.*

### 3. Commission income

- i) *Difference of Rs. 69,03,735/- was on account of service tax, which is separately credited in books. Commission income was only Rs. 5,58,55,450/-.*
- ii) *Commission bill at PN 101 to 103 of PB. Ledger accounts of commission at PN 99 of PB, ledger account of party at PN 100 of PB showing separate accounting of service tax. Commission income included in "Other Income" in profit & loss account PN 70 & 64 of PB.*
- iii) *Income correctly and fully accounted. No error in the order of AO.*
- iv) *Issue examined by AO. Query letter at PN 20 of PB, query no. 11 and reply at PN 23 to 32 of PB, at PN 26. Books and ledger accounts produced before AO. He added net commission as .-." unexplained income. Once the issue was looked into by AO, jurisdiction u/s 263 could not have been invoked. Reliance on:*

- *CIT vs Gabriel India Ltd. (1993) 203 ITR 108 (Bom.), PN 104 to 111 of PB, relevant finding on PN 110, para no. 15.*
- *CIT vs Arvind Jewellers (2003) 259 ITR 502 (Guj.). PN 112 to 116 of PB, relevant finding at PN 115, para no. 7.*
- *Colour Publications P. Ltd. vs Pr. CIT (2018) 196 TT.T 257 (Bom.), PN 117 to 127 of PB, relevant finding at PN 127, para no. 17.*

*Revision order passed it's 263 is without jurisdiction, without application of mind and there is no error in the order of the AO nor any prejudice to Revenue has been established by any material on record."*

7. On the other hand, Id. CIT-DR vehemently supported the order of Id. Pr. CIT and submitted that there is no proper enquiry by the AO even there is non-application of mind on the part of the AO in passing the assessment order. The assessee failed to furnish any document in support its claim

even MOA & AOA, necessary evidence in support of claim of unsecured loan in the light of Section 68 of the Act and any other document could not be produce by the assessee to prove its case. Accordingly, the Pr. CIT has rightly set aside the assessment order for fresh adjudication as the same is erroneous and prejudicial to the interest of revenue. It was the prayer of the Id. CIT-DR that the order of the Pr. CIT deserves to be upheld.

8. We have considered the rival contentions and perused the relevant material on record. The issue raised in the present appeal are with regard to incorrect classification of capital gain, unexplained cash credit and short addition on account of commission received. These are the reasons, which led the learned Pr. CIT to initiate the proceedings under section 263 of the Act. Learned AR has submitted that the first issue regarding profit on sale of land amounting to Rs.8,63,83,100/- was because of transactions in purchase/sale of land as a business activity of the assessee. Such activity included in incidental business clause of Memorandum of Association (MoA) of the assessee company. It was also submitted that the business income was taxable at the rate of 30%, whereas, capital gain at the rate or 20%. Therefore, no prejudice was caused to the Revenue. Similar contention was raised by the assessee by submitting reply to the notice under section 263 of the Act, however, the explanation of the assessee was not found to be acceptable by the learned Pr. CIT in absence of furnishing of any document in support of assessee's claim, even copy of MoU and AoU were not submitted before the learned Pr. CIT.

9. Coming to the second reason for revisionary proceedings that the assessee company had accepted unsecured loan of Rs.50,00,000/- from M/s. Angad Chemicals Pvt. Ltd. and the same was repaid/squared off during the year. It is further observed by learned PCIT that another two unsecured loans of Rs.1,05,00,000/- and 10,65,00,000/- relating to Dhanlaxmi Vyapar P. Ltd. and Milan Tie-up Pvt. Ltd. were accepted/repaid from/to Kolkata based shell companies in the guise of unsecured loans. Since, as per the list published by SEBI on online platform, the companies are shell companies, hence, transactions entered into by the assessee company with such shell companies were treated as unexplained.

10. The third issued relating to short addition made by the AO pertaining to commission received from M/s. Agrawal Marketing & Services (Energy) Ltd. under section 68 of the Act, wherein, it is observed by learned PCIT that the addition was made for Rs.5,85,55,450/-, whereas, the same should have been for Rs.6,27,59,185/-. Therefore, the difference amount of Rs.69,03,735/- was not looked into by the AO. Therefore, learned PCIT was within his powers to invoke the provisions of section 63 of the Act. It was the observations of learned PCIT that the submissions of the assessee were perused but found to be devoid of merits because the assessee failed to furnish any documents to substantiate its claim, like MoA, AoA and other necessary evidence in support of unsecured loan in the light of section 68 of the Act. Learned PCIT has recorded his satisfaction in para 5 of his order that he was fully satisfied that the assessment order is erroneous insofar as it is prejudicial to the interest of Revenue in view of Explanation 2 to

section 263 of the Act and has directed the AO to make adequate inquiries with regard to each issue discussed in his order.

11. Before us, learned AR of the assessee has submitted a copy of the balance sheet along with notes, wherein, at Note no. 17, the assessee has duly recorded the transaction of sale of land under Note No. 20 "Revenue from operations" for Rs.8,63,83,100/-, also under Note no. 22, the cost of acquisition of the said land was shown as the land purchased under the head "cost of material consumed" amounting to Rs.1,34,48,750/-. However, the contention of the assessee that taxes under the head "income from business" are applicable at a higher rate of 30% as compared to taxes on capital gain at the rate of 20%, was not substantiated before us by submitting any working of the same. Since, such calculations were also not submitted before the learned PCIT, which is evident from the order of learned Pr. CIT, therefore, we cannot persuade to subscribe with the submission of learned AR without verification of such facts. In case of other two issues also, it is not discernible from the order of learned Pr. CIT that the assessee has substantiated its claim that the issues were already dealt with by learned AO in the assessment order under section 143(3) of the Act. Therefore, such facts requires an in depth verification.

12. In view of such facts, since, the learned Pr. CIT has observed that the Assessing Officer has not conducted proper inquiry regarding the genuineness of the contention made by the assessee, after relying upon various judicial pronouncements, has rightly assumed the powers to initiate revisionary proceedings under section 263 of the Act. Since, learned Pr.

CIT has set aside the order of learned AO with the directions to make adequate inquiries with regard to each issue discussed in his order, the assessee was provided with another opportunity to submit all relevant information and documents, which the assessee was failed to submit before the learned Pr. CIT. Learned Pr. CIT has acted in accordance with the principle of natural justice by setting aside the assessment order providing the assessee an alternate remedy to submit all the contentions before the learned AO. Therefore, the order of learned Pr. CIT cannot be considered to be held as perverse or erroneous, wherein, he has established that the order of learned AO was erroneous so far as prejudicial to the interest of justice. We, therefore, considering the aforesaid observations, are of the considered view that the order of learned Pr. CIT under section 263 is sustainable in view of various judgments as relied upon by learned Pr. CIT in his order.

13. In the result, appeal of the assessee stands dismissed.

Order pronounced in the court on 06/09/2023.

**Sd/-**  
**(RAVISH SOOD)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(ARUN KHODPIA)**

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 06/09/2023

*Prakash Kumar Mishra & RK, Sr. P.S(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,