

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "D" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Narender Kumar Choudhry (JM)

I.T.A. No. 1219/Mum/2023 (A.Y. 2018-19)

Drupad Menda 101-104, Red Rose D Wing CHS Ltd. New Link Road Andheri West Mumbai-400 053.  PAN : AJXPM5296Q (Appellant)	Vs.	PCIT-5 515, 5 <sup>th</sup> Floor Aayakar Bhavan M.K. Road Mumbai-400 020.  (Respondent)
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Assessee by	Shri Vipul Joshi
Department by	Smt. Sanyogita Nagpal
Date of Hearing	13.09.2023
Date of Pronouncement	14.09.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the revision order dated 21-03-2023 passed by Ld PCIT-5, Mumbai for assessment year 2018-19 u/s 263 of the Act. The assessee is challenging the validity of the revision order passed by Ld PCIT.

2. The assessment in the hands of the assessee for AY 2018-19 was completed by the AO u/s 143(3) of the Act on 04-11-2020. It is pertinent to note that the return of income filed by the assessee was taken up for scrutiny to verify the "large deduction claimed u/s 57 of the Act." In the assessment order, the AO did not make any addition in respect of large deduction claimed by the assessee. The Ld PCIT, upon examination of the assessment record, took the view that the assessment order is erroneous and prejudicial to the interests of revenue, since the AO did not disallow the large deduction

claimed by the assessee. Accordingly, the Ld PCIT initiated revision proceedings u/s 263 of the Act.

3. The facts relating to the “large deduction claimed u/s 57 of the Act” are discussed in brief. The assessee is a director in a company named “M/s JMD Auto India P Ltd”. The said company had taken a Keyman Insurance Policy in the name of the assessee. During the year under consideration, the said policy was surrendered and a sum of Rs.46,89,087/- was received by the assessee from the insurance company. The Insurance company also deducted TDS on the above said payment and the same was reflected in Form 26AS relating to the assessee. Since the TDS was deducted in the name of the assessee, the above said amount was declared as his income under the head “Income from Other sources” and the assessee claimed the very same amount as deduction. According to the assessee, the above said money belongs to M/s JMD Auto India P Ltd only and hence he has transferred the same to the above said company. Hence the amount so transferred was claimed as deduction by the assessee in his return of income. The Ld A.R submitted that the assessee was constrained to declare these receipts and payments, since TDS was deducted by the insurance company from the said payment. It is pertinent to note that the above said company M/s JMD Auto P Ltd had treated the insurance premium payments as its “Investments” and the difference between the maturity proceeds and accumulated payment of insurance premium, which amounted to Rs.14,20,806/-, was offered to tax as its income. We also notice that this fact was submitted to the AO.

4. The AO, during the course of assessment proceedings, raised a specific query, vide his notice dated 28-09-2019 issued u/s 142(1) of the Act, on the deductions claimed under the Income from Other sources. The assessee furnished the reply stating the facts discussed in the preceding paragraph.

Accordingly, the AO accepted the submissions made by the assessee and did not make any disallowance of the deduction so claimed.

5. However, the case of the Ld PCIT is that the AO should not have allowed deduction so claimed by the assessee. Even though, the assessee explained all the above said facts before the Ld PCIT, he was not satisfied with them. Accordingly he held as under:-

“5.....However, in the event of Director being the assignee under the Keyman Insurance Policy, the AO has failed to verify the deduction claimed by the assessee under section 57 of the Act. Since proper enquiry/examination has not been made by the AO the assessment order is incomplete and erroneous.”

Accordingly, the Ld PCIT set aside the assessment order and directed the AO to reframe the assessment after conducting necessary enquiries and verifications as warranted on the facts of the case.

6. We heard the parties and perused the record. We notice that the only apprehension of Ld PCIT is that the assessee could not have claimed deduction u/s 57 of the Act, if the assessee was the assignee. We notice that the Ld PCIT is not disputing the factual aspects discussed above. With regard to the above said apprehension, the Ld A.R invited our attention to the copy of insurance policy placed at pages 52 to 74 of the paper book. He submitted the above said copy of insurance policy was furnished both to the AO and PCIT. He invited our attention to the said policy and we notice that the Policy holder was M/s JMD Auto India P Ltd and the name of life insured is shown as the assessee herein, viz., Drupad Kannaiyalal Menda. The details of beneficiary of the policy are given at page 61 of the paper book, wherein it is stated that the “Policy holder” is the beneficiary. Hence M/s JMD Auto India P Ltd is the beneficiary and not the assessee, meaning thereby, the assessee herein is not the assignee of the policy, as apprehended by Ld PCIT. It is the submission of Ld A.R that all the above said details were furnished by the assessee to the AO. It shows that the AO has examined this issue and has taken a possible view.

7. We also noticed earlier that the company M/s JMDhas shown the premium payments as its investments. Further, the difference between the accumulated value of investments and the maturity amount has been declared by the above said company as its gains, meaning thereby, the assessee has only acted as conduit in collecting the maturity proceeds and remitting it to the company. Since the TDS was deducted from the above said maturity proceeds, the assessee was constrained to declare the maturity proceeds in the return of income and correspondingly claim deduction of the equal amount.

8. Accordingly, we are of the view that the AO has taken a possible view of the matter and hence the Ld PCIT was not justified in initiating revision proceedings. We derive support in this regard from the decision rendered by Hon'ble Supreme Court in the case of Malabar Industrial Co Ltd (243 ITR 83). Accordingly, we quash the impugned revision order passed by Ld PCIT.

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

Order pronounced in on 14.9.2023.

Sd/-  
(Narender Kumar Choudhry)  
Judicial Member

Sd/-  
(B.R. Baskaran)  
Accountant Member

Mumbai.; Dated : 14/09/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

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BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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