

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 286/Asr/2019
Assessment Year: 2014-15**

M/s Saraf Electricals Pvt. Ltd. Bathinda Road, Rampura Phul. [PAN:-AABCS8638Q] (Appellant)	Vs.	PCIT, Bathinda. (Respondent)
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Appellant by	Sh. Sudhir Sehgal & Sh. P. N. Arora, Adv.
Respondent by	Sh. Anupam Kant Garg, CIT DR.

Date of Hearing	13.09.2023
Date of Pronouncement	20.09.2023

ORDER

Per: Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Principal Commissioner of Income, Bathinda, (in brevity 'the PCIT') order passed u/s 263 of the Income-tax Act, 1961 (in brevity the Act) for assessment year 2014-15. The impugned order was emanated from the order of Id. DCIT, Circle-1, Bathinda, (in brevity 'the AO') order passed u/s 143(3) of the Act.

2. The assessee has taken the following grounds:

“1. That the learned Principal Commissioner of Income Tax (Pr. CIT) has erred in assuming the jurisdiction under section 263 of the Income Tax Act and thereby setting aside the order to the file of the AO to frame the assessment de novo.

2. That the learned Pr. CIT has failed to consider the facts that the assessment was framed by the AO after due application of mind and verification of issues referred in the notice to his satisfaction in accordance with law, therefore, the finding of the learned Pr. CIT that the assessment has been made without making adequate enquiries is against the facts.

3. That the learned Pr. CIT has erred in law and on facts of the case by holding that the transaction of import of raw material & high seas sale thereof are speculative in nature as per provisions of section 43(5) of the Income Tax Act, whereas as per explanation furnished and material placed on record at the time of assessment as well as during the proceedings before the learned Pr. CIT, the transactions of import & high seas sales does not fall under the purview' of speculative nature.

4. That the learned Pr. CIT has erred in law and on facts of the case by holding that the transactions of import of raw material & high seas sale thereof are speculative in nature especially when transactions are non-

speculative transactions as per clause (a) of section 43(5) of the Income Tax Act.

5. That the appellant craves leave to add or amend any grounds of appeal before the appeal is finally heard or disposed of.”

3. Brief fact of the case is that the assessment was completed u/s 143(3) of the Act after verification of books of account and other documents. The total turnover of the assessee was Rs.17,89,63,396/-. Out of which the high seas transaction was executed i.e. purchase goods of Rs.7,53,70,714/- on dated 26.04.2013 and 14.03.2013 and related to purchase high seas sale was made for Rs.7,01,36,004/-. Accordingly, the assessee's company incurred loss Rs.52,34,714/-. During assessment proceeding the ld. AO treated this sale as a normal sale. The assessment was completed u/s 143(3) & the claim of loss of the assessee was allowed by the ld. AO. The ld. PCIT by invoking section 263 alleged the assessment order as erroneous and prejudicial to the interest of the revenue. The ld. PCIT mentioned this transaction u/s 43(5) of the Act and the loss is rejected by treating the loss as the speculative loss. The assessee during processing u/s 263 submitted all relevant documents related to the transaction of the high sea sale for purchase of “Core Sheets” from M/s Metal One Corporation, Japan. Finally, the goods are delivered to different party. The ld. PCIT rejected the submission of the assessee and due to absence of actual

delivery to the assessee the entire transaction was treated u/s 43(5) as speculative transaction and in absence of verification of the fact the assessment order is called erroneous and prejudicial to the interest of the revenue. Accordingly, the assessment order was setting aside. Being aggrieved assessee filed an appeal before us.

4. The Id. AR of the assessee filed written submissions which are kept in the record. The Id. AR first invited our attention in the assessment order page 1 which is reproduced as below:

“The assessee filed its return of income for the assessment year 2014-15 on 29.11.2014 declaring loss of Rs.85,73,686/-. The case was selected for regular assessment through CASS. Notice u/s 143(2) dated 31.08.2015 was issued and was duly served on the assessee on 05.09.2015. Thereafter, notice u/s 142(1) alongwith a questionnaire dated 05.08.2016 was issued. In response, Sh. Parshotam K. Singla, Advocate & Sh. K.K.Singla, ITP, authorized representatives of the assessee and Sh. Krishan Kumar, Accountant attended the assessment proceedings and furnished information as requisitioned. The case was discussed and heard. The assessee entity is carrying on the business of Manufacturing of electronic transformers and sales thereof. Books of account have been maintained by it in the form of cash book, ledger and Journal which were produced alongwith allied bills/vouchers and test checked. The accounts of the assessee have been audited as per the provisions of section 44AB of the

I.T. Act, 1961 and audit report in form 3CA and 3CD was furnished by the assessee during the course of assessment proceedings.”

4.1 The ld. AR specifically mentioned that all the documents are submitted before the ld. AO during assessment and accordingly, the ld. PCIT collected all the details from the file of the ld. AO. The ld. AR further invited our attention in the submission before the ld. assessing officer where the details were submitted in point no. 6, which is the clear indication for submission of the relevant documents. The copy of this submission is reproduced as below:

To

(24)
The Deputy Commissioner of Income Tax,
Circle-I, Bathinda

Sub:- Assessment proceedings in the case of M/s Saraf Electricals Pvt. Ltd.,
Rampura Phul for the assessment year 2014-15 – Regarding -

Sir,

With reference to the above assessment proceedings, further information,
as called for, is submitted here as under:-

3. Copy of bank statement of the persons from whom fresh unsecured loan raised during the year are enclosed herewith.
6. Copy of account of CRGO (Core Lamination (import)) for purchase and sale alongwith photocopies of purchase & sale bills and dollar exchange variation account are enclosed herewith.
13. Copy of bank interest credit alongwith bank statement is enclosed herewith.
15. Detail of service tax deposited during the year is enclosed herewith.
17. Details of excise duty, excise duty PLA, service tax and service tax PLA for the year 2013-14 are enclosed herewith.
18. Copy of rebate account alongwith copy of account of the parties to whom rebate allowed are enclosed herewith.
20. Photocopies of purchase orders received from PSPCL, Patiala are enclosed herewith.
21. Detail of service tax PLA, excise duty PLA, service tax and excise duty for the financial year 2013-14 and 2012-13 are enclosed herewith.
22. Copy of expenses account of Delhi office is enclosed herewith.
23. Letter regarding cancellation of FLC is enclosed herewith.
24. Letter from Electrical Research and Development Association, Vadodara regarding membership fee is enclosed herewith.

This is submitted as required.

Thanking you,

Yours faithfully,
For: Saraf Electricals Pvt. Ltd.

Encl: As above.

4.2 The Id. AR further invited our attention in the copy of the bill, bill of lading, invoice of the seller at Japan and relevant vouchers. The Id. AR further argued that section 43(5) is mentioned about the non-delivery of goods. But it is never mentioned that the goods should be delivered to the assessee. From the

documents, it is clearly indicated that the goods are duly delivered to M/s KRYFS Power Components Ltd. Mumbai. The relevant high seas sale agreement is annexed **APB page 20 to 23**.

5. The ld. DR vehemently argued and relied on the order U/s 263. The ld. DR filed a written submission and as per written submission the ld. DR respectfully relied on the order of Hon'ble Jurisdictional High Court in the case of **Chaman Lal Madan Lal vs. CIT (1996) 89 Taxman.com 249 (P & H)**.

6. We heard the rival submission and considered the documents available in the record. First, the order of Jurisdictional High Court was duly mentioned by the ld. DR is clearly distinguishable where the delivery was not taken related to high sea sale. But in assessee's case the delivery was executed and copy of the agreement is annexed. The ld. AR relied on the order of Coordinate Bench in the case of **DCIT vs. G H Crop Science P. Ltd. in ITA No. 56/Asr/2020 date of order 23.02.2023**.

14.2 It is seen that the CIT(A) has stated on page 25 that the import of edible oil by the assessee from exporter outside India is not speculative as the edible oil was loaded in the ship by seller of goods which amounts to physical delivery of the goods taken by the buyer i.e., appellant as an importer. It has been further held by the CIT(A) that the edible oil has been purchased by the assessee while in transit and the appellant has sold the same to the subsequent buyer on High Seas and the physical delivery of the goods has been taken by the end user for which the evidence has been placed on record. The Ld. CIT(A) has categorically

discussed on Page 24 that the fact of taking the physical delivery of the goods by the assessee is not the test for determining the speculative transaction in terms of section 43(5) but the test is settlement of the transaction entered into by the assessee or on his behalf otherwise than by actual delivery of the commodity or scrips. For this finding, he relied on the judgments of Andhra Pradesh High Court in the case of CIT vs. Lakshminarayana Trading Co (1995) 82 Taxman 301(AP); Rajasthan High court in the case of Sripal Satypal vs. ITO (2008) 217 CTR [Raj] and Calcutta High Court in the case of Hoosen Kasam Dada(India) Ltd. vs. CIT (1964) 52 ITR 171. Accordingly, it is held that the transactions of trading in edible oil by the appellant are not speculative in nature within the meaning of section 43(5) of the Act. Therefore, the business loss incurred by the appellant is eligible for set off against other income in terms of the provisions of section 71(1) of the Act.”

The transaction related high sea sales is normal business transaction and not the speculative in nature. The issue is covered by the order of ITAT-Amritsar Bench in **G H Crop Science P. Ltd**(supra). So, the issue which was alleged by the ld. PCIT as erroneous is covered by order of the same bench of ITAT-Amritsar in favour of assessee.

The assessee in both assessment and revisional stages had filed all documents related to high sea transaction. The ld. PCIT has not marked any comment about the veracity of transaction of assessee. The ld. AO had treated the transaction as normal business transaction and the loss on high sea sales as normal business loss. But the ld. PCIT has taken the reverse view.

The difference of opinion cannot be the basis of setting aside of the assessment order by invoking Section 263. The Books of Accounts and other relevant documents were also examined in assessment proceeding. So, there is no question of non-verification of the documents of the assessee by the Id. AO. The assessee had produced documents before the Id. Assessing Officer who had scrutinized the same and accepted the genuinity of the claim and granted the benefit. The PCIT had set aside the order of the Id. AO on the ground that the AO did not make an in-depth inquiry. A similar finding was tested for its correctness by the Hon'ble **High Court of Delhi** in the case of **CIT v. Sunbeam Auto Ltd. [2011] 332 ITR 167** and it was held that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was an inquiry, even adequate that would not by itself give occasion to the Commissioner to pass orders under section 263 of the Act merely because he has a different opinion in the matter, and it is only in cases of lack of inquiry that such a course of action would be open. As mentioned by us in the preceding paragraphs, the assessee has responded to the notice issued by the Id. AO and also the Id. PCIT. Therefore, in our considered view the finding rendered by the PCIT was perverse for the reason that there was no specific lacuna was found about the nature and veracity of transaction, declared by the assessee. The Id. PCIT could not have revised the assessment by invoking Section 263 of the Act. The order cannot be as erroneous on the point of verification.

Accordingly, the order u/s 263 is liable to be quashed.

7. In the result, appeal of the assessee **ITA No. 286/ASR/2019** is allowed.

Order pronounced in the open court on 20.09.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order