

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.358/SRT/2023

Assessment Year: (2018-19)

(Physical Hearing)

Hi-Shine Inks Pvt. Ltd., 208, GIDC Estate, Antalia, Tal: Gandevi, Dist: Navsari – 396325.	Vs.	The PCIT, Valsad
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACU2926J		
(Appellant)		(Respondent)

Appellant by	Shri Sujesh C. Suratwala, CA
Respondent by	Shri S. M. Keshkamat, CIT(DR)
Date of Hearing	14/09/2023
Date of Pronouncement	16/10/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

By way of this appeal, the assessee has challenged the correctness of the order passed by the Learned Principal Commissioner of Income Tax, Valsad [in short ‘the Ld. PCIT’], dated 31.03.2023, under section 263 of the Income Tax Act, 1961 [hereinafter referred to as ‘the Act’] for the Assessment Year (AY) 2018-19.

2. The grounds of appeal raised by the assessee are as follows:

“1. The learned Pr.CIT, Valsad erred in passing an order u/s 263, when the jurisdictional conditions of “erroneous” nor “prejudicial to the interest of the revenue” with respect to the order passed u/s 143(3) r.w.s. 143(3A) & 143(3B) of the Act by the learned NeAC (AO) dated 12/01/2021 were not satisfied.

2. On the facts and in the circumstances of the case as well as law on the subject, the learned Pr.CIT, Valsad has erred in invoking powers under section 263 and passing order holding the assessment order to be

“erroneous” and “prejudicial” without even justifying, which of the twining condition described in section 263 is applicable and as to how the order of assessment is “erroneous” causing “loss to the revenue”.

3. On the facts and in the circumstances of the case as well as law on the subject, in any event, in response to the notice under Section 263 on the issue of claim of "Bad Debts" of Rs.2,31,18,532/-, of furnishing of details pertaining to "Employee Contribution towards Provident Fund" as well as Reporting of Stock in "Annual Report" and in "Return of Income" the appellants had made detailed submissions on the issue that had been taken up in the notice u/s 263 and for the reason that the learned Pr.CIT, Valsad has failed to carry out his statutory obligation to deal with and decide such issue, the order under Section 263 stands wholly vitiated and the same deserves to be quashed.

4. On the facts and in the circumstances of the case as well as law on the subject, the details called out by the learned Pr. CIT, Valsad in relation to proceedings carried out u/s 263 of the Act for verification of the claim of Bad Debts, Employee Contribution to Provident Fund has already been reported by the Tax Auditor in Form No. 3CA/3CD along with the return of income filed u/s 139(1) of the Act for A.Y. 2018-19 which led to proceedings carried out u/s 263 of the Act by learned Pr. CIT Valsad become void ab initio.

5. On the facts and in the circumstances of the case as well as law on the subject, the learned Pr.CIT, Valsad has erred in passing the order u/s 263 on the issue of “Huge difference between the addition to stock in Annual Report viz-a-viz Return of Income filed by assessee company” without providing opportunity of being heard and without observing principle of natural justice which is illegal and required to be deleted.

6. The above Grounds of Appeal are without prejudice to and are independent of each other.

7. The Appellant craved leave to add, alter, delete, amend or rescind any of the above grounds of appeal as and when necessary with the permission of Honorable ITAT, Surat.”

3. The facts of the case which can be stated quite shortly are as follows: The assessee before us is a Private Limited Company and filed revised return of income on dated 23/01/2019. Subsequently, the assessee's return of income was selected for scrutiny and assessment was completed under section 143(3) read with section 143(3A) and 143(3B) of the Income Tax Act, on 12/01/2021 without any additions.

4. Later on, Learned Principal Commissioner of Income Tax (in brief 'Id PCIT') has exercised his jurisdiction, under section 263 of the Income Tax Act, 1961. On verification of case records, it was noted by Id PCIT that the assessee-company has claimed bad debts amounting Rs.2,31,18,532/- and these bad debts were mainly pertaining to Rotomac Global Private Limited Ahmedabad unit and Kanpur unit and Today's Writing Instruments Ltd, which constitute the major write off. It was further noted by Id PCIT that the assessee has claimed these balances before the liquidator of above-mentioned companies before the filing of financial statements for assessment year 2017-18 and neither any provision was created following prudential accounting/auditing norms nor any concern was stated in the notes to the account by the auditors. During the assessment proceedings for assessment year 2018-19, the assessing officer has not gone through into the write off of Desire Pen and Stationery where even the PAN number is not given by the assessee- company and the amount involved is Rs.2,15,823/-. Even AO did not send any communication to the AO's of these entities regarding the write-off and consequently cassation of liability. Thus, on all counts, the AO has failed to do the required verification and thus assessment order suffers from patent errors and which is detrimental to the interest of Revenue also. In view of the factual position, a show cause notice vide DIN No. ITBA/COM/S/01/2022-23/1050688684(1) dated 13.03.2023 was issued to the assessee to explain the transaction.

5. In response to the above notice of Id. PCIT, the assessee submitted its reply before the Id. PCIT, which was reproduced by Id. PCIT in his order.

6. Thereafter, Id PCIT has raised other issue relating to addition of fixed assets, for which the Id. PCIT has issued notice to the assessee, however, the assessee, in response to that notice, filed adjournment application before Id PCIT asking time to submit the reply. However, the Id. PCIT without waiting the reply of the assessee, framed the order on 31.03.2023, under section 263 of the Act.

7. Thereafter, Id PCIT concluded his findings, stating that no provision for bad debts was created by the assessee. No any verification has been conducted by the Assessing Officer in respect of provision for bad debts. The Id PCIT further observed that though the initial triggering point was bad debts but it is noted that the Assessing Officer has not even gone through the financials of the assessee-company in a proper manner. In the annual report filed by the assessee company, additions to the assets during the financial year amounting Rs.1,51,82,414/- have been shown along with work in progress valuing Rs.17,58,838/-, however in the ITR additions to the fixed assets have been shown at Rs.23,67,914/-. This discrepancy has neither been explained by the assessee nor asked for by the Assessing Officer through it has a direct bearing on the profit and loss account of the assessee- company and final income and which was the basis for selection of the case for scrutiny. Therefore, Id PCIT was of the view that Assessing Officer has passed the assessment order without making inquiries or verification on this issue which ought to have been made in this case. During on-going proceedings, no clarification regarding the issue was made and therefore, Id PCIT held that the assessment order u/s 143(3) of the I.T. Act, 1961 in the case of *M/s Hi-Shine Inks Private Limited* for AY. 2018-19 passed on 12.01.2021

by the Assessing Officer is erroneous in so far it is prejudicial to the interest of revenue. Therefore, Id PCIT directed that assessing officer to frame the assessment order afresh.

8. Aggrieved by the order of the Id PCIT, the assessee is in appeal before us.

9. Learned Counsel for the assessee argued that during the assessment proceedings in the return of income filed by the assessee, the assessee claimed the bad debts. The assessee has also submitted the relevant details of bad debts and provision for bad debts. The Id. Counsel submitted that as per the famous judgment of the Hon'ble Supreme Court in the case of TFR Company Limited, it is sufficient for the assessee to debit the amount of bad debts in the books of accounts and the same has been done by the assessee, therefore order passed by the Assessing Officer should not be erroneous or prejudicial to the interest of Revenue.

10. Learned Counsel for the assessee, further argued that Id PCIT has raised another issue about additions to the fixed assets during the financial year amounting Rs.1,51,82,414/- which have been shown along with work in progress valuing Rs.17,58,838/-, however Id PCIT observed that in the ITR additions to the fixed assets have been shown at Rs.23,67,914/- only, therefore, Id PCIT considered the order of the assessing officer, as erroneous and prejudicial to the interest of revenue. To examine this new issue, the Id PCIT has issued notice to the assessee under section 263 of the Act dated 29.03.2023. In compliance to the said notice, the assessee has replied on 30.03.2023. However, Id PCIT did not consider the reply of the assessee and passed the order under section 263 of the Act on 31.03.2023, which is

against the principle of natural justice and therefore order of ld PCIT may be quashed.

11. On the other hand, Ld. Departmental Representative (ld. DR) for the Revenue relied on the findings of ld PCIT.

12. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. PCIT and other material brought on record. We note that ld PCIT in his order raised two issue, namely: (i) Bad-debts/Provision for bad debts and (ii) Additions to the fixed assets during the financial year amounting Rs.1,51,82,414/- which have been shown along with work in progress valuing Rs.17,58,838/-.

13. Regarding first issue, Provision for bad debts/ Bad-debts, we note that during the assessment proceedings, the Assessing Officer has issued notice to the assessee and in response to notice of AO, the assessee submitted reply, hence assessing officer has examined the issue raised by the ld. PCIT. Apart from this, we note that as per CBDT Circular No.12 of 2016, dated 30.05.2016, the deduction on account of bad debts are allowable to the assessee, the contents of the Circular is reproduced below:

Circular No. 12/2016

F.No.279/Misc./140/2015-ITJ
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, Dated 30th May, 2016

Subject: - Admissibility of claim of deduction of Bad Debt under section 36(1) (vii) read with section 36(2) of the Income-Tax Act, 1961– reg.

Proposals have been received by the Central Board of Direct Taxes regarding filing of appeals/pursuing litigation on the issue of allowability of bad debt that are written off as irrecoverable in the accounts of the assessee. The dispute relates to cases involving failure on the part of assessee to establish that the debt is irrecoverable.

2. Direct Tax Laws (Amendment) Act, 1987 amended the provisions of sections 36(1)(vii) and 36(2) of the Income Tax Act 1961, (hereafter referred to as the Act) to rationalize the provisions regarding allowability of bad debt with effect from the 1st April, 1989.

3. The legislative intention behind the amendment was to eliminate litigation on the issue of the allowability of the bad debt by doing away with the requirement for the assessee to establish that the debt, has in fact, become irrecoverable. However, despite the amendment, disputes on the issue of allowability continue, mostly for the reason that the debt has not been established to be irrecoverable. The Hon'ble Supreme Court in the case of TRF Ltd. In CA Nos. 5292 to 5294 of 2003 vide judgment dated 9.2.2010¹, has stated that the position of law is well settled. "*After 1.4.1989, for allowing deduction for the amount of any bad debt or part thereof under section 36(1)(vii) of the Act, it is not necessary for assessee to establish that the debt, in fact has become irrecoverable; it is enough if bad debt is written off as irre. overable in the books of accounts of assessee.*"

4. In view of the above, claim for any debt or part thereof in any previous year, shall be admissible under section 36(1)(vii) of the Act, if it is written off as irrecoverable in the books of accounts of the assessee for that previous year and it fulfills the conditions stipulated in sub section (2) of sub-section 36(2) of the Act.

14. From the above circular, it is vivid that Hon'ble Supreme Court in the case of TRF Ltd in CA Nos. 5292 to 5294 of 2003, vide judgement dated 9th February 2010, has stated that the position of law is well settled" "After 1 April 1989, for allowing deduction for the amount of any bad debt or part thereof under section 36(1)(vii) of the Act, it is not necessary for assessee to establish that the debt in fact has become irrecoverable, it is enough if bad debt is written off as

irrecoverable in the books of accounts of assessee”. Therefore, we note that assessing officer has taken a possible view to allow this claim, therefore order passed by the assessing officer is neither erroneous nor prejudicial to the interest of revenue so far issue of ‘*bad debts*’ is concerned.

15. About other new issue raised by Id PCIT, namely, the additions to the fixed assets during the financial year amounting Rs.1,51,82,414/- which have been shown along with work in progress valuing Rs.17,58,838/-, we note that to examine this new issue, the Id PCIT has issued notice to the assessee, under section 263 of the Act dated 29.03.2023. In compliance to the said notice, the assessee has replied on 30.03.2023. However, Id PCIT did not consider the reply of the assessee and passed the order under section 263 of the Act on 31.03.2023, which is against the principle of natural justice. That is, adjudication of this issue has been done by Id PCIT, without hearing the assessee and without giving opportunity to the assessee to explain the transaction, hence it is against the principal of natural justice. We note that the Hon’ble Supreme Court in M. S. Gill vs The Chief Election Commission 1978 AIR SC 851 held “The dichotomy between administrative and quasi-judicial function *vis-à-vis* the doctrine of natural justice is presumably obsolescent after Kraipak (A.K. Kraipak vs UOI AIR 1970 SC 150) which makes the watershed in the application of natural justice to administrative proceedings. The rules of natural justice are rooted in all legal systems and are not any new theology. They are manifested in the twin principles of *nemo judex in parte sua* (no person shall be a judge in his own case) and *audi alterem partem* (the right to be heard). It has been pointed out that the aim of natural justice is to secure justice.

16. We note that Hon`ble Supreme Court in the case of ***Amitabh Bachchan 384 ITR 0200 (SC)***, held that opportunity of hearing should be provided by Principal Commissioner of Income Tax (PCIT) to the assessee during revision proceedings. The findings of the Hon`ble Supreme Court is reproduced below (to the extent useful for our analysis):

“9. Under the Act different shades of power have been conferred on different authorities to deal with orders of assessment passed by the primary authority. While Section 147 confers power on the Assessing Authority itself to proceed against income escaping assessment, Section 154 of the Act empowers such authority to correct a mistake apparent on the face of the record. The power of appeal and revision is contained in Chapter XX of the Act which includes Section 263 that confer suo motu power of revision in the learned C.I.T. The different shades of power conferred on different authorities under the Act has to be exercised within the areas specifically delineated by the Act and the exercise of power under one provision cannot trench upon the powers available under another provision of the Act. In this regard, it must be specifically noticed that against an order of assessment, so far as the Revenue is concerned, the power conferred under the Act is to reopen the concluded assessment under Section 147 and/or to revise the assessment order under Section 263 of the Act. The scope of the power/jurisdiction under the different provisions of the Act would naturally be different. The power and jurisdiction of the Revenue to deal with a concluded assessment, therefore, must be understood in the context of the provisions of the relevant Sections noticed above. While doing so it must also be borne in mind that the legislature had not vested in the Revenue any specific power to question an order of assessment by means of an appeal.

10. Reverting to the specific provisions of Section 263 of the Act what has to be seen is that a satisfaction that an order passed by the Authority under the Act is erroneous and prejudicial to the interest of the Revenue is the basic pre- condition for exercise of jurisdiction under Section 263 of the Act. Both are twin conditions that have to be conjointly present. Once such satisfaction is reached, jurisdiction to exercise the power would be available subject to observance of the principles of natural justice which is implicit in the requirement cast by the Section to give the assessee an opportunity of being heard. It is in the context of the above position that this Court has repeatedly held that unlike the power of reopening an

*assessment under Section 147 of the Act, the power of revision under Section 263 is not contingent on the giving of a notice to show cause. In fact, Section 263 has been understood not to require any specific show cause notice to be served on the assessee. Rather, what is required under the said provision is an opportunity of hearing to the assessee. The two requirements are different; the first would comprehend a prior notice detailing the specific grounds on which revision of the assessment order is tentatively being proposed. Such a notice is not required. What is contemplated by Section 263, is an opportunity of hearing to be afforded to the assessee. Failure to give such an opportunity would render the revisional order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice. Reference in this regard may be illustratively made to the decisions of this Court in **Gita Devi Aggarwal** vs. **Commissioner of Income Tax, West Bengal and others**¹ and in **The C.I.T., West Bengal, II, Calcutta** vs. **M/s Electro House**². Paragraph 4 of the decision in **The C.I.T., West Bengal, II, Calcutta** vs. **M/s Electro House** (supra) being illumination of the issue indicated above may be usefully reproduced hereunder.....”*

17. From the above judgment of Hon`ble Supreme Court in the case of Amitabh Bachchan (supra), it is vivid that what is contemplated by Section 263, is an opportunity of hearing to be afforded to the assessee. Failure to give such an opportunity would render the revisional order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice. We note that to examine the new issue, namely, the additions to the fixed assets, the ld PCIT has issued notice to the assessee, under section 263 of the Act dated 29.03.2023. In compliance to the said notice, the assessee has replied on 30.03.2023. However, ld PCIT did not consider the reply of the assessee at all, and ignored the reply of the assessee. Therefore, without giving an opportunity of hearing to the assessee, (in respect of said new issue) the ld PCIT has passed the order, hence order passed by the ld PCIT is not in accordance with the mandatory provisions of section 263 of the Act, therefore we quash the order of ld PCIT.

18. In the result, appeal filed by the Assessee is allowed.

Order is pronounced on 16/10/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 16/10/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat