IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "C", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S.VISWANETHTRA RAVI, JUDICIAL MEMBER

ITA No.147 & 148/PUN/2019
निर्धारण वर्ष / Assessment Years: 2012-13 & 2013-14

Volkswagen India Private Limited, E-1, MIDC, Industrial Area, Village Nigoje, Mahalunge, Kharabwadi, Chakan, Pune – 410 501, Maharashtra PAN : AACCV4229P	Vs.	PCIT-4, Pune
Appellant		Respondent

Assessee by: Shri Nikhil Pathak
Revenue by: Shri M.M. Chate

Date of hearing 17-10-2023
Date of pronouncement 19-10-2023

आदेश / ORDER

PER R.S.SYAL, VP :

These two appeals by the assessee are directed against the common order dated 19-11-2018 passed by the Principal Commissioner of Income-tax (PCIT) u/s.263 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment years 2012-13 & 2013-14. Since a common issue is raised in these appeals, we are, therefore, proceeding to dispose them off by this consolidated order.

2. Briefly stated, the facts for the A.Y. 2012-13 are that the assessee filed its return declaring Nil income. The assessment was completed by making addition on account of certain transfer pricing adjustment. The ld. PCIT issued a show cause notice dated 29-05-2018 observing that the assessment proceedings for the A.Y. 2014-15 transpired that the assessee had received Government grants in the year under consideration also, which were taxable, but taken as capital receipt in the computation of total income. On the basis of a reference made by the AO, through proper channel, the ld. PCIT issued the above show cause notice and thereafter passed the order u/s.263 setting aside the assessment order and directing the AO to frame the assessment afresh after conducting enquiries and verification. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

3. We have heard the rival submissions and gone through the relevant material on record. The ld. PCIT issued show cause notice dated 29-05-2018, which is reproduced as under:

> "Sub : Show cause notice u/s.263 – A.Yrs. 2012-13 and 2013-14 – reg.
>
> Please refer to the above.

02. During the course of assessment proceedings of A.Yr.2014-15, it was observed that you had credited an amount of Rs.405.68 crores and Rs.38.36 crores respectively as 'Government Grant – Capital' and 'Government Grant – Revenue' under the head 'Other Income' being an amortization of deferred income. In your statement of computation of income for the year, this amount has been deducted claiming to be capital in nature.

03. You had contended that the amount of amortization of deferred income, though credited to P&L account as revenue income is actually a capital receipt not chargeable to tax. In this regard, you were asked to justify your claim along with documentary evidences.

You had contended that subsidy was received by you for setting up of an industry itself and not for day-to-day operation in view of SC decision in the case of PJ Chemicals.

04. Your contention was found to be not acceptable and accordingly assessment for the A.Y. 2014-15 was completed making addition of Rs.362,84,60,000/- on account of subsidy received. It was further observed that the incentives given to the company in the form of subsidy were production related incentives. It was not a one-time subsidy but a recurring subsidy over the years. Therefore, the scheme was not to make any payment directly or indirectly for setting up of the industries as claimed by you. Reliance was placed on the decision of the SC in the case of Sahney Steel & Press Works Limited Vs. CIT wherein the apex court held that where the assessee received certain incentives including concessions etc. year after year only after setting up of the new industry and commencement of production, then they are to be treated as revenue receipts.

During the course of assessment proceedings it was revealed that the assessee company has received similar grants/subsidies in the earlier years also. The assessee has furnished year wise statement of claim sanctioned and claim disbursed.

The AO has reported that during the course of assessment proceedings this issue was not properly dealt with and the assessment order is erroneous in so far as it is prejudicial to the interest of revenue.

05. In view of the facts noted above, the order passed by the Assessing Officer for A.Yrs. 2012-13 and 2013-14 in the case of

M/s. Volkswagen India Pvt. Ltd. is erroneous and prejudicial to the interest of the revenue. The same is hence proposed to be revised invoking the provisions of section 263 of the Income Tax Act.

06. The case is posted for hearing on 11-06-2018 at 11.00 a.m."

4. It can be seen that the ld. PCIT referred to the assessment proceedings and the assessment order for the A.Y. 2014-15, in paras 2, 3 and first two sub-paras of para 4 of his show cause notice, divulging that the grants received by the assessee in such year were wrongly taken as capital receipt and the further fact that similar grants were received in earlier years as well, including the year under consideration. In sub-para 3 of para 4 of his show cause notice, the ld. Pr. CIT referred to the AO's report and then recorded that: "The AO has recorded that during the course of assessment proceedings this issue was not properly dealt with and the assessment order is erroneous in so far as it is prejudicial to the interest of the Revenue". In last para of the show cause notice, he records that: "In view of the facts noted above, the order passed by the Assessing Officer for A.Yrs. 2012-13 and 2013-14 …. is erroneous and prejudicial to the interest of the revenue". Thus, it is apparent from the entire show cause notice that the initiation of revision is premised only

on the report submitted by the AO requesting for the revision of the assessment order. During an earlier hearing, the ld. DR was directed to produce the said report of the AO forming part of the show cause notice. The ld. DR produced the file in original containing the AO's letter dated 22-03-2018 requesting for the revision of the assessment order and such request having been routed through the range JCIT with his own letter dated 27-03-2018. Pursuant to such letter of the AO, the ld. PCIT issued the above show cause notice on 29-05-2018. It is apparent that the entire foundation of the revision is based on the AO requesting the ld. PCIT to revise the assessment order.

5. At this juncture, it is relevant to note the mandate of section 263(1) of the Act providing that: "The Commissioner may call for and examine the record of any proceeding under this Act *and* considers if he considers that any order passed therein by the AO is erroneous in so far as it is prejudicial to the interests of the revenue, he may after giving the assessee an opportunity of bearing heard…pass such order thereon as the circumstances of the case justify….". This section which gives jurisdiction to the CIT to revise an order. It categorically provides that the

Commissioner may call for and examine the record of any proceedings under this Act *and* thereafter *if he considers that any order passed therein by the AO is erroneous,* he may initiate the revision proceedings. Both the conditions, namely, the CIT calling for and examining the record *and* then considering the assessment order passed by the AO to be erroneous and prejudicial to the interest of the Revenue are to be cumulatively satisfied by the CIT alone. The use of the word `*and'* between the two expressions amply demonstrates that the calling for and examining the record by the CIT should precede and his such examination should culminate in getting satisfied that the order passed by the AO is erroneous and prejudicial to the interest of the Revenue. If one of these conditions gets negated, that is, either he does not call for and examine the record or such examination does not lead him to satisfying the assessment order erroneous etc., the jurisdiction u/s.263 is not activated.

6. Extantly, we are confronted with a situation in which the AO wrote a letter, through the range JCIT, to the ld. PCIT that the assessment order passed for the year under consideration did not properly deal with the issue of taxability of subsidy from the

Government. It was on the sole strength of this letter of the AO dt.22-03-2018, moving through the range JCIT with a covering letter dt.27-03-2018, that the ld. PCIT made up his mind and issued show cause notice on 29-05-2018 seeking to revise the assessment order. But for the AO's report, there is not even a slightest utterance or remotest clue to the effect that the ld. PCIT called for and examined any record of the proceeding for the year *and* then on the basis of such an examination considered the assessment order erroneous and prejudicial to the interest of the revenue. *Au contraire*, he specifically mentioned in the show cause notice that the AO reported about the issue of grant not having been properly dealt with during the course of assessment proceedings rendering the assessment order amenable to revision. It goes without saying that if some lacunae is left in the assessment order, which comes to the notice of the AO, he has ample power to take corrective measures either by way of rectification u/s.154 or revision u/s.147. Insofar as the revision u/s.263 is concerned, it is the sole prerogative of the Pr. CIT, who needs to take *suo motu* action on calling for and examining the record of any proceedings under this Act and on the basis of

such examination considering the assessment order erroneous and prejudicial to the interest of the Revenue. It is evident from the show cause notice that the ld. PCIT initiated revisionary proceedings just on the basis of the AO's report without carrying out any independent examination of the record followed by independently satisfying himself that the assessment order required revision.

7. The ld. AR relied on certain orders of the Tribunal, including the order dt. 02-11-2021 passed by the Pune Tribunal in *Alfa Laval Lund and AB Vs. CIT (ITA No.1287/Pun/2017),* holding the initiation of revision proceedings, based only on the proposal sent by the AO for making the revision, lacked jurisdiction. *Per contra,* the ld. DR relied on certain decisions in support of his case. The first such case is the judgment of the Hon'ble Calcutta High Court in *Smt. Sumitra Devi Khirwal Vs. CIT (1972) 84 ITR 26 (Cal.)* in which the revision was upheld. In that case, the Commissioner did not himself call for any record but certain records were placed before him and he acted thereon. The assessee's contention before the Hon'ble High Court that the revision in such circumstances was not valid,

came to be jettisoned by the Hon'ble High Court. What is significant to note in that case is that: `certain records were placed before him (CIT) and he acted thereon' for revising the assessment order. As opposed to that, we are dealing with a situation in which the AO sent a proposal to the ld. Pr. CIT for revision and acting on the same, the latter issued show cause notice for revising the assessment order. Even in that case, the Hon'ble High Court emphatically observed that: "All that the section requires is that before issuing a notice u/s.33B he must call for all relevant papers and documents, examine them and then issue the notice *if he is satisfied* that the interests of the revenue have suffered" (emphasis supplied by us). It is clear from the *ratio* of the judgment that the personal satisfaction of the CIT is paramount for revision. This satisfaction may be based on any relevant papers and documents, including the viewpoint of the AO. But, if the satisfaction of the CIT is missing and the notice u/s.263 is based simply on the proposal sent by the AO, then it cannot be said that the twin conditions of examining the record of any proceedings under this Act and

thereafter satisfying that the assessment order was erroneous and prejudicial to the interest of the Revenue, are satisfied.

8. The second judgment relied by the ld. DR is *CIT Vs. Bhagat Shyam & Co. (1991) 188 ITR 608 (Allahabad).* In that case also, the assessee contended that the ITO placed certain information or material before the Commissioner and hence, the revision u/s.263 was not justified. Repelling such a contention, the Hon'ble High Court held that: "There is no bar to the ITO bringing that material to the notice of the Commissioner. What cannot, however, be denied is that *the Commissioner must apply his mind to the material placed before him and satisfy himself* that it is a case where he ought to exercise his revisional power". Again, it is manifest that there is no bar on the AO placing certain information or material before the CIT justifying the invocation of power u/s.263, but ultimately, it is the CIT who must apply his independent mind to such material and satisfy that the revision is warranted. What should follow from the examination of material, including that placed by the AO, is the independent satisfaction of the CIT, after due application of mind, that the assessment order was erroneous and prejudicial to

the interest of the Revenue requiring revision. If such satisfaction of the CIT, which is crucial and *sine qua non,* is missing and the notice is based simply on the proposal sent by the AO for revision, as is the case under consideration, the revision cannot take-off.

9. In view of the foregoing discussion, we are satisfied that the ld. PCIT exercised his jurisdiction to initiate the revision proceedings in a wrongful manner, which, ergo, cannot be accorded our imprimatur.

10. Before parting with this appeal, we would like to record that this legal issue was raised by the ld. AR by means of an additional ground, which was strongly opposed by the ld. DR for admission. The ld. DR pointed out that this issue was not taken up either before the ld. PCIT or in the original memorandum of appeal before the Tribunal and hence, the additional ground should not be admitted.

11. It is graphically overt from the above discussion that the assessee created the bedrock for challenging the revision through the additional ground, on the basis of the show cause notice issued by the ld. PCIT, which is part of the assessee's paper

book. Our decision of quashing the revision on this legal issue is based on such show cause notice. We are reminded of the judgment of the Hon'ble Supreme Court in *National Thermal Power Company Ltd. Vs. CIT (1998) 229 ITR 383 (SC),* holding that: "the purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as the relevant facts are on record in respect of that item". Answering the question posed before it in affirmative, their Lordships held that on the facts found by the authorities below a question of law arises (though not raised before the authorities) which bears on the tax liability of the assessee and the Tribunal has jurisdiction to examine the same. Similar facts are prevailing in the case under consideration. The additional ground raises a pure question of law, for which no fresh investigation of facts is required. That is

raison d'etre for our admitting the additional ground and then espousing it for consideration.

12. It is, therefore, ultimately held that the ld. Pr. CIT was not justified in invoking the revision jurisdiction. In view of our decision on the legal ground, there is no need to examine the issue on merits.

A.Y. 2013-14 :

13. Both the sides are in agreement that the facts and circumstances for the year under consideration are *mutatis mutandis* similar to the preceding year. In fact, a common show cause notice as well as a combined order for both the years came to be issued/passed. Following the view taken herein above, we set-aside the impugned order passed by the PCIT u/s.263 of the Act.

14. In the result, both the appeals are allowed.

Order pronounced in the Open Court on 19th October, 2023.

Sd/-	Sd/-
(S.S.VISWANETHTRA RAVI)	(R.S.SYAL)
JUDICIAL MEMBER	VICE PRESIDENT

पुणे Pune; दिनांक Dated : 19th October, 2023
Satish

आदेश की प्रतिलिपि ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The Pr.CIT concerned
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "**C**" /
5. DR 'C', ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	17-10-2023	Sr.PS
2.	Draft placed before author	18-10-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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