

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 189/RPR/2023
निर्धारण वर्ष / Assessment Year : 2018-19

M/s. Hardayal Singh Patel
43, Golden Homes, VIP Estate,
Khamardih (C.G.)-492 001

PAN : AABFH5997A

.....अपीलार्थी / Appellant

बनाम / V/s.

The Pr. Commissioner of Income Tax,
Raipur-1

.....प्रत्यर्थी / Respondent

Assessee by : Shri B. Subramanyam, CA
Revenue by : Smt. Ila M Parmar, CIT-DR

सुनवाई की तारीख / Date of Hearing : 22.08.2023
घोषणा की तारीख / Date of Pronouncement : 19.10.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee firm is directed against the order passed by the Pr. Commissioner of Income Tax, Raipur-1 (for short 'Pr. CIT'), dated 22.03.2023, which in turn arises from the order passed by the A.O. u/s.143(3) r.w.s. 143(3A) & 143(3B) of the Income-tax Act, 1961 (for short 'Act'), dated 15.01.2021 for A.Y. 2018-19. The assessee firm has assailed the impugned order on the following grounds of appeal before us:

- “1. On the facts and circumstances of the case, the submissions of the assessee were accepted by the Ld. AO during the complete scrutiny assessment proceedings conducted under CASS 2019, after application of his independent mind. The Ld. Pr. CIT has erred in invoking the provisions of the Section 263 and revised the original assessment order NIL without bringing forth any additional material or evidence on record as to why the order passed by the Ld. AO is erroneous as far as prejudicial to the interest of the revenue. The order made by the Ld. Pr. CIT u/s 263 of the Act, is illegal, invalid, void and bad in law and is liable to be quashed.
2. On the facts and circumstances of the case, the Ld. Pr. CIT, in the order passed u/s 263 of the Act, has rejected the submissions of the assessee without any proper reason. Mere rejection of the submissions of the assessee NIL without any proper reason is not tenable as per law. The Order by the Ld. Pr. CIT u/s 263 of the Act is illegal, bad in law, void and liable to be quashed.
3. On the facts and circumstances of the case, the Ld. Pr. CIT has erred both on facts and in law in ignoring the fact that the issue raised by him in notice u/s 263 was before the AO and as such the jurisdiction on this issue u/s NIL 263 cannot be assumed by him. The Order by the Ld. Pr. CIT u/s 263 of the Act is illegal, bad in law, void and liable to be quashed.
4. On the facts and circumstances of the case, the order passed by Ld. Pr. CIT under section 263 of the Act is unsustainable as power to revise can be invoked in the case of no NIL enquiry and not in the case of inadequate enquiry. The order made by the Ld. Pr. CIT u/s 263 of the Act, is illegal, invalid, void and bad in law and is liable to be quashed.
5. The appellant reserves the right to add, amend or modify any of the ground/s of appeal.”

2. Succinctly stated, the assessee firm had e-filed its return of income for A.Y.2018-19 on 25.10.2018, declaring an income of Rs.16,70,180/-. Return of income filed by the assessee was processed as such u/s.143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny u/s.143(2) of the Act.

3. Original assessment was, thereafter, framed by the A.O. vide his order passed u/s.143(3) r.w.s. 143(3A) & 143(3B) of the Act dated 15.01.2021, wherein the returned income of the assessee was accepted as such.

4. After the culmination of the assessment proceedings, the Pr. CIT called for the records of the assessee firm. On a perusal of the records, the Pr. CIT observed, viz. (i). the A.O. had failed to examine the expenses payable aggregating to Rs.29,49,008/-, which comprised of, viz. TDS amount: Rs.2,33,856/-; CGST amount: Rs.13,49,822/-, SGST amount: Rs.13,49,822, EPF amount: Rs.12,358/-, ESIC amount: Rs.3,150/-, that were statutorily required to be paid on or before the due date of furnishing return of income u/s. 139(1) of the Act, failing which the same entailed disallowance u/s. 43B of the Act; and (ii). the A.O. had failed to examine the fixed assets of Rs.4,98,150/- that were purchased by the assessee firm during the year under consideration. Accordingly, the Pr. CIT issued a "Show Cause Notice" (SCN) dated 01.02.2023 and called upon the assessee to explain why the order passed by the A.O u/s. 143(3) r.w.s. 143(3A) & 143(3B) dated 15.01.2021 may not be revised u/s. 263 of the Act.

5. In reply, the assessee tried to impress upon the Pr. CIT that the assessment order passed by the A.O. was not liable for revision u/s.263 of the Act. However, the aforesaid explanation of the assessee did not find favor with the Pr. CIT for the following reasons:

“1. Expenses payable viz. TDS payable of Rs.2,33,856/- was outstanding as on 31.03.2018. The assessee has furnished the copy of challan on 26.04.2018, 07.05.2018, 26.05.2018 towards TDS liability. In support of claim, the assessee has furnished the copy of challan and form 26Q of TDS return. Further, on perusal of tax audit report of assessee, it is seen that the auditor has reported Nil payment pending after due date of filing of return of income u/s 139(1) of the I.T.Act, 1961. On verification, nothing adverse is noted and accordingly, the issue is dropped.

2. CGST. and SGST amount totaling to Rs.26,99,644 /- has been paid on 19.04.2013, before the due date of filing of return of income u/s 139(1) of the I.T.Act. 1961. The same is reported by the Auditors too in TAR. It is a settled position of law that if the amount payable if paid on or before the due date of filing of return u/s 43B of the I.T. Act, 1961. On verification, nothing adverse is noted and accordingly, the issue is dropped.

3. In respect of EPF amount of Rs.12,358/- and ESIC amount of Rs. 3,150/, the assessee has furnished payment receipts dated 15.04.2018.However, it needs further verification in respect of deposit of EPF and ESIC amount as prescribed under Section 36(1)(va) of the I.T.Act 1961 r.w.s. 2(24)(x).The AO is directed to verify the claim in the light of decision of Hon'ble Supreme Court of India in the case of Checkmate Services (P.) Ltd. v. Commissioner of Income-tax-1[2022] 143 taxmann.com 178 (SC)).

4. In respect of purchase of various fixed assets amounting to Rs. 4.98,150/- , the assessee has furnished the copy of tax invoices etc. However, the A.O may further verify the transactions for their source as well as correct claim of depreciation, etc. The matter is set aside for further verification.”

Backed by his aforesaid observations, the Pr. CIT held a conviction that as the A.O. had failed to conduct proper/correct inquiries as regards the aforesaid issues, the same, thus, had rendered his order passed 143(3) r.w.s. 143(3A) & 143(3B) dated 15.01.2021 as erroneous in so far as it was prejudicial to the interest of the revenue u/s.263 of the Act. Accordingly, the Pr. CIT set aside the order passed by the A.O

u/s. 143(3) r.w.s. 143(3A) & 143(3B) dated 15.01.2021 with a direction to him to carry out necessary verifications on the aforesaid issues, viz. (i) to verify the claim of the assessee as regards the allowability of deduction of EPF: Rs.12,358/- & ESIC: Rs.3150/- u/s. 36(1)(va) r.w.s. 2(24)(x) of the Act in the backdrop of the judgment of the Hon'ble Apex Court in the case of Checkmate Services (P) Ltd. Vs. Commissioner of Income Tax-1 (2022) 143 taxmann.com 178 (SC); and (ii) to verify the purchase of fixed assets of Rs.4,98,150/- a/w. source of the same, and correctness of depreciation claimed by the assessee on the said new assets.

6. The assessee, being aggrieved with the order of the Pr. CIT u/s.263 of the Act dated 22.03.2023 has carried the matter in appeal before us.

7. We have heard the Id. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

8. At the threshold of hearing of the appeal, Shri B. Subramanyam, Ld. Authorized Representative (for short 'AR') for the assessee took us through the order passed by the Pr. CIT u/s. 263 of the Act. Referring to the observation of the Pr. CIT, wherein he had directed the A.O. to carry out necessary verification as regards the entitlement of the assessee with respect to EPF: Rs.12,358/- & ESIC: Rs.3150/- u/s. 36(1)(va) r.w.s. 2 (24)(x) of the Act in the backdrop of judgment in the case of Checkmate Services (P) Ltd. Vs. Commissioner of Income Tax-1 (supra), it was

submitted by the Ld. AR that the Pr. CIT had proceeded on the basis of misconceived facts. Elaborating on his aforesaid contention, it was submitted by the Ld. AR that both the aforementioned amounts, i.e., EPF: Rs.12,358/- & ESIC: Rs.3150/-, which were deposited by the assessee firm on 15.04.2018, were the employer's contributions and, thus, were not covered by the provisions of Section 36(1)(va) r.w.s. 2 (24)(x) of the Act. The Ld. AR, in support of his aforesaid contention, had drawn support from Column No. 20(b) of the "audit report" of the assessee in Form 3CD, Page 62-63 of APB, wherein the complete details of the employees share of contributions towards ESI and EPF were mentioned. Apart from that, the Ld. AR had taken us through the Column. No. 26 of the aforesaid "audit report," wherein the details of employers share of contributions towards ESI & EPF that were covered u/s. 43B of the Act were stated. Referring to the aforesaid details of Column No.26 of the "audit report," the Ld. AR drew our attention to the aforesaid amount of EPF payable: Rs.12,358/- and ESIC payable: Rs.3150/- under consideration. In order to dispel all doubts, the Ld. AR had further drawn our attention to the intimation issued by the CPC, Raipur u/s.143(1) dated 05.11.2019, wherein the delayed deposit of the employee's share of contributions towards ESIC/EPF or any other fund for the welfare of the employees amounting to Rs.5,458/- was disallowed, Page 37 of APB.

9. Apropos the direction of the Pr. CIT, as regards the addition/purchase of fixed assets during the year under consideration, the Ld. AR took us through "Annexure A," which revealed the addition of fixed assets made by the assessee during the year under consideration of Rs.4,98,150.78/-. Referring to the observations of the Pr. CIT,

the Ld. AR submitted that he had directed the A.O. to carry out necessary verification as regards the fixed assets purchased by the assessee during the year, i.e., source of purchase, claim of depreciation, etc. The Ld. AR submitted that during proceedings before the Pr. CIT, the assessee, had placed on record copies of the ledger account (new asset), invoices, registration certificates (or vehicles purchased), insurance policy, etc. The Ld. A.R averred that when the aforesaid purchase transactions were duly accounted for by the assessee in his books of account, it was incomprehensible that what verification as regards the source of the same was called for by the Pr. CIT. Our attention was drawn by the Ld. AR to the aforesaid documentary evidence, which were filed by the assessee in the course of the revisional proceedings. It was, thus, the claim of the Ld. AR that now, when not only the factum of purchase was evidenced on the basis of the aforesaid documents but also, the entitlement of the assessee for claiming depreciation, therefore, there was no justification for the Pr. CIT to have set aside the order of the A.O. with a direction to him to carry out necessary verifications on the said issue.

10. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the order of the Pr. CIT.

11. As stated by the Ld. AR and, rightly so, it is a matter of fact borne from the record that the Pr. CIT had misconceived the employer's share of contribution towards labor welfare funds, viz. (i) EPF: Rs.12,358/-; & (ii) ESIC: Rs.3150/-, which were deposited by the assessee on 15.04.2018 as the employee's share of contribution. Our aforesaid view is fortified by the reference to the relevant extracts

of the “audit report” of the assessee in “Form 3CD”, Pages 62 to 66 of APB, read a/w. the details of disallowance made by the CPC, Bengaluru vide its intimation u/s.143(1) of the Act dated 05.11.2013 of the delayed deposit by the assessee firm of employees share of contribution of Rs.5458/- u/s. 36(1)(va) r.w.s. 2(24)(x) of the Act. As the Pr. CIT had proceeded with the matter on the basis of misconceived and incorrect facts with respect to the aforesaid issue; therefore, we set aside his order to the said extent.

12. Apropos the observation of the Pr. CIT wherein he had directed the A.O to verify the source of purchase, the claim of depreciation, etc., as regards the fixed assets aggregating to Rs.4,98,150/- which the assessee firm had purchased during the year under consideration, we find that it is a matter of fact borne from the record that the assessee firm had in the course of proceedings before the Pr. CIT placed on his record a copy of the ledger accounts (of new assets), invoices, registration certificates (for vehicles purchased), insurance policy, etc. Page 10 to 23 of APB. As the purchase of the “fixed assets” of Rs.4,98,150/- by the assessee firm, as evidenced by the copies of the respective ledger accounts of the new assets, is undeniably accounted for in its books, we are unable to comprehend the as to what verification the Pr. CIT had sought as regards the source of the purchase of the same. Also, as the aforementioned documents, viz. copy of the ledger accounts (of new assets), invoices, registration certificates (for vehicles purchased), insurance policy, etc., substantiating the ownership and user of the fixed assets in question by the assessee firm during the year were available before the Pr. CIT, thus, there was

no justification on his part to have set aside the assessment order for the purpose of verifying the correctness and claim of depreciation raised by the A.O. We, thus, in terms of our aforesaid deliberations, are unable to concur with the Pr. CIT, who, as observed by us hereinabove, had set aside the assessment order for carrying out verifications as regards the fixed asset of Rs.4,98,150/- purchased by the assessee firm during the year under consideration and, thus, set aside the same. Thus, the **Grounds of appeal Nos.1 to 4** raised by the assessee are allowed in terms of our aforesaid observations.

13. **Ground of appeal No.5**, being general, is dismissed as not pressed.

14. In the result, the appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in open court on 19th day of October, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 19th October, 2023

**#SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT, Raipur-1 (C.G)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.