

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE
DR. BRR KUMAR, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 1113/Del/2022
Asstt. Year: 2017-18

Hemkunt Service Station P. Ltd. Link Road, Near Lodhi Hotel, Jangpura Extension, New Delhi – 110 003 PAN AAACH0310H (Appellant)	Vs.	DCIT, Circle-10(1) New Delhi. (Respondent)
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Assessee by:	Shri Ved Jain, Advocate Shri Aman Garg, CA
Department by:	Shri Vivek Vardhan, Sr. DR
Date of Hearing:	30.08.2023
Date of pronouncement:	17.11.2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 30.03.2022 of the Ld. Principal Commissioner of Income Tax (**"PCIT"**), Delhi-4 under section 263 of the Income Tax Act, 1961 (**the "Act"**) pertaining to Assessment year (**"AY"**) 2017-18.

2. The assessee has raised the following grounds:-

- “1. *On the facts and circumstances of the case, the order passed by the learned Principal Commissioner of Income Tax (Pr. CIT) under Section 263 of the Act is bad, both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, the order passed by the learned Pr. CIT cancelling the assessment order passed by the A.O. is untenable in the absence of order of the A.O. being erroneous as well as prejudicial to the interest of the Revenue.*

3. *On the facts and circumstances of the case, the order passed by the learned Pr. CIT cancelling the assessment order passed by the A.O. is illegal and without jurisdiction as the issues on which the revision was sought are the subject matter of appeal before the learned CIT(Appeals)*
4. *On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in ignoring the fact that all the issues raised by him in notice under Section 283 were before the A.O during the assessment proceedings and as such the jurisdiction on this issue under Section 263 cannot be assumed.*
5. *On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in rejecting the contention of the appellant that the issues raised in the show cause notice were before the AO in proceedings under Section 143(3) and were allowed after application of mind by him as such the same cannot be the matter for reassessment under Section 263 of the Act.*
6. *On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in ignoring the fact that the proceeding under Section 263 cannot be used for substituting option of the A.O. by that of the Pr. CIT.*
7. *On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in invoking revisionary power under Section 263 of the Act despite the fact that even after thorough examination, no specific findings have been given on the issue of how the order is erroneous and prejudicial to the interest of Revenue.*
8. *On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in setting aside the matter to the file of the A.O. without giving a finding as to the error and prejudice caused to the revenue by the assessment order.*
9. *That the appellant craves leave to add, amend or alter any of the grounds of appeal.”*

3. Briefly stated, the assessee company is engaged in the business of petrol pump. It filed its return for AY 2017-18 on 30.10.2017 declaring income of Rs. 79,99,000/-. The case was selected for complete scrutiny through CASS. Statutory notice(s) along with questionnaire were issued / served upon the assessee. In response to notices, the assessee uploaded the submissions through online which have duly been examined by the Ld. Assessing Officer (“**AO**”) who completed the assessment on total income of

Rs. 1,09,77,800/- on 28.12.2019 under section 143(3) of the Act including therein addition of Rs. 25,21,073/- on account of undeclared profit; unexplained cash credit of Rs. 2,25,000/- under section 68; interest expense of Rs. 11,446/- under section 40(a)(ia) and disallowance of general expenses of Rs. 2,21,281/-.

4. The Ld. PCIT examined the case records and found that the assessee has claimed general expenses of Rs. 11,06,406/- out of which the Ld. AO disallowed 20% i.e. Rs. 2,21,281/-. According to the Ld. PCIT, the assessee has not furnished any supporting evidence in respect of general expenses. Hence, the disallowance of Rs. 11,06,406/- needs to be made. He also found that the Ld. AO has made addition of Rs. 25,21,073/- on account of undeclared profit in respect of which penalty under section 270A for under-reporting of income has been initiated. The Ld. PCIT was of the view that the aforesaid disallowance and addition fall in the definition of misreporting of income and not in the definition of under reporting of income mentioned by the Ld. AO in the assessment order. The Ld. PCIT therefore considered the assessment order as erroneous in so far as it is prejudicial to the interest of the Revenue and issued show cause notice dated 25.02.2022 as to why an order enhancing the assessment be not passed. The assessee company responded by stating that disallowance of 20% of general expenses was made by the Ld. AO after applying his mind, though no specific detail was called for and furnished by the assessee. The Ld. AO disallowed 20% of expenses after fully satisfying himself of the claim of expenditure made by the assessee company, hence, it cannot be concluded that the remaining expenditure was allowed without enquiring into the claim. As regards addition of Rs. 25,21,073/- being the difference between the sales and purchase as per information received from HPCL and as per ledger account of the assessee, it was explained that difference was mainly on account of VAT charged by HPCL in their bills whereas VAT was booked by the assessee under separate head as per accounting policy regularly followed by the assessee. It was submitted before the Ld. PCIT that both the issues were raised during assessment proceedings and the necessary clarifications /

documentary evidences were submitted before the Ld. AO which he did not consider properly.

5. The Ld. PCIT considered the submission/reply of the assessee and in exercise of powers vested in him under section 263 of the Act enhanced the assessment by a sum of Rs. 8,85,125/- being the difference between the claim of Rs. 11,06,406/- made by the assessee under the head General Expenses and disallowance of Rs. 2,21,281/- made by the Ld. AO.

6. Aggrieved, the assessee is in appeal before the Tribunal and all the grounds relate thereto.

7. The Ld. AR submitted that during the course of assessment proceedings the Ld. AO had asked the assessee to furnish details of various expenses and the assessee in response, furnished details of other expenses which included general expenses of Rs. 11,06,406/-. Thereafter, the Ld. AO after due application of mind disallowed general expenses to the tune of Rs. 2,21,281/-. Hence the order of the Ld. AO passed under section 143(3) of the Act after due application of mind cannot be deemed to be erroneous and there is no wrong application of law or an incorrect assumption of facts. Hence, revisionary powers under section 263 of the Act cannot be invoked by the Ld. PCIT as twin conditions (erroneous and prejudicial to the interest of Revenue) are not cumulatively satisfied. Conclusion arrived at by the Ld. AO in exercise of his quasi-judicial power vested in him cannot be termed as 'erroneous' only because the Ld. PCIT is not satisfied. Reliance was placed on a number of decisions.

8. The Ld. Sr. DR supported the order of the Ld. PCIT.

9. We have considered the submission of the parties and perused the records. It is a case selected for complete scrutiny and assessment is completed after issue of notice under section 143(2) and 142(1) of the Act along with questionnaire and after duly examining the submissions of the assessee. If that be so, it is rather naive to assume that it is a case in which assessment order is passed without making enquiries or verification which

should have been made. The import of the Ld. PCIT's order is that cent percent general expenses of Rs. 11,06,406/- claimed by the assessee be disallowed as against 20% thereof i.e. Rs. 2,21,281/- as per the decision of the Ld. AO for the reason that complete details were not filed and that veracity thereof could not be verified. By no stretch of imagination, the decision of the Ld. AO to disallow 20% out of the claim of the assessee can be termed as "erroneous". This is because the Ld. AO has exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion. Such a conclusion cannot be termed to be erroneous because the Ld. PCIT does not feel satisfied with the conclusion as held by the Hon'ble Bombay High Court in CIT vs. Gabriel India Ltd. 203 ITR 108 (Bom). In other words, erroneous order does not mean an order with which the Ld. PCIT is unable to agree as observed by the Hon'ble Gauhati High Court in Smt. Lila Chaudhary vs. CIT 167 Taxman 1 (Gau). Prejudicial to the interest of Revenue would mean an erroneous order which goes against the interest of revenue collection. Both the conditions i.e. erroneous as also prejudicial to the interest of revenue must pre-exist to enable the Ld. PCIT to exercise the power under section 263 of the Act. The revisional power under section 263 of the Act is a quasi-judicial power hedged in with limitations and has to be exercised subject to the same and within its scope and ambit. The impugned order of the Ld. PCIT is not sustainable both on facts and in law. It is hereby vacated.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 17th November, 2023.

**sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

**sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 17/11/2023

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	