

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. G.S. PANNU, HON'BLE VICE PRESIDENT  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.3341/Del/2019  
(Assessment Year: 2019-20)

Richa & Co. B-34, Phase-1, Mayapuri Industrial Area, Delhi. PAN No. AAAFR0114L <b>(APPELLANT)</b>	Vs.	JCIT Special Range-17, New Delhi.  <b>(RESPONDENT)</b>
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Assessee by	Shri KVSR Krishna, CA
Revenue by	Shri PN Barnwal, CIT-DR

Date of hearing:	16.10.2023
Date of Pronouncement:	27.12.2023

**ORDER**

**PER ANUBHAV SHARMA, JM :**

The Assessee has come in appeal against the order dated 22.03.2019 passed by the Ld. Commissioner of Income Tax (Appeals)-17, New Delhi [in short 'Ld.CIT(A)'] u/s 263 of the Income Tax Act, 1961 (hereinafter referred as "the Act") being Appeal No. PCIT 17/order u/s 263/2018-19/3116, pertaining to AY 2014-15.

2. The assessee is a partnership firm and engaged in manufacturing and export of readymade garments. During the relevant year the assessee had shown to earn income from

business. Besides this the assessee has also shown income from house property. The return which was filed by the assessee declaring total income of Rs.10,02,41,200/- was processed u/s 143(1) and subsequently was selected for scrutiny for which notice u/s 143(2) was issued followed by questionnaire and notice u/s 142(1) and after examining the details the Ld. Assessing Officer (hereinafter referred as the "AO") had accepted the return income by order dated 17.11.2016.

3. However, the Ld. PCIT was not satisfied from the order as the case of assessee was selected for complete scrutiny. Ld. PCIT observed that on perusal of the assessment record it was observed that the case was selected for scrutiny under CASS for "complete scrutiny" and the reason was mentioned as "(i) Mismatch in sales turnover reported in Audit Report and ITR and (ii) Mismatch in amount paid to related persons u/s 40(A)(2)(b) reported in Audit Report and ITR". Later the reasons were revised to:

- I. *Large specified domestic transaction(s) (FORM 3 CEB).*
- II. *Depreciation claimed at higher rates/higher additional depreciation claimed.*
- III. *Mismatch in sales turnover reported in Audit Report and ITR.*
- IV. *Delayed payment of tax and return filed late.*

- V. *Large other expenses claimed in the Profit and Loss Account.*
- VI. *Mismatch in amount paid to related persons u/s 40(A)(2)(b) reported in Audit Report and ITR.*

3.1 Ld. PCIT questioned the assessment order observing that from the above reasons it can be seen that the case was selected on the basis of a TP Risk parameter. There was a mistake in noting the reason of selection on the system and, therefore, the case was not referred to TPO due to omission. This has resulted in the order passed therein which is erroneous and prejudicial to the interest of the Revenue.

4. Further on examining the records the Ld. PCIT concluded that the AO has passed the order without making enquiries or verification which he should have made while investigating the case and thus questioned the assessment order as erroneous due to the following reasons:

- (i) *The AO as required by the Act/Circular did not send your case to the TPO, who has knowledge and ability to properly examine the specified domestic transaction which in your case appears to be in large amount. This was on the issues required to be examined extensively and it was one of the basis on which the case was selected for scrutiny. The AO, the record shows, has failed to apply his mind in making enquiries with regard to Specified Domestic Transactions.*

- (ii) *Besides this AO, has not properly examined the amount paid to related persons u/s 40(A)(2)(b) which was also a parameter for selection of the case for scrutiny.*
- (iii) *Further AO has failed to verify the sales turnover as given by the assessee in the audit report and ITR and has not applied his mind in making enquiries with regard to sales made by the assessee.*
- (iv) *Further proper enquiries with respect to other expenses as claimed by the assessee have not been done by the AO which appears to be in large amount in your case.*
- (v) *Moreover, AO has not conducted proper enquiries on the issue of large commission expenses paid by you which has resulted in low net profit as declared by you in your ITR.*

5. The assessee had responded to the notice u/s 263 of the Act, however, Ld. PCIT was not satisfied and found the assessment order to be erroneous and prejudicial to the interest of Revenue with the following relevant findings: -

*“The assessment records have been called and perused and it is observed that:*

*As per reply submitted by the AR of the assessee the case was selected for scrutiny only for two reasons. However, the AO has failed to make assessment as per the revised reasons of selection. And as per the revised reasons the AO had to send the case to the TPO in first instance and thus failed in making enquiries with regard to specify domestic transactions. Thus, reassessment u/s 263 is necessarily required in the case.*

*The assessee has submitted the reply however, on perusal of the records it is observed that the assessee has only submitted the unsigned copies of ledger account of various parties from page no. 55-128. No*

*explanation/comparison/reconciliation have been submitted by the assessee and AO has failed to make detailed enquiry about the rent paid to various parties of Rs.5,39,328/- which does not have premises/building no. and no rent agreement found in assessment records.*

*Vide reply dated 17.08.2016 the assessee has submitted the party wise details of Fabrication and Embroidery charges for top ten parties with their PAN and address with aggregate amount paid during the year. But there is difference between amount paid to the parties i.e. for Fabrication Expenses and for Embroidery Expenses as compared to TDS certificate submitted by the assessee. Further, the assessee also claimed the various expenses on account of foreign tour expenses of Rs.25,46,244/- and Diwali & Festival expenses of Rs.29,90,855/- but did not submit any bank account details or vouchers to justify the same.*

*The assessee has only submitted unsigned copies of ledger account no Bill Vouchers or copy of bank account has been submitted by the assessee to justify the amount paid on account of commission.*

*The AO had not referred the case to TPO even when the reason for selection was TP risk parameter. The AO had to mandatorily refer the case to TPO as scrutiny reasons had been revised as under:*

- 1. Large specified domestic transaction(s) (Form 3 CEB).*
- 2. Depreciation claimed at higher rates/higher additional depreciation claimed.*
- 3. Mismatch in sales turnover reported in Audit Report and ITR.*
- 4. Delayed payment of tax and return filed late.*
- 5. Large other expenses claimed in the Profit & Loss A/c.*

6. *Mismatch in amount paid to related persons u/s 40(A)(2)(b) reported in Audit Report and ITR.*

*Hence, I am satisfied that this order is erroneous and prejudicial to the interest of Revenue. The order is set aside with directions to AO to refer it to TPO and examine all the other reasons as reflected in the system. The assessee must be given adequate opportunity.”*

6. The assessee is now in appeal before this Tribunal raising the following grounds:

1. *“The assumption of jurisdiction u/s 263 of the Act by the Pr. CIT is beyond the scope of provisions contained in section 263 of the Act. Therefore, the order is not sustainable in law and liable to be quashed.*
  2. *The assessment framed by the AO was after due consideration of the facts and the law. There is nothing pointed out by the Pr. CIT in the order of AO as erroneous or resulting in any prejudice to the interest of the Revenue and hence the setting aside of the order of AO by the Pr. CIT u/s 263 of the Income Tax Act, 1961 is in excess of jurisdiction and bad in law.*
  3. *Without prejudice, setting aside the order of the AO on the ground of not referring the case to TPO and directing for examination of other reasons for scrutiny cannot be reason for calling the AO’s order as erroneous or prejudicial to the interest of the Revenue, the order u/s 263 of the Pr. CIT is erroneous and not in accordance with law.*
  4. *The above grounds are independent and without prejudice to one another.*
  5. *The appellant prays that he may be allowed to add, amend, alter or forgo any of the grounds at the time of hearing.”*
7. Heard and perused the record.

8. The Ld. AR has primarily relied on the proposition of law that without any enquiry of its own Ld. PCIT could not have invoked the provisions of section 263 of the Act. It was submitted that the order to make further enquiry and pass fresh order is contrary to law and the burden was on the PCIT to show what was erroneous. Reliance in this regard was placed on the following judgments: -

1. *NKB Infrastructure (P) Ltd. vs. PCIT (2022) 29 ITR (Trib) 0125 (Del)-Copy enclosed.*
2. *PCIT vs. M/s Kavin (India) ITA No.213 of 2019 dated 21/4/22 (P&H)-Copy enclosed.*
3. *ETT Ltd. vs. CIT (2019) 112 Taxmann.com 321 (Delhi).*
4. *CIT (Dr.) vs. Delhi Airport Metro Express Pvt. Ltd. (2017) 398 ITR 8 (Delhi).*
5. *ITO vs. DG Housing Projects Ltd. (2012) 343 ITR 329 (Delhi).*
6. *Narayan Tatu Rane vs. ITO (2016) 70 Taxmann.com 227 (Mum).*

9. Ld. DR has, however, submitted that there was no error in the findings of the Ld. PCIT. He relied the Instruction No.3/2016 dated 10.03.2016 of CBDT providing for guidelines/implementation of transfer pricing provisions.

10. After taking into consideration the facts and circumstances of the case and the submissions, it comes up that as with regard to failure of the AO to send the case to the TPO. The assessee's claim

was that there was Specified Domestic Transactions and the payments were made covered u/s 40(A)(2)(b) of the Act and for which both the parties are paying similar rate of taxation and no Revenue has been affected. The case of assessee is that this angle was examined by the AO while completing the assessment. It was also submitted before Ld. PCIT that for the AY 2015-16 on the same facts as this year no adverse view was found by TPO.

11. We are of the considered view that Instruction No.3/2016 dated 10.03.2016 of CBDT providing for guidelines/implementation of transfer pricing provisions in para 3.2 specifically provides that if a case is selected for scrutiny on the basis of transfer pricing risk parameters in respect of International Transactions or Specified Domestic Transactions or both the case has to be referred to TPO by the AO after obtaining the approval of the jurisdictional PCIT or CIT. The failure of Ld. AO to comply with these directions in relevant AY 2014-15 and following them in next AY 2015-16 makes it apparent that Ld. AO has not followed directions of Circular this years without mentioning any reasons for not referring the matter to TPO and that makes the order erroneous and prejudicial to the interest of Revenue irrespective of the fact that the transaction may have resulted into no loss to Revenue for the reason that both the

parties were paying tax at similar rate as that is not a justification in TP issue examination by TPO.

12. As with regard to remaining grounds for finding the assessment order to be erroneous and prejudicial to the interest of Revenue, we find that assessee had made submissions to Ld. PCIT that the issue was examined by the Ld. AO by raising queries to which assessee had responded by letters dated 29.04.2016, 11.07.2016, 11.08.2016 and 17.08.2016. The copies of which have been filed before us from page nos. 7 to 11 of paper book.

13. The order of Ld. PCIT makes it apparent that he has taken note of these submissions of the assessee as made before Ld. AO and as available on the assessment record, but found that enquiry was not detailed without indicating by his own efforts as to where Ld. AO failed to follow the mandate of the Act in accepting the pleas. No separate and reasoning of his own are stated to establish his findings that how the submissions were not otherwise sustainable under the law to hold that assessment order was erroneous and prejudicial to the interest of Revenue.

14. Thus, we are not inclined to interfere in the order of Ld. PCIT with regard to directions of AO to refer the matter to TPO but on

other counts the order is not sustainable. Consequently, the ground no.3 is allowed partly in favour of the appellant-assessee and remaining grounds are dismissed.

13. In the result, the appeal of assessee is allowed partly with consequences to follow as per the determination of grounds as above.

**Order pronounced in the open court on 27.12.2023**

**Sd/-  
(G.S. PANNU)  
VICE PRESIDENT**

**Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

Date:- 27.12.2023

*\*Kavita Arora, Sr. PS*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI