

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

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No. 1272/DEL/2021 [A.Y. 2015-16]

M/s National Udyog
28, Industrial Development Colony
Delhi Road, Hisar

Vs. The Pr. C.I.T.
Hisar

PAN - AAAFN 9042 R

(Applicant)

(Respondent)

Assessee By : Shri Suraj Bhan Nain, Adv
Shri Mahrsusrur Rahman, CA

Department By : Shri Subhra Jyoti Chakraborty, CIT-DR

Date of Hearing : 30.01.2024

Date of Pronouncement : 31.01.2024

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. PCIT, Hisar dated 17.02.2020 pertaining to A.Y. 2015-16.

2. The sum and substance of the grievance of the assessee is that the PCIT erred in assuming jurisdiction u/s 263 of the Income-tax Act, 1961 [the Act, for short], and further erred in holding that the assessment order dated 8.06.2017 framed u/s 143(3) of the Act is not only erroneous but also prejudicial to the interest of the revenue.

3. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

4. Briefly stated, the facts of the case are that the assessee is engaged in the trading of scrap and processing stainless steel cuttings. The assessee filed its return of income electronically on 29.09.2015, declaring total income of Rs. 7,65,050/-.

5. Return was selected for scrutiny assessment through CASS.

Reasons for scrutiny selection were:

- (i) low net profit or loss shown from large gross receipts;
- (ii) large squared up loans during the year, and
- (iii) custom duty payment mismatch.

6. Statutory notices were issued and served upon the assessee and assessment was framed u/s 143(3) of the Act vide order dated 0806.2017.

7. Vide notice dated 18.01.2017, the Assessing Officer sought clarification on the following points:



भारत सरकार
GOVERNMENT OF INDIA
वित्त विभाग
MINISTRY OF FINANCE
आयकर विभाग
INCOME TAX DEPARTMENT

Income Tax Officer, Ward-3, Hisar
Aayakar Bhawan, Sector-14, Hisar-125091 (Haryana)
Telephone No. 01662-278977, Fax No. 01662-278975.

No. ITO/W-3/HSR/2016-17/13609

Dated: 16.01.2017

To

M/s National Udyog
78, Industrial Development Colony,
Hisar

D/Sir,

Sub: - Assessment Proceedings u/s 143(3) - Information Required u/s 142(1) of the Income Tax Act, 1961 for the Assessment year 2015-16 - Regarding-

To enable me to complete the assessment in your case for the above noted assessment year, you are requested to furnish the following information/documents/explanations with documentary evidence to the following points, wherever necessary:-

1. Confirm the Jurisdiction of your case, whether the jurisdiction of the case vests with the undersigned or not.
2. Copy of Return of Income, Computation of Income, Balance Sheet, Capital account, Trading & Profit & Loss A/c alongwith Audit Report, for the Financial Year ending 31-03-2014 and 31.03.2015. *with copy of purchase chp acct.*
3. A brief note on financial/business activities carried on during the year with details of all sources of income.
4. Please explain with documentary evidence the followings as reflected in the ITR filed for A.Y. 2015-16:-

- i) Low net profit or loss shown from large gross receipt.
- ii) Large squared up loans during the year (Form 3CD).
- iii) Mismatch of custom duty paid as shown in the ITR with the duty paid as per Export Import Data (CBEC tab to ITS).

5. Details of all the bank accounts maintained during the year under consideration, in your name along-with copies of bank accounts, giving narration for debit/credit entries exceeding Rs. 10,000/- therein, in the following format: -

S.No.	Name & Address of the Bank	Account No	Type of Account	In the name of

6. All books of accounts i.e. cash book, ledger etc. alongwith complete vouchers may be produced on the date of hearing.

The information is being called for under section 142(1) of the Income Tax Act, 1961 and should be verified and signed as prescribed in Rule 14 of the Income Tax Rules, 1962. Your case is fixed for hearing on 25.01.2017 at 12:30 P.M. Notice u/s 142(1) dated 16.01.2017 of the Income Tax Act, 1961 are enclosed herewith.

Yours faithfully,

(Signature)
(Ramesh Lal Thakral)
Income Tax Officer
Ward-3 Hisar

Encl: - As above

8. It can be seen from the above that a very specific query was raised in relation to large squared up loans during the year.

9. The assessee filed detailed reply alongwith documentary evidences which are exhibited at pages 12 to 191 of the Paper Book. Exhibit Nos. 51 to 53 need special mention here as the same are confirmation of accounts of M/s Vardhman Financial Services Pvt Ltd for Rs. 1 crore, bank statement with HDFC belonging to M/s Vardhman Financial Services Pvt Ltd and Income tax return for A.Y 2015-16 of M/s Vardhman Financial Services Pvt Ltd.

10. Particulars of each repayment of loan filed with the Assessing Officer is as under:

Confirmed copy of T/C
M/s National Udyog, Hisar

Annexure-D

Particulars of each repayment of loan or deposit in an amount exceeding the limit specified in Section 269T made during the previous year:

<u>S. No.</u>	<u>Name, address and Permanent account no. of the payee</u>	<u>Amount of repayment</u>	<u>Maximum amount outstanding in the account at any time during the previous year</u>	<u>Whether the repayment was made otherwise than by an account payee cheque or a bank draft</u>
1	Amtrex Trading Co, C/o Hisar Metal Ind. Ltd., Industrial Area Hisar PAN:	1500000.00	1500000.00	No
2.	Century Steel 1, IDC, Hisar PAN:AABFC0979K	5970000.00	4270000.00	No
3.	Dayanand Aggarwal, Hisar	200000.00	200000.00	No
4.	Rohit Jindal, 90, UE-IIInd, Hisar PAN: AGFPJ3951N	7052000.00	4852000.00	No
5.	Haryana Tin Plot No-13, IDC, Hisar PAN:AABFH6981N	3300000.00	2100000.00	No
6.	S.S. Saxena & Sons H.U.F., Hisar	168848.00	168848.00	No
7.	Shanti Devi, Sec-9-11, Hisar PAN:	300000.00	300000.00	No

Notes:

- Accounts consisting of loans/deposits as well as sales/purchases are not considered for reporting here.
- Particulars of only those accounts in which loan or deposit has exceeded Rs. 20000/- or more during the year are considered for reporting here.
- It is not possible for us to verify whether the payments have been made otherwise than through account payee cheques/drafts as the necessary evidence is not in the possession of the assessee. However, no such payments have been made otherwise than by cheque/drafts.
- Particulars of Bank Loan are not considered for reporting here

11. Assuming jurisdiction conferred upon him by provisions of section 263 of the Act, the PCIT issued show cause notice which reads as under:

(267)



भारत सरकार / Govt. of India
आयकर विभाग / Income Tax Department

कार्यालय प्रधान आयकर आयुक्त
आयकर भवन, सैक्टर - 14, हिसार-125 001 (हरियाणा)
दूरभाष नं. 01662-278939, 278974, फैक्स नं.-01662-278975
e-mail ID : hissar.cit@incometax.gov.in, cit-hsr-hry@gov.in

(11)

F.No.Pr.CIT/HSR/Tech./263/2018-19/3995

Dated : 31.08.2018

To

The Principal Officer,
M/s National Udyog,
28, Industrial Development Colony,
Delhi Road, Hisar

Sub : Notice u/s 263(1) of the Income Tax Act, 1961 for the A.Y. 2015-16 – Regarding –

Return of income for the A.Y. 2015-16 was filed by you electronically on 29.09.2015 declaring an income of Rs.7,65,050/-. Subsequently, the case was selected through the CASS under Limited scrutiny category to examine the issues "(i) Low net profit or loss shown from large gross receipts, (ii) Large squared up loan during the year (Form 3 CD), and (iii) Custom duty mismatch". The assessment for the year under consideration was completed by the Income Tax Officer, Ward-3, Hisar vide order dated 08.06.2017 passed u/s 143(3) of the I.T.Act, 1961 by accepting returned income of Rs.7,65,050/- as such.

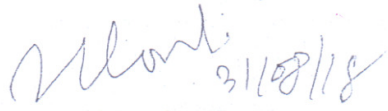
2. The assessment record for the period under consideration was called upon and examined. On such examination, it has been noticed that you have raised fresh unsecured loan from M/s Vardhman Financial Services Pvt. Ltd., New Delhi amounting to Rs.1,00,00,000/- on 18.06.2014. The lender has filed the return of income declaring loss of Rs.1,06,37,691/- during the year. Further, from the perusal of the bank account of the lender, it is noticed that money is credited in the bank account just a day

268
10

before advancing the loan to you. Further, no substantial amount is involved in other entries in the bank account of the lender except the above entry involved with you. In addition to this, from the perusal of list of directors shown on the Zauba.com website, it is noticed that directors of the above lender company are also working as directors of other paper companies, which are not carrying out any business except providing the entry on commission basis. Therefore, all the above facts indicate that you have just introduced the unaccounted money into the business in the form of unsecured loan. But the AO has failed to conduct the necessary detailed investigation and cross-verification to unearth the real picture.

3. In view of the above facts, failure on the part of the Assessing Officer to examine the issues discussed hereinabove have *prima facie* rendered the assessment order erroneous in so far as it is prejudicial to the interest of revenue. The same is, therefore, required to be suitably amended/modified u/s 263 of the I.T. Act, 1961. You are, therefore, required to show cause as to why an appropriate order u/s 263(1) of the Act should not be passed. In this connection, hearing in your case has been fixed in the office of undersigned at Hisar on 05.10.2018 at 11:45 AM. You may send your written reply so as to reach this office before the stipulated date. In case you wish to avail of the opportunity of being heard in person, you may do so by attending the office of the undersigned personally or through duly authorized representative on the above said date and time. In case of no reply / non-attendance as per above, it shall be assumed that you do not wish to say anything in the matter and the matter would be decided as per material on record without any further notice / intimation to you.




 (Niranjana Kouli)
 Pr. Commissioner of Income Tax,
 Hisar

12. From the above, it can be seen that the PCIT was of the opinion that the Assessing Officer has not made any enquiry in respect of loan taken from M/s Vardhman Financial Services Pvt Ltd amounting to Rs. 1

crore. This is factually incorrect as explained hereinabove. The Assessing Officer has raised specific query to which the assessee had filed specific reply alongwith supporting documentary evidences mentioned hereinabove. Therefore, it cannot be said that the Assessing Officer has not made any enquiry. This, in itself, makes the assumption of jurisdiction by the PCIT bad in law.

13. The root cause for initiation of the impugned proceedings is the review of scrutiny case by the JCIT, Hisar Range, Hisar and the same reads as under:

Comments of the JCIT

Return declaring an income of Rs. 7,65,050/- was filed by the assessee on 29.09.2015. The case was selected for limited Scrutiny under CASS for examination of '(i) Low net profit or loss shown from large gross receipts (ii) Large Squared up loan during the year and (iii) Custom duty mismatch'. The issues involved have been examined by the A.O. on completion of scrutiny assessment proceedings under section 143 (3) vide order dated 08.06.2017, total income of the assessee has been assessed at returned income.

2. The assessee had raised the fresh unsecured loan from M/s Vardhman Financial Services Pvt. Ltd., New Delhi amounting Rs. 1,00,00,000/- on

18.06.2014. The lender has filed the return of income declaring loss of Rs. 1,06,37,691/- during the year. Further, from the perusal of the bank account of the lender, it is noticed that money is credited in the bank account just a day before advancing the loan to the assessee. Further, no substantial amount is involved in other entries in the bank account of the lender except the above entry involved with the assessee. In addition to this, from the perusal of list of directors shown on the Zaubacom website, it is noticed that directors of the above lender company are also working as directors of other paper companies, which are not carrying out any business except providing the entry on commission basis. Therefore, all the above facts indicate that assessee has just introduced the unaccounted money into the business in the form of unsecured loan. But the AO has failed to conduct the necessary detailed investigation and cross-verification to unearth the real picture.

3. In view of the above facts, the assessment order passed by the AO is erroneous and prejudicial to the interest of the revenue. Therefore, the case is proposed to the Pr. Commissioner of Income Tax, Hisar for initiating the proceedings u/s 263 of the Income Tax Act, 1961.

(Hemant Gupta)

Joint Commissioner of Income Tax,
Hisar Range, Hisar

1581
19/2/18
Copy to: The Pr. Commissioner of Income Tax, Hisar with a proposal to initiate the proceeding u/s 263 of the Act along with the assessment record.

Joint Commissioner of Income Tax,
Hisar Range, Hisar

14. A plain reading of section 263 of the Act would show that the PCIT may call for and examine the record of any proceedings under this Act whereas in the case in hand, we find that it was the JCIT who recommended the PCIT to initiate the proceedings u/s 263 of the Act for which it can be safely concluded that the PCIT did not apply his mind. Even the recommendation of the JCIT is based upon erroneous facts as mentioned elsewhere. Complete enquiry was made by the Assessing Officer during the course of original assessment proceedings.

15. In the light of the afore-stated facts the Hon'ble Supreme Court in Malabar Industrial Co. Ltd., 243 ITR 83, has laid down the following ratio:

"A bare reading of section 263 of the Income-tax Act, 1961, makes it clear that the prerequisite for the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent--if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue-- recourse cannot be had to section 263(1) of the Act. The provision cannot be invoked to

correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous".

16. The Hon'ble Bombay High Court in the case of Gabriel India Ltd 203 ITR 108 has held as under:

"The power of suo motu revision under subsection (1) is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision under this sub-section, viz., (i) the order is erroneous; (ii) by virtue of the order being erroneous prejudice has been caused to the interests of the Revenue. It has, therefore, to be considered firstly as to when an order can be said to be erroneous. We find that the expressions "erroneous", "erroneous assessment" and "erroneous judgment" have been defined in Black's Law Dictionary. According to the definition, "erroneous" means "involving error; deviating from the law". "Erroneous assessment" refers to an assessment that deviates from the law and is, therefore, invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the Assessing Officer in fixing the amount of valuation of the property. Similarly, "erroneous judgment" means "one rendered according to course and practice of court, but contrary to law, upon mistaken view of law; or upon erroneous application of legal principles". 12. From the aforesaid

definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. It may be said in such a case that in the opinion of the Commissioner the order in question is prejudicial to the interests of the Revenue. But that by itself will not be enough to vest the Commissioner with the power of suo motu revision because the first requirement, viz., that the order is erroneous, is absent. Similarly, if an order is erroneous but not

prejudicial to the interests of the Revenue, then also the power of suo motu revision cannot be exercised. Any and every erroneous order cannot be the subject-matter of revision because the second requirement also must be fulfilled. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed. We, therefore, hold that in order to exercise power under sub-section (1) of section 263 of the Act there must be material before the Commissioner to consider that the order passed by the Income-tax Officer was erroneous in so far as it is prejudicial to the interests of the Revenue. We have already held what is erroneous. It must be an order which is not in accordance with the law or which has been passed by the Income-tax Officer without making any enquiry in undue haste. We have also held as to what is prejudicial to the interests of the Revenue. An order can be said to be prejudicial to the interests of the Revenue if it is not in accordance with the law in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised. There must be material available on the 10 record called for by the Commissioner to satisfy him prima facie that the aforesaid two requisites are present. If not, he has no authority to initiate proceedings for revision. Exercise of power of suo motu revision under such circumstances will amount to arbitrary exercise of power. It is well-settled that when exercise of statutory power is dependent upon the existence of certain objective facts, the authority before exercising such power must have materials on record to satisfy it in that regard. If the action of the authority is challenged before the court it would be

open to the courts to examine whether the relevant objective factors were available from the records called for and examined by such authority. The Income-tax Officer in this case had made enquiries in regard to the nature of the expenditure incurred by the assessee. The assessee had given detailed explanation in that regard by a letter in writing. All these are part of the record of the case. Evidently, the claim was allowed by the Income-tax Officer on being satisfied with the explanation of the assessee. Such decision of the Income tax Officer cannot be held to be "erroneous" simply because in his order he did not make an elaborate discussion in that regard. Moreover, in the instant case, the Commissioner himself, even after initiating proceedings for revision and hearing the assessee, could not say that the allowance of the claim of the assessee was erroneous and that the expenditure was not revenue expenditure but an expenditure of capital nature. He simply asked the Income- 11 tax Officer to re-examine the matter. That, in our opinion, is not permissible. Hence the provisions of section 263 of the Act were not applicable to the instant case and, therefore, the commissioner was not justified in setting aside the assessment order."

17. It is a settled position of law that powers u/s 263 of the Act can be exercised by the Commissioner on satisfaction of twin conditions, i.e., the assessment order should be erroneous and prejudicial to the interest of the Revenue. By 'erroneous' is meant contrary to law. Thus, this power cannot be exercised unless the Commissioner is able to establish that the order of the Assessing Officer is erroneous and

prejudicial to the interest of the Revenue. Thus, where there are two possible views and the Assessing Officer has taken one of the possible views, no action to exercise powers of revision can arise, nor can revisional power be exercised for directing a fuller enquiry to find out if the view taken is erroneous. This power of revision can be exercised only where no enquiry, as required under the law, is done. It is not open to enquire in case of inadequate inquiry. Our view is fortified by the 12 decision of Hon'ble High Court of Bombay in the case of CIT vs. Nirav Modi, [2016] 71 Taxmann.com 272 (Bombay)".

18. The Hon'ble High Court of Gujarat in the case of CIT vs. Nirma Chemical Works Ltd. 309 ITR 67 has observed as under:

"if assessment order were to incorporate the reasons for upholding the claim made by an assessee, the result would be an epitome and not an assessment order. In this case, during the assessment proceedings for both the Assessment Years, the Assessing . A.Y. 2009-10 Officer issued a query memo to the assessee, calling upon him to justify the genuineness of the gifts. The Respondent Assessee responded to the same by giving evidence of the communications received from his father and his sister i.e. the donors of the gifts along with the statement of their Bank accounts. On perusal, the Assessing Officer was satisfied about the creditworthiness/capacity of the donors, the

source from where these funds have come and also the creditworthiness/ capacity of the donor. Once the Assessing Officer was satisfied with regard to the same, there was no further requirement on the part of the Assessing Officer to disclose his satisfaction in the Assessment Order passed thereon. Thus, this objection on the part of the Revenue cannot be accepted."

19. We find that the Hon'ble Delhi High Court in the case of CIT Vs Sunbeam Auto reported in 332 ITR 167 has held as held as under:

"12. We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the CIT under s. 263 of the IT Act. As noted above, the submission of learned counsel for the Revenue was that while passing the assessment order, the AO did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order, which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the AO had not applied his mind on the issue. There are judgments galore laying down the principle that the AO in the assessing order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue

expenditure. Learned counsel for the assessee is right in his submission 14 that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate that would not by itself give occasion to the CIT to pass orders under s. 263 of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry" that such a course of action would be open".

20. Considering the facts of the case in totality, in light of the judicial decisions discussed hereinabove, we do not find any error or infirmity in the assessment order which could make it erroneous and prejudicial to the interest of the revenue. Therefore, we set aside the order of the PCIT and restore that of the Assessing Officer dated 8.06.2017.

21. In the result, the appeal of the assessee in ITA No. 1272/DEL/2021 is allowed.

The order is pronounced in the open court on 31.01.2024.

Sd/-

[SAKTIJIT DEY]
VICE PRESIDENT

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 31st January, 2024.
VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. 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	