

IN THE INCOME TAX APPELLATE TRIBUNAL  
NAGPUR BENCH, NAGPUR – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.56/NAG/2021  
Assessment Year : 2016-17

Sara Spintex India Pvt. Ltd., Gate No.97, 98, Dhamnagaon Road, Moha 445 001 Maharashtra PAN : AAPCS5098G	Vs.	Pr.CIT, Nagpur-2
Appellant		Respondent

Assessee by : Shri Mahavir Atal  
Revenue by : Shri Kailash G. Kanojiya

Date of hearing : 01.02.2024  
Date of pronouncement : 02.02.2024

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

This is an appeal filed by the assessee directed against the order of Id. Pr. Commissioner of Income Tax-1, Pune ['PCIT'] dated 24.02.2021 passed u/s 263 of the Income Tax Act, 1961 ('the Act') for the assessment year 2016-17.

2. At the outset, we find that there is a delay of 64 days in filing the present appeal. The appellant had filed the petition praying for condonation of delay on the ground that the delay pertains to the

covid-19 pandemic outbreak period. The order of the Id. CIT(A) was served on appellant on 30.03.2021 and the appeal was filed on 28.06.2021. The delay period was covered by the decision of the Hon'ble Supreme Court in the case of Cognizance for Extension of Limitation, In re (2022) 441 ITR 722 (SC) dated 10.01.2022, wherein, the limitation prescribed by various statutes was *suo motu* extended on account of difficulties faced by the citizens of the country on account of Pandemic Covid-19.

3. Having regard to the explanation given by the assessee for condonation of delay, we are of the considered opinion that it is a fit case for condonation of delay. Accordingly, we condone the delay and proceed to dispose of the appeal on merits.

4. Briefly, the facts of the case are that the appellant is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacturing and exporting cotton yarn. The Return of Income for the assessment year 2016-17 was filed on 31.03.2017 declaring total income of Rs.2,50,49,070/-. The case was selected for scrutiny under computer assisted scrutiny selection (CASS) by way of issue of statutory notice u/s.142(1) of the Act. In this case, survey u/s.133A of the Act was conducted

during which the appellant has declared additional income of Rs.2.25 crores and offered the same to tax. Eventually, the assessment was completed by the Assessing Officer vide order dated 26.11.2018 passed u/s. 143(3) of the Act after making of addition of Rs.66,133/- on account of late payment of sales tax.

Subsequently, the Id. PCIT, on review of the assessment record, formed an opinion that the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue, as the Assessing Officer had failed to examine the following items :

- “i. The AO has failed to ascertain the genuineness and credit worthiness of an amount of Rs.4,07,90,000/- shown as money received against share warrants.
- ii. The AO has failed to verify the loans inspite of being a reason for selection under CASS.
- iii. The AO has failed to enquire whether any income has accrued to the assessee under the heads “State interest subsidy, TUF interest subsidy & VAT tax”.
- iv. The AO also has failed to investigate the genuineness and source of amount claimed by assessee as share application money.
- v. The AO has not given any finding that he has examined the books and documents impounded at the time of survey.

5. In response to the said show-cause notice, the appellant had filed a detailed explanation which has been reproduced by the Id. PCIT in para no.5 of the impugned order. Considering the submissions of the assessee, the Id. PCIT had concluded that since the AO had failed to cause necessary enquiries, the assessment order is erroneous and prejudicial to the interest of the Revenue. Accordingly, he set-aside the assessment order with a direction to redo the assessment afresh after examining relevant details and conducting proper enquiry after affording reasonable opportunity of hearing to the appellant.

6. Being aggrieved, the appellant is in appeal before us in the present appeal contending that the Id. PCIT ought not to have exercised the jurisdiction u/s 263 of the Act, without reaching the prima-facie conclusion that the assessment order is erroneous and prejudicial to the interest of the Revenue.

7. On the other hand, Id. CIT-DR supports the order of the Id. PCIT.

8. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the validity of assumption of jurisdiction u/s 263 by the Id. PCIT. The Parliament

had conferred the power of revision on the Commissioner of Income Tax u/s 263 of the Act in case the assessment order passed is erroneous and prejudicial to the interests of revenue. In order to invoke the power of revision, the above two conditions are required to be satisfied cumulatively. References in this regard can be made to the decision of the Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. vs. CIT*, 243 ITR 83 (SC) and in the case of *CIT vs. Max India Ltd.*, 295 ITR 282 (SC). The error in the assessment order should be one that it is not debatable or plausible view. In a case where the Assessing Officer examined the claim took one of the plausible views, the assessment order cannot be termed as an "erroneous".

9. Now, we proceed to examine whether the assessment order passed by the Assessing Officer is erroneous or not. Admittedly, there was no enquiry by the AO on the issues which are sought to be revised by the ld. PCIT. It is evident from the very submissions made by the appellant during the course of proceedings before the ld. PCIT that no enquiry was conducted by the AO on the aforementioned issues and the items on which the revision was sought to be made by the ld. PCIT does not call for any interference

by us having regard to the facts of the each item. We refer to a decision by the Hon'ble Bombay High Court in the case of *CIT Vs. Ballarpur Industries Ltd. (2017) 85 taxmann.com 10 (Bombay)* holding that mere taking the view by the Assessing Officer without having subjected the claim to examination would not make it a view of the Assessing Officer. A view has necessarily to be preceded by examination of the claim and opting to choose one of the possible results. In the absence of view being taken, merely because the issue itself was debatable, would not absolve the Assessing Officer of applying his mind to the claim made by the assessee and allowing the claim only on satisfaction after verification/enquiry on his part. A view in the absence of examination is no view but only a chance result. The Hon'ble High Court further went on to hold in para No.16 as under:

“16. Therefore, we are of the view that the Assessing Officer cannot abdicate his responsibility of examining the claim for deduction before allowing it. Absence of examination of the claim made by the assessee while passing an assessment order and allowing the claim made, would render the order of the Assessing Officer erroneous coupled with the fact that it is admitting prejudicial to the interest of the revenue, exercise of revisional jurisdiction u/s.263 of the Act by the Id. Commissioner of Income Tax is proper and valid.”

10. In the light of the above binding judicial precedent, we are of the considered opinion that the Id. PCIT has rightly exercised the

power of revision u/s.263 of the Act. The impugned order passed by the ld. PCIT was justified and therefore, we do not find any reason to interfere with the same.

11. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on this 02<sup>nd</sup> day of February, 2024.

**Sd/-**  
**(S. S. VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 02<sup>nd</sup> February, 2024.  
*Satish*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर /  
DR, ITAT, Nagpur.
4. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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

		Date	
1.	Draft dictated on	01-02-2024	Sr.PS
2.	Draft placed before author	02-02-2024	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.		