

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "B" CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No 232/CHD/2023

निर्धारण वर्ष / Assessment Year : 2018-19

M/s V-Con Integrated Solutions Pvt.Ltd., Plot F-141, Phase-8B, Mohali, Rupnagar.	Vs	The PCIT, Chandigarh-1.
स्थायीलेखासं./PAN NO: AABCI9928H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Sudhir Sehgal, Advocate

राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT DR

सुनवाई की तारीख/Date of Hearing : 14.02.2024

उद्घोषणा की तारीख/Date of Pronouncement : 27.02.2024

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order of the ld. Pr. Commissioner of income Tax, Chandigarh [hereinafter referred to as 'ld.PCIT] dated 29.03.2023 pertaining to 2018-19 assessment year.

2. The brief facts of the case are that the case of the assessee was selected for limited scrutiny on three issues :

- i) Refund Claim
- (ii) Share Capital/other capital
- (iii) Deduction or total income under Chapter VI-A.

3. The ld. Assessing Officer (in short 'the AO') in the scrutiny assessment proceedings u/s 143(3) of the Income Tax Act, after examining the aforesaid issues accepted the returned income of the assessee. Thereafter, the ld. PCIT noted from the assessment records that the assessee had claimed deduction u/s 80JJAA of the Income Tax Act, 1961 (in short 'the Act') for the assessment year 2018-19 to the tune of Rs.99,23,285/-. He further observed that from the perusal of record in Form 10DA, it revealed that 775 employees had been added by the assessee in the relevant Financial Year 2017-18. He observed that to cater the employment of 775 employees, the assessee would have required extra space alongwith furniture and computer systems which might have increased the financial expenses of the assessee. He further observed that the assessee, however, had not shown any extra expenses for creating the infrastructure for newly added employees. He further observed that in addition to the infrastructure expenses, the assessee might have incurred expenses for advertisement, interviews, hospitality expenses etc. He observed that the assessee had simply provided the list of employees which was not sufficient for fulfillment of the requirements u/s 80JJAA of the Income Tax Act. He observed that the AO had not made adequate enquiries in this respect.

3.1 The ld. PCIT further observed that during the year, the assessee had raised loans and also paid huge interest thereupon. He observed that the said loan amount was incurred for capital work in progress and therefore, the disallowance in respect of interest expenditure was attracted u/s 36(1)(iii) of the Act, however, the AO has not examined this issue.

3.2 The ld. PCIT further observed that the assessee had made certain investments, income from which was exempt and therefore, the disallowance u/s 14A of the Act in respect of making those investments was attracted, however, the AO has not examined the said issue.

3.3 The ld. PCIT also observed that the assessee during the year had issued 0.25% Non Cumulative Compulsory Redeemable Preference Shares (NCRPS) of Rs.100/- each. He, in this respect, observed that the AO had not properly examined the issue relating to the identity/financial worthiness and share subscribers and genuineness of the transactions.

4. The ld. PCIT show caused the assessee on the above issues as to why the assessment order be not held as erroneous and prejudicial to the interests of the Revenue for lack of adequate enquiries made by the AO.

5. In reply to the show cause, the assessee furnished the

various details and submissions. However, the ld. PCIT did not get satisfied with the aforesaid submissions of the assessee and held that the assessment order passed by the AO u/s 143(3) was erroneous and prejudicial to the interests of the Revenue as the AO has failed to make enquiries and verifications which should have been made by him. He, accordingly, set aside the assessment order for denovo assessment.

6. Being aggrieved by the said order of the ld. PCIT, the assessee has come in appeal before us.

7. At the outset, the ld. Counsel for the assessee has submitted that the case of the assessee was selected for limited scrutiny on three issues i.e., (i) Refund Claim (ii) Share Capital/other capital (iii) Deduction or total income under Chapter VI-A. The ld. counsel has submitted that so far as the observation of the ld. PCIT that the AO has not properly examined the issue relating to disallowance u/s 36(1)(iii) of the Act and u/s 14A of the Act is concerned, the AO was not authorized to scrutinized and enquire these issues without the permission of the Competent Authority. The assessment was selected for limited scrutiny on the three issues as noted above and the AO was not supposed to scrutinize any other issue, therefore, the observation of the

ld. PCIT that the assessment order was erroneous because the AO has not scrutinized the issue relating to disallowance u/s 36(1)(iii) and Section 14A of the Act is not correct, the assessment order cannot be held erroneous as the AO was not supposed to go into these issues in case of limited scrutiny.

8. The ld. DR has fairly agreed on these submissions of the ld. counsel. Since in this case, the aforesaid issue relating to disallowance u/s 36(1)(iii) and 14A of the Act were not covered under the limited scrutiny, therefore, the assessment order cannot be held to be erroneous for want of detailed enquiries on these issues by the AO.

9. Now coming to the issue relating to the claim of deduction u/s 80JJAA of the Act, the ld. Counsel for the assessee has invited our attention to the various details and explanations given by the assessee during the assessment proceedings. He has further invited our attention to the reply filed before the ld. PCIT wherein, the reference was made to the various enquiries made by the AO on this issue and the reply and explanation given by the assessee in this respect. The sum and substance of the reply of the assessee has been that the assessee was also providing manpower services and that out of 1640 employees, services of 1133

employees had been placed under the other company namely Quadrant Televentures Ltd. and the assessee company had also raised the bills during the Financial Year and the said amount was remitted to it and the same was paid to the employees. It was submitted that there was no extra burden upon the assessee company for creating infrastructure etc. The ld. counsel in this reply has also placed reliance on page 92 of the Paper Book wherein the reply relating to the claim of deduction u/s 80JJAA have been furnished along with certificate of the Chartered Accountant. The ld. counsel has further invited our attention to Paper Book page 99, which is copy of Form 10DA, wherein all the details relating to claim of deduction u/s 80JJAA have been furnished and it has been mentioned that there was increase of 213 number of employees during the year in respect of which the deduction was claimed u/s 80JJAA on the total emoluments paid of Rs.3,30,77,615/- to the additional employees, whereupon, deduction @30% was claimed. The ld. counsel has further invited our attention to page 102 and 103 of the Paper Book which is the copy of the notice issued by the AO u/s 142(1) of the Income Tax Act whereupon the AO had called from the assessee the following details in respect of the deduction claimed under Chapter VI-A :

1. Section/subsection wise details of deductions claimed under VIA.
- 2 *Details of earnings under the relevant heads against which deduction claimed.*
3. *Note on eligibility criteria of deductions claimed under different sections of Chapter VIA*
4. *Details of all the bank accounts alongwith the bank statement for the year to support the claim.*
5. *Documentary evidence in respect of investment/expenditure/payment etc. made to claim the deductions.”*

10. The ld. counsel has further invited our attention to page 120, whereby, the details in respect of additional employees was submitted which included the names of the additional employees, their PAN number, gross salary, bank account details and the mode of salary paid through banking channel and even the relevant deductions and deposits under employees' Provident Fund and under Employees' State Insurance Act were made. The ld. counsel has also referred to page 39 of the Paper Book to submit that in case of outsourced employees, the emolument/receipts on that account were received from the company to whom the services were provided and the same were duly accounted for.

11. We note that the adequate enquiries were made by the AO on these issues and the ld. PCIT has not pointed out what additional enquiries were required to be made by the AO on this issue. Moreover, the assessee has duly explained

before the ld. PCIT that the assessee has outsourced the employees, therefore, the expenditure on account of additional infrastructure was not incurred. The ld. PCIT has simply held the order erroneous on this issue by making general observation that the AO was required to make more enquiries, which, in our view, is not a valid ground to hold the assessment order erroneous and prejudicial to the interests of the Revenue.

12. So far as the issue relating to the issue of shares to the two companies namely M/s Takecare India Pvt. Ltd. and Videocon Realty Infrastructure Ltd. was concerned, the assessee explained that the AO had made adequate enquiries on this issue and various replies and details were furnished to the AO, considering which the AO has accepted the claim of the assessee. The ld. counsel, in this respect has submitted that the AO had issued questionnaire dated 28.12.2020 wherein, the following details were asked for from the assessee, on this issue :

- a) *Name and address of the shareholders*
 - b) *PAN of the shareholders*
 - c) *Face Value of each share.*
 - d) *Number of shares allotted to each shareholder.*
 - e) *Total value of the shares allotted to each shareholder,*
 - f) *Payment received from each shareholder during the financial year.*
- 2) *Provide documentary evidence to substantiate the identity and ITR of the shareholders to substantiate creditworthiness the*

- shareholders as well as the proof of genuineness of transaction in respect of fresh credit of the share capital account.*
- 3) *The valuation report with respect to the working of EPS.*
 - 4) *The comparison of the working of EPS with the immediately prior instance, wherein the shares were allotted.*
 - 5) *The year wise details of dividend declared during the year and three earlier years.*

13. It was submitted that the aforesaid queries of the AO were duly replied alongwith documents. It was further replied to the PCIT that another reply dated 25.01.2021 was furnished to the AO in which the required details and explanation regarding the fresh issue of preference shares was submitted giving PAN numbers, number of preference shares and face value, PAN number of the share subscribers, total value of the shares alongwith ITRs of the shareholders was also furnished. Copy of bank account of the assessee showing the receipt of amount from the shareholder alongwith Equity Valuation Report of the shares was also furnished. The ld. counsel has further referred to the reply dated 03.02.2021 vide which the various details including allotment of preference shares, copy of Resolution, ratio of preference shares issued against original shares and other particulars as desired by the AO have been furnished. The ld. counsel has further submitted that even the assessee had furnished copy of the information in respect of the allotment of preference shares to the Ministry of Corporate Affairs alongwith prescribed Form SH-7.

14. It is to be noted that the ld. PCIT has not pointed out in the impugned order that what further enquiries were required to be made by the AO in this case which have not been so made. The ld. PCIT has only by single observation held that these claims of the assessee alongwith claim on the issue of share capital paid to the companies namely M/s Takecare India Pvt. Ltd. and Videocon Realty Infrastructure Ltd. are held to be a matter that needs to be factually verified and examined accordingly by the AO. We note that these are the general observations of the ld. PCIT. The ld. PCIT has not given any specific finding as to why the order of the AO was erroneous and prejudicial to the interests of the Revenue on this issue and on what account. The ld. PCIT has not pointed out any defect, infirmity or inadequacy in the explanation offered by the assessee on the queries made by the ld. PCIT. Simply holding that the AO was required to make more enquiries is not a valid ground to hold assessment order as erroneous and prejudicial to the interests of the Revenue. The exercise of the revision power by the Ld. PCIT, in this case, is not justified. The revisional order of the ld. PCIT is, therefore, not sustainable in the eyes of law and the same is hereby quashed.

15. In the result, appeal of the assessee stands allowed.

Order pronounced on 27th February,2024.

Sd/-
(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

“Poonam”

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar