

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : A : NEW DELHI

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

ITA No.769/Del/2021
Assessment Year: 2015-16

Ahlcon Parenterals (India) Ltd., Vs Pr. CIT-3,
Plot No.30/30-E, Shivaji Marg, New Delhi.
2nd Floor, Najafgarh Road,
New Delhi – 110 015.
PAN: AAACA1112C

(Appellant)

(Respondent)

Assessee by : Shri Ketan Vaid, CA
Revenue by : Shri Zafarul Haque Tanweer, CIT-DR
Date of Hearing : 26.02.2024
Date of Pronouncement : 21.05.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Assessee against the order dated 25.03.2021 passed by the Pr. Commissioner of Income Tax (Central), Delhi-3 (hereinafter referred as the Ld. PCIT) in Revision No.PCIT (Central), Delhi-3/Revision-263/100000193785/2021 arising out of the appeal before it against the order passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act'), by the DCIT, Central Circle-31, New Delhi (hereinafter referred to as the Ld. AO).

2. Heard and perused the record. At the outset, the ld.AR has pointed out that there was a delay in filing the appeal. The ld. AR has submitted that the period of

delay stands covered by the Hon'ble Supreme Court directions in Writ Petition (Civil) No.3 of 2020 wherein due to Covid-19 pandemic, the date of filing of the appeal was extended. The ld. DR could not dispute this. Accordingly, the application is allowed.

3. Further, it comes up that the assessment order was passed making two additions. However, the ld. PCIT was not satisfied and had invoked his powers u/s 263 of the Act. The assessment records for A.Y. 2015-16 in the case of the above assessee i.e. M/s Ahlcon Parenterals India Ltd. were called for and examined by the ld. PCIT. In this case the assessment was completed on 14.12.2017 u/s 143(3) at an assessed loss of Rs. 30,83,89,802 as against the returned loss of Rs.30,94,55,123/-. ld. PCIT observed that from the perusal of assessment records following relevant points emerged:

3.1 There is an undisclosed TDS of Rs.4929.43 which has resulted into under assessment by Rs.4,29,493/-. The case was under complete Scrutiny and this was highlighted as one of the reasons but was not reconciled in assessment proceedings.

3.2 Purchases shown in ITR are less than invoice value of imports by Rs. 17,08,352/-. This was one of the reasons in ITD selection but the same was not reconciled during assessment proceedings.

3.3 Wrong claim of deduction u/s 32 and 32AC in respect of plant and machinery, addition in building, furniture and fittings, exchange rate and cost in

INR, wrong claim of Modvat etc. These issues were not examined in assessment proceedings resulting in under-assessment of Rs.56,56,46,563/-.

4. Hence, ld. PCIT observed that the examination of the assessment order as well as the assessment records clearly shows that the assessment order passed by the AO is not only erroneous but also prejudicial to the interest of the Revenue. Accordingly, show cause notice u/s 263(1) of the I.T. Act, 1961 for the AY 2015-16 was issued on 13.03.2020 to the assessee asking him as to why the assessment order so passed should not be revised as the same was erroneous & prejudicial to the interest of the revenue.

5. Ld. PCIT observes in the impugned order that in response to the show-cause notice the assessee filed reply through webmail on 16.03.2021. The reply of the assessee is discussed in brief as under:

5.1 As with regards to the undisclosed TDS, the assessee stated that it is not aware to which TDS is being referred to in the show cause notice and asked to provide the specific detail/particulars of the undisclosed TDS from ld. PCIT.

5.2 Similarly, with regards to the difference in purchases shown in the ITR w.r.t. to the invoice value of the imports, the assessee again asked ld. PCIT to provide the specific details/particulars of difference in purchase.

5.3 Then, with regard to the wrong claim of deduction u/s 32 and 32AC in respect of plant and machinery, addition in building, furniture and fittings,

exchange rate and cost in INR, wrong claim of Modvat etc. which were found to be not examined and verified properly by the AO during the course of assessment proceedings, the assessee has replied that the Assessing Officer has duly raised the query and allowed the claim after due examination. In support of its contention the assessee attached the copy of the questionnaire issued in the case along with copy of its covering letter of the reply submitted before the AO during the course of assessment proceedings.

6. In view of its above mentioned replies, the assessee further contended that the order passed by the AO is neither erroneous nor prejudicial to the interest of the Revenue. However, the Id. PCIT was of the view that the impugned assessment order was erroneous so far as prejudicial to the interests of the Revenue as there was no enquiry.

7. During the course of arguments before us, the Id. AR has primarily rested his contention on the averment that the Id.PCIT has exercised his powers u/s 263 of the Act on the basis of a proposal received from subordinate tax authorities. In this regard, relevant material was produced by the Revenue and same shows that by the letter dated 04.03.2020 by Addl. Commissioner of Income-tax, Central Range-8, New Delhi, had made a proposal for proceedings by Id. PCIT . The Id. AR has also submitted that by order dated 11.06.2018 in Appeal No.318/17-18, CIT(A)-31, Delhi has allowed the appeal of the assessee and the additions made stood deleted. Further, a copy of the letter dated 26.11.2018 by ACIT, Nodal Officer (Audit)

addressed to the Joint Commissioner of Income-tax, Central Range-8, New Delhi is relied wherein certain audit objections in regard to the case of the assessee for AY 2015-16 stand mentioned. This reminder dated 26.11.2018 was in continuation to earlier letter dated 12.11.2018. Further, a copy of the letter dated 27.09.2018 from the AO, Deputy Commissioner of Income-tax addressed to Central Circle-31, addressed to PCIT, Central, New Delhi, through JCIT, Central Range-8, New Delhi is also on record where proposal for remedial action u/s 263 of the Act was made by submitting that there was non-verification of the facts during the assessment proceedings and as audit has worked out total loss of revenue at Rs.8,81,89,794/-, the proceedings u/s 263 be initiated.

8. Now, as we appreciate the order of PCIT, it comes up that there is no reference of these proposals. The ld. AR has relied the judgement of the Hon'ble Calcutta High Court in the case of ***PCIT vs. M/s Sinhotia Metals and Minerals Pvt. Ltd. in IA No.GA/1/2019 in ITAT/104/2019 dated 7th January, 2022*** wherein the Hon'ble Calcutta High Court has held as follows:-

“We have gone through the order passed by the Tribunal, wherein we find that the Tribunal has noted the decision of the co- ordinate Bench of the Tribunal in the case of M/s. Rapayan Udyog in said decision the Tribunal points out that the appellant department has not controverted the contents of the letter of the Joint Commissioner of Income Tax dated 18th August, 2016 and has recorded that the said letter clearly brings out that the PCIT has called for proposal from the JCIT/Assessing Officer to exercise jurisdiction under Section 263 of the Act. Therefore, the Tribunal concluded that the PCIT has not exercised jurisdiction under Section 263 of the Act himself, but he exercised jurisdiction at the instance of the Assessing Officer/JCIT, which is against the provisions of law.

The argument made by the learned Standing Counsel is that it is the PCIT who has exercised jurisdiction under Section 263 of the Act. From the order passed by the Tribunal we find that the department could not controvert the contents of the letter dated 18th August, 2016. If, according to the department, the contents of the letter were otherwise, then it is for the department to approach the Tribunal for necessary rectification or clarification and the correctness of the order of the Tribunal cannot be decided by us in an appeal under Section 260A of the Act by bringing certain submissions which were never made before the Tribunal. Therefore, we are not inclined to interfere with the order passed by the Tribunal and accordingly, the appeal is dismissed. However, we leave it open to the appellant/department to approach the Tribunal for clarification or rectification of the order, if they are so advised.”

9. The Id. DR, on the contrary, relies the Calcutta Bench order in the case of ***Stewarts & Lloyds of India Ltd. vs. CIT [2016] 67 taxmann.com 41 (Kolkata-Trib.)*** to contend that there is no prohibition u/s 263 of the Act for Revisional Authority to act on the basis of the proposal by the AO if other conditions specified under the said section are satisfied. The Id. DR has, thus, defended the action of the PCIT u/s 263 submitting that there may have been audit objection and proposal, otherwise, it was on the basis of records the PCIT has exercised its powers.

10. After taking into consideration the aforesaid submissions, we find that the Hon’ble Calcutta High Court in the case of ***PCIT vs. M/s Sinhotia Metals and Minerals Pvt. Ltd.*** (*supra*) has, by order dated 7th January, 2022, categorically upheld the conclusion of the Tribunal that PCIT has not exercised his jurisdiction u/s 263 of the Act himself but only on proposal of AO. This is a question of fact which was appreciated by the Hon’ble High Court to hold that there was irregular exercise of jurisdiction u/s 263 of the Act. The Tribunal in the case of ***Stewarts &***

Lloyds of India Ltd. (supra) had thoroughly gone on the facts of the case and in that case, independently the AO had made a proposal. In the case in hand before us even the AO made a proposal on the basis of audit report objections. Further, as we examine the notice u/s 263 available at page 84 of the paper book, it appears that the contents of the notice in a tabular form are similar to the proposal dated 27.09.2018 of the AO. The audit report is provided by Revenue at page no 1 to 9 of PB and same only seems to be the foundation of all the reasons quoted by the PCIT, for giving a finding that assessment order is erroneous. Thus, though not mentioned specifically in the order of the PCIT, that the jurisdiction is being invoked on the basis of the audit objections and the proposal thereof, the manner in which the PCIT has approached the issues by issuing show-cause notice and the discussion made upon the issue establish non-application of independent mind. It appears that based upon the audit objections and proposal only the jurisdiction u/s 263 was invoked and exercised to hold assessment order to be erroneous so far as prejudicial to Revenue

11. Thus, the grounds raised are sustained. The impugned order u/s 263 of the Act is set aside and the appeal of the assessee is allowed.

Order pronounced in the open court on 21.05.2024.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Dated: 21st May, 2024.

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

dk

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi