

आयकर अपीलीय अधिकरण, कटक न्यायापीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND**

SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.264/CTK/2023

(निर्धारण वर्ष / Assessment Year : 2017-2018)

Integral Publication Pvt. Ltd., Plot No.464, Saheed Nagar, Bhubaneswar-751007	Vs	Pr.CIT-1, Bhubaneswar
PAN No. :AABCI 0931 L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri S.K.Agrawalla, Shri Chitrasen Parida, ARs
राजस्व की ओर से /Revenue by	:	Shri Sanjay Kumar, CIT- DR
सुनवाई की तारीख / Date of Hearing	:	03/06/2024
घोषणा की तारीख/Date of Pronouncement	:	03/06/2024

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order dated 10.06.2023, passed by the Pr.CIT, Bhubaneswar-1 in DIN & Order No.ITBA/REV/F/REV5/2023-24/1053648643(1) for the assessment year 2017-2018.

2. It was submitted by the Id. AR that the original assessment order came to be passed u/s.143(3) of the Act 30.12.2019. It was the submission that the first order u/s.263 of the Act was passed on 01.03.2021. The same was challenged before the ITAT on the ground that the there was violation of principle of natural justice, insofar as no opportunity had been granted to the assessee. The ITAT had vide its order dated 21.12.2021 allowed assessee's appeal and quashed the order passed u/s.263 of the Act. The said order of the Tribunal was the

subject matter of the appeal before the Hon'ble Jurisdictional High Court of Orissa under Section 260A of the Act and the Hon'ble High Court vide an order dated 08.02.2023 had set aside the issue in the appeal to the file of the Id. Pr.CIT, Bhubaneswar-1 to pass an order after granting the assessee adequate opportunity of being heard and to pass an order as per law. Consequent to the order of the Hon'ble Jurisdictional High Court, the Id. Pr.CIT passed an order u/s.263 of the Act on 10.06.2023 setting aside the assessment order and directed the AO to examine the issue of the payments made in cash allegedly in violation of the provisions of Section 40A(3) of the Act to the two sundry creditors, who were the supplier of the newsprint. It was the submission that the issue of the sundry creditors had been examined by the AO in the course of original assessment. The Id. AR drew our attention to page 43 of the paper book which was the response to the notice u/s.142(1) of the Act on 18.12.2019. The response is dated 20.12.2019, wherein the details of sundry creditors had been produced. It was the submission that the sundry creditors having been examined by the AO, the same issue could not be considered by the Id. Pr.CIT in an order u/s.263 of the Act. The Id. AR submitted that in para 13 of his order, the Id. Pr.CIT has mentioned that the issue has not been examined by the AO during regular assessment u/s.143(3) of the Act dated 30.12.2019. It was the submission that, however, in para 12.3.11.3, the Id. Pr.CIT mentions that the assessee has merely submitted balance confirmation from both the parties during regular assessment proceeding but has not submitted any confirmation

from parties regarding the necessity or insistence for cash receipt nor has explained necessity of cash payment for each such transaction. It was the submission that this order of Id. Pr.CIT itself was contrary. It was the submission that the order passed u/s.263 of the Act is liable to be quashed, insofar as there has been no enquiry by the Id. Pr.CIT even though all the evidences were produced before him.

3. In reply, Id. CIT-DR vehemently supported the order of the Id. Pr.CIT passed u/s.263 of the Act.

4. We have considered the rival submissions. For better understanding of the facts, it would be worthwhile to extract para 12.5 to 13 of the order of the Id. Pr.CIT, which is found at pages 33 & 34 of the order passed u/s.263 of the Act :-

12.5 The following other materials may be relevant in this connection.

The tax return filed by the asseese in ITR-6 dated 11/10/2017 at col 9(b) "Amount paid otherwise than by account payee cheque or account payee bank draft under sec 40A(3)- 100% disallowable" shows an amount of RS.NIL.

Audit report in Form 3CO for the AY 17-18 at para 21(d),.it is certified that on the basis of examination of books of account and other relevant documents /evidence, the payment referred to in Sec 40A(3) r.w. Rule 600 has been made by account payee cheque or account payee bank draft and there is no details given to the contrary, meaning thereby that there is no violation of sec 40A(3).

It is contended(reply to notice u/s 142(1) and written submission in the present proceeding) that cash deposits are made out of business realization w.r.t circulation of newspaper. It is noticed that mostly the cheques are issued to parties after cash deposit preceding it. For example, a study of bank account No. 602003636455 with Indus Ind Bank, BBSR, it is found that after deposit of cash of Rs.4,10,000, cheque of 3,95,000 has been paid to Banadurga Traders. Similarly after cash deposit of Rs,3,96,000 on 4/4/16, ch of Rs.6,45,000 paid to Banadurga Traders and so on.

It is also noticed that even small to small amounts of RS.2000-3000 are also paid to parties in cheque etc e.q. transporters like Manas Senapati, Mahesh P lenka, Ganesh Ch Jena. Similarly, payments to printers like Gayatri Industries and Niyati Publications are all made in cheques. Equally, there are several parties from whom Newsprint is purchased. For example, Ananat kishore Traders, Sai Paper Agency, Bharat sales Syndicate, trishakti Distributors etc. In some cases, all payments are made in cheque, e.q. Shree Trading. To parties like Bharat Sales Syndicate both bank and cash payments are made where each cash payment is less than Rs. 20,0001-. Even to the two parties under consideration here several bank and cash payments are made but some of the cash payments violate the provisions of Sec 40A(3). Thus, it appears that assessee is aware of the provisions of the Act and also is quite accustomed to payment through banking channel. Therefore, the specific payments to these parties in contravention of the Sec 40A(3) needs to be examined in respect of each such instance of violation and needs to be explained by the assessee, which could not be done in the present proceeding because the same could not be supplied by the assessee nor confirmation from the other party for insistence of cash payment etc could not be produced.

12.6. Thus, in short, the onus on the assessee to the admitted transactions in cash and in violation of Sec 40A(3) has not been fully discharged as to under what clause of Sec 6DD they could be exempt, besides other factors as discussed supra and need>further examination by the AO ,before effecting disallowance.

13. Be that as it may, the moot point here is that the issue has not been examined at all by the AO during regular assessment u/s 143(3) dated 30/12/2019. I am fully conscious of the position that Section 263 has been understood not to require any specific show cause notice to be served on the assessee. Rather, what is required under the (said provision is an opportunity of hearing to the assessee. CIT vs Amitabh Bachhan CIVIL APPEAL No.5009 OF 2016 (SC) and Taradevi Agrawal76

ITR 496(SC). In view of the same and the direction of the Hon'ble HC, further opportunity has been provided.

5. It would also be worthwhile to extract para 12.3.11.3, which is page

25 of the order of the Id. Pr.CIT :-

12.3.11.3 Further, the assessee has merely submitted balance confirmation from both these parties during regular assessment proceeding but has not submitted any confirmation from parties regarding the necessity or insistence for cash receipt nor has explained necessity of cash payment for each such transaction.

6. It would also worthwhile to take cognizance of the reply filed by the assessee to the notice u/s.142(1) of the Act by the AO, signed copy of which is reads as follows :-

Others Compliance25a.pdf (8 KB)	Others Compliance25.pdf (876 KB)	Others Compliance5aa.pdf (5 KB)	Others Compliance6aa.pdf (5 KB)
Others Compliance10aa.pdf (5 KB)	Others Compliance23a.pdf (8 KB)	Others Compliance23.pdf (741 KB)	Others Compliance24.pdf (809 KB)
Others Compliance24a.pdf (5 KB)			
Response/Remarks 1.Given as below		Response Submitted On 20-Dec-2019	Response Type Partial
Response Filed By Self			
Attachments			
Others SUNDRYCREDIRORS.pdf (61 KB)	Others Compliance1.pdf (825 KB)	Others Compliance1a.pdf (6 KB)	
Response/Remarks 1.As given below		Response Submitted On 21-Dec-2019	Response Type Partial
Response Filed By Self			
Attachments			
Others Compliance10.pdf (664 KB)	Others Compliance10a.pdf (30 KB)		
Response/Remarks 1.Given as below		Response Submitted On 26-Dec-2019	Response Type Partial
Response Filed By Self			
Attachments			
Others letter1.PDF (342 KB)	Others powerofattorney.PDF (346 KB)	Others bankreceipts.PDF (640 KB)	Others directors.pdf (2 MB)
Others rent.PDF (379 KB)	Others computation.PDF (475 KB)		
Response/Remarks 1.Given as below		Response Submitted On 27-Dec-2019	Response Type Partial
Response Filed By Self			
Attachments			
Others NewRNI.pdf (733 KB)			
Response/Remarks 1.As given below		Response Submitted On 27-Dec-2019	Response Type Partial
Response Filed By			

7. The scanned copy clearly shows that the details of the sundry creditors have been supplied. There is no information nor has any query which has been raised by the AO regarding the issue of 40A(3) of the Act being the issue before us. The assessee admittedly is a publication unit. The assessee has purchased newsprint from the said two sundry creditors. The Id. AR has admitted that the payments have been made within two or three days of the bills being raised. The assessee admittedly has been unable to show that there is any query raised by the AO in regard to the issue of 40A(3) of the Act. The decision of the Hon'ble Delhi High Court in the case of M/s Clix Finance India Pvt. Ltd., reported in [2024] 160 taxmann.com 357 (Delhi), referred to by the Id. AR, it would be worthwhile to extract para 27 to 29, which read as follows :-

27. Considering the aforesaid judicial pronouncements, it can be safely concluded that inadequacy of enquiry by the AO with respect to certain claims would not in itself be a reason to invoke the powers enshrined in Section 263 of the Act. The Revenue in the instant case has not been able to make out a sufficient case that the CIT has exercised the power in accordance with law. Rather, in our considered opinion, the facts of the case do not indicate that the twin conditions contained in Section 263 of the Act are fulfilled in its letter and spirit.

28. Notably, the ITAT, while making a categorical finding that the CIT had failed to point out any definite or specific error in the assessment order, has satisfactorily explained both the claims in question in Paragraph 8.2 of its order, which reads as under:-

"8.2 In the Impugned Order, the Ld. Commissioner of Income Tax-IV, Delhi held that the AO had not examined the aforesaid two issues properly and, therefore, set aside the issues for further inquiries to be conducted by the AO. As regards the first issue is concerned, we note that out of total provision of Rs. 1114.68 lacs, a sum of Rs. 7,60,76,105/- was suo moto added back in the computation of income and a further sum of Rs. 73,46,160- was disallowed by the AO in the original assessment order dated 30.3.2005. Therefore, out of Rs. 1114.68 lacs, Rs. 834.22 lacs already stood disallowed in the original assessment

order. The balance amount represented actual write off which was palpably clear from page 2 of the impugned order itself. No deduction on account of any such provision was, therefore, allowed to the assessee. Hence, there is no error or prejudice to the interest of revenue. As regards second issue it was noted that interest rate swap was an actual loss and only the net loss of Rs. 114.05 lacs after setting of gain of interest rate swap was claimed as deduction. However, we find that both these issues were duly examined by the AO vide Questionnaire dated 2.11.2004 (Page 1-2 of the Paper Book) to which replies dated 9.12.2004, 20.12.2004 and 6.1.2005 (Page No. 3-39 of Paper Book-1) were furnished and, therefore, the finding of the Ld. CIT that the issues were not examined properly was not correct. Even the Ld. CIT has not pointed out the definite and specific error in the original assessment order and observed that the inquiry made by the AO was inadequate or improper without first pointing out the error in the original assessment order passed by the AO, particularly because both the aforesaid issues were duly examined at the stage of the original assessment proceedings, hence, the impugned order is beyond jurisdiction, bad in law and void-ab-initio."

29. *It is discernible from the aforesaid findings of the ITAT that both the claims were duly examined during the original assessment proceedings itself and neither there was any error nor the same was prejudicial to the interests of the Revenue. Thus, the findings of fact arrived at by the ITAT do not warrant any interference of this Court.*

8. A perusal of the said decision, in fact, in para 29, clearly states that the claims were duly examined during the original assessment proceedings itself and neither there was any error nor the same was prejudicial to the interests of the Revenue. The examination of the issues in the course of original assessment proceedings would have a substantial bearing. In the present case, there is nothing available on record to show that the issue of the cash payments vis-à-vis the provisions of Section 40A(3) of the Act has been examined by the AO in the course of original assessment proceedings. This being so, we are of the view that the action by the Id. Pr.CIT in invoking its powers u/s.263 of the Act are in order.

9. Coming to the issue that the Id. Pr.CIT has not done any enquiry by himself and, therefore the decision of the Hon'ble Jurisdictional High Court in the case of Orissa State Police Housing & Welfare Corporation Ltd., reported in [2022] 139 taxmann.com 207 (Orissa) and the decision of the Tribunal in the case of Earth Minerals Co. Ltd., passed in ITA No.223/CTK/2019, order dated 29.08.2022, which has been confirmed by the Hon'ble Jurisdictional High Court, reported in [2024] 162 taxmann.com 272 and finally the same has been upheld by the Hon'ble Supreme Court, reported in [2024] 162 taxmann.com 273 (SC), would apply. In this regard, a perusal of the order of the Jurisdictional High Court in the assessee's case, when the issues have been set aside to the file of Id. Pr.CIT, the Hon'ble High Court in para 6 has held as follows :-

6. In that view of the matter, the impugned order of the ITAT is interfered with to the extent that while the order dated 1st March, 2021 of the Pr.CIT under Section 263 of the ITAT Act will remain set aside, the revisional proceedings under Section 263 of the IT Act will revive before the Pr.CIT and will be listed there on 10th April, 2023. On that date the Respondent-Assessee will appear and produce all the relevant documents/materials. The Pr.CIT will then proceed in accordance with law and pass a fresh order within a period of two months thereafter.

10. The Hon'ble Jurisdictional High Court of Orissa has directed the Pr.CIT to proceed in accordance with law and pass a fresh order within a period of two months thereafter. The Hon'ble High Court in its order in the assessee's case in ITA No.7 of 2022, vide order dated 08.02.2023 had specifically given a direction that the revisionary proceedings u/s.263 of the Act will revive before the Id. Pr.CIT and will be listed there on 10th April, 2023 and that the assessee is to appear and produce all relevant documents and materials on that date. The details were produced before

the Id. Pr.CIT only on 06.06.2023. Obviously, the time limit for passing order u/s.263 of the Act expired on 10.06.2023. It is also noticed that the first hearing notice was given by Id. Pr.CIT on 16.05.2023 and even on that date the evidences were not produced. Now to say that the Id. Pr.CIT should have done the enquiry is farfetched. This being so, considering the fact of the present case, the order passed u/s.263 of the Act by the Id. Pr.CIT stands upheld.

11. In the result, appeal of the assessee is dismissed.

Order dictated and pronounced in the open court on 03/06/2024.

**Sd/-
(MANISH AGARWAL)**

लेखा सदस्य/ **ACCOUNTANT MEMBER**

**Sd/-
(GEORGE MATHAN)**

न्यायिक सदस्य / **JUDICIAL MEMBER**

कटक Cuttack; दिनांक Dated 03/06/2024

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
Integral Publication Pvt. Ltd.,
Plot No.464, Saheed Nagar,
Bhubaneswar-751007
2. प्रत्यर्थी / The Respondent-
Pr.CIT-1, Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack