

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Hybrid Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 32/PAT/2022
Assessment Year: 2017-2018**

***Indian PAC Consulting Private Limited,..... Appellant
4A, Khushi Villa, East Boring Canel Road,
Patna-800001, Bihar
[PAN: AADCI8016Q***

-Vs.-

***Principal Commissioner of Income Tax-1,..Respondent
Patna,
Central Revenue Building,
Birchand Patel Marg, Patna-800001, Bihar***

Appearances by:

N o n e, appeared on behalf of the assessee

*Smt. Rinku Singh, CIT, D.R., appeared on behalf of the
Revenue*

Date of concluding the hearing : May 08, 2024

Date of pronouncing the order : July 05, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of ld. Principal Commissioner of Income Tax, Patna-1 dated 17th February, 2022 passed under section 263 of the Income Tax Act in A.Y. 2017-18.

2. In response to the notice of hearing, no one has come present on behalf of the assessee nor any paper book has been filed. With the assistance of ld. D.R., we have gone through the record carefully.

3. Brief facts of the case are that the assessee Company was engaged in the business of providing services to political parties, business organizations and trading in share market. It has filed its return of income on 31.10.2017 declaring a loss of Rs.2,22,14,719/-. This return was processed under section 143(1). Later on, it was selected for scrutiny assessment. The ld. Assessing Officer has accepted the return without discussing any of the issues and accepted loss declared by the assessee.

4. A perusal of the assessment record, ld. Pr. Commissioner formed an opinion that ld. Assessing Officer has not examined the issue as was required to be examined. The ld. Pr. CIT observed that this case was selected for scrutiny system on the ground that the assessee has not filed TDS statement or TDS reported by the assessee in Forms No. 26Q, 27Q and 26QB, which is significantly lower than the aggregate of TDS claimed to be deducted by the assessee by different taxpayers in their respective ITRs. Before the ld. CIT, the assessee has filed

written submission, which has been verbatim reproduced but again the assessee could not submit the requisite supporting details. The ld. CIT recorded a mismatch on the certain figures. The ld. CIT has observed that TDS under section 194C amounting to Rs.58,00,000/- against receipt of Rs.29,00,00,000/- was done. The aggregate TDS i.e. deducted under sections 194C and 194A has been worked out at Rs.58,46,788/- on the total receipt of Rs.29,04,67,871/-. But in the Profit & Loss Account, the assessee had shown the short receipt namely against the aggregate receipt of Rs.29,00,00,000/-, it has shown the receipts of Rs.28,69,52,174/-. This was a mismatch and this was not verified by the ld. Assessing Officer. Therefore, ld. Pr. CIT took cognizance under section 263 and set aside the assessment for reconsideration and reverification of these details.

5. With the assistance of ld. D.R., we have gone through the record carefully. Before we embark upon an enquiry on the facts and issues agitated before us to find out whether the action u/s 263 of the Act, deserves to be taken against the assessee or not, it is pertinent to take note of this section. It reads as under:-

“263(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the revenue, he may, after giving the assessee

an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

[Explanation.- For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,-

(a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include-

(i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income Tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;

(ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorized by the Board in this behalf under section 120;

(b) "record shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Commissioner;

(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject

matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.

Explanation.- In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.”

6. A bare perusal of the sub section-1 would reveal that powers of revision granted by section 263 to the learned Commissioner have four compartments. In the first place, the learned Commissioner may call for and examine the records of any proceedings under this Act. For calling of the record and examination, the learned Commissioner was not required to show any reason. It is a part of his

administrative control to call for the records and examine them. The second feature would come when he will judge an order passed by an Assessing Officer on culmination of any proceedings or during the pendency of those proceedings. On an analysis of the record and of the order passed by the Assessing Officer, he formed an opinion that such an order is erroneous in so far as it is prejudicial to the interests of the Revenue. By this stage the learned Commissioner was not required the assistance of the assessee. Thereafter the third stage would come. The learned Commissioner would issue a show-cause notice pointing out the reasons for the formation of his belief that action u/s 263 is required on a particular order of the Assessing Officer. At this stage the opportunity to the assessee would be given. The learned Commissioner has to conduct an inquiry as he may deem fit. After hearing the assessee, he will pass the order. This is the 4th compartment of this section. The learned Commissioner may annul the order of the Assessing Officer. He may enhance the assessed income by modifying the order. He may set aside the order and direct the Assessing Officer to pass a fresh order.

7. A perusal of sub-clause (c) of the above would contemplate that if any order, which is subject matter for revision under section 263 is challenged in appeal, then, on the items which are subject matter of appeal, no power

under section 263 could be exercised by the ld. Commissioner. We may elaborate further, for example- an assessment order was passed, it contains five issues, which were challenged before the ld. CIT(A), but ld. Assessing Officer failed to look into few issues, which may arise from the record, then inspite of the assessment order being challenged before the ld. CIT(A), the ld. Commissioner would have jurisdiction on such items, which are not subject matter of appeal in that assessment order.

8. At this stage, before considering the multi-fold contentions of the ld. Representatives, we deem it pertinent to take note of the fundamental tests propounded in various judgments relevant for judging the action of the CIT taken u/s 263. The ITAT in the case of Mrs. Khatiza S. Oomerbhoy Vs. ITO, Mumbai, 101 TTJ 1095, analyzed in detail various authoritative pronouncements including the decision of Hon'ble Supreme Court in the case of Malabar Industries 243 ITR 83 and has propounded the following broader principle to judge the action of CIT taken under section 263.

- (i) The CIT must record satisfaction that the order of the AO is erroneous and prejudicial to the interest of the Revenue. Both the conditions must be fulfilled.

(ii) Sec. 263 cannot be invoked to correct each and every type of mistake or error committed by the AO and it was only when an order is erroneous that the section will be attracted.

(iii) An incorrect assumption of facts or an incorrect application of law will suffice the requirement of order being erroneous.

(iv) If the order is passed without application of mind, such order will fall under the category of erroneous order.

(v) Every loss of revenue cannot be treated as prejudicial to the interests of the Revenue and if the AO has adopted one of the courses permissible under law or where two views are possible and the AO has taken one view with which the CIT does not agree. It cannot be treated as an erroneous order, unless the view taken by the AO is unsustainable under law.

(vi) If while making the assessment, the AO examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determine the income, the CIT, while

exercising his power under s 263 is not permitted to substitute his estimate of income in place of the income estimated by the AO.

(vii) The AO exercises quasi-judicial power vested in him and if he exercises such power in accordance with law and arrive at a conclusion, such conclusion cannot be termed to be erroneous simply because the CIT does not fee stratified with the conclusion.

(viii) The CIT, before exercising his jurisdiction under s. 263 must have material on record to arrive at a satisfaction.

(ix) If the AO has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the AO allows the claim on being satisfied with the explanation of the assessee, the decision of the AO cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard.

9. In the light of above, we have examined the impugned order of ld. Pr. CIT. We find that the ld. Assessing Officer has nowhere carried out the investigation on the items of

which case was selected for scrutiny. His order is totally non-speaking and, therefore, ld. Commissioner rightly took cognizance under section 263 and directed the ld. Assessing Officer to frame the assessment order *denovo*. We do not find any error in this order and accordingly, appeal of the assessee is dismissed.

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

Order pronounced in the open Court on 05.07.2024.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Rajpal Yadav)
Vice-President

Kolkata, the 5th day of July, 2024

*Copies to :(1) Indian PAC Consulting Private Limited,
4A, Khushi Villa, East Boring Canel Road,
Patna-800001, Bihar*

*(2) Principal Commissioner of Income Tax-1,
Patna,
Central Revenue Building,
Birchand Patel Marg, Patna-800001, Bihar*

(3) Commissioner of Income Tax- Patna;

(4) The Departmental Representative

(5) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.