

आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.1568/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2015-16)

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स्टे याचिका सं. S.A No.28/Chny/2024
(Arising out of ITA No.1568/Chny/2024)
(निर्धारण वर्ष / Assessment Year: 2015-16)

M/s. Schneider Electric Systems India P. Ltd. SP Plot No.16-19 & 20A, Taramani Tech Park Inner Ring Road, Thiru Vi Ka Industrial Estate, Guindy Industrial Estate S.O. Guindy, Chennai-600 032.	बनाम/ Vs.	PCIT Chennai-3.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AABCS-8027-M		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri Rohit Tiwari (Advocate) (Virtual) - Ld.AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri Nilay Baran Som (CIT) -Ld. DR

सुनवाईकी तारीख/ Date of Hearing	:	01-07-2024
घोषणाकी तारीख / Date of Pronouncement	:	10-07-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee assails invocation of revisionary jurisdiction u/s 263 by Ld. Pr. Commissioner of Income Tax Chennai-3 (Pr. CIT) vide impugned order dated 31-03-2024 in the matter

of an assessment framed by Ld. AO u/s.147 r.w.s 144B of the Act on 21-03-2022. The grounds taken by the assessee are as under: -

1.1 The order passed by the Principal Commissioner of Income Tax Corporate Circle - 3 ('Ld. PCIT') dated 31 March 2024, under section 263 of the Income-tax Act, 1961 ('the Act'), is bad in law and on facts.

1.2 The PCIT has erred in law and in the circumstances of the case in partly setting aside the order passed under section 147 r.w.s. 144B of the Act dated 21 March 2022 thereby, directing the Assessing Officer ('Ld. AO') to disallow the amount of INR 20,766,481 paid to Life insurance Corporation of India ('LIC') towards superannuation fund under section 40A(9) of the Act.

1.3 The order of the PCIT is contrary to the law, facts and circumstances of the case and hence, is liable to be quashed.

2. Revisionary proceedings initiated under section 263 of the Act is bad in law and is liable to be quashed

2.1 The Ld. PCIT has erred in law by concluding that the order passed by the Ld. AO was erroneous in so far as it is prejudicial to the interest of the revenue without appreciating the fact that proper inquiries / verification were made by the Ld. AO during the course of reassessment proceedings which were initiated subsequent to the original assessment proceedings.

2.2 The Ld. PCIT has erred in law by failing to appreciate that one of the reasons for re-opening the assessment proceedings for the subject AY was regarding the disallowance of payment of INR 20,766,481 made to Life insurance Corporation of India ('LIC') towards superannuation fund under section 40A(9) of the Act, which was dropped by the Ld. AO pursuant to verification of the details furnished by the Appellant.

2.3 The Ld. PCIT has erred in law by initiating revisionary proceedings under section 263 of the Act without appreciating that the Ld. AO has adjudicated on the aforementioned issue by duly applying his mind.

2.4 The Ld. PCIT has erred in law by concluding that there was "lack of enquiry" by the Ld. AO without appreciating that the Ld. AO had conducted detailed inquiries during the course of reassessment proceedings specifically with respect to contribution made to LIC towards superannuation fund.

3 Contribution to Government controlled LIC superannuation fund is an allowable expenditure

3.1 Without prejudice to the above, the Ld. PCIT has failed to appreciate that the contribution made towards superannuation fund to LIC, a Government Controlled Organization, was exclusively for the benefit of the employees wherein the Appellant has no control over such funds and accordingly, such deduction ought to be allowed as a deduction under section 37 of the Act as the same was incurred towards its business.

2. The Ld. AR advanced arguments and relied on various documents as placed in the paper-book. The Ld. CIT-DR supported the revision order. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under. The assessee being resident

corporate assessee is stated to be engaged in the business of execution of contracts for manufacture and supply of distribution control systems.

3. From the record, it emerges that the assessee was assessed u/s 143(3) on 27-02-2019. However, upon formation of belief of escapement of income, the case was reopened and another assessment was framed u/s 147 r.w.s. 144B of the Act on 21-03-2022. One of the reason to reopen the case was that upon perusal of column 21(f) of Form No.3CD, it was noted that an amount of Rs.207.66 Lacs was not allowable u/s 40A(9). However, the same was not disallowed in the computation of income. The Ld. AO, in para 4.1 of the assessment order dated 21-03-2022, observed that the assessee made payment of Rs.207.66 Lacs to superannuation fund of LIC. No addition thereof was made in the computation of income.

4. Subsequently, upon perusal of case records, Ld. Pr. CIT observed that statutory auditor had clearly mentioned that the aforesaid amount was not allowable u/s 40A(9) but Ld. AO simply allowed the claim. The claim could be allowed only if superannuation scheme was approved under fourth schedule to the Income Tax Act and the payment was in consequent thereto as per relevant scheme. However, Ld. AO without causing any enquiries, allowed the claim of the assessee which was improper.

5. The assessee defended the assessment order on the ground that twin conditions to invoke the revision u/s 263 were not fulfilled. Another argument was that the issue was specifically examined during the course of reassessment proceedings and therefore, the same could not be examined again. The assessee furnished the required information during reassessment proceedings and Ld. AO completed the assessment after

considering all the facts. The assessee also submitted that two views were possible on the issue and accordingly, revision could not be sustained in law. Further it was not a case of lack of enquiry. Another submission, on merits, was that the payment was made to superannuation fund of LIC. The contribution was made for the benefit of the employees and it ought to have been allowed as deduction even if the scheme was not approved. The assessee had no control over the funds created by LIC.

6. The Ld. Pr. CIT rejected the aforesaid submissions on the ground that it was simply a case of wrong opinion on the part of Ld. AO. The payment was certified by Auditor to be not allowable u/s 40A(9). Further, the receipts were in the name of M/s Invensys Systems India P. Ltd and that too for Rs.76.21 Lacs and Rs.29.35 Lacs respectively as against the aggregate claim of Rs.207.66 Lacs. The same would show that Ld. AO did not apply his mind to the issue and did not verify the receipts furnished by the assessee. As per the provisions of Sec. 36(1)(iv), any sum paid by the assessee towards approved superannuation fund would only be allowable as deduction. Since the payment was not to an approved fund, the same could not be allowed u/s 36(1)(iv) r.w.s. 40A(9). Alternative, the deduction could also not be allowed u/s 37 since the assessee did not furnish details of beneficiaries and demonstrated that in the absence of approved funds, the payments were included as part of the salary of the said beneficiaries. Even otherwise, it was not open for the assessee to claim deduction under other sections / provisions otherwise the conditions specified would become redundant and the purpose of statute would be defeated. Accordingly, Ld. AO was directed

to disallow the aforesaid payment and re-compute the income of the assessee. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

7. The factual matrix is not in dispute. The Tax Audit Report, in Form 3CD, has mentioned that certain contribution made by the assessee would be disallowable u/s 40A(9). This was, in fact, one of the reasons to reopen the case of the assessee. In the queries raised by Ld. AO (Page No.58 of paper-book) during re-assessment proceedings, It was objected to by Ld. AO that the bank statement furnished by the assessee do not identify the name of the holder of the bank account or bank number. The contribution receipts were in the name of M/s Invensys India Pvt. Ltd. and the same do not pertain to the assessee company. The evidences furnished by the assessee do not support the claim of the assessee.

8. In reply, the assessee clarified that erstwhile name of the company was changed from M/s Invensys India Pvt. Ltd. to present name as evidenced by certificate of ROC showing name change of the assessee company. The assessee also furnished bank statement highlighting two payments out of four payments. Considering the same, Ld. AO chose not to make any addition / disallowance, in this regard. However, the proposal made by the Tax Auditor apparently has not been considered and the issue whether the funds were approved fund or not was not addressed.

9. Therefore, on the given facts and circumstances and considering the case records as placed before us, it could be concluded that though a specific query was raised on the issue as flagged by revisionary authority, the same was not adjudicated by Ld. AO properly with full facts and with due application of mind as required. Firstly, the Ld. AO

overlooked the reporting made by Tax Auditor. Secondly, the assessee only furnished partial receipts in support of the claim. The issue whether the fund was approved fund was not examined / verified. Therefore, we would conclude that it was a case of inadequate enquiry which justifies invocation of revisionary powers u/s 263.

10. The Ld. AR, has submitted that the claim could alternatively be allowed on merits u/s 37(1). Reliance has been placed on certain decisions, in this regard allowing similar claim of the assessee. The Ld. AR also submitted that fund went out of control of the assessee and therefore, the deduction thereof could be allowed to the assessee. Considering the same, we modify the directions given in the impugned order and direct Ld. AO to verify the claim of the assessee and examine deductibility of the expenditure. The assessee is directed to substantiate the same. All the issues are kept open. Our adjudication as aforesaid shall not be construed as any expression on the merits of the case. We order so.

11. The appeal stand partly allowed. The stay application has been rendered infructuous and accordingly, dismissed.

Order pronounced on 10th July, 2024

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated :10-07-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai.

4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF