

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "सी", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" C " BENCH, AHMEDABAD

श्री सिद्धार्थ नौटियाल, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.743/Ahd/2024
निर्धारण वर्ष /Assessment Year : 2014-15

Dee Are Texfab Pvt.Ltd. 149, New Cloth Market O/S. Raipur Gate Raipur Ahmedabad - 380 002 (Gujarat)	बनाम/ v/s.	The PCIT Ahmedabad-1
स्थायी लेखा सं./PAN: AAECD 5136 H		
(अपीलार्थी/ Appellant)	(प्रत्यर्थी/ Respondent)
Assessee by :	Shri Chetan Agarwal, AR	
Revenue by :	Shri Kamlesh Makwana, CIT-DR	

सुनवाई की तारीख/Date of Hearing : 22/07/2024
घोषणा की तारीख /Date of Pronouncement: 25/07/2024

आदेश/ORDER

PER SHRI MAKARAND V. MAHADEOKAR, AM:

This appeal is filed by the Assessee against the order dated 28/03/2024 passed by the Principal Commissioner of Income Tax, Ahmedabad [hereinafter referred to as "the Pr.CIT(A)" in short] arising out of the assessment order dated 27/03/20223 passed by the Assessing Officer (AO) under section 147 read with section 144B of the Income Tax Act, 1961 (hereinafter referred to as "the Act") relevant to the Assessment Year (AY) 2014-15.

Facts of the case:

2. The assessee-company filed its return of income for the A.Y. 2014-15 on 05-09-2014 declaring the total income of Rs.11,45,820/-. On the basis of information available with the Department due to the search u/s.132 of the Act conducted on 12-04-2019 in case of Sanjay Govindram Agrawal (also known as Sanjay Tibrewal), the case of assessee was reopened by issuing notice u/s.148 of the Act and after recording reasons for reopening the assessment. During the course of reassessment proceedings, the AO issued notices u/s.142(1) of the Act on 03-09-2021, 24-11-2021, 08-12-2021 and 14-12-2021 asking the assessee to provide required details. The assessee also replied to all these notices.

2.1. The National Faceless Assessment Centre also sent one letter to jurisdictional AO requesting to provide all the details/documents seized during the course of search in case of Sanjay Govindram Agrawal indicating involvement of the assessee.

2.2. Considering the information and examining the documents provided by the assessee the NFAC completed the assessment u/s.147 of the Act read with section 144B of the Act.

2.3. The PCIT observed that the case of the assessee was reopened on the basis of information of accommodation entries totalling to Rs.1,36,02,120/- from the entry operator Sanjay Govindram Agrawal, but concluded that the AO has not made any addition despite availability of specific information. He further concluded that there is underassessment of the income and

issued notice u/s.263 of the Act for revision of the order passed u/s.147 r.w.s 144B of the Act.

2.4. The assessee in reply to the notice of Ld.Pr.CIT contended that the order of the AO is neither erroneous nor prejudicial to the interest of the revenue and hence the exercise of jurisdiction u/s 263 is barred.

2.5. The relevant part of the reply of the assessee is reproduced herewith for the sake of clarity:

Submission

- "1. Your honour have proposed an addition of Rs. 1,36,02,120 being alleged transactions with Sanjay Tibrewal (i.e. Sanjay Govindram Agrawal) or Alpaben Anilkumar Shah, Jignaben Samirbhai Shah, Harish Purohit, Hasmukh Jameshkumar Purohit, Lucky Bajoria, Niranjana Nareshbhai Makwana, Sandip Nareshbhai Makwana, Vivekkumar Kamalkumar Agrawal or any employee or ex-employee of Sanjay Tibrewal.*
- 2. We invite your honours kind attention to our earlier submissions as well as our objection to reasons recorded, in which it was repeatedly submitted to your honour that we have not carried out any such alleged transactions.*
- 3. Even at the stage of final show cause notice, your honour has just repeated reasons recorded and proposed an addition. Your honour has not made any independent inquiry in the matter to reach to a conclusion.*
- 4. Your honour has not supplied us*
 - a. How the assessee is in any way connected with Sanjay Tibrewal and his group. b. Nowhere mentioned that Sanjay Tibrewal and his group has given name of assessee in any statement recorded by department.*
 - b. How assessee is linked with Sanjay Tibrewal in his group.*
 - c. It is not mentioned anywhere in entire show cause notice.*
 - i. Date of transactions.*
 - ii. Mode of transactions.*
 - iii. Amounts of transactions.*
 - iv. Nature of transactions.*

- v. *The persons/ firms with whom transactions were made with entire group of Sanjay Tibrewal as names mentioned in reasons and notice.*
 - vi. *Your honour has not supplied us statements relied upon by your honours and used against us*
 - vii. *Your honour has not provided us cross examinations of all such persons to ascertain correct facts of the case.*
5. *The show cause notice as well as reasons are not speaking anything to ascertain correct facts or even giving basic details to ascertain correctness of allegations.*
 6. *In view of this, we have approached Sanjay Tibrewal through his tax consultant and able to get details of transactions from his books of accounts maintained in the case of Austvinayak Textile. We have found that transactions amounting to 2,11,24,031 were entered into with independent Proprietor firm M/s. Dee Are Products Prop. of Divyaraj Madanlal Gupta (PAN: ACVPG1840P), we have also ascertained from the books of M/s. Dee Are Products and all transactions were matching.*

We submit herewith following documents for your honours verification.

- a. *Ledger account of M/s. Dee Are Products Prop. Divyaraj Madanlal Gupta (PAN: ACVPG1840P) from the books of Austvinayak Textiles.*
 - b. *Ledger account of Austvinayak Textiles from books of M/s. Dee Are Products Prop. Divyaraj Madanlal Gupta (PAN: ACVPG1840P).*
 - c. *Income Tax Return of M/s. Dee Are Products Prop. Divyaraj Madanlal Gupta (PAN: ACVPG1840P).*
 - d. *Audited Accounts of M/s. Dee Are Products Prop. Divyaraj Madanlal Gupta (PAN: ACVPG1840P).*
 - e. *All Bank Statements of M/s. Dee Are Products Prop. Divyaraj Madanlal Gupta (PAN: ACVPG1840P) highlighting the transactions.*
 - f. *All bank statements of present assessee DEE ARE TEXTFAB PVT. LTD were already been submitted in earlier submissions.*
7. *We humbly submit that transactions with Sanjay Tibrewal group have been entered into by Proprietor firm M/s. Dee Are Products Prop. of Divyaraj Madanlal Gupta (PAN: ACVPG1840P) and not by us. The said firm is separately assessed to tax. Due to mentioning of Dee Are in the bank statement of Sanjay Tibrewal group, our case is mistakenly reopened and accordingly addition is proposed, which is factually incorrect.*

8. *In view of facts of the case as narrated above with evidences, we kindly request not to call for addition in the hands of the assessee, since no such alleged transactions has been entered into by present assessee.*

5. *In view of above, it is amply evident that in the course of assessment Ld. AO had made sufficient inquiry and verified the issue under consideration and accordingly had not made an addition.*

6. *Hence, we kindly request your honour not to call for revision of assessment order. Factually also, the alleged entry of Rs. 13602120/-belongs to M/s. Dee Are Products Prop. Divyaraj Madanlal Gupta (Pan no. ACVPG1840P) for which we have submitted*

a. Ledger account of M/s. Dee Are Products Prop. Divyaraj Madanlal Gupta (PAN: ACVPG1840P) from the books of Austoinayak Textiles.

b. Ledger account of Austoinayak Textiles from books of M/s. Dee Are Products Prop. Divyaraj Madanlal Gupta (PAN: ACVPG1840P).

c. Income Tax Return of M/s. Dee Are Products Prop. Divyaraj Madanlal Gupta (PAN: ACVPG1840P).

d. Audited Accounts of M/s. Dee Are Products Prop. Divyaraj Madanlal Gupta (PAN: ACVPG1840P).

e. All Bank Statements of M/s. Dee Are Products Prop. Divyaraj Madanlal Gupta (PAN: ACVPG1840P) highlighting the transactions.

f. All bank statements of present assessee DEE ARE TEXFAB PVT. LTD were already been submitted in earlier submissions.

g. We humbly submit that transactions with Sanjay Tibrewal group have been entered into by Proprietor firm M/s. Dee Are Products Prop. of Divyaraj Madanlal Gupta (PAN: ACVPG1840P) and not by us. The said firm is separately assessed to tax. Due to mentioning of Dee Are in the bank statement of Sanjay Tibrewal group, our case is mistakenly reopened and accordingly addition is proposed, which is factually incorrect."

2.6. The assessee also placed reliance on some judicial precedents before PCIT:

a. CIT vs. Sunbeam Auto Limited reported in 332 ITR 167 (Del).

b. Smt.Juthika Kar vs. ITO in ITA No.1128/Kol/2009 dated 16.05.2012.

c. CIT v. Jawahar Bhattacharjee [2012] 341 ITR 434 (Gauhati) (HC) (FB).

d. CIT v. Bhagwan Das [2005] 272 ITR 367 (All.)(HC).

- e. Hero Briggs & Stratton Auto Ltd. v. CIT [2007] 161 Taxman 127 (Delhi) (Trib.).
- f. Punjab Wool Syndicate v. ITO [2012] 17 ITR 439 (Chandigarh) (Trib.).
- g. Vijay Kumar Megotia v. CIT [2010] 3 ITR (T) 760 (Pat.)(Trib.).

2.7. However, Ld.Pr.CIT was not satisfied with the submission of the assessee and by exercising the powers u/s.263 of the Act set aside the order of the AO with a direction to AO to pass a fresh order after duly examining the facts of the case to the extent of the issue. While doing so he primarily relied on the information available on INSIGHT PORTAL and concluded that there is ample evidence that the assessee has transacted with Sanjay Govindram Agrawal for accommodation entries.

3. Aggrieved by the order of the Ld.PCIT, the assessee is in appeal before us with following grounds of appeal:

"1. Ld. PCIT-1, Ahmedabad erred in law as well as on fact in assuming jurisdiction u/s 263 of the IT Act.

2. Ld. PCIT-1, Ahmedabad erred in law as well as on fact in holding that assessment order passed by LD. AO is erroneous and prejudicial to interest of the revenue.

The appellant curves leave to amend, alter, modify and/or raise additional ground of appeal."

On the grounds of appeal

4. The Ld.Counsel for the assessee explained the case with the help of the paper-book submitted. Primarily, he explained that the information available with the revenue on Insight Portal pertains to Divyaraj Madanlal Gupta (PAN: ACVPG1840P) who is a proprietor M/s Dee Are Products. He

also took us through the submissions made before the AO in response to notices issued and explained the details thereof.

5. The Ld.Departmental Representative (DR), on the other hand, relied on the order of the Ld.PCIT and argued that the AO has not mentioned anything in his order about the accommodation entries for which the case was reopened. He persistently stated that the information as available on Insight Portal has not been investigated by the AO and, therefore, the Ld.PCIT has correctly assumed his jurisdiction. However, he agreed that no specific evidence is brought on record by the Ld.PCIT as stated by him in his order about the accommodation entries of the assessee.

6. We have heard the contentions of both the parties and perused the material available on records. The fundamental issue to address is whether the Ld.PCIT was justified in invoking jurisdiction under Section 263 of the Act. The jurisdiction under Section 263 of the Act can only be invoked if the order of the AO is found to be erroneous and prejudicial to the interests of the Revenue.

6.1. During reassessment proceedings, the AO issued multiple notices under Section 142(1) of the Act to the assessee, who duly responded to each. Additionally, the National Faceless Assessment Centre (NFAC) requested the jurisdictional AO to provide all relevant documents seized during the search in the case of Sanjay Govindram Agrawal, which implicated the assessee. The NFAC completed the reassessment under Section 147 read with Section 144B of the Act. Despite having information regarding

accommodation entries amounting to Rs.1,36,02,120/- from Sanjay Govindram Agrawal, no additions were made by the AO.

6.2. We have noted that the assessee provided detailed explanations and evidence to show that the transactions in question were conducted by M/s. Dee Are Products, a proprietorship firm of Divyaraj Madanlal Gupta (PAN: ACVPG1840P), and not by the assessee. Relevant documents, including ledger accounts, bank statements, and tax returns of M/s.Deer Are Products, were submitted to both the AO and the Ld.PCIT.

6.3. The Ld.PCIT, relying primarily on information available on the INSIGHT portal, concluded that there was ample evidence of transactions between the assessee and Sanjay Govindram Agrawal for accommodation entries, thus exercising jurisdiction under Section 263 of the Act. In our opinion, mere information on the Insight Portal cannot be considered as evidence based on which the Ld.PCIT assumed his jurisdiction especially when the assessee has explained that the transactions are not pertaining to the assessee company but pertains to another person.

6.4. We have considered the judicial precedents cited by the assessee in the submission to the Ld.PCIT, including:

1. **CIT vs. Sunbeam Auto Limited (332 ITR 167) (Del.)**: In this case the Hon'ble High Court deals with distinction between lack of inquiry and inadequate inquiry. An inquiry made by the AO, even if inadequate, does not give the PCIT the power to revise the order merely based on a different opinion.
2. **Smt. Juthika Kar vs. ITO (ITA No.1128/Kol/2009)**: Where Tribunal held that adequate inquiry by the AO, and the formation of an

opinion based on evidence, cannot be considered erroneous or inadequate.

3. **CIT v. Jawahar Bhattacharjee (341 ITR 434) (Gauhati) (HC):** Where the Hon'ble High Court decided that the term "erroneous" involves non-application of mind, incorrect assumption of facts, or incorrect application of law and the term "prejudicial" refers to prejudice to the income-tax administration as a whole.

6.5. As per the provisions of section 263 of the Act, after getting the explanation from the assessee, the Ld.PCIT was supposed to examine the contention of the assessee. Before passing an order of modifying, enhancing or cancelling the assessment, he was supposed either to himself make or cause to make such an enquiry as he deems necessary. We note that the Ld.PCIT did not raise any query as to what enquiries were made by the Assessing Officer before proceeding to pass the assessment order in question. The opinion of the Ld.PCIT that the Assessing Officer had not made proper enquiries or verifications should be based on his objective satisfaction and not a subjective satisfaction from the assessment order.

6.6. The reopening in this case was held on the basis of information received from Insight Portal, whereby, the AO asked the assessee to furnish the necessary details from time to time which were duly furnished by the assessee and after considering the same the Assessing Officer passed the assessment order. However, a perusal of the revision order passed by the Ld.PCIT shows that the Ld.PCIT has not pointed out any error or discrepancy in the explanations and details furnished by the assessee and without examining such evidence and without counter questioning the assessee on the relevant points and even without considering the

submission of the assessee furnished in reply to the show-cause notice, the Ld.PCIT, in our view, was not justified in setting aside the order, simply stating that in his view more enquiries were needed to be carried out by the AO. The Ld.PCIT's role is not to substitute his judgment for that of the AO but to identify clear errors that are prejudicial to the revenue's interests. The reliance solely on the INSIGHT portal without further investigation does not meet the threshold required to invoke Section 263 of the Act.

6.7. In our opinion, the AO conducted sufficient inquiries during the reassessment proceedings, as evidenced by the notices issued and responses received. There is sufficient ground to conclude that the AO formed an opinion based on the documents and explanations provided by the assessee, which included detailed evidence of transactions involving M/s. Dee Are Products.

6.8. The conditions necessary for invoking Section 263 of the Act, i.e., the order being erroneous and prejudicial to the interest of the revenue, are not satisfied in this case. The assessee provided substantial evidence to the AO and Ld.PCIT to demonstrate that the transactions in question were not conducted by the assessee but by M/s. Dee Are Products. The Ld.PCIT did not refute this evidence with any concrete findings.

6.9. We find that judicial precedents cited by the assessee to be applicable and supportive of the assessee's case. Specifically, the distinction between lack of inquiry and inadequate inquiry, as well as the necessity for the Ld.PCIT to demonstrate an erroneous and prejudicial order, aligns with the facts of this case.

6.10. Accordingly, the order of the Ld.PCIT invoking Section 263 of the Act is set aside. The reassessment order passed by the AO under Section 147 read with Section 144B of the Act is upheld.

7. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in the Open Court on 25 July, 2024 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 25/07/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)/PCIT, Ahmedabad-1
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, ITAT, Ahmedabad