

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

ITA No. 226/MUM/2024 : A.Y : 2015-16

M/s. Balaji Exports, Gala No. E-887/888, APMC Market Vegetable, Vashi, Navi Mumbai. PAN : AAIFB2566Q (Appellant)	Vs Pr. Commissioner of Income Tax-27, Room No. 301, 3 rd Floor, Vashi Railway Station Building, Tower No. 6, Navi Mumbai (Respondent)
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Appellant by : Ms. Ritika Agarwal, a/w.
Shri Roshan Ochani,

Respondent by : Shri Dr. Mahesh Akhade, CIT-DR

Date of Hearing : 03/07/2024

Date of Pronouncement : 25/07/2024

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the revision order dated 16-11-2023 passed by the learned Pr. Commissioner of Income Tax-27, Mumbai (in short 'Ld.PCIT') u/s. 263 of the Income Tax Act, 1961 ('the Act') and it relates to AY. 2015-16. In this appeal, the assessee is challenging the validity of revision order passed by the Ld.PCIT u/s. 263 of the Act.

2. The facts relating to the case are stated in brief. The assessee is engaged in the business of export of vegetables and fruits. The original

assessment u/s. 143(3) of the Act was passed by the AO on 27-06-2017 accepting the total income declared by the assessee.

3. This is second round of proceeding. The reason for initiation of proceedings is that the assessee is in appeal before us. The Ld.PCIT noticed from the data received from CBEC that the assessee's export turnover of the year under consideration was Rs. 38,49,52,619/-, while the assessee has declared Export turnover at Rs.29,11,44,219/- in the return of income. Accordingly, the Ld PCIT noticed that there was under reporting of turnover to the tune of Rs. 9,38,08,400/-. The Ld.PCIT took the view that the AO has failed to examine this difference and hence the assessment order is rendered erroneous and prejudicial to the interest of the Revenue. After hearing the assessee, the Ld.PCIT passed an order dated 19-02-2020 by setting aside the assessment order and directed him to pass fresh order. In the appeal filed by the assessee challenging the above said order, the ITAT restored the matter back to the file of Ld.PCIT for passing the order afresh. Accordingly, the Ld.PCIT passed the impugned order on 16-11-2023 u/s 263 of the Act, wherein he again set aside the assessment order passed by the AO and directed him to pass the assessment order afresh. The assessee is challenging the revision order so passed by Ld PCIT.

4. The Ld.AR submitted that there is no difference in the turnover reported by the assessee, as presumed by the Ld.PCIT. She submitted that two of his customers, viz., M/s Noor Al Din Nashef Co, and M/s East Crown General Trading LLC, did not accept the frozen vegetables exported by the assessee on account of quality difference and accordingly stopped payment also aggregating to Rs. 9,38,08,400/-. The assessee subsequently issued credit notes to these parties for the above said amount. However, while accounting the credit notes, the accountant of the assessee has shown the above said amount as debit

to the “Sales turnover” account and hence, these credit notes were netted-off against the said turnover. Hence, the sales turnover was shown at lower figure in the books of accounts. The Ld.AR invited our attention to the following reconciliation statement:

Reconciliation of sales between Books of accounts and CBEC Information	
Sales as per Books of account	38,39,84,612
Less: Credit Notes issued to parties	-9,28,40,393
Sales Credited in Audited Profit and Loss Account	29,11,44,219
Sales Turnover as per CBE (Export Department)	38,39,84,612

4.1. The Ld.AR submitted that the alleged difference in the turnover is on account of recording the transactions in a different manner in the books of accounts. Had the assessee debited the discount account and shown it as an expenditure in the P&L A/c, then the gross turnover would have tallied with the data received from CBE. Accordingly, the Ld.AR submitted that there is no difference as pointed out by the Ld.PCIT and hence no prejudice is caused to the revenue. Accordingly, she submitted that the assessment order cannot be termed as erroneous and prejudicial to the interest of the Revenue.

4.2. The Ld.AR further submitted that the AO had raised specific query, viz., “Export Turnover mismatch” in the notice dated 09-08-2016 issued by him u/s 142(1) of the Act. The assessee has also explained the mismatch to the AO along with the reconciliation statement. The AO was satisfied with the explanation given by the assessee. Accordingly, the Ld.AR submitted that the assessment order cannot be termed as erroneous, since the AO has accepted the explanation given by the assessee. Further, since there is no under reporting of turnover, no prejudice is caused to the revenue. Accordingly, she submitted that

the impugned revision order is liable to be set aside. In support of her submissions, the Ld.AR placed reliance on the following case law:

- a. The Hon'ble High Court of Delhi in the case of Pr.CIT-2 vs. M/s. Clix Finance India Pvt. Ltd., in ITA No. 1428/2018, judgment pronounced on 01 March, 2024;
- b. The Hon'ble High Court of Judicature at Bombay in the case of The CIT vs. M/s. Fine Jewellery (India) Ltd., in ITA No. 296/2013, dt. 3rd February, 2015;
- c. CIT vs. Gabriel India Ltd., [1993] 71 Taxman 585 (Bombay);

5. On the contrary, the Ld.DR submitted that there is no evidence to show that the assessee has furnished all these documents before the AO, since the AO did not discuss anything about the difference in sales in the assessment order.

6. In reply, Ld.AR submitted that the assessee has furnished copies of sale register before the AO. Further, the impugned difference in sales has occurred due to different manner of accounting the credit notes. She further submitted that the assessee has also furnished all these details before Ld PCIT and he did not conduct preliminary examination of the same also.

7. We heard the rival contentions and perused the record. The scope of revision proceedings initiated under section 263 of the Act was examined by Hon'ble Bombay High Court, in the case of Grasim Industries Ltd. Vs. CIT (321 ITR 92) by taking into account the law laid down by the Hon'ble Supreme Court. The relevant observations are extracted below:

Section 263 of the Income-tax Act, 1961 empowers the Commissioner to call for and examine the record of any proceedings under the 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 interests of the Revenue, to pass an order upon hearing the assessee and after an enquiry as is necessary, enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment. The key words that are used by section 263 are that the order must be considered by the Commissioner to be "erroneous in so far as it is prejudicial to the interests of the Revenue". This provision has been interpreted by the Supreme Court in several judgments to which it is now necessary to turn. In *Malabar Industrial Co. Ltd. v. CIT* [2000] 243 ITR 83, the Supreme Court held that the provision "cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer" and "it is only when an order is erroneous that the section will be attracted". The Supreme Court held that an incorrect assumption of fact or an incorrect application of law, will satisfy the requirement of the order being erroneous. An order passed in violation of the principles of natural justice or without application of mind, would be an order falling in that category. The expression "prejudicial to the interests of the Revenue", the Supreme Court held, it is of wide import and is not confined to a loss of tax. What is prejudicial to the interest of the Revenue is explained in the judgment of the Supreme Court (headnote) :

"The phrase 'prejudicial to the interests of the Revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law."

The principle which has been laid down in *Malabar Industrial Co. Ltd.* [2000] 243 ITR 83 (SC) has been followed and explained in a subsequent judgment of the Supreme Court in *CIT v. Max India Ltd.* [2007] 295 ITR 282."

The principles laid down by the courts are that the Learned CIT cannot invoke his powers of revision under section 263 if the Assessing Officer has conducted enquiries and applied his mind and has taken a possible view of the matter. If there was any enquiry and a possible view is taken, it would not give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter. **The consideration of the Commissioner as to whether**

an order is erroneous in so far it is prejudicial to the interests of Revenue must be based on materials on record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to start fishing and roving enquiries in matters or orders which are already concluded.

8. In the instant case, it is the submission of the assessee that there is no difference in the Sales turnover between the books and the data received from CBEC. The turnover reported in the books of account is the net turnover, i.e., net of credit notes issued to the customers. Had the assessee accounted the value of credit notes as an expenditure, then the sales turnover would have been shown at gross figure and the credit notes would have been shown as expenditure in the debit side of profit and loss account. Thus, the alleged difference in sales turnover is on account of preparing the accounts in a particular manner. The copy of Sales ledger is available in the pages 31 to 35 of the paper book. We notice that these details were furnished to the Ld PCIT also. However, the Ld PCIT appears to have not examined it. Thus, the material already available on record militates against the view entertained by the Ld PCIT and hence, on this count alone, the impugned revision order is liable to be set aside.

9. Further, we notice that the AO had raised specific query in the course of assessment proceedings with regard to “mis match in the sales turnover”. The assessee has furnished explanations and reconciliation statements. Hence the AO did not make any addition to the total income, meaning thereby, he was satisfied with the explanations so

given by the assessee. In the facts and circumstances of the case, we are of the view that the view taken by the assessee cannot be found fault with. Since it is a case of showing the financial transactions in a different manner, it cannot be termed that the assessment order is prejudicial to the interests of Revenue. Accordingly, the impugned revision order is liable to be set aside on this count also.

10. Accordingly, we quash the impugned revision order passed by the Ld. PCIT.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 25th July, 2024

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai,
Date : 25th July, 2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "B" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai