

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

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

I.T.A. No.152/Ahd/2022
(Assessment Year: 2017-18)

Jaybhole Cold Storage, Survey No. 742/744, Dehgam Bayad Road, Village Chhapariya, Post: Vasani-Rel, Taluka Bayad, Dist: Aravali-383325	Vs.	Principal Commissioner of Income Tax-1, Ahmedabad
[PAN No.AALFJ9918M]		
(Appellant)	..	(Respondent)

I.T.A. No.151/Ahd/2022
(Assessment Year: 2017-18)

Shreeji Cold Storage, Survey No. 742/7, Dehgam Bayad Road, Village Chhapariya, Post: Vasani Rel Taluka Bayad, Dist: Aravali, 383325	Vs.	Principal Commissioner of Income Tax-1, Ahmedabad
[PAN No.ADBFS1381A]		
(Appellant)	..	(Respondent)

Appellant by :	Shri D. K. Parikh, A.R.
Respondent by:	Shri Kamlesh Makwana, CIT DR

Date of Hearing	23.07.2024
Date of Pronouncement	31.07.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

These are appeals filed by the Assessee against the order passed by the Ld. Principal Commissioner of Income Tax-1, (in short “Ld. PCIT”), Ahmedabad under Section 263 of the Act, vide separate orders dated 10.03.2022 & 12.03.2022 passed for Assessment Year 2017-18. Since common facts and issues for consideration and war for both the assessee

under consideration, both the appeals filed by the assessee are being taken up together.

We shall first take up the appeal in the case of Jaybhole Cold Storage in ITA-152/Ahd/2022(A.Y. 2017-18)

2. The assessee has taken the following grounds of appeal:

“1. The learned Principals CIT-1 Ahmedabad has erred both in law and in facts in revising and setting aside the Order passed by ld A.O. under Section 143(3) on the ground that the AO failed to examine the details of capital introduced by partners as it was onus to be discharged by the appellant firm to prove identity, creditworthiness and genuineness of transactions of capital so introduced in the books of partnership firm. On the facts and circumstances of the case and considering the details and evidences furnished, order passed by AO being neither erroneous nor prejudicial to interest of revenue, PR.CIT erred in revising the said Order. It be so held now and order under Section 263 be set aside.

2. The learned Principal CIT further grievously erred in law and on facts in revising and setting aside the order of assessment on the ground that the AO did not call for details and verify the filing of Form No: 10CCB and that conditions of Section 35AD were not fulfilled and that deduction under Section 35AD in any case would be Rs. 43,01,639/- as against Rs. 7,75,12,899/- as claimed. The Order under Section 143(3) being passed after application of mind to the issue and considering submissions, evidences and details furnished by appellant, the order is neither erroneous nor prejudicial to interest of revenue. It be so held now and order passed under Section 263 be set aside.

3. The ld Principal CIT also erred both in law and on facts in holding that as audit report in Form No: 10CCB was not furnished electronically, the condition for deduction under Section 35AD was not fulfilled, as it is advised that Form No: 10CCB and details mentioned therein are not applicable so far as the claim under Section 35AD is concerned but are relating to claim under Section 80IA and since otherwise, the profit & Loss account as well as Balance sheet with all its assets were duly vouched, audited and report thereon was already furnished. Also no such reason was recorded by Pr CIT in his show cause notice.

4. The ld Principal CIT further erred both in law and on facts in not appreciating the order passed under Section 143(3) after detailed scrutiny and necessary inquiry, the same could not be held to be erroneous merely because in him opinion, further inquiry is required to be made. Considering the explanations and details given and in view of settled legal position, regarding the law with regard to onus about capital introduced by partners, the order passed by AO is not erroneous or prejudicial to interest of revenue. It be so held now.

5. The ld Principal CIT also erred in law and on facts that the deduction under Section 35AD was wrongly allowed considering the fact that in view of submission of audit report by tax auditors and the appellants submission of details and invoices etc, the conditions for claim were fulfilled and the deduction was legitimately and correctly claimed and rightly allowed as such. It be so held now.

6. *There being no material or different facts to hold that the order passed by ld AO after due application of mind taking a correct view the order under Section 143(3) could not be treated as prejudicial to interest of revenue even considering the aggregate depreciation allowable as per Act It be so held now and order passed under Section 263 setting aside the Order of AO be cancelled and order passed by ld AO be restored.*

7. *Without prejudice to the above, the order passed by ld Pr. CIT is invalid, illegal and bad in law being with no firm conclusion.*

8. *The ld Principal CIT erred in law and on facts in placing reliance to Explanation-2 to Section 263 since it is settled legal position as considered by various judicial pronouncements that it does not give unfettered powers to the Commissioner to assume jurisdiction under Section 263 to revise every order of the Assessing Officer to re-examine the issues. It be so held now and order passed by ld Pr.CIT be cancelled.*

9. *The appellant craves leave to add, alter, modify or delete any of the grounds at the time of hearing.”*

3. The brief facts of the case are that the assessee is a partnership firm which came into existence with effect from 4th May 2016 with 10 partners and the partners of the firm introduced capital of Rs. 2,26,27,740/- during the year under consideration. The Principal CIT observed that on going through the assessment records, the assessing officer failed to enquire about the source of capital by these partners. Accordingly, the Principal CIT initiated proceedings under Section 263 of the Act asking the assessee firm to furnish details regarding capital introduced by the respective partners and also the details like name, returns of income, mode of introduction of capital by these partners, their creditworthiness etc. were called for. On going to the details submitted by the partnership firm, the Principal CIT observed that most of the partners are residing in villages and have shown holding of agricultural land, however, no supporting evidence have been made available for sale of agricultural produce, purchase of cattle feed etc. Secondly, in none of the case of partners, their own surplus funds have been utilised for introducing the capital in the books of the assessee firm, in some cases copy of ITR and computation of total income had not been made available for verification, in almost all cases there was insufficient balance before the clearance of cheques and amounts either in cash

or transfer from other banks/persons have been found to be credited. Accordingly, in view of the above observations, the Principal CIT was of the view that the AO did not make enquiries on the basis of details available on record regarding the source of capital contribution made by these Partners in the assessee firm. The Principal CIT was of the view that the assessing officer should have recorded statements of all the Partners under Section 131 of the Act. Accordingly, the PCIT was of the view that while framing the assessment order, the assessing officer did not make adequate enquiries and therefore, the assessment order for this reason was erroneous and prejudicial to the interests of Revenue.

4. The assessee is in appeal before us against the aforesaid order passed by PCIT. The primary arguments of the Counsel for the assessee before us was that the order passed by the assessing officer could not be held to be erroneous for the reason that in various cases, the Courts have held that once the assessee has given the details of partners who have invested capital in the partnership firm, then no addition can be made in the hands of the partnership firm. The addition, if any, can only be made in the hands of the respective partners. In the instant case, the assessee had given details of all the 10 partners who had invested capital in the assessee firm. The Principal CIT had analysed the details of all the 10 partners and details of all the 10 partners were produced before the tax authorities at the time of relevant proceedings. Therefore, when the details of 10 partners who had invested capital and the assessee firm were available with the tax authorities, then in that case, the addition could have only been made in the hands of the individual partners who had invested capital in the assessee firm and not in the hands of the assessee firm. Therefore, it was submitted that the order passed by the assessing officer

cannot be held to be erroneous insofar as prejudicial to the interests of the Revenue.

5. In response, this issue, DR placed reliance on the observations made by the principal CIT in the 263 order.

6. We have heard the rival contentions and perused the material on record. In the case of **Vaishnodevi Refoils & Solvex 96 taxmann.com 469 (SC)**, the facts were that for relevant year, Assessing Officer made addition to income of assessee-firm under Section 68 on account of capital introduction by one partner of firm. He was of view that creditworthiness of partner who introduced capital had not been proved. The High Court in impugned order noted that amount received by assessee-firm had been duly reflected in books of account maintained by concerned partner and that assessee had furnished details with regard to source of capital introduced in firm and concerned partner had also confirmed such contribution and concluded that assessee had duly discharged onus cast upon it. Further, court noted that if Assessing Officer was not convinced about creditworthiness of partner who had made capital contribution, inquiry had to be made at end of partner and not against firm. The Hon'ble Supreme Court dismissed the SLP against said decision.

7. In the case of **Bhagwat Prasad Sharma38 taxmann.com 102 (Agra - Trib.)**, Assessing Officer made addition under Section 68 on account of unsecured loan on ground that assessee had failed to prove genuineness of loan and creditworthiness of lender. The submission of assessee was that amount was on account of current capital account; and that title of relevant account as 'loan' was inadvertently used as per prevailing practice but in fact it was a current capital account of partner in books of firm. It was further submitted

that since assessee had furnished confirmation, identity and other records to establish that in fact amount was given to firm by partner as a current capital, addition could not be made in hands of firm. The ITAT held that since current capital introduced by partner in firm was established, addition could not be made in hands of firm.

8. In the case of **Nova Medicare 150 taxmann.com 363 (Telangana)**, Assessee-firm had taken loans from two partners and one outsider. The Assessing Officer concluded that none of those persons had creditworthiness to advance loans and doubted genuineness of said loan transactions. Accordingly, he made additions under Section 68 on account of said loan amount received by assessee. The High Court held that in view of decision in case of **CIT v. M. Venkateshwara Rao [2015] 57 taxmann.com 373/232 Taxman 123/370 ITR 212 (AP & Telangana)**, firm is not required to explain source of income of partners regarding contribution made by them towards capital of firm. Further, in view of decision in case of **CIT v. Anurag Rice Mills [2017] 88 taxmann.com 420 (Patna)**, unexplained cash credits would have to be assessed in individual partners of firm and not firm itself by relying upon Section 68.

9. Accordingly, in our considered view, insofar as the issue regarding capital contribution by the 10 partners in the assessee firm is concerned, since the assessee had furnished details of all the 10 partners and all the 10 partners were available before the tax authorities, then, in that case, addition if any, could have been made in the hands of the individual partners who had contributed capital in the assessee firm, and not in the hands of the assessee firm. Accordingly, the assessment order, in so far as the issue of capital

contribution is held not to be erroneous as prejudicial to the interest of Revenue.

10. Therefore, this ground of appeal raised by the assessee is allowed.

11. The next ground of appeal relates to order passed by the Principal CIT in relation to claim of deduction under Section 35AD(1) of the Act. During the course of 263 proceedings, the Principal CIT observed that the assessee firm has claimed deduction under Section 35AD of the Act of Rs.7,75,12,899/- as per statement of total income available. During the course of assessment proceedings, the assessee firm had submitted that it has carried out specified businesses as defined under Section 35AD(1) of the Act and it has set up and operated warehousing facility for storage of agricultural produce. The assessee had submitted that the business of the assessee was specifically covered under Section 35AD(1)(ii) of the Act. On examination of the case records, the Principal CIT observed that the provisions of Section 35AD(7) of the Act provides that the provisions contained in sub Section (6) of Section 80A and those of sub Sections (7) and (10) of the 80-IA of the Act shall, apply to a Section in respect of goods or services or assets held for the purpose of the specified businesses.

12. On examination of the case-records as made available by the A.O. for the purpose of proceedings under Section. 263 of the Act, PCIT noticed that the assessee-firm did not file any such audit report in the prescribed format i.e. Form No.10CCB as prescribed under the I.T. Rules quoted above. Further, the A.O. did not call for such details and verify the filing of Form No.10CCB which was one of the conditions for allowing the deduction claimed under Section 35AD of the Act. Since this condition has not been fulfilled, the

allowing of the deduction under Section 35AD of the Act is a mistake committed by the A.O. while making the assessment under Section 143(3) of the Act which was also prejudicial to the interest of Revenue. Therefore, the assessment order passed under Section 143(3) of the Act on 27.12.2019 was held to be erroneous and prejudicial to the interest of Revenue for the reason that the A.O. has committed an error in allowing the deduction of Rs.7,75,12,899/-.

13. Before us, the Counsel for the assessee submitted that on going to the relevant Income Tax Rules, more specifically form 10CCB and Rule 18BBB, there is no reference to Section 35AD of the Act. Accordingly, it was submitted that when the Auditors in Form No. 3CD had certified the amount of deduction claimed by the assessee under Section 35AD of the Act, there was no error in the part of the assessing officer since for the purpose of claiming deduction under Section 35AD of the Act, as there is no specific requirement for separately filing of Form 10CCB for claiming deduction under Section 35AD of the Act.

14. In response, DR placed reliance on the observations made by the Principal CIT under 263 order.

15. We have heard the rival contentions and perused the material on record. It would be useful to reproduce the relevant extracts of the Section for ready reference:

Section 35AD(7)

“(7) The provisions contained in sub-section (6) of section 80A and the provisions of sub-sections (7) and (10) of section 80-IA shall, so far as may be, apply to this section in respect of goods or services or assets held for the purposes of the specified business.”

Section 80-IA(7)

“(7) The deduction under sub-section (1) from profits and gains derived from an undertaking shall not be admissible unless the accounts of the undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant, as defined in the Explanation below sub-section (2) of section 288, before the specified date referred to in section 44AB and the assessee furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant.”

16. Accordingly, on going through the relevant provisions, it is evident that filing of requisite form for claiming deduction under Section 35AD in terms of 80-IA(7) of the Act is required under the Act. In the present case, admittedly, no separate form was filed by the assessee under the Income Tax Rules. On going through the case records it is observed that no specific query regarding claim of deduction under Section 35AD of the Act was raised by the Assessing Officer, during the course of assessment proceedings. Further, in our considered view, looking at the relevant provisions reproduced above, the assessee in order to claim deduction under Section 35AD of the Act is required under law to furnish requisite form, duly certified by Chartered Accountant in terms of Section 80-IA(7) of the Act. The issue is also not whether it is mandatory or merely procedural to file such requisite form as envisaged under Section 80-IA(7) of the Act but it is a fact that no specific query was made by the Ld. Assessing Officer with respect to his specific issue in hand before us. The assessee has claimed substantial amount of deduction under Section 35AD of the Act amounting to Rs. 7.75 crores and the Assessing Officer did not enquire into the aspect of whether the assessee had furnished the requisite form as required for claim of such deduction under Section 35AD of the Act.

17. Accordingly, on this issue we are of the considered view that the Ld. Assessing Officer erred in not conducting the requisite enquiry and we hold that Ld. CIT(A) has not erred in facts and in law in holding that the assessment

order is erroneous, in so far as prejudicial to the interest of the Revenue so far as this issue is concerned.

18. In the result, this ground of appeal of the assessee is dismissed.

Now we come to ITA No. 151/Ahd/2022 (Shreeji Cold Storage for A.Y. 2017-18)

19. The assessee has taken the following grounds of appeal:

“1. The learned Principals CIT-1 Ahmedabad has erred both in law and in facts in revising and setting aside the Order passed by Id A.O. u/s 143(3) on the ground that the AO failed to examine the details of capital introduced by partners as it was onus to be discharged by the appellant firm to prove identity, creditworthiness and genuineness of transactions of capital so introduced in the books of partnership firm. On the facts and circumstances of the case and considering the details and evidences furnished, order passed by AO being neither erroneous nor prejudicial to interest of revenue, PR.CIT erred in revising the said Order. It be so held now and order u/s 263 be set aside.

2. The learned Principal CIT further grievously erred in law and on facts in revising and setting aside the order of assessment on the ground that the AO did not call for details and verify the filing of Form No: 10CCB and that conditions of section 35AD were not fulfilled and that deduction u/s 35AD in any case would be Rs. 44,88,323/- as against Rs. 7,18,96,466/- as claimed. The Order u/s 143(3) being passed after application of mind to the issue and considering submissions, evidences and details furnished by appellant, the order is neither erroneous nor prejudicial to interest of revenue. It be so held now and order passed u/s 263 be set aside.

3. The Id Principal CIT also erred both in law and on facts in holding that as audit report in Form No: 10CCB was not furnished electronically, the condition for deduction u/s 35AD was not fulfilled, as it is advised that Form No: 10CCB and details mentioned therein are not applicable so far as the claim u/s 35AD is concerned but are relating to claim u/s 80IA and since otherwise, the profit & Loss account as well as Balance sheet with all its assets were duly vouched, audited and report thereon was already furnished. Also no such reason was recorded by Pr CIT in his show cause notice.

4. The Id Principal CIT further erred both in law and on facts in not appreciating the order passed u/s 143(3) after detailed scrutiny and necessary inquiry, the same could not be held to be erroneous merely because in him opinion, further inquiry is required to be made. Considering the explanations and details given and in view of settled legal position, regarding the law with regard to onus about capital introduced by partners, the order passed by AO is not erroneous or prejudicial to interest of revenue. It be so held now.

5. The Id Principal CIT also erred in law and on facts that the deduction u/s 35AD was wrongly allowed considering the fact that in view of submission of audit report by tax auditors and the appellants submission of details and invoices etc, the conditions for claim were fulfilled and the deduction was legitimately and correctly claimed and rightly allowed-as such. It be so held now.

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6. *There being no material or different facts to hold- that the order passed by ld AO after due application of mind taking a correct view the order u/s 143(3) could not be treated as prejudicial to interest of revenue even considering the aggregate depreciation allowable as per Act It be so held now and order passed u/s 263 setting aside the Order of AO be cancelled and order passed by ld AO be restored.*

7. *Without prejudice to the above, the order passed by ld Pr CIT is invalid, illegal and bad in law being with no firm conclusion.*

8. *The ld Principal CIT erred in law and on facts in placing reliance to Explanation-2 to section 263 since it is settled legal position as considered by various judicial pronouncements that it does not give unfettered powers to the Commissioner to assume jurisdiction under section 263 to revise every order of the Assessing Officer to re-examine the issues. It be so held now and order passed by ld Pr.CIT be cancelled.*

9. *The appellant craves leave to add, alter, modify or delete any of the grounds at the time of hearing.”*

20. We observe that the issue is involved in the case of M/s. Shreeji Cold Storage in ITA No. 151/Ahd/2022 are also similar and therefore, the appeal of the assessee with regard to this issue is also dismissed in the case of M/s. Shreeji Cold Storage, in light of the observations made by us in the preceding paragraphs.

21. In the combined result, the appeal of the assessee is partly allowed.

This Order pronounced in Open Court on	31/07/2024
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Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

Ahmedabad; Dated 31/07/2024

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रहित/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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad