

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस.आर. रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:1394/CHNY/2024
निर्धारण वर्ष/Assessment Year: 2014-15

Shri Ashok Kumar Jain,
33/38, Diwan Rama Road,
Purasawalkam,
Chennai – 600 084.

**The Principal Commissioner
of Income Tax,**
Vs. Central-3,
Chennai.

PAN: AADPJ 1397A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri D. Anand, Advocate
: Shri Nilay Baran Som, CIT

सुनवाई की तारीख/Date of Hearing

: 08.08.2024

घोषणा की तारीख/Date of Pronouncement

: 14.08.2024

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the Revision orders passed by the Principal Commissioner of Income-Tax, Chennai-3, in ITBA/REV/F/REV5/2023-24/1063336070 (1) dated 25.03.2024. The assessment was framed by the Income Tax Officer, Corporate Ward 6(2), Chennai for the assessment year 2014-15 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide

order dated 26.12.2016. The impugned re-assessment order was passed by the Addl./Joint/Deputy/Assistant Commissioner of Income Tax/ Income-tax Officer, National Faceless Assessment Centre, Delhi u/s.147 r.w.s. 144B of the Act dated 24.03.2022.

2. This appeal by assessee is arising out of revision order passed by the PCIT u/s.263 of the Act revising the assessment framed by the AO u/s.147 r.w.s. 144B of the Act, dated 24.03.2022 by upholding the assessment as erroneous and prejudicial to the interest of Revenue for verification of transactions of NSEL commodities and provision of bad debt claimed by the assessee. For this, assessee has raised various grounds which are argumentative, exhaustive and factual, hence need not be reproduced.

3. Briefly stated facts are that the assessee is a Director of SRS Cargo Logistics Pvt. Ltd., and filed his return of income for the relevant assessment year 2014-15 on 30.11.2014. The assessee's case was selected for scrutiny assessment and accordingly original assessment was completed u/s.143(3) of the Act by the ITO, Corporate Ward 6(2), Chennai vide his order dated 26.02.2016. Subsequently as per the AO, NFAC and as per information available with the Department that there were suspicious source of funds and

transactions carried out without physical possession of underlying commodities etc., trading in NSEL (National Spot Exchange Ltd) by the assessee. A notice u/s.148 of the Act was issued to the assessee dated 30.03.2021 for the relevant assessment year 2014-15. The AO framed reassessment u/s.147 r.w.s. 144B of the Act vide order dated 24.03.2022 and in the reassessment order, the AO noted the facts regarding trading transacted in NSEL platform by the assessee i.e., sales shown from NSEL commodities at Rs.68.21 lakhs and NSEL commodities purchased shown at Rs.67,42,700/-. The AO noted that during the short period of four months from 01.04.2013 to 31.07.2013, the transactions of the assessee in NSEL platform are more than Rs.1.31 crores. He noted that the amount receivable is reported to be Rs.33.93 lakhs from NSEL commodities. After examining the information, profit & loss account, balance sheet and other details and verification of details submitted by assessee viz-a-viz the issue flagged and data available, reassessment was concluded and reassessment order was passed u/s.147 r.w.s. 144B of the Act.

4. Subsequently, the PCIT on examination and perusal of assessment records of the assessee for the relevant assessment year 2014-15, issued show-cause notice u/s.263 of the Act for

setting aside the assessment by revising the assessment vide dated 28.07.2023 on the following two issues:-

“2. *The records related to the assessment were prused. IT is seen from the records that, no action has been taken to assess Rs.33,93,000/- being receivable from NSEL Commodities. The suppressed income/undisclosed incomes is to be taxed at applicable rate.*

3. *Further the provision for Bad debts amount of Rs.15,91,000/- has been debited as expenditure in Profit and loss account. In this connection, the expenditure is a mere provision only. Hence the same should have been disallowed, and added back to the total income.”*

The assessee replied to the above show-cause notice by stating that the AO in original assessment proceedings examined this issue of transactions done in NSEL as well as bad debts and accordingly, original assessment was completed u/s.143(3) of the Act dated 26.12.2016. It was also explained before PCIT that the assessment was reopened for this very reason to examine the sale and purchase shown from NSEL commodities and to verify the transactions and amount receivable at Rs.33.93 lakhs from NSEL commodities. But, PCIT was not convinced with the reply and he noted that the assessee did not furnish transaction-wise details of trading carried out with NSEL platform and he noted that *"despite the details were called for in the proceedings u/s.263, the assessee did not furnish*

any materials/evidence in support of the NSEL transactions done to the tune of Rs.1.31 crores. It is a well known fact that a scam broke out in NSEL and due to the fraudulent activities of the Board, the trading through platform was suspended from 31.07.2013 and that the assessee also transacted during the period from 01.04.2013 till 31.07.2013. In the light of NSEL scam and also the claim of the bad debts by the assessee, it is necessary that the assessee should have furnished the relevant details of his transactions in the NSEL platform to prove his bonafide.” Further, as regards to provision for bad debts, he noted in para 10 as under:

“Further, on verification of the profit and loss account, it is seen that the assessee has claimed provision for bad debts in profit and loss account to the tune of Rs.15,91,000/- but not disallowed the same as under the Income-tax Act, 1961, provisions are not allowed.”

4.1 Accordingly, after discussing some case laws, he set aside the assessment and restored the matter back to the file of the AO for limited purpose of verification of transaction of NSEL commodities and provision of bad debts claimed by assessee vide paras 21 & 22 as under:-

21. In the light of the above discussion and on relying on the aforesaid decisions of the Hon'ble Supreme Court in Malabar Industrial Co. Ltd. and LG Electronics India patent failure on the part of the Assessing (P) Ltd. (supra), it is held that there is patent Officer in not doing verification of issue on question which resulted in incorrect assessment of income requiring revision. Therefore, the order of the Assessing Officer dated

24/03/2022 is deemed to be erroneous in so far prejudicial to the interests of revenue in terms clause (a) of Explanation (2) to section 263 of the Income-tax Act, 1961.

22. Hence, the order of the Assessing Officer passed u/s 147 r.w.s. 144 of the Income-tax Act, 1961 dated 24/03/2022 vide DIN: ITBAAST/S/143(3)/2021-22/1041497458(1) is set aside and restored back to the file of the Assessing Officer for the limited purpose of verification of Transactions of NSEL Commodities and provisions of bad debts claim and for necessary order in accordance with law after providing due opportunity of hearing to the assessee. The assessee shall produce all the necessary evidences in relation to the aforesaid transactions before the Assessing Officer and the Assessing Officer shall cause necessary enquiries as per law.

Aggrieved, assessee is in appeal before the Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. Before us Id.counsel for the assessee, first of all drew our attention to the paper-book filed by it and page 1 wherein, a letter to the AO filed during original assessment proceedings dated 25.01.2016 and he took us through point Nos.2 to 4 of the letter which reads as under:-

“2. Copy of the contact notes evidencing the transactions done in NSEL. These transactions are Trading in Nature as the entire consideration is paid and further applicable VAT and other market charges are required to be paid by the buyer. Hence these transactions are trading in nature and not Speculative.

3. Copy of the confirmation statement from Sundry borrowals is enclosed.

4. Copy of Bank account statement is enclosed.

Standard Chartered Bank – S.B. A/c No.42610367850 – Haddows Road Branch

ICICI Bank – S.B A/c No.660901026069 – Sowcarpet Branch”

In view of the above, the Id.counsel for the assessee stated that in the original assessment, the transactions through NSEL and trading carried out by assessee through this exchange was explained with transparency and accordingly, assessment was completed by the AO u/s.143(3) vide order dated 26.12.2016. The Id.counsel for the assessee then took us through the reassessment proceedings conducted by the AO and consequent issuance of notice u/s.142(1) of the Act dated 22.12.2021 by virtue of which, he called for information in regard to transactions entered by assessee through NSEL was enquired vide questionnaire at points 8 to 11 as under:-

“8. It is reported that you have carried out transactions of commodities, etc through National Spot Exchange ltd (NSEL), which was suspended. It is reported that you have shown sales from NSEL commodities at Rs.68,21,000/- and NSEL commodities purchases at Rs.67,42,700/-. Thus, during the short period of four months from 1.04.2013 to 31.07.2013, the transactions in NSEL platform in sale and purchases is more than Rs.1.31 crores. The amount receivable is reported to be Rs.33,93,000/- from NSEL commodities. Furnish complete details of transactions traded through NSEL, with specific details of transactions carried out without physical possession of underlying commodities, etc.

9. Furnish evidence with regard to genuineness of such transactions like contract notes, identity of seller/buyer, as the case may be, reasons for transactions, etc.

10. Please state whether amounts have been offered to tax and taxes were paid? If not, reasons and why they should not be brought to tax?

11. Furnish a statement of affairs for the year including each transaction carried out by you.”

5.1 The Id.counsel for the assessee then took us through the reassessment order passed u/s.147 r.w.s.144B of the Act dated 24.03.2022 and stated that the assessee has explained the transactions and the AO in his reassessment order at para 2 had noted the same as under:-

“As per the information available with the department, due to the fact that there were suspicious source of funds of many of the investors, transactions carried out without physical possession of underlying commodities etc., trading in NSEL (National Spot Exchange Ltd) was suspended on 31.07.2013. Assessee, Shri Ashok Kumar Jain is one of the persons who had transacted in NSEL platform. IT is seen from the Trading and Profit and Loss account for the year ended 31.03.2014, the assessee has shown sales from NSEL commodities at Rs.68,21,000/- and NSEL commodities purchases at Rs.67,42,700/-. Thus, during the short period of four months from 1.4.2013 to 31.07.2013, the transactions of the assessee in NSEL platform in sale and purchases is more than Rs.1.31 crores. The amount receivable is reported to be Rs.33,93,000/- from NSEL commodities.

and vide para 5, he framed assessment as under:-

“5. Assessee also furnished copy of Profit and Loss Account, Balance Sheet and other details in connection with the Assessment proceedings. After verification of details submitted by the assessee visa-a-vis the issue flagged and data available, the assessment is concluded by accepting the returned income declared by the assessee.”

5.2 The Id.counsel for the assessee then took us through the balance sheet and details of sundry debtors and stated that the total

transactions were recorded in the trade account i.e., purchases from NSEL commodities at Rs.67,42,700/- and sales through NSEL commodities at Rs.68.21 lakhs. The Id.counsel also drew our attention to debtors of NSEL amounting to Rs.15.91 lakhs disclosed in the balance sheet of the assessee for the year ending 31.03.2014. He also filed details of transactions entered with NSEL in the shape of ledger account wherein details of transactions are depicted and there is a debit of Rs.33.93 lakhs being amount receivable and bad debts claimed of Rs.15.91 lakhs which were available before the AO during the course of original assessment proceedings and subsequent reassessment proceedings. In view of these facts and above details, the Id.counsel stated that the assessee has filed complete details before the AO in the first round of assessment u/s.143(3) of the Act and subsequent reassessment u/s.147 r.w.s 144B of the Act as well as during the revision proceedings u/s.263 of the Act before the PCIT. He stated that now the PCIT has only pointed out that the matter is restored back to the file of the AO for limited purpose of verification of transactions of NSEL commodities and provision of bad debts claimed by assessee. The Id.counsel also stated that the PCIT has only observed that there is patent failure on the part of the AO in not doing verification on the above two issues, which resulted in the reassessment order dated 24.03.2022 to be

erroneous so far as prejudicial to the interest of revenue in term of clause (a) of Explanation 2 to section 263 of the Act.

5.3 In answer to the same, the Id.counsel for the assessee took us through the judgment of Hon'ble High Court of Bombay in the case of Marico Ltd., vs. ACIT in writ petition No.1917 of 2019 dated 21.08.2019, wherein the Hon'ble High Court has answered this question that what the AO should do in the assessment proceedings and what the assessee has to do. The Hon'ble High Court has clearly pointed out once a query has been raised by the AO during the assessment proceedings and the assessee has responded to that query, it would necessarily follow that the AO has accepted the assessee's submission, so as to not deal with that issue in the assessment order. The Hon'ble High Court of Bombay considering another decision of the same High Court in the case of GKN Sinter Metals Ltd., vs. ACIT reported in 371 ITR 225 has categorically pointed out that an assessment order passed u/s.143(3) of the Act does not reflect any consideration of the issue, it must follow that no opinion was formd by the AO in the regular assessment proceedings. This submission was negatived by the Hon'ble Bombay High Court and the relevant paras 10 & 11 reads as under:-

"10. It is undisputed position before us, that query was raised on the very issue of reopening during regular Assessment proceedings. The parties have responded to it and the Assessment Order dated 30 January 2018 makes no reference to the above issue at all. However, once a query has been raised by the Assessing Officer during the assessment proceedings and the assessee has responded to that query, it would necessarily follow, as held by our Court that the Assessing Officer has accepted the Petitioner's/Assessee's submissions, so as to not deal with that issue in the assessment order. In fact, our Court in GKN Sinter Metals Ltd. V/s. Ms. Ramapriya Raghavan, Assistant Commissioner of Income Tax, Circle 2(1) (371) ITR 225 had occasion to deal with the similar/identical submissions on behalf of the Revenue viz. that an assessment order passed under Section 143(3) of the Act does not reflect any consideration of the issue, it must follow that no opinion was formed by the Assessing Officer in the regular assessment proceedings. This submission was negated by this Court by observing as follows :-

14. According to the Revenue, it could only be when the assessment order contains discussion with regard to particular claim can it be said that the Assessing Officer had formed an opinion with regard to the claim made by the assessee. This Court in Idea Cellular Ltd. v/s. Deputy Commissioner of Income Tax 301 ITR 407 has expressly negated on identical contention on behalf of the Revenue. The Court held that once all the material was placed before the Assessing Officer and he chose not to refer to to the deduction/ claim which was being allowed in the assessment order, it could not be contended that the Assessing Officer had not applied his mind while passing the assessment order. Moreover in this case, it is evident from the letter dated 6 th August, 2007 addressed by the Assessing Officer to the Petitioner containing the reasons recorded for issuing the impugned notice also record the fact that during the regular assessment proceedings, the Petitioner has been asked to furnish details in support of the claim for exemption under Section 80IA/IB of the Act. The letter further records that the details sought for were furnished and it is now observed that there has been a disproportionate distribution of expenses between various units belonging to the Petitioner for claiming deduction under Section 80IA/IB of the Act. This is a further indication of the fact that the Assessing Officer had during the regular assessment proceedings for Assessment Year 200203 sought information in respect of the allocation of expenses and the explanation offered by the Petitioner was found to be satisfactory. This is evident from query dated

27 th December, 2004 and the Petitioner's response to the same on 25 th January, 2005 explaining the manner of distribution of common expenses for delaying the process of claiming deduction under Section 80IA/IB of the Act. All this would indicate that Assessing Officer had formed an opinion while passing the order dated 9 th March, 2005. This Court in Aroni Commercials Ltd. v/s. Assistant Commissioner of Income Tax 367 ITR 405 had occasion to consider somewhat similar submission made by the Revenue and negatived the same by holding that when a query has been raised with regard to a particular issue during the regular assessment proceedings, it must follow that the Assessing Officer had applied his mind and taken a view in the matter as is reflected in the Assessment Order. Besides, the manner in which an Assessing Officer would draft/frame his order is not within the control of an assessee. Moreover, if every contention raised by the assessee which even if accepted is to be reflected in the assessment order, then as observed by the Gujarat High Court in CIT v/s. Nirma Chemicals Ltd. 305 ITR 607, the order would result into an epic tome. Besides, it would be impossible for the Assessing Officer to complete all the assessments which have to under gone scrutiny at its hand. In the above view, it is clear that once a query has been raised during the assessment proceedings and the Petitioner has responded to the query to the satisfaction of the Assessing Officer as is evident from the fact that the Assessment Order dated 9 th March, 2005 accepts the Petitioner's claim for deduction under Section 80IA/IB of the Act. It must follow that there is due application of mind by the Assessing Officer to the issue raised.

The above observations apply on all fours to this Petition, so far as the Revenue's submission of no change of opinion is concerned.

11. The further submission of Mr. Walve that in the absence of the Assessing Officer adjudicating upon the issue it cannot be said that the Assessing Officer had formed an opinion during the regular assessment proceedings leading to the order dated 30 January 2018. An adjudication would only be on such issue where the assessee's submissions are not acceptable to the Revenue, then the occasion to decide a lis would arise i.e. adjudication. However, where the Revenue accepts the view propounded by the assessee in response to the Revenue's query, the Assessing Officer has certainly to form an opinion whether or not the stand taken by the assessee is acceptable. Therefore, it must follow that where queries have been raised during the assessment proceedings and the assessee has responded to the

same, then the non-discussion of the same or non-rejection of the response of the assessee, would necessarily mean that the Assessing Officer has formed an opinion accepting the view of the Assessee. Thus an opinion is formed during the regular Assessment proceedings, bars the Assessing Officer to reopen the same only on account of a different view.”

6. Another aspect argued by Id.counsel that in term of clause (a) to Explanation 2 to section 263 of the Act, reassessment order is deemed to be erroneous insofar as prejudicial to the interest of revenue. The Id.counsel for the assessee drew our attention to the decision of Hon'ble High Court of Delhi in the case of PCIT vs. Clix Finance India Pvt. Ltd., ITA No.1428/2018, order dated 01.03.2024 and drew our attention to paras 19 & 20 explaining the provisions and particularly Explanation 2(a) as under:-

19. A bare reading of sub-Section (1) of Section 263 of the Act makes it abundantly clear that the said provision lays down a two- pronged test to exercise the revisional authority i.e., firstly, the 17:06:54 assessment order must be erroneous and secondly, it must be prejudicial to the interests of the Revenue. Further, Explanation 2 to Section 263 of the Act delineates certain conditions and circumstances when the order passed by the AO can be said to be erroneous and prejudicial to the Revenue.

20. Clause (a) of Explanation 2 to Section 263 of the Act further stipulates that if an order is passed without making an enquiry or verification which should have been made, the same would bestow a revisional power upon the Commissioner. However, the said Clause or any other condition laid down in Explanation 2 does not warrant recording of the said enquiry or verification in its entirety in the assessment order.

6.1 Even the Hon'ble High Court of Bombay in the case of PCIT vs. Shivshahi Punarvasan Prakalp Ltd., in ITA No.397 of 2018, order

dated 05.08.2022 has considered the issue of no enquiry case or inadequate enquiry even after the insertion of Explanation 2 in para 32 as under:-

“32. In this appeal, we are concerned with the assessment year 2006-07. Prior to the insertion of Explanation 2, it was the prerogative of the Assessing Officer to determine what enquiry he wants to make while completing the assessment. We have already observed that an enquiry was made by the Assessing Officer and the assessment order passed. Therefore, the CIT could not invoke jurisdiction under Section 263 as the view taken by the Assessing Officer was a possible/plausible view. It was only if the Assessing Officer had not made any enquiry then it could be said that the order passed was erroneous. This is not a case of lack of enquiry though it may be a case of inadequate enquiry. B. D. Prithiani itxa-397.18.doc Inadequacy of enquiry as elucidated above does not give jurisdiction to the CIT to invoke provisions of Section 263 prior to the insertion of Explanation 2. In our view, the Explanation 2 does not help the revenue in as much as the same is prospective and applicable with effect from 1st June, 2015.”

7. When these factual situation that the same two issues of transactions with NSEL commodities and provision for bad and doubtful debts have been considered by the AO during original assessment proceedings and subsequently in reassessment proceedings, where is error in reassessment order dated 24.03.2022 so as to make the same prejudicial to the interest of revenue, the Id.CIT-DR could not controvert the above fact situation except supporting the revision order passed by the PCIT.

8. In view of the above discussion, facts discussed, perusal of records, we are of the view that the very issue was raised in the reasons recorded for reopening of assessment u/s.147 of the Act, relevant reasons recorded reads as under:-

2. As per the information available with the department, due to the fact that there were suspicious source of funds of many of the investors, transactions carried out without physical possession of underlying commodities etc., trading in NSEL (National Spot Exchange Ltd) was suspended on 31.07.2013. Assessee, sri. Ashok Kumar Jain is one of the persons who had transacted in NSEL platform.

It is seen from the Trading and Profit and Loss account for the year ended 31.03.2014, the assessee has shown sales from NSEL commodities at Rs.68,21,000/- and NSEL commodities purchases at Rs.67,42,700/-. Thus, during the short period of four months from 1.4.2013 to 31.07.2013, the transactions of the assessee in NSEL platform in sale and purchases is more than Rs.1.31 crores. The amount receivable is reported to be Rs.33,93,000/- from NSEL commodities.”

Further, it is noted that the complete details were examined by the AO in the reassessment proceedings and framed assessment u/s.147 r.w.s. 144B of the Act after examining these details. Even these were answered by the assessee in reply to questionnaire issued along with notice u/s.142(1) of the Act dated 22.01.2021 while completing reassessment. Hence, it is a full verification case and AO has verified complete facts and after verification completed the reassessment. Hence, we find no reason to hold that the reassessment order is erroneous insofar as prejudicial to the interest

of revenue on this very jurisdictional issue. Hence, we quash the revision order passed by PCIT dated 25.07.2024 and allow this appeal of assessee.

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

Order pronounced in the open court on 14th August, 2024 at Chennai.

Sd/-

(एस.आर. रघुनाथा)

(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 14th August, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.