



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

ITA No.146/LKW/2022
Assessment Year: 2017-18

Rehber Food Industries Pvt Ltd Old Name, M/s. Marya Forzen Agro Foods Pvt. Ltd. B-51, Second Floor, Butler Plaza, Civil Lines, Bareilly-243001.	v.	Pr. Commissioner of Income Tax Aayakar Bhawan, Bareilly-243005.
PAN:AAF8M8846E		
(Appellant)		(Respondent)

Appellant by:	None (Adj. Application filed)		
Respondent by:	Shri. Mazhar Akram, CIT(DR)		
Date of hearing:	20	08	2024
Date of pronouncement:	22	08	2024

ORDER

PER SUBHASH MALGURIA, J.M.:

This appeal has been filed by the assessee against the order of the ld. PCIT, Bareilly, dated 24.03.2022 for the assessment year 2017-18.

2. In the present appeal, the assessee has challenged the impugned order passed u/s. 263 of the Income Tax Act, 1961 (hereinafter called 'the Act').

3. The brief facts of the case are that the assessee filed its return of income for the AY. 2017-18 on 26/05/2018, declaring total income at Rs.23,72,54,360/-. The case was selected for scrutiny under CASS. Thereafter, notice u/s 143(2) of the Act

was issued and served upon the assessee on 22/09/2019. And notices issued u/s 142(1) of the Act were issued and served upon the assessee on 23/10/2019 and 27/11/2019 along with detailed questionnaire. In response to the said notices, the assessee has furnished the details of Copy of I. T. Return with acknowledgment, Audit Report, Audited Balance-sheet, audited profit & loss account, copy of bank accounts and other documents for the year under consideration through online/offline mode. The assessee company is engaged in the business of manufacturing, processing and export of frozen meat of buffalos. The case of the assessee was selected for scrutiny to mainly examine the only two issues are as under: -

- (i) Expenditure of Personal Nature
- (ii) Duty drawback

4. Therefore, to examine the facts regarding office notice u/s 142(1) of the Act, queries regarding expenditure of personal nature and duty drawback were raised. In response to the queries, the assessee furnished all the documentary evidences placed on record. The assessment was completed after accepting the returned income.

5. Subsequently, the Id. PCIT issued notice u/s. 263 of the Act, on the ground that the assessment for the AY. 2017-18, which is completed u/s 143(3) of the Act on 07/12/2019 at total assessed income of Rs.23,72,54,360/- is erroneous in so far as it is prejudicial to the interest of the revenue on the following issues: -

“(i) The main issue in this limited scrutiny case before the AO was for verification of Duty Drawback received as shown in the Export import data. The ITBA system generates data populated through information received from Customs department regarding mismatch in duty drawback received by the assessee. it has to be matched by the claim made by the

assessee in its ITR. As per information available on file, it appears that the AO has not even printed the ITS data available in ITBA. Hence, it is evident that the AO has not enquired into the main issue flagged for examination by the system.

(ii) The case was picked up for limited scrutiny to examine an issue specifically flagged by the system. But the AO has devoted more of his precious time in examining issues which were neither relevant nor connected remotely to the main issue under examination. He should be cautious in future while scrutinizing the limited scrutiny case.

(iii) In view of the above, it is evident that the Assessing Officer has not made complete enquiry or verification regarding limited scrutiny issue noted supra. The assessment order is categorized as 'unsatisfactory.'

(iv) Thus, during the course of assessment proceedings, the Assessing Officer has not examined /enquired into the details of facts of the case by making the assessment order u/s 143(3) of the IT Act as erroneous in So far as prejudicial to the interest of the revenue as per explanation 2 to section 263 of the IT Act, 1961."

6. The ld. PCIT invoked Explanation-2(a) of Section 263 of the Act and held that the assessment in this case was erroneous as well as prejudicial to the interest of the Revenue. The ld. PCIT set aside the order of the assessment and directed the Assessing Officer to pass a fresh order in respect of the issue raised in the show cause notice.

7. Aggrieved, the assessee has now approached this Tribunal, (ITAT), challenging the order of the ld. PCIT by raising the following grounds of appeal: -

"1. BECAUSE, on the facts and in circumstances of the case the impugned order passed by the learned Pr. CIT, Bareilly U/s 263 of the Income Tax Act is patently illegal, without jurisdiction, bad in law and hence liable to be quashed as void ab initio. The impugned order passed by the Ld. Pr. CIT does not satisfy the statutory requirement stipulated under Section 263 of the Income Tax Act to assume jurisdiction over an assessee and hence the proceedings are ab-initio void.

2. BECAUSE, on the facts and in circumstances of the case the impugned order - passed by the learned Pr. CIT, Bareilly U/s 263 of the Income Tax Act is patently illegal as the assessee has duly supplied and produced all requisite material necessary for the correct assessment of its income and in fact, during the course of regular assessment proceedings, the assessee has duly supplied and produced all

details and materials requisitioned by the AO in relation to the contentious issue of Duty Draw-Back, as is evident from a record of the proceedings. Accordingly, the findings returned by the Pr. CIT in the impugned order considering inaction on the part of the assessing officer is manifestly perverse and unsubstantiated, rendering the impugned order bad in law as also on facts. Further, there are NO adverse proceedings over assessee from the Customs Department who have issued and credited the Duty Draw Back and accordingly the Income Tax authorities have no jurisdiction in the matter.

3. BECAUSE, without prejudice to above, on the facts and in circumstances of the case the Impugned Order passed by the learned Pr. CIT, Bareilly U/s 263 of the Income Tax Act is patently illegal, itself erroneous and bad in law since the impugned order do not demonstrate or contain any finding about the PREJUDICE or LOSS caused to REVENUE, if any, by the alleged inaction (factually incorrect and disputed) on the part of the assessing authority. Accordingly, the cumulative twin conditions stipulated under law have also not been satisfied while issuing the impugned order. The impugned order is based on probabilities and conjectures. The Ld. Pr. CIT is merely making roving and fishing enquiries in the garb of proceedings under section 263 of the Income Tax Act.

4. BECAUSE, on the facts and in circumstances of the case, the impugned order passed by the learned Pr. CIT, Bareilly U/s 263 of the Income Tax Act is patently illegal and bad in law as the powers to invoke Revisional Jurisdiction cannot be exercised in a case where the Revisional Authority do not specify the loss which is attributable to the alleged mistake committed by the Assessing Officer. A bare perusal to the Impugned Order would reveal that the Ld. Pr. CIT is merely desirous of causing a re-examination/ verification/analysis of the Duty Draw Back claim made by the assessee. There is no application of mind by the CIT to form any specific opinion on the matter concerning any escapement of income from taxation or the prejudice caused to revenue or the error committed by the assessing authority and accordingly the impugned order deserves to be set-aside and quashed.

5. BECAUSE, wholly without prejudice to above, on the facts and in circumstances of the case, the Impugned Order is patently illegal since the direction to frame assessment order denovo, is made without any authority of law or sound foundation/reason. The issue, under consideration, both at the time of assessment as also during Revisional proceedings relate to Duty Draw-Back and nothing more. Accordingly, the direction issued by the Pr CIT to frame the assessment, denovo is wholly unwarranted and a colourable exercise of power. There is no legal sanction available under law with the Revisional Authority to travel beyond the scope of the Show-Cause Notice and issue directions. In the Show-Cause Notice under Section 263 of the Income Tax Act, there was no indication that the entire assessment would be set aside to be framed, a fresh. Hence, the direction in the impugned order is bad in law.

6. BECAUSE, on the facts and in the circumstances of the case, the impugned order is unsustainable in law being

hopelessly barred by limitation, therefore the impugned order is liable to be set-aside and quashed.

7. BECAUSE, on the facts and in the circumstances of the case, the order having being passed by the Assessing Officer who does not have jurisdiction Over the instant assessee and such order having being passed by an officer, without jurisdiction renders the impugned order bad in law and void-ab-initio and the same, hence deserves to be quashed.

8. BECAUSE, on the facts and in circumstances of the case the learned Pr. CIT - grossly erred in failing to adjudicate the various grounds of Defence raised by the assessee before the same and in celling the assessment order on the said issues.

9, BECAUSE, on the facts and in circumstances of the case the learned Pr. CIT exercising powers under Section 263 did not provide due, sufficient and reasonable opportunity to the assessee to plead his case which is evidence enough of the marshal administration of law by the said authority. The circumventing circumstances, speaks of volumes for itself. The LD. Authority has processed in the matter with some pre-conceived notion and predetermined mind.

8. None was present for the assessee when the appeal was called out for hearing. However, an application dated 19.08.2024 seeking adjournment was placed before me citing the reason that the counsel of the assessee had not prepared the case. However, looking into facts of the case, we reject the adjournment application and proceed to adjudicate the appeal.

9. We have heard the Ld. Departmental Representative ("DR") and perused the record carefully. We noticed that the appeal filed by the assessee is barred by limitation. As per noting of registry the appeal is time barred by 53 day's. Despite numerous opportunities and substantial lapse of time the assessee has not filed any application for condonation of delay in filling of this appeal. However, when the appeal was called out on the date fixed for hearing i.e. on 20/08/2024, none was present on behalf of the assessee. Therefore, this appeal is dismissed in limine being barred by limitation, without going into the merits of the case. However, the assessee will be at liberty to approach this Tribunal, in accordance with law, for restoration of the appeal for

disposal on merits, if the assessee advances reasonable cause for delay in filing of this appeal.

10. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 22/08/2024.

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

Sd/-
[SUBHASH MALGURIA]
JUDICIAL MEMBER

DATED: 22/08/2024

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard file

//True Copy//

By order

Assistant Registrar