

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH: CHENNAI

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष  
BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND  
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.859/Chny/2024  
निर्धारण वर्ष /Assessment Year: 2020-21

Western India Cashew Company  
Pvt. Ltd.,  
No.88, RP Towers,  
Coimbatore Road,  
Pollachi – 642 002.  
[PAN: AAACW 3202B]

**Vs.** The Principal Commissioner of  
Income Tax,  
Coimbatore - 1.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Assessee by  
प्रत्यर्थी की ओर से /Revenue by

: Shri G. Surendarnath Rao, C.A  
: Shri V. Nandakumar, CIT

सुनवाई की तारीख/Date of Hearing

: 27.06.2024

घोषणा की तारीख /Date of Pronouncement

: 04.09.2024

**आदेश / ORDER**

**PER S.R. RAGHUNATHA, A.M :**

This appeal by the assessee is arising out of the order of the Principal Commissioner of Income Tax, Coimbatore-1 [hereinafter "PCIT"] in DIN & Order No. ITBA/REV/F/REV5/2023-24/1060503232(1), dated 05.02.2024. The assessment was framed by the Assessing Officer for the Assessment Year 2020-21 u/s.143(3) r.w.s 144B of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 06.09.2022.

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2. The assessee has raised the grounds of appeal are as under:

1. *The order of the Principal Commissioner is against law and facts.*

2. *The jurisdiction u/s.263 can be exercised by the Principal Commissioner only when both the following conditions are satisfied (i) the order of the Assessing Officer should be erroneous and (ii) it should be prejudicial to the interest of the revenue. These conditions are conjunctive. An order of assessment passed by the Assessing Officer should not be interfered with only because another view is possible.*

3. *The Principal Commissioner is not justified in invoking the provisions of section 263 against the appellant for AY 2020-21. when there was application of mind on part of the Assessing Officer, at the time of scrutiny assessment under section 143(3), since the proceedings were completed after obtaining the audited financial statements for the year and examining all necessary details and evidence related to such statements. When an assessment has been completed u/s.143(3) there is always a presumption that the Assessing Authority has gone through all the details, and he has applied his mind to the facts and documents before him. There was proper disclosure of the remuneration paid to the director and after detailed scrutiny including the profit for the year the Assessing Authority had not made any addition on account of alleged excess payment of remuneration to the directors during the year. The appellant submits that the mere fact that the AO did not express specific observations in the assessment order or that the assessment order was cryptic, cannot be a ground to conclude that the order is erroneous and prejudicial to revenue in order to invoke the provisions of section 263.*

4. *The Principal Commissioner should have known that it is necessary for him to state in what manner he considered the order of the AO to be erroneous and prejudicial to the interest of the revenue and what was the basis for such conclusion. When the order of the AO was in compliance with the CBDT Circular No. 6P dated 06-07-1968, it was up to the Principal Commissioner to point out in what way the order of the AO was erroneous in so far as it was prejudicial to the interest of the revenue.*

5. *The Principal Commissioner failed to appreciate that the performance incentive payment to the director was not made with any intention to evade tax liability and is not prejudicial to the interest of the Revenue. This is clearly evident from the fact that the tax outflow was more by Rs.46.85 Lakhs when the said amount is taxed in hands of the director. The Central Board of Direct Taxes had vide its Circular No.6P dated 06-07-1968, instructed that no disallowance shall be made u/s.40A(2) in respect of payment made to related parties, where there is no attempt to evade tax.*

6. *The Principal Commissioner failed to note that the turnover and the*

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*profitability for the year ended 31.03.2020 was significantly higher than the preceding year(s) and the bonus paid to the director was merely a performance incentive approved in accordance with the incentive scheme of the company. He also erred in suspecting that payment is excessive, without taking into account the educational qualification and work experience of the director and also failing to bring on record any other comparable instances on the basis of which this view was arrived at. The growth in turnover and profitability by Rs.33.47 crores and Rs.15.12 crores respectively were mainly due to the direct efforts of the said director.*

3. The brief facts of the case are that the Assessee is a private limited company engaged in the business of processing and exporting of nuts and its derivatives like Cashew-nuts, Almonds, Apricots, etc. The Assessee had e-filed their return of income for AY 2020-21 on 04.11.2020 declaring total income at Rs.23,12,01,240/-. The return of income was processed u/s.143(1) on 24.12.2021. The case was selected for complete scrutiny through CASS. The assessment was completed vide Order u/s.143(3) on 06.09.2022, as per which the returned income was accepted. Subsequently, on 21.11.2023, Principal Commissioner of Income Tax, Coimbatore-1 issued a notice under section 263 directing to show cause as to why part of the remuneration paid to the director debited to the Statement of Profit & Loss account for the year should not be disallowed as excessive and unreasonable, when compared to the preceding assessment year. The Principal Commissioner of Income Tax, Coimbatore - 1 rejected the detailed explanations submitted by the appellant and vide Order

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dated 05.02.2024 set aside the order of Assessment by holding as under:

*“4. The facts of the instant case have been carefully perused. The scrutiny assessment in the instant case was handled by the National Faceless Assessment Centre under complete scrutiny category. The Faceless Assessing Officer had Completed the assessment proceedings by accepting the returned income. Prima facie perusal of the assessee's financials revealed that there was excess bonus payment to Shri. Harikrishnan R Nair as Bonus amounting to Rs.3,38,75,000 during the period relevant to the impugned assessment year in question now. When this was compared with the previous assessment year (viz.) A.Y.2019-20, the above Director was paid a meager sum of Rs.3,30,000 only. Thus, it was decided to invoke the revisionary proceedings u/s 263 of the Act. In the course of the current revisionary proceedings, the assessee through its authorized representative had filed elaborate submissions in the form of booklet wherein, it had (a) objected to the invoking of proceedings u/s 263 of the Act as it had stated that the twin conditions laid down under the said section is not satisfied (b) Various cases laws in support of its claim that there had been no violation of section 40A(2)(b) as alleged in the show cause notice issued u/s 263 of the Act and supporting documents in respect of their claims. Before deciding the present proceedings, it is imperative to know that the assessment order framed by the FAO is devoid of any reasoning or conclusive findings about the assessment proceedings. When the FAO had passed cryptic assessment order, and when there is a prima facie error as mentioned in the show cause notice issued, and this error is prejudicial to the interest of revenue, the Income Tax Act authorises the undersigned to invoke the proceedings u/s 263 of the Act and therefore it is held that the assessment order so framed by the FAO is erroneous in so far as the same is prejudicial to the interest of revenue.*

*5. Thus, in order to remedy the said error in the order of assessment in the instant case made on 06-09-2022 for the assessment year 2020-21, the recourse would be to resort to provisions of Section 263 of the Act. Accordingly, the order of the AO dated 06-09-2022 for the assessment year 2020-21 in the case of the captioned assessee is, set aside, in exercise of the powers vested in me u/s.263 of the Act.”*

Aggrieved by the order of the PCIT, the assessee is before us.

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4. The Ld.AR of the assessee assailing the action of the Ld.PCIT stated that there is a failure to record the exact reason as to how the order is erroneous and prejudicial to the revenue. Further he stated that the Principal CIT had in his notice proposing revision under section 263 mentioned in Para 2 as follows:

*“-----It is obvious that the expenditure/bonus payment pertaining to the AY 2020-21 of Rs.3,38,75,000/- as per SL.No.2 of the above, is excessive and unreasonable compared to the payment of Rs.3,30,000/-pertaining to previous Assessment Year. Therefore, the same is required to be considered for disallowance u/s 40 A(2)(a) of 1T Act, 1961as the expenditure being excessive and unreasonable.*

*Hence, necessitating invoking the provisions of the Section 263 of the IT.Act, to remedy the loss of the revenue. It is therefore, proposed to invoke the provisions of the Sec. 263 of the I. T. Act, 1961.*

*You are hereby, afforded an opportunity of being heard and to show cause as to why the provisions of the Section 263 of the IT Act should not be invoked on the order under consideration. - - - ”*

5. The Ld.AR submitted that the Assessee had filed detailed response to the above and explained as to how it would be improper to just compare the remuneration for the two years and conclude that the same was excessive without taking into account, other crucial factors such as increased production, increased turnover, increased profits, etc. Attention of the Principal CIT was drawn to CBDT Circular No. 6P dated 06-07-1968, wherein it has been instructed that no disallowance shall be made u/s.40A(2) in respect of payments made to relatives and sister concerns where there is no attempt to evade tax. It was pointed out that the remuneration paid to the director was in the form of

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performance bonus duly approved by the board. It was also submitted that the incremental remuneration was not to evade tax as more tax has been paid by the director individually compared to that, the company would have paid on the enhanced profits had no remuneration been paid to the director. It was pointed out that the performance bonus of Rs.3,38,75,000/- which was disallowed has suffered tax at the rate of 39% in the hands of the director and would have suffered tax only at the rate of 25.17% in the hands of the company had such performance bonus not been paid. The qualification and eligibility of the director was brought on record before the Principal CIT and also comparable cases was brought to his kind attention to prove that the remuneration paid was comparable. It was submitted that the said director was a graduate in Commerce and also an MBA Graduate from the prestigious Indian Institute of Management, Calcutta and has more than three decades of experience in the line of business.

6. The PCIT even then, did not give specific finding in the revision order that the submissions made by the appellant in response to the notice under section 263 was wrong or were not factual but proceeded to set aside the assessment order allegedly on the ground that the

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assessment order is erroneous and prejudicial to the interest of revenue and directed the AO to re-do the assessment on the issue involved. The action of the Ld.PCIT in not controverting the submissions made by the appellant and proceeding to set aside the assessment is not in accordance with law and renders the order u/s.263 unsustainable. In support of the same the Ld.AR relies on the decision of the Rajkot Bench of the Tribunal in **Kishore Kumar Bhalara Vs Principal CIT (161 [taxmann.com](http://taxmann.com) 587) (Rajkot - Trib)** [PB Page No.119 to 125].

7. The Ld.AR further submitted that the assessee had submitted that there was only excess payment of tax as the director had paid more tax individually compared to that, the company would have paid had the remuneration not been paid and also relied on the CBDT Circular which squarely proved that the provisions of Section 40A(2) was not attracted in the appellant's case. Hence, prima facie there was no error in the order of the Assessing Authority. This view has been confirmed by the Hon'ble Bombay High Court in the case of **CIT v. Indo Saudi Services (Travel) (P.) Ltd. (2009) (310 ITR 306)(Bom HC)** [PB Page No.126 to 128]. The turnover and Profit-before-Tax

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(PBT) of the appellant company for FY 2019-20, when compared to the preceding year is as furnished below:

Particulars	FY 2018-19	FY 2019-20
Turnover	3,00,97,52,342	3,33,47,47,767
Profit Before Tax	5,96,10,722	21,07,90,869

8. The board of directors of the appellant company had approved an incentive scheme for the promoter director and president based on the achievement of various profitability levels of the business vide Resolution passed on 21st February 2019. The performance bonus was hence paid on the basis of the board decision. It was submitted to the Principal CIT that., the tax revenue to the department is significantly higher, when said amount is taxed in the hands of the director, Mr. Hari Krishnan Nair as per working given below:

Sl.	Particulars	In the hands of company	In the hands of Director	Additional tax revenue to Dept.
A	Bonus paid	3,38,75,000	3,38,75,000	-
B	Tax rate applicable (as per ITR for AY 2020-21)	25.168% (ie., Tax 22%+SCH 10%+EC 4%)	39% (ie., Tax 30%+SCH 25%+EC 4%)	-
C	Tax liability on above amount	85,25,660	1,32,11,250	46,85,590

Thus, the payment of bonus by the appellant company had resulted in additional tax revenue to the department amounting to Rs, 46,85,590/-,

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as made out in table above. These facts which were apparent from the financial statements were ignored and the Principal CIT set aside the assessment order.

9. The Principal CIT was by law required to state in what manner he considered that the order of the AO to be erroneous and prejudicial to the interest of the revenue and what was the basis for such conclusion. Your appellant relies on the decision of the **Punjab & Haryana High court in CIT Vs RK Metal Works (112 ITR 445) (P&H)** [PB Page No.129 to 131]. In the absence of such a finding the order of revision is not valid

10. The Learned Principal CIT failed to take into account the principles laid down in the following decisions which were binding on him:

i) Carmel Softech Pvt. Ltd., Chennai v. The Income Tax Officer, Corporate Ward 1(3), Chennai (96 ITR (Trib) (S.N.) 34)(Chen Trib) [ITA No. 724/CHNY/2018]

ii) Benninger India Private Limited vs. The Dy.Commissioner of Income Tax-1(1), Mumbai. (ITA/2360 of 2017 dated 28.09.2018)

iii) Sigma Research & Consulting (P) Ltd. v. Commissioner of Income tax [2019] 103 taxmann.com 397.

iv) The Assessment Order not erroneous and prejudicial to the interests of the revenue:

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11. The Hon'ble Supreme Court in the case of CIT vs. M.Chandra Sekhar (151 ITR 433) (SC) has held that the presumption that A.O. has considered the details filed by the assessee was "founded" on the principle that an officer entrusted with a judicial or quasi-judicial duty must be presumed to have discharged his duties in a proper and bonafide manner. This view is confirmed by the full bench decision of the Delhi high court in CIT VS Kelvinator of India Ltd ( 256 ITR 1) (Delhi FB), was upheld by the Supreme court in Commissioner of Income Tax Vs Kelvinator Of India Ltd ( 320 ITR 561)(SC). The mere fact that the Assessing Authority had not referred to the issue in the assessment order cannot be a ground for the Principal CIT to conclude that the assessment order is erroneous and prejudicial to the interest of the revenue. This view has been confirmed in CIT VS Mahendra kumar Bansal (297 ITR 99)(Allahabad HC) and Idea Cellular Ltd Vs Deputy CIT( 301 ITR 407)(Bombay HC). In light of the above arguments, the Ld.AR prayed for setting aside the order of the Ld.PCIT.

12. Per contra, the Ld.DR argued that the payments made under Section 40A(2) is very high compared to the preceding previous year and prayed for upholding the order of the Ld.PCIT.

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13. We have heard the rival contentions and perused the orders of the AO and that of the PCIT along with the various case laws referred by the Id.AR to claim that the order u/s.263 of the Ld.PCIT is against the law and facts. The jurisdiction u/s 263 can be exercised only when both the following conditions are satisfied :

- (i) the order of the Assessing Officer should be erroneous and
- (ii) it should be prejudicial to the interest of the revenue,

These conditions are conjunctive, In the instant case, there was nothing erroneous and prejudicial. An order of assessment passed by the Assessing Officer should not be interfered with only because another view is possible Malabar Industrial Company Ltd Vs.CIT (243 ITR 83) (SC) and CIT Vs. Green World Corporation (314 ITR 81)(SC).

14. The Principal CIT can invoke section 263 if on examination of records he forms an opinion that the order passed by the Assessing Authority is erroneous in so far as it is prejudicial to the interest of the revenue The learned Principal CIT, failed to note that a revision order cannot be passed against an order of assessment merely on the basis that in his opinion, an alternate view is possible. The PCIT, cannot substitute his view in place of that of the Assessing officer merely because the Principal Commissioner of Income Tax thinks that

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the assessment should have been completed in another way. It has been held by the Bombay High Court in the case of Gabriel India Ltd. (203 ITR 108)(Bom) as to when an order can be termed as erroneous:

*"From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an income tax officer acting in accordance with the law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of 'substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order, unless the decision is held to be erroneous..... . There must be some prima facie decision is held to be erroneous material on record to show that the tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed..."*

15. We have gone through the PCIT's order and noted that on account of payment of excess bonus to the Director U/s.40A(2)(b) of the Act, he has noted the facts and his observation as under:-

*"5. Thus, in order to remedy the said error in the order of assessment in the instant case made on 06-09-2022 for the assessment year 2020-21, the recourse would be to resort to provisions of Section 263 of the Act. Accordingly, the order of the AO dated 06-09-2022 for the assessment year 2020-21 in the case of the captioned assessee is, set aside, in exercise of the powers vested in me u/s.263 of the Act."*

16. We noted that the PCIT has simpliciter carried out unnecessary exercise by obtaining the information of payments made to related parties from the Form 3CD filed by the assessee from the assessment records which are already considered by the AO in his original assessment u/s.143(3) of the Act. Further, the PCIT without

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appreciating the fact of increased turnover by Rs.33.00 crores and profit before tax by Rs.15.00 during the relevant assessment year compare to preceding assessment year and thereby the additional bonus given to director, has resulted an additional tax revenue of Rs.46.85 lakhs to the department due bonus given by the assessee to its director, which has been taxed in the hands of the individual at the rate of 39% against the domestic companies' tax rate of 25.17%. Thus, the PCIT has not noted any error in the assessment order or any prejudice caused to the Revenue by the assessment order. Further for revising the assessment, the PCIT has to give a clear-cut finding that the order passed by the AO u/s.143(3) of the Act suffers from the twin conditions i.e., erroneous insofar as prejudicial to the interest of Revenue, which is sine qua non to invoke the powers u/s.263 of the Act.

17. We, after going through the provisions section 263 of the act and facts of present case, are of the view that the factual matrix stares in the face of the record in the light of the legal requirement of a satisfaction that for invoking the powers u/s.263 of the Act, necessarily presupposes the statutory satisfaction that although there is some error with regard to the completed assessment but the order passed by the officer has to be erroneous in so far as prejudicial to the interest

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of the Revenue. The plain language of the provision is more than abundantly clear that it is not every error or mistake that should induce the PCIT to resort to exercise the powers u/s.263 of the Act. Where the factual matrix shows that it is a marginal situation and when by a careful and cautious judgment the AO has considered the issue in hand, the exercise of the power u/s.263 of the Act by the PCIT is not proper. For invoking the revisionary powers u/s.263 of the Act, it is necessary for the PCIT to state in what manner he consider the assessment order as erroneous and prejudicial to the interest of Revenue and what the basis and material for such conclusion. Though the provisions of section 263 of the Act vests power in PCIT in subjective terms, the PCIT has blindly considered the issue of payment of bonus to director as a reason for invoking the powers of section 263, stating that the order passed by the AO was cryptic. In view of this discussion and respectfully following the various judicial decisions of hon'ble courts, we are of the view that the order passed by the AO is not erroneous and prejudicial to the interests of Revenue and thus we set aside the order of the PCIT. In the present case the PCIT has not given any reasoning how the order of the AO was prejudicial interest of revenue for setting aside the assessment order and directing the AO verification. Hence, we quash the revision order passed by the PCIT and allow the appeal of assessee.

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18. In the result the appeal of the assessee is allowed.

*Order pronounced on 04<sup>th</sup> September, 2024.*

**Sd/-**

(मनु कुमार गिरि)

**(Manu Kumar Giri)**

**न्यायिक सदस्य / Judicial Member**

चेन्नई/Chennai,

दिनांक/Dated: 04<sup>th</sup> September, 2024.

*JPV*

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

**Sd/-**

(एस. आर. रघुनाथा)

**(S.R. Raghunatha)**

**लेखा सदस्य /Accountant Member**