

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.955/PUN/2024
निर्धारण वर्ष / Assessment Year: 2019-20

Anand Construwell Private Limited, Ramchandra Apartments, Makhmalabad Road, Panchvati, Nashik- 422003. PAN : AAFCA7736H	Vs.	PCIT-1, Nashik.
Appellant		Respondent

Assessee by : Shri Pramod S. Shingte
Revenue by : Shri Keyur Patel

Date of hearing : 05.09.2024
Date of pronouncement : 29.11.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 19.03.2024 passed by Ld. PCIT-1, Nashik ['Ld. PCIT'] for the assessment year 2019-20.

2. The appellant has raised the following grounds of appeal :-

- "1. On the basis of the facts and circumstances of the case, the order passed u/s. 263 by the Principal Commissioner of Income-tax, Nashik may please be quashed.*
- 2. On the basis of the facts and circumstances of the case, the Principal Commissioner of Income-tax is not justified in invoking the provisions of section 263 by holding that provisions of section 69C are applicable in the present case as the assessee was not able to explain the sources of expenditure*

when it is accepted fact that the impugned expenses were already accounted in the audited books of accounts and the same were disallowed for the reason the same were accounted to inflate the expenses.

3. *On the basis of the facts and circumstances of the case, the Principal Commissioner of Income-tax is not justified in invoking the provisions of section 263 by holding that provisions of section 69C are applicable in the present case as the assessee itself has declared in the statement recorded during the course of survey action that the additional income of Rs. 2,28,29,555/- was declared on account of unexplained expenditure, when no such admission was made by the appellant in the statement recorded during the course of survey action.*
4. *The appellant craves for the addition to, deletion, alteration, modification of the above grounds of appeal.”*

3. The facts of the case, in brief, are that the assessee is a private limited company engaged in the business of civil contract work. A survey u/s 133A of the IT Act was carried on at the premises of the assessee on 22.02.2019. In the statement recorded at the time of survey the assessee in the answer to question no 23 admitted that certain expenses shown as incurred in cash has already been booked, however they were not incurred and they were booked to inflate the expenses. In the next para assessee himself termed these expenses as bogus expenses. Accordingly assessee agreed to declare additional income of Rs.2,28,29,555/- over and above the normal income and promised to pay the tax. The return of income was e-filed on 30.10.2019 by declaring income of Rs.6,99,67,790/- which includes additional income as

admitted by the company. Notices u/s 143(2) and 142(1) were issued to the assessee. After considering the reply of the assessee, the assessment was completed u/s 143(3) of the IT Act on total income of Rs.7,01,01,766/- vide order dated 30-09-2021. Later on another AO initiated proceedings u/s 154 of the IT Act on 05-04-2023 which were dropped by an order dated 08-02-2024.

3.1 In the meanwhile, it was observed by Ld. PCIT that the Assessing Officer has completed the assessment without making due verification and enquiries which were warranted in the facts and circumstances of the case. Therefore, a show-cause notice u/s 263 dated 07.02.2024 was issued to the assessee pointing out that the additional income was required to be added u/s 69C of the IT Act as expenditure from unexplained sources & consequently to be taxed at special rate u/s 115BBE of the IT Act.

3.2 In response to the above show-cause notice, the assessee furnished reply and submitted that on this same issue, proceedings u/s 154 of the IT Act were also initiated, proposing to treat the impugned additional income offered as taxable u/s 69C of the IT Act and thereby to tax the same u/s 115BBE instead of normal tax rate as applicable to the companies. But, the said 154 proceedings were dropped vide order dated 08.02.2024 considering the reply of

the assessee. It was also stated that now the assessee is in receipt of the above notice u/s 263 of the IT Act for the same reason, that the said additional income offered by the assessee is taxable u/s 69C and thereby the tax is to be levied u/s 115BBE of the IT Act. It was therefore contended before Ld. PCIT that the assessment order was passed after making due verification and proper enquiry and as such there is no need to initiate proceedings u/s 263 of the IT Act. Ld. PCIT being not satisfied with the above reply of the assessee, set-aside the assessment order passed by the Assessing Officer and directed the Assessing Officer to pass assessment order afresh as per the provisions of law. It is this order against which the assessee is in appeal before this Tribunal.

4. Ld. AR appearing for the assessee submitted before us that the order passed by Ld. PCIT u/s 263 is not justified. It was also submitted that all the grounds raised in this appeal are related to challenging the initiation of proceedings u/s 263 of the IT Act and against the passing of the order by Ld. PCIT. Ld. AR submitted before us that during the survey proceedings u/s 133A of the IT Act it was admitted by the assessee that he will offer additional income of Rs.2,28,29,555/- on account of various expenditure incurred in cash at his various sites. It was also stated by the

assessee in his statement that the expenditure of Rs.2,28,29,555/- has already been booked / accounted for in its regular books of accounts. It was further submitted that the assessee has not retracted from his statement and declared additional income of Rs.2,28,29,555/- in his regular books of accounts over and above the normal income earned by the company. Ld. AR further submitted that the books of accounts were examined by the Assessing Officer during the proceedings u/s 143(3) of the IT Act and the assessment order was passed. Even penalty proceedings u/s 270A of the IT Act were also initiated for under-reporting income of Rs.2,28,29,555/-, since the same was declared during survey proceedings, which clearly shows that the Assessing Officer has made proper enquiry and applied his mind to the facts of the case. Ld. AR also submitted that even after passing of 143(3) assessment order, proceedings u/s 154 of the IT Act were also initiated for amending the computation of income as there is a mistake apparent from the record within the meaning of section 154 of the IT Act, as per the Assessing Officer. In the notice u/s 154 of the IT Act it was stated that the amount of Rs.2,28,29,555/- was required to be added as unexplained expenses u/s 69C of the IT Act and, therefore, the income was taxable u/s 115BBE of the

IT Act at the rate of 60% whereas it was taxed at the rate of 30% under normal provisions of the IT Act. In reply to the above 154 notice, the assessee furnished his written submission and objected to the proceedings initiated u/s 154 of the IT Act by saying that the addition was not made u/s 69C of the IT Act and there is no mention of section 69C in the assessment order anywhere. Therefore, there is no income chargeable to tax at special rates u/s 115BBE of the IT Act. Accordingly it was submitted that there is no mistake apparent from the record, hence initiation of proceedings u/s 154 of the IT Act are not justified. After considering this reply, the Assessing Officer was pleased to drop the rectification proceedings u/s 154 of the IT Act and a separate order dated 08.02.2024 to this effect was also passed. Copy of this order is also produced for kind perusal of the Bench in the Paper Book. Ld. AR also submitted that the impugned expenses were entered in the regular audited books of accounts therefore the sources were very well explained & accordingly section 69C is not attracted in the instant case. In support of his contention, ld. AR appearing for the assessee relied on the various judgements/decisions which are as follows and accordingly requested to set-aside the order passed by Ld. PCIT :-

- (i) CIT vs. Gabriel India Ltd., 203 ITR 108 (Bom.).
- (ii) CIT vs. M/s RAdhika Creation, ITA No.692/2019 dated 30.04.2010.
- (iii) JCIT vs. Sarvhit Trust, ITA No.2745/Del/2016, dated 22.02.2022.
- (iv) ITO vs. M/s. Growel Energy Co. Ltd., ITA No.338/Mum/2011, dated 13.06.2014.

5. Ld. DR appearing for the Revenue placed heavy reliance on the order passed by Ld. PCIT and relied on the following judgements/decisions :-

- (a) ACIT vs. Kantilal Exports Surat, 150 taxmann.com 172 (SC).
- (b) Kolaparthi Suvarna Lakshimi vs. DCIT, ITA No.595/Hyd/2023, dated 22.03.2024.

6. We have heard Ld. Counsels from both the sides and perused the material available on record including paper books submitted by both the parties. We find that Ld. PCIT invoked section 263 of the IT Act and set-aside the matter back to the Assessing Officer to pass the assessment order afresh by observing as under :-

“02. On examination of the case records, it was prima facie observed that, the AO has completed the assessment without making due verification and inquiries which were warranted in the facts and circumstances of the case, which will be clear from the discussion made in sub sequent paras.

03. On verification of assessment records, Profit and Loss accounts computation and assessee’s submission filed before the AO, it was noticed that total revenue as per the Profit and Loss account was at Rs.67,54,57,964/- which includes additional income of Rs.2,28,92,801/- on account of unrecorded expenditures. Section 69C of the Act, specifically mentions that where in any of the financial year if an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or explanation, if

any offered by him is not satisfactory, the amount covered by such expenditure, may be deemed to be the income of the assessee for such Financial Year. In this case, the assessee has accepted that the expenditure amounting to Rs.2,28,29,555/- which has been recorded in the books of accounts to inflate the expenses. Further, the assessee was not able to explain the source of such expenditure. Therefore, section 69C was squarely applicable in this case and the same should have been taxed applying the provisions of section 115BBE of the Act. During the assessment proceedings, the AO levied the same at normal tax rate and failed to levied the taxes applying the provision of section 115BBE.

04. In view of the above facts, it appears to me that the assessment order passed u/s 143(3) of the I.T. Act,1961 on 30.09.2021 by the NFAC AO is erroneous in so far as it is prejudicial to the interest of the Revenue, because the assessment has been made without making inquiries or verification which should have been made.

4.1 Therefore, a show cause notice No.ITBA/REV/F/REV1/2023-24/1060622901(1)/6060 dated 07.02.2024 communicating the above reasons and calling for submission on 15.02.2024 was issued to the assessee through e-proceedings.

05. In response to the show cause notice, the assessee filed written submission on 15.02.2024 through e-proceedings. The relevant portion of the submissions of the assessee filed during the proceedings u/s 263, is as under :

“

1. The assessee is a Private Limited Company carrying on the business of civil contractor. The assessee is regularly assessed to Income Tax and has maintained regular books of accounts for the year under review and the same are audited under Companies Act, 2013 and under Income Tax Act, 1961.

2. The return of Income for A.Y.2019-20 was filed on 30/10/2019 declaring total income of Rs.6,99,67,790/- vide e-filing acknowledgment No.23370950130109.

3. A survey action u/s 133A of the Act was conducted, where the assessee has declared that the expenditure of Rs.2,28,29,555/- recorded in Profit and Loss account was not incurred for the purpose of business. The same was duly offered to income by the assessee.

4. The assessment order u/s 143(3) has passed by the AO on 30/09/2021 assessing total income at Rs.7,01,01,766/-after making addition of Rs.41,196/- on account of disallowance of interest on TDS.

5. The proceedings u/s 154 of the Act were initiated vide notice dated 05/04/2023 proposing to treat the abovementioned

income offered as taxable under section 69C and thereby to tax the same under section 115BBE instead of normal tax rate applicable to companies.

6. *However, the said proceedings were dropped vide order dated 08/02/2024 considering the fact that there was no mistake in the assessment order passed.*

7. *Now, the assessee is in receipt of the notice u/s 263 for the same reason that the said additional income offered by the assessee is taxable under section 69C and thereby the tax is to be levied under section 115BBE of the Act.*

8.....

1. *Your contention that the assessment order is passed without making due verification is incorrect because the present case was covered by survey action u/s 133A of the Act. Therefore, the entire material was already on record i.e. the assessee has accounted for some expenses in its audited books of accounts just to inflate the expenses. Therefore, the fact that the impugned expenses were already accounted for in the audited books of accounts is not in dispute. In such backdrop, there was no question as regards the source of the expenses. In addition to above, the present assessment, in our opinion was also approved by Jt. Commissioner of Income Tax, Central Range. In brief, in the present case, there was no need to make inquiries as regards the source of expenditure because the said expenses were already accounted in the audited books of accounts. Nevertheless, I kindly request your honour to provide me with the details of expenses which are unrecorded or unexplained because the expenses which were offered for taxation in the return of income by the assessee were duly recorded in the books of accounts. Therefore, inquiry w.r.t. source thereof is absolutely unwarranted on the facts of the case.*

Further, the aforesaid fact is also accepted by you in the notice itself where you yourself, in para 3.1 has mentioned that “ the assessee has accepted that the expenditure amounting to Rs.2,28,29,555/- which has been recorded in the books of accounts to inflate the expenses”.

Therefore, if the fact that the impugned expenses were accounted for in the books of accounts is accepted by you, then the question of treating the same as unexplained should not have been called for.

2. *The said expenditure of Rs.2,28,29,555/- was not incurred for the business purpose and it is specifically mentioned by the assessee in the statement recorded during the course of survey action. Therefore, the issue involved here is*

not source of expenditure because the expenses were duly accounted in the audited books of accounts and there was no question as regards the source of expenses. The issue involved was that the said expenses were not incurred for the purpose of business of the assessee.

In the case of CIT Vs M/s Radhika Creation, Hon'ble Delhi High Court held that there cannot be addition u/s 69C for recorded expenses in the books. The relevant para of the order read as under –

5. Insofar as the first aspect of the matter is concerned, we find that Section 69C clearly stipulates that where, in any financial year, the assessee has incurred an expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if it is offered by him, is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year. Thus, the focus of Section 69C is on the "source" of such expenditure and not on the authenticity of the expenditure itself. It is an admitted position that the expenditure was shown by the assessee in its regular books of accounts and it is because of this reason that the Income Tax Appellate Tribunal had observed : -

"As the expenditure was accounted in the regular books, the source is obviously explained. The provisions of section 69C are not applicable as there was no unaccounted expenditure."

In view of above, we kindly request your honor to drop the impugned proceedings.

....."

06. The submission of the assessee has been considered.

The present revision proceedings u/s 263 of the Act have been initiated on the ground that during the survey proceedings, assessee was not able to explain the source of expenditure of Rs.2,28,29,555/-, therefore, section 69C was squarely applicable and the same should have been taxed applying the provisions of section 115BBE of the Act. During the assessment proceedings, the AO levied the same at normal tax rate and failed to levied the taxes applying the provision of section 115BBE.

6.2 On perusal of assessment records, it is noticed that the assessee has declared Rs.7,00,52,570/- only in his Return of Income. The AO made addition of Rs.41,196/- on account of disallowance of interest on TDS and assessed the total income of the assessee at Rs.7,01,01,766/-.

6.3 On perusal of Profit and Loss account, computation and assessee's submission filed during the assessment proceeding as well as during the revisionary proceedings, it is seen that out of total revenue as per P & L account additional income of Rs.2,28,92,801/- on account of unexplained expenditure was offered as an additional income, which was detected during the survey proceedings. It is pertinent to mention here that, if the survey might not have been conducted, this income could not have been unearthed. It is therefore, not a voluntary disclosure of the assessee, but had disclosed this income (i.e. unexplained expenditure) only after survey action. Further, on perusal of statement recorded during the survey proceedings, in reply to question no.23, the assessee had himself stated that he had declared additional income of Rs.2,28,29,555/- on account of unexplained expenditure for the year under consideration. The assessee was unable to explain the source of such expenditure. Therefore, section 69C is squarely applicable and is required to be taxed under provisions of section 115BBE of the Income Tax Act. The relevant portion of the section 69C is read as under :

“69C.[Unexplained expenditure, etc. [Inserted by Act 41 of 1975, Section 14 (w.e.f. 1.4.1976).]

- Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the] [Assessing Officer] [Substituted by Act 4 of 1988, Section 2, for " Income-tax Officer" (w.e.f. 1.4.1988).], satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year: [Provided that notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.] [Inserted by Act 41 of 1975, Section 14 (w.e.f. 1.4.1976).]”

During the assessment proceedings, the Assessing Officer has failed to consider the same by making addition u/s 69C chargeable to tax applying the provisions u/s 115BBE of the Act. Considering the overall facts of the case, it is clearly established that all these details have escaped proper scrutiny in the hands of A.O. Therefore, it can be inferred safely that AO has failed to cause proper inquiries and consequential verifications which rendered assessment order erroneous and prejudicial to the interest of revenue.

07. In the light of the detailed discussion made hereinabove, I am of the considered opinion that the assessment order passed u/s.143(3) of the Act for Assessment Year 2019-20 on 30.09.2021 by the then AO, is erroneous in so far as it is prejudicial to the interests of Revenue, because the assessment has been made not only without proper

verification but also without applying the relevant provisions of the Act properly. Therefore, the provisions of section 263 of the I.T. Act, 1961 are hereby invoked and assessment order passed by the AO on the above issue is hereby set aside as mentioned in para 03 above.

The AO is directed that the assessment order be framed afresh as per the provisions of law, after considering proper facts and submissions of the assessee on the issue set-aside herein above, after affording proper opportunity to the assessee within the time allowed under the Income-tax Act, 1961.”

7. We find that a survey u/s 133A of the IT Act was conducted on 22.02.2019 at the premises of the assessee and in reply to question no.23 of his statement, recorded at the time of survey, the assessee accepted that the expenditure recorded in the books of accounts was incurred in cash at different sites of the assessee company & the same amount was received back in cash, therefore, the assessee agreed to declare additional income of Rs.2,28,29,555/- in his return of income over and above the normal income earned by the company, and by honouring his statement recorded at the time of survey proceedings, the assessee company declared additional income of Rs.2,28,29,555/- and paid the due taxes. The return was subject to scrutiny u/s 143(3) of the IT Act and the assessment was completed u/s 143(3) of the IT Act. Later on another AO initiated rectification proceedings u/s 154 of the IT Act on 05.04.2023 which were dropped by an order dated 08.02.2024.

8. However, we find that the AO initiated rectification proceedings u/s 154 of the IT Act to amend the computation of income & proposed to impose special rate of income tax u/s 115BBE of the IT Act @ 60% on Rs.2,28,29,555/- instead of @ 30% in normal provisions. By issue of this 154 notice the AO proposed to impose short levy of Income Tax of Rs.1,14,55,872/-. We also find that in the 154 notice at one place amount taxable under special provision section 115BBE of the IT Act is mentioned correctly i.e. Rs.2,28,29,555/- but in the same notice under the head particulars of mistake proposed to be rectified, due to typographical error in place of taxable amount, the Income Tax amount of Rs.1,14,55,872/- has been mentioned. In compliance to this notice assessee took advantage of the typographical error and replied that no such addition of Rs.1,14,55,872/- was made in the assessment order and therefore requested to drop the 154 proceedings. And the AO also accepted the above reply and dropped the 154 proceedings. We therefore find that the 154 proceedings initiated correctly but were dropped on the basis of some irrelevant reply of the assessee. It is also found that the 154 proceedings were issued by a notice dated 05.04.2023 and when no action was taken by the AO the Ld. PCIT initiated proceedings u/s

263 on the basis of same reasons which were mentioned in the notice u/s 154 of the IT Act. It is also to our surprise that when Ld. PCIT issued notice u/s 263 i.e. on 07.02.2024 the Assessing Officer for reasons best known to him woke up and on the very next day i.e. on 08.02.2024 dropped the 154 proceedings by considering the wrong reply of the assessee in which the assessee took the benefit of typographical error occurred in the 154 notice. We therefore do not find any substance in the ground taken by the assessee that on the same issue 154 proceedings were dropped by the Assessing Officer.

9. We further find that the assessee has disclosed additional income of Rs.2,28,29,555/- since the amount booked as expenses in the books of accounts was claimed to be received back in cash by the assessee but the Assessing Officer has not enquired about the use of the cash disclosed by the assessee, therefore it appears that such cash was used by the assessee in recording bogus expenses which were never incurred. We also find that the claim of the assessee, that the expenditure was already recorded in the books of accounts therefore the sources were very well explained does not come to the rescue of the assessee since the Assessing Officer has not enquired as to whether sufficient cash was

available in the books of accounts on the date of impugned expenses or the additional disclosed income was introduced/utilized in the books of accounts on those particular dates. Accordingly in our opinion the Assessing Officer has failed to conduct proper enquiry which was required in the case of the assessee for which the order has become erroneous as well as prejudicial to the interest of the Revenue. In view of the above discussion, we hold that the order passed by Ld. PCIT does not suffer from any irregularity and therefore the same is upheld.

10. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on this 29th day of November, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29th November, 2024.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Nashik.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.