IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'A' NEW DELHI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.3359/Del/2024
Assessment Year: 2012-13

Sh. Ajay Kumar Dua, B-3, Defence Colony, New Delhi	**Vs.**	PCIT, Circle-61(1)-12, New Delhi
PAN :AAJPD3532B		
(Appellant)		**(Respondent)**

Assessee by	Sh. Ved Jain, Advocate Sh. Ayush Garg, CA
Department by	Mr. Javed Akhtar, CIT(DR)

Date of hearing	19.11.2024
Date of pronouncement	16.12.2024

ORDER

PER SATBEER SINGH GODARA, JM

This assessee's appeal for assessment year 2012-13, arises against the Principal Commissioner of Income Tax [in short, the "PCIT"], Delhi's-12 DIN and order no. ITBA/REV/F/REV5/2021-22/1042332420(1), dated 31.03.2022 involving proceedings under section 147 r.w.s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Heard both the parties at length. Case file perused.

3. The delay of 781 days in filing of the assessee's instant appeal is condoned going by his averments in the condonation petition attributing reasons thereof to various chronic health complications and other issues.

4. Next comes the sole substantive grievance raised in the instant appeal that the learned PCIT herein has erred in law and of facts in assuming his section 263 revision jurisdiction thereby terming the Assessing Officer's corresponding section 143(3) read with section 147 reassessment dated 30th December, 2019, as erroneous one causing prejudice to the interest of the Revenue.

5. Both the learned representatives reiterate their respective stands. The assessee more particularly invites our attention to the PCIT's impugned revision directions reading as under:

> *"2. The case was reopened on the basis of following reason:*
>
> *As per the agreement between the assessee and KSL, the assessee has to receive 2,00,000/- USD per annum right from 01.04.2010. It appears that the assessee was in the knowledge that the receipt of various years is not to be refunded and therefore ought to have paid taxes in respective years on the basis of receipts. However, the income has not been offered for taxation for the AY 2012-13. In view of the above discussion, amount of Rs.94,25,852/- chargeable to tax has escaped assessment for A.Y 2012-13. Accordingly, Notice u/s 143(2) was issued to assessee on 27/03/2019.*
>
> *3. Thereafter assessment u/s 147 r.w.s 143(3) of the Act was completed on 30/12/2019 at returned income of Rs. 2,16,98,330/-. During the assessment, no addition was made.*

4. During the course of scrutiny proceedings, the assessee explained that the amount of Rs. 94,25,852/- was shown as advance in view of the letters issued by the parties concerned. It was also submitted that the receipts was offered to tax in subsequent year when the same became eligible to be recognized as income. The AO in assessment order has mentioned that assessee offered the amount of Rs 94,25,852/- as income, the returned income of assessee is accepted.

5. On perusal of return of income filed by assessee for the year under consideration it was observed that the assessee had shown Sundry creditors of Rs.1,34,71,852/- and unsecured loans from others as Rs 4,00,000/- in his retum of Income for AY 2012-13. It is observed from the return of income for AY 2011-12 that the assessee had shown Sundry creditors as Rs. 44,46,000/- and unsecured loans from others of nil in his return of Income. This shows an increase in sundry creditor balance of the assessee by Rs.94,25,852/- for AY 2012-13. It has also been observed from the Part A-Ol of the return of income fumished by the assessee that the assessee is following cash system of accounting.

Mr. Ajay Dua, an Indian national, having his place of business at B-3, Defence Colony, New Delhi-110024, had entered into an advisory services agreement on 01.04.2010 with KSL, a Japanese corporation having its principal place of business in Japan.

From the agreement, following points are clear-

(A) As per the original agreement w.e.f 01.04.2010 and its amendment on 13.12.2010 and its restatement (Redraft Incorporating the amendment) on 28.01.2011, the assessee will receive 200,000 US Dollar per annum for its services in two fields as given below.

i) Service related to the UBC process 100,000 USD per annum

(ii) Service related to the Iron unit Business 100,000 USD per annum

(B) This fee of 200,000 USD is payable w.e.f. 01.04.2010. Apart from this, a success fee will be paid in addition, as discussed and agreed upon later, between the KSL and assessee.

(C) As per the intimation from KSL dated 15.03.2011, the sum paid as advisory fee was to be treated as advance from FY 2011-12 (AY 2012-13) to FY 2014-15 (AY 2015-16), which may be refunded, in case the techno economic viability of the new technology is not successfully concluded.

From the accounts furnished by assessee, year wise increase in advances is shown below:

Advance as on	Advance/ Sundry Creditor	Increase in Advance	FY	AY
31.03.2011	44,46,000/-	44,46,000/-	2010-11	2011-12
31.03.2012	1,38,71,852/-	94,25,852/-	2011-12	2012-13
31.03.2013	2,14,68,605/-	75,96,753/-	2012-13	2013-14
31.03.2014	3,22,26,605/-	1,07,58,000/-	2013-14	2014-15

Income as per agreement/receipts for AY 2012-13 comes out to be Rs 89,06,000/- (2,00,000/- USD as per the agreement Rs 44.53/USD approximate rate of conversion for the month of April 2011). Hence, Increase in advance by Rs 94,25,852/- consists of Rs 89,06,000/- received as per agreement.

The assessee has furnished a letter from KSL dated 14.11 2016 in which it has been mentioned that KSL, based on the feasibility report has decided to cease its marketing efforts and not to pursue it any further. Therefore, the agreement now has been concluded and he has not been asked to refund.

In assessee replies for AY 2014-15, it is mentioned that assessee has already shown the receipt of Rs 1,07,58,000/- received as advance for AY 2014-15 by filing the ITR on 29.09.2016 for AY 2016-17 i.e. before the receipt of communication from KSL about the non-refundability of the advance. When he came to know about the conclusion of the agreement on 14.11.2016, then how can he arrive at the conclusion at an earlier date and file the return on 29.09.2016 declaring only a part of advance as his income, ie. Rs. 1,07,58,000/- only, the amount of fee received in AY 2014-15. This appears to be the motive of the assessee to pay taxes only on a limited amount of Rs, 1,07,58,000/- which is under scrutiny. Had the assessee not been scrutinized on the issue relating to sundry creditors, he would have never offered this amount for taxation.

As per the agreement, the payment is given by KSL on the basis of invoices raised by the assessee. There are no such invoices available on the record. There are no account statements from KSL to prove the contention of assessee.

On perusal of records and above mentioned facts, it has been found that AO has passed assessment order without making proper enquiry and verification.

Hence, there is under-assessment of income amounting to Rs 94,25,852/- during the A.Y. 2012-13.

6. The above facts clearly shows that the AO has not conducted proper enquiry and verification before completion of assessment. Thus AO has not made proper enquiry or verification. The assessment order passed by the Assessing Officer in respect of A.Y. 2012-13 is erroneous in so far as it is prejudicial to the interests of the revenue as the AO has passed the assessment order without making inquires or verification which should have been made during the assessment proceedings. Therefore, I intend to initiate proceedings u/s 263 of the Income Tax Act and pass a suitable order.

7. But before proceeding further, a show cause notice dated 10/02/2022 vide letter F. No. ITBA/REV/F/REV1/2021-22/1039617342(1) was issued to the assessee through e-proceeding and also sent by speed post which was to be complied by 17/02/2022. However the assessee did not comply with the hearing notice.

7.1 Again another show cause notice dated 18/02/2022 vide letter F. No. ITBA/REV/F/REV1/2021-22/1039903953(1) was issued to the assessee through e- proceeding and also sent by speed post which was to be complied by 25/02/2022.

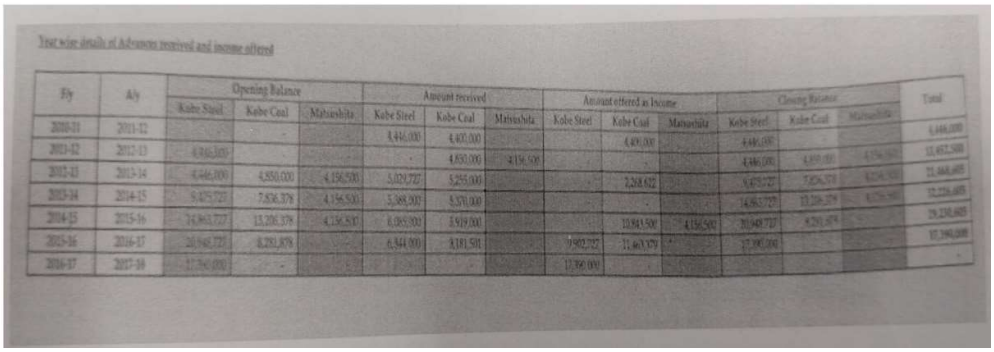
In response to this notice, the assessee requested for adjournment of date of hearing. Accordingly, date of hearing was fixed for 08.03.2022.

On 03.03.2022, hearing was rescheduled for 09.03.2022 and on 09.03.2022, hearing was again rescheduled for 10.03.2022.

7.2 On 10.03.2022, the assessee along with AR Mr. Manu Narang, CA attended the personal hearing and filed his written submission..

8. The reply of the assessee has been considered carefully.

9. The assessee in his reply mentioned that advances received have been declared and offered as income in below mentioned manner:



Year wise details of Advances received and income offered

Fy	Ay	Opening Balance			Amount received			Amount offered as Income			Closing Balance			Total
		Kobe Steel	Kobe Coal	Matsushita	Kobe Steel	Kobe Coal	Matsushita	Kobe Steel	Kobe Coal	Matsushita	Kobe Steel	Kobe Coal	Matsushita	
2010-11	2011-12				4,446,000	4,405,000			4,405,000		4,446,000			4,446,000
2011-12	2012-13	4,446,000				4,850,000	4,156,500				4,446,000	4,850,000	4,156,500	13,452,500
2012-13	2013-14	4,446,000	4,850,000	4,156,500	5,029,727	5,295,000			2,268,622		9,475,727	7,876,378	4,156,500	21,508,605
2013-14	2014-15	9,475,727	7,876,378	4,156,500	5,288,000	5,370,000					14,763,727	13,246,378	4,156,500	32,226,605
2014-15	2015-16	14,763,727	13,246,378	4,156,500	8,085,000	3,929,000			10,843,500	4,156,500	20,949,727	9,231,878		29,230,605
2015-16	2016-17	20,949,727	9,231,878		6,344,000	8,181,501		7,992,727	11,463,379		17,190,000			37,390,000
2016-17	2017-18	17,190,000	-	-	-	-	-	17,190,000	-	-	-	-	-	-

9.1 On perusal of above chart, it is found that assessee has received Rs 48,50,000/- from Kobe Coal and Rs 41,56,500/- from Matsushita during the year under consideration and the amount received from Kobe Coal and Matsushita has already been offered to tax.

9.2 The assessee has also enclosed copy of bank statement highlighting the advance received during the year. On perusal of bank statement, it is clear that assessee has received Rs 48,50,000/- from KSL and Rs 41,56,500/- from Matsushita. Hence, it is clear that assessee has received only Rs 48,50,000/- from KSL during the year under consideration.

9.3 The assessee has submitted that aforesaid declaration of income stands assessed to tax in the following manner:

Sr. No.	Assessment year	Amount raised as advances (Rs.)	Amount offered as income (Rs.)	Income Assessed (Rs.	Assessment u/s	Date of order of assessment (pages of Annexure to this Reply)
i)	2011-12	88,46,000	44,00,000	2,13,14,020	147/143(3)	3.12.2018 (Acquired finality) (365-369)
ii)	2012-13	48,50,000	---	2,16,98,330	147/143(3)	30.12.2019 (24-27)
iii)	2013-14	10284727	22,68,622	---	---	---
iv)	2014-15	10958000	----	2,04,96,700	143(3)	7.12.2016 (119-126)
v)	2015-16	1,20,04,000	1,08,43,500	3,34,90,720	143(3)	3.8.2017 (192-196)

From the above chart, it is clear that the amount received from KSL has already been offered to tax in AY 2015-16, AY 2016-17 and AY 2017-18.

9.4 From reply submitted by the assessee and as per record, it is clear that the amount received as advance from KSL has already been offered to tax but it cannot be identified in which year the amount received as advance from KSL is taxable. Thus, the AO is directed to examine this aspect.

The AO is also directed to examine if there is loss of interest u/s 234B of the Act, he should recover it after due verification.

10 The above fact clearly shows that AO had not made proper enquiry and verification before completion of assessment. The AO has passed the order u/s 147 r.w.s 143(3) without making inquiries or verification which should have been made.

10.1 Thus, the assessment order passed u/s 147 r.w.s 143(3) dated 30/12/2019 for A.Y 2012-13 is both erroneous & prejudicial to the interest of revenue. It is absolutely clear that during the assessment proceedings for A.Y. 2012-13, AO has not made proper enquiry and verification of the bank accounts maintained by the assessee before completion of assessment. There was no application of mind on issues in hand as narrated above. This has rendered assessment order "erroneous". If due to an erroneous order of the AO the revenue is losing tax lawfully payable by a person, it would be certainly prejudicial to the interest of revenue, as held in the case of CIT Vs Leisure Wear Exports Ltd. (2012) 341 ITR 166 (Del.), In case of Malabar Industrial Co. Ltd. Vs CIT (2000) 243 ITR 87 (SC) Hon'ble Apex Court held that there was no material to support the claim of appellant & yet AO accepted the entry in the statement of account in absence of any supporting material and without making any inquiry. It is incumbent on the officer to investigate the facts stated in the return. The order becomes erroneous if such as enquiry has not been made as held in case of Duggal & Co. V/s CIT (1996) 220 ITR 456 (Del.).

10.2 Where the Assessing Officer keeps a letter on record and does not carry out necessary investigations which are per se required to verify the correctness of the averments, there being an error in the sense that he has failed to carry out the requisite enquiry which can be rectified in a revision. Thus the Commissioner was to pass a fresh order under Section 263 after hearing the assessee [CIT v. DLF Power Ltd., (2012) 345 ITR 446(Del.)].

10.3 Further, section 263 of the Act and amendment made in explanation 2 to section 263 states that

"The Principal Commissioner or) Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case

justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

Explanation 1.-.

Explanation 2.- For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner, -

1. the order is passed without making inquiries or verification which should have been made:
2. the order is passed allowing any relief without inquiring into the claim;
3. the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
4. the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person."

11. From the discussion made above, it is clear that the AO has not made enquiry and verification which he should have done as per details given above. I therefore, hold that the assessment order passed u/s 147 r.w.s 143(3) of the Act dated 30.12.2019 for A.Y 2012-13 is erroneous in as much as it is prejudicial to the interest of revenue. The assessment order is partly set aside on issue mentioned at para no. 9.4 with the direction that the assessment be made after conducting appropriate inquiries and verification keeping in view of the facts mentioned above. The AO will give reasonable opportunity to the assessee of being heard before completion of assessment.

6. There would be hardly a dispute between the parties that the learned PCIT has assumed his section 263 revision jurisdiction for the sole reason that the learned Assessing Officer had not properly examined or not at all examined the issue of assessee's advances received from M/s. KSL for the purpose of taxability thereof in the relevant previous year. It is in this factual backdrop that one

clinching aspect is abundantly clear from the impugned directions itself that the assessee has already offered the said advances in assessment year 2015-16 onwards (supra).

7. Faced with this situation, we have afforded ample opportunity to the learned CIT(DR) to indicate as to how the assessee's mere advances received in the impugned assessment year are taxable even going by the accrual principle till the time there is some reasonable certainty going by the Chainrup Sampatram Vs. CIT (1953) 24 ITR 481 (SC). We must also clarify that even the learned PCIT's impugned revision discussion in para 9.4 does not dispute both these facts of the assessee having got assessed qua the very advances and also a doubt in his own mind that any other assessment year of taxability thereof would also be identified. We thus conclude in these peculiar facts that the impugned assessment herein is neither an erroneous one nor does it cause prejudice to the interest of the Revenue which forms the twin pre-conditions giving rise to exercise of revision jurisdiction as settled long back in Malabar Industrial Co. Ltd. vs. CIT. (2000) 243 ITR 83 (SC). That being the case, learned PCIT's impugned revision

direction herein forming subject matter of our apt adjudication stands reversed. Ordered accordingly.

8. This assessee's appeal is allowed.

Order pronounced in the open court on 16th December, 2024

Sd/-	***Sd/-***
(M. BALAGANESH)	**(SATBEER SINGH GODARA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 16th December, 2024.
RK/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi