

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B-Bench" JAIPUR

श्री गगन गोयल, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI GAGAN GOYAL, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 745/JPR/2024
निर्धारणवर्ष / Assessment Year : 2017-18

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| Mikuni India Private Limited SP2 19(A-20) and 21(A), New Industrial Complex, Neemrana, Behror, Alwar-301705. | बनाम Vs. | Principal Commissioner of Income Tax, PCIT |
| स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAFCM7409R | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओरसे / Assessee by : Shri Abhishek Agarwal, C.A. (Through V.C.) &
Sh. Varun Goyal, C.A. (Th. V.C.)
राजस्व की ओरसे / Revenue by: Ms. Alka Gautam (CIT)

सुनवाई की तारीख / Date of Hearing : 26/12/2024
उदघोषणा की तारीख / Date of Pronouncement: 26/12/2024

आदेश / ORDER

PER: NARINDER KUMAR, JUDICIAL MEMBER .

Assessee- a Private Limited Company- is before this Appellate Tribunal by way of present appeal, while challenging order dated 28.03.2024, passed by Learned PCIT, Jaipur u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

The impugned order pertains to the assessment year 2017-18.

2. Learned PCIT has exercised powers u/s 263 of the Act, as regards, assessment order dated 27.10.2021. Assessing Officer had completed assessment u/s 143(3) r.w.s. 144C(13) r.w.s. 144B of the Act and assessed total income of the assessee at Rs. 6,75,33,340/-, while making additions on account of Transfer Pricing adjustment amounting to Rs. 6,44,86,098/-.

3. Before passing the impugned order, Learned PCIT issued notice to the assessee, as Learned PCIT found that the Assessing Officer, while framing the above said assessment and the making addition, did not initiate penalty proceedings 270A of the Act.

Learned PCIT was of the view that penalty proceedings were to be initiated under the said provision on account of misreporting of income, which came to be added by the Assessing Officer to the total income of the assessee company.

It being a Transfer Pricing proceedings, the above said addition was made on the directions of Dispute Resolution Panel (in short “DRP”) as per order dated 09.09.2021, passed u/s 144C(5) of the Act.

In the impugned order, Learned PCIT also observed in para 5 thereof that the AO had failed to apply his mind to the material available on record, and also to invoke the applicable provisions of law, and that the same

resulted in passing an erroneous order so far as same is prejudicial to the interests of the Revenue.

4. Ld. AR for the appellant has contended that while exercising powers u/s 263 of the Act, no doubt, the competent authority is to satisfy that the assessment order is erroneous and also prejudicial to the interest of the Revenue, but, this is a case where Learned PCIT did not satisfy himself as regards the said essential ingredients of Section 263 of the Act, while passing the impugned order.

Ld. AR has further contended that the Assessing Officer framed assessment after conducting enquiry and applying his mind, and further that when the Assessing Officer did not deem it to be fit case to initiate penalty proceedings, Learned PCIT was not justified in issuing directions vide the impugned order, and as such same deserves to be set aside.

5. On the other hand, Ld. DR for the Revenue has submitted that when addition was made by way of TP adjustment, this being a case of under reporting in consequence of misreporting of the amount of income by the assessee company, the Assessing Officer was required to initiate penalty proceedings in view of provisions of Section 270A of the Act,. In this regard, Ld. DR for the Revenue has referred to the impugned order, passed by Learned PCIT and also to the provisions of sub-section (8) and

(9) of Section 270A of the Act. Reliance has also been placed on the decision dated 20.2.2023 in **Anjis Developers Private Limited vs. PCIT**, ITA No. 959/MUM/2022.

6. Admittedly, the assessee company entered into various international transactions with its Associate Enterprises; that the case was selected for scrutiny, and referred to Transfer Pricing Officer (in short "TPO") u/s 92CA(1) of the Act; that Deputy Commissioner of Income Tax, Transfer Pricing-2(3)(2), Delhi passed order dated 29.01.2021 u/s 92CA of the Act, thereby determining the amount of TP adjustment at Rs. 7,01,72,622/- and the said amount was proposed to be added to the income of the assessee.

It is also not in dispute on 07.04.2021, the Assessing Officer passed draft order u/s 94C of the Act, and the same was also served upon the assessee company. Feeling aggrieved by the draft order, the assessee company preferred appeal, which was decided by the DRP-1, New Delhi, vide order dated 09.09.2021. Having regard to the directions contained in the said order dated 09.09.2021 passed u/s 194C(5) of the Act,

Then, TPO/DCIT TP-2(3)(2), Delhi, passed order dated 22.10.2021 to give effect to the said directions.

Ultimately, assessment order dated 27.10.2021 was passed by assessing total income of the assessee company.

7. A perusal of the order dated 27.10.2021 would reveal that same does not contain any direction for initiation of penalty proceedings u/s 270A of the Act.

It is true that while passing order u/s 92CA(3) of the Act, DCIT/TP, Delhi had proposed adjustment of Rs. 7,01,72,622/- and directed the Assessing Officer to enhance the income of the assessee by the said additions, keeping in view the international transactions relating to purchase and payment royalty.

It is also true that at the same time, DCIT TP had observed **“Assessing Officer may to examine the issue of initiation of penalty proceeding u/s 270A of the Act”**.

So, the issue was as whether penalty proceedings were or were not to be initiated. It was to be examined by the Assessing Officer.

8. From the above order u/s 92CA(3) of the Act, it can safely be said that the issue as regards initiation of penalty proceedings u/s 270A of the Act was to be examined by the Assessing Officer.

It cannot be said that the above said observation was in the form of a direction to the Assessing Officer to must initiate penalty proceedings.

9. Reverting to the assessment order dated 27.10.2021, it is found that the Assessing Officer has specifically referred to the order dated

29.01.2021, passed u/s 92CA of the Act, by DCIT, TP. That goes to show that the Assessing Officer must have gone through the entire order and then considered this aspect as well.

Since the Assessing Officer even after having gone through the said order dated 29.01.2021, opted not to initiate penalty proceeding u/s 270A of the Act, it cannot be said by any stretch of imagination that the Assessing Officer dated 27.10.2021 is erroneous or prejudicial to the interest of the Revenue or that he did not apply his mind to any material available on record.

10. In **Anjis Developers Private Limited vs. PCIT's** case (supra) cited on behalf of the Revenue, Learned PCIT had observed that the Assessing Officer was bound by law to initiate proceeding against the assessee therein on the point of penalty u/s 270A of the Act, in every assessment proceedings, and that the non initiation of penalty proceedings rendered the assessment order as erroneous and prejudicial to the interest of the Revenue. Said directions by Learned PCIT, in that matter, were challenged by the assessee before Hon'ble Bench of ITAT, Mumbai Benches.

Therein, the Hon'ble ITAT Mumbai Bench, having regard to the issue decided by **Hon'ble Allahabad High Court** in case of **CIT vs. Surendra**

Prasad Agrawal (2005) 142 Taxman 653, followed the findings recorded on the said issue and dismissed the appeal filed by the assessee.

When we refer to para no. 10 of decision in **Anjis Developers Private Limited vs. PCIT's case** (supra), we find that Hon'ble Bench of ITAT, Mumbai referred to other decisions by Hon'ble Delhi High Court, Hon'ble Rajasthan High Court, Hon'ble Gauhati High Court, Hon'ble Calcutta High Court, Hon'ble Madras High Court and Hon'ble Madhya Pradesh High Court as well.

As observed in para 10 of the said decision, Hon'ble Rajasthan High Court, in the case of **Keshrimal Parasmall** (1986) 157 ITR 484 took the view that was taken by Hon'ble Delhi High Court in **Additional CIT vs. J.K. Costa**, (1982) 9 Taxman 88.

The view taken by Hon'ble Delhi High Court in J.K. Costa's (supra) case was that assessment cannot be said to be erroneous or prejudicial to the interest of the Revenue because of the failure of the Income Tax Officer to record his opinion about the leviability of penalty in a case.

In that matter, Hon'ble Delhi High Court was dealing with the question as to whether the Tribunal was right in revoking of the order of the Additional Commissioner of Income Tax in so far as it pertained to the question of penalty u/s 271(1)(a) and 273(b) of the Act.

Hon'ble Delhi High Court was in complete agreement with the view taken by the Tribunal. Hon'ble High Court also mentioned that well settled law is that proceedings for levy of penalty are separate from the assessment proceedings.

Hon'ble High Court was also of the view that when the Commissioner is dealing with the assessment proceedings and the assessment order, it is not possible to expand the scope of those proceedings and to view the penalty proceedings also as part of the proceedings which are being sought to be revised by the Commissioner.

Accordingly, Hon'ble High Court held that assessment could not be said to be erroneous or prejudicial to the interest of the Revenue because of the failure of the ITO to record his opinion about the leviability of penalty.

11. As finds mentioned in the referred decision, the view taken by the Hon'ble Delhi High Court has also been taken by Jurisdictional Hon'ble High Court in case of Keshrimal Parasmal (supra).

The following decisions cited by Ld. AR for the appellant on the issue also support the case of the appellant:-

- Copy of decision of Hon'ble Supreme Court in the case of CIT vs. Malabar Industrial Co. Ltd. [243 ITR 83].

- Copy of decision of Chennai Bench of Tribunal in the case of Mr. Coimbatore Vaiyapuri Maathesh vs ITO [ITA No. 373/Chny/2021].
- Copy of decision of Hon'ble Punjab and Haryana High Court in the case of Hari Iron Trading Co. vs. CIT [263 ITR 437]
- Copy of decision of Hon'ble Delhi High Court in the case of CIT vs. Eicher Ltd. [294 ITR 310].
- Copy of decision of Hon'ble Delhi High Court in the case of CIT vs. Anil Kumar [335 ITR 83].
- Copy of decision of Hon'ble Supreme Court in the case of CIT vs. Amitabh Bachchan [384 ITR 200].
- Copy of decision of Hon'ble Gujarat High Court in the case of CIT vs. D.P. Karai [266 ITR 113].
- Copy of decision of Hon'ble Gujarat High Court in the case of CIT vs. Arvind Jewellers [259 ITR 502]
- Copy of decision of Hon'ble Punjab and Haryana High Court in the case of CIT vs. Max India Limited [388 ITR 81].
- Copy of decision of Hon'ble Supreme Court in the case of CIT vs. Max India Limited [295 ITR 282].
- Copy of decision of Hon'ble Supreme Court in the case of CIT vs. Kwaliti Steel Suppliers Complex (395 ITR 1).
- Copy of decision of Hon'ble Delhi High Court in the case of ITO vs. D.G. Housing Projects Ltd. [343 ITR 329].

Herein, as noticed above, the Assessing Officer has nowhere observed, while passing the assessment order that it was a case of under reporting or

misreporting of income by the assessee company. That is why, the Assessing Officer appears to have closed assessment order, while assessing the total income and requiring the assessee to pay the demand as per demand notice.

Result

12. In view of the above discussion, we find merit in this appeal, when the assessment order dated 27.10.2021 cannot be said to be erroneous or prejudicial of the interest of the Revenue, simply because the Assessing Officer did not prefer to initiate penalty proceedings u/s 270A of the Act.

The appeal is accordingly allowed.

File be consigned to the record room after the needful is done by the office.

Order pronounced in the open court on 26/12/2024.

Sd/-

(गगन गोयल)
(GAGAN GOYAL)
लेखा सदस्य / Accountant Member

Sd/-

(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 26/12/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Mikuni India Pvt. Ltd. Alwar.
2. प्रत्यर्था / The Respondent- Principal Commissioner of Income Tax.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur

5. गार्डफाईल / Guard File ITA No. 745/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar