

IN THE INCOME TAX APPELLATE TRIBUNAL "PATNA BENCH", PATNA
(VIRTUAL HEARING AT KOLKATA)

SHRI DUVVURU RL REDDY, VICE PRESIDENT
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 156/Pat/2019
Assessment Year: 2014-15

M/s Kumar Piyush Construction Pvt. Ltd.,
H/o Praphull Kumar,
Bichli Khandakpar, Bihar Sharif,
Nalanda, Bihar - 803101**Appellant**
[PAN: AADCK8096N]

vs.

The Principal Commissioner of
Income Tax-1, Patna,
2nd Floor, Central Revenue Building,
Birchand Patel Marg,
Patna – 800001 **Respondent**

Appearances by:

Assessee represented by : None

Department represented by : Ashok Kumar, CIT

Date of concluding the hearing : 30.12.2024

Date of pronouncing the order : 08.01.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. The present appeal emanates from the order u/s 263 of the Income Tax Act, 1961 (hereafter 'the Act'), passed by the Ld. Principal Commissioner of Income Tax -1, Patna (hereafter 'the Ld. PCIT') vide order dated 29.03.2019. It is seen that the Ld. PCIT resorted to revisionary powers against the Ld. AO's order dated 20.12.2016 for AY 2014-15 in the case of the assessee. The Ld. AO had passed the said order after accepting the returned income.

1.1 The Ld. PCIT noticed that the assessee had shown gross contractual receipts at Rs. 14,24,49,527/- but in the computation of income he deducted Rs. 1,38,54,942/- as “retention money”. This action of the assessee allegedly resulted in a loss of Rs. 98,65,419/-. On this issue, the Ld. PCIT noticed that the so called “retention money” was not debited in the P&L Account but was straightway adjusted in the computation of income. This action of the assessee was treated as a case of the assessment order being erroneous in so far as it was prejudicial to the interest of revenue.

1.2 Thereafter, the Ld. PCIT recorded the following findings:

“As per written submission of the assessee, the figure of income returned by it is based on several judicial decisions. These were cited by it in its submission. The crux of all these decisions is that when there is an agreement for payment of only part of the contracted amount then the assessee is entitled to declare only its actual receipts. However, among the cases cited by it, in the case of M/s Simplex Concrete Piles (India) Pvt. Ltd. 179 (TR 8 (Cal) and East Coast Constructions and Industries Ltd. 283 ITR 297 (Mad), the examination of the actual contracts were deemed necessary by the judicial authorities. However, in the instant case, such actual contract does not appear to have been gone through by the A.O. It had submitted before the A.O. that the retention money was excluded since the same amount had not accrued to the company during the year. However, there is no evidence on record that the A.O. had examined the said contracts & applied his mind to those. The lack of enquiry on the A.O's part has made his order erroneous in so far as it is prejudicial to the interests of the revenue. The facts in the case cited by the appellant in its submission are clearly different from the instant case.

Furthermore, the main issue here is that in the computation statement the assessee stated:-

"less: disallowed u/s 43B in last year, now allowed on payment basis

Employee's contribution of PF & ESI

Service Tax paid 9,538,668/-

Retention money 2013-14 13,854,942/-

However, it is further seen that as per A.Y. 2013-14 the corresponding disallowance made was of Rs. 23,419,610/-. The A.O. obviously has not looked into this disallowance also.”

2.0. Aggrieved with the action of Ld. PCIT, the assessee is in appeal before us with the following grounds of appeal:

“Ground number 1

Was not justified in initiating proceedings under Section 263 of the Act since the order under Section 143(3) of the Act dated 20 December 2016 was neither erroneous nor prejudicial to the interest of revenue.

Ground number 2

erred in initiating revision proceedings under Section 263 of the Act, without appreciating that the learned AO had passed the assessment order after making proper inquiries and analysis as regards retention money and its taxability.

Ground number 3

erred in initiating revision proceedings under Section 263 of the Act, based on mere difference of opinion between the learned AO and learned PCIT, without appreciating that this cannot be a ground for initiation of revision proceedings.

Ground number 4

*grossly erred in not holding that 'retention money' is not liable to tax in view of the rulings in case of *Simples Concrete Piles (India) Private Limited (197 ITR 8) (Cal)* and *East Coast Construction and Industries Limited (283 ITR 297) (Mad)* while passing its order under Section 263 of the Act.*

The Appellant craves leave to add, alter, amend, modify, rescind or supplement one or more of the ground at any time before, or at the time of hearing.”

2.1. On the last date of hearing, none appeared on behalf of the assessee, however, since this is a very old pending matter, it was decided to proceed ahead with the adjudication with the help of Ld. DR and a paper book running into 38 pages filed by the assessee.

2.2 Before us, the Ld. DR took us through the various relevant pages of the impugned order and also pointed out that there was no discussion by the AO regarding the impugned issue. We have also perused the written submissions contained in the paper book and it is seen that at some stage the assessee had informed the Ld. AO about the facts surrounding the issue of “retention money”. However, it is evident that there is absolutely no discussion in the assessment order regarding this issue and it is not evident as to whether any cognizance was taken at all about the same or not.

3. We have carefully considered the facts of the case and gone through the impugned order as also the contents of the paper book before us. Right at the outset, it needs to be mentioned that w.e.f. 01.06.2015 a clarificatory amendment has been brought into the existing statute as under:

“Explanation 2.-For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer for the Transfer Pricing Officer, as the case may be,) 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 [Chief Commissioner or Chief Commissioner or Principal] Commissioner er Commissioner,

(a) the order is passed without making inquiries or verification which should have been made

(b) the order is passed allowing any relief without inquiring into the claim,

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) 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.]

Explanation 3-For the purposes of this section, "Transfer Pricing Officer" shall have the same meaning as assigned to it in the Explanation to section 92CA].”

3.1 Apart from this the intention of legislature in bringing about the said change has been brought out more clearly in Circular No. 19/2015 dated 27.11.2015 issued by CBDT. The relevant portion from the said circular deserves to be extracted as under:

“53. Revision of order that is erroneous in so far as it is prejudicial to the interests of revenue

53.1 The provisions contained in sub-section (1) of section 263 of the Income-tax Act, before amendment by the Act, provided that if the Principal Commissioner or Commissioner considers that any order passed 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 an enquiry pass an order modifying the assessment made by the Assessing Officer or cancelling the assessment and directing fresh assessment.

53.2 The interpretation of expression "erroneous in so far as it is prejudicial to the interests of the revenue" has been a contentious one. In order to provide clarity on the issue, section 263 of the Income-tax Act has been amended to provide 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, (a) the order is passed without making inquiries or verification which, should have been made; (b) the order is passed allowing any

relief without inquiring into the claim; (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or (d) the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.”

3.2 It is evident that in the present case, there is no indication whatsoever that the Ld. AO has applied his mind to the issue at hand and we find that the Ld. PCIT has duly noted the lack of enquiry or verification regarding the said issue. This point has been highlighted in the impugned order and has been extracted (supra). Accordingly, we find no merit in the contention of the assessee that assumption of jurisdiction and the subsequent passing of the order by the Ld. PCIT is not as per law and hence we dismiss the present appeal.

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

Order pronounced in the court on 08.01.2025

Sd/-
(Duvvuru RL Reddy)
Vice President

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 08.01.2025

AK, P.S.

Copy of the order forwarded to:

1. M/s Kumar Piyush Construction Pvt. Ltd.,
2. The Principal Commissioner of Income Tax-1, Patna
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches