

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “E” NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

I.T.As. No.2858 & 2859/DEL/2017
Assessment Years: 2013-14 & 2014-15

Monika Gupta, C/o Kapil Goel Adv., F-26/124 Sector, 7 Rohini, Delhi.	v.	Pr. Commissioner of Income Tax-21, New Delhi.
TAN/PAN: AETPG 8505R		
(Appellant)		(Respondent)

Appellant by:	Shri Kapil Goel, Adv.		
Respondent by:	Shri S.S. Rana, CIT-DR		
Date of hearing:	06	12	2019
Date of pronouncement:	14	02	2019

ORDER

PER AMIT SHUKLA JM:

The aforesaid appeals have been filed by the assessee against separate impugned orders of even date, 17th April, 2017, passed u/s. 263 by Ld. Principal Commissioner of Income Tax, Delhi-21 for the Assessment Years 2013-14 and 2014-15. Since issues involved in both the appeals are common, therefore, same were heard together and are being disposed of by way of this consolidated order.

2. In various grounds of appeal in both the appeals, the assessee has challenged the jurisdiction of ld. Principal Commissioner of Income Tax u/s.263 in setting aside the assessment order dated 30.03.2016 for the Assessment Year

2013-14 dated 26.10.2016; for the Assessment Year 2014-15 on various grounds. We will first take up the appeal for the Assessment Year 2013-14.

3. The facts in brief are that the assessee is an individual and Chartered Accountant by profession, not only deriving income from Business or Profession but also income from house property. The assessee has filed her return of income on 30.09.2013, declaring total income of Rs.67,59,310/-. The case was selected for scrutiny and accordingly, after detailed scrutiny proceedings, assessment was completed at an income of Rs.71,39,230/- after making various disallowance claimed under certain heads of expenditure and on account of difference in TDS reconciliation on professional fees. Later on, Id. Pr.CIT issued show cause notice u/s.263 in his revisionary jurisdiction on the ground that the order passed by the Assessing Officer is erroneous in so far it is prejudicial to the interest of the Revenue. In show cause notice, Ld. PCIT has stated that in the assessment proceedings of some different assessee, i.e., M/s. UT Starcom Inc., which was completed vide order dated 29.04.2016, i.e., after the completion of assessment in the case of the assessee, it was observed that UT Starcom has claimed huge expenses as allowable business expenditure under the head 'Legal & Professional charges'; and out of same, substantial amount was paid to the present assessee. The Assessing Officer in the case of M/s. UT Starcom Inc. came to the conclusion that said arrangement has been made to siphon off the money from the profits of the

said company to avoid the payment of taxes, and such payment was not for business expediency and not related to the projects in hand of the assessee company. Consequently, in the assessment order of M/s. UT Starcom Inc. an amount of Rs.4,03,44,630/- was disallowed. Ld. Pr.CIT has further stated in his notice that the assessee has claimed huge expenses especially under the head salary and administrative expenses that requires verification. On this basis, he was of the view that Assessing Officer did not carry out investigation which he was required to do so.

4. In response to the show cause notice, assessee challenged the notice on the ground that it is vague and lacks material particulars and assessment order passed by the Assessing Officer cannot termed as erroneous unless it is shown that it has not been passed in accordance with law. It was submitted that the Assessing Officer during the course of assessment proceedings had called for regular books of account and has scrutinized each and every entry reflected in P&L account vis-à-vis bills and invoices and balance-sheet and thereafter has completed the assessment. Once, Assessing Officer has conducted detailed inquiry after examining each and every point; then, such an order can neither be termed to be erroneous nor prejudicial to the interest of Revenue. Regarding specific point raised by the ld. Pr.CIT it was submitted and stated as under:

“Without prejudice to the aforesaid submissions, the following ad-seriatim submissions are made on merits on the

particular of alleged errors proposed to be rectified by your goodself;

a) I am a practicing Chartered Accountant and I have rendered professional services to M/s. U.T. Starcom Inc. for which I had raised professional bills. These bills were paid by M/s. UT Starcom Inc. by way of account payee cheques after deducting IDS. The Assessing Officer of M/s. U T Starcom Inc. has raised a doubt about the payment because according to the Assessing Officer, It was 'huge'. It is well known that various Chartered Accountants have various fee structures for the same set of work and therefore it was wrong on the part of the Assessing Officer of M/s. U.T. Starcom Inc, to decide or categorize any fees charged as 'huge' or 'small'. Except making bald observations, the Assessing Officer of M/s. U T Starcom Inc, has not brought any evidence on record which establishes that there was any arrangement between me and my client (M/s. U.T. Starcom Inc.) to siphon off money from the profits of the company, as alleged by him, In fact, it is uncalled for the Assessing Officer to make any defamatory insinuations against a practicing Chartered Accountant on the basis of surmises and conjectures. It is also important to mention that the accounts of my client M/s. U T Starcom Inc. for the Assessment Year 2013-14 were duly audited by a reputed firm of Chartered Accountants i.e. Price Waterhouse & Co. (PwC) and the Auditors has not qualified their audit report. If, the Assessing Officer had materials in his possession that the audit report/books of accounts are incorrect, he should have rejected the same which has not been done.

b) That whatever expenses has been incurred by me for

the purpose of profession, has been debited in my books of accounts and duly reflected in the profit and loss accounts which were produced before the Assessing Officer at the time of assessment and the Assessing Officer verified the books of accounts/profit and loss accounts, vouchers etc. which he found to be satisfactory. This fact also finds mention in the order passed by the Assessing Officer. Therefore, once the Assessing Officer has found the expenses debited in the profit and loss account to be satisfactory, it cannot be said that there was lack of inquiry by the Assessing Officer. The expenses were duly verified by the Assessing Officer and therefore invoking the provisions of section 263 for "re-verification" is not warranted in law.

c) It is incorrect to suggest that necessary investigations were not carried out by the Assessing Officer and any transaction remained unexplained, it is submitted that all the transactions were duly explained to the satisfaction of the Assessing Officer. Even in the notice issued by your goodself, you have not specified any particular transaction which the Assessing Officer has failed to check or transactions that remained unexplained. A generalized and omnibus observation that the Assessing Officer did not carry out the investigation which he were required to do and various entries and transaction have remained unexplained cannot be a ground for initiating section 263 proceedings.

d) It is a settled position in law that section 263 cannot be invoked for "re-verification" or to review the order passed by the Assessing Officer only because the Commissioner's view is different from the view of the Assessing Officer. There is no

illegality in the actions/views of the Assessing Officer and hence the initiation of proceedings under section 263 is bad in law and also in facts.

e) In view of the aforesaid submissions on legality as well as on merits prayed that the proceedings under section 263 may be dropped."

5. However, the ld. PCIT rejected the assessee's contention and observed that she is a Chartered Accountant by profession and rendered all kind of services in the field of direct and indirect taxes and other related areas. In the Profit & Loss account, assessee has reflected a turnover of Rs. 4.33 crores and in the expenditure side she had shown salary of Rs.73,62,000 and Administrative Expenses of Rs. 2,91,76,253/-. Most of the receipts are from M/s. U.T. Starcom Inc., a non-resident company and a tax resident of USA which is global telecom infrastructure provider, during the year. The assessee had received following receipts from various companies of M/s. UT Starcom Inc. which has noted in paragraph 3 of the impugned order:

The assessee has received a total sum of Rs. 1,50,78,548/- from U.T. Starcom - BSNL- Multiplay (2010-13), and Rs. 1,97,06,487/- from UT Starcom - BSNL Project 2 (since 2010) and Rs.55,59,595/- from V.T. Starcom - MTNL - Project (since 2010), aggregating Rs. 4,03,44,630/- M/s U.T. Starcom INC. was awarded turn Key projects by BSNL & MTNL for supply and installation of telecommunication instruments. In addition, certain other payments were made to M/S. Monica Gupta &

Co. by M/S. U.T. Starcom India Telecom Private Ltd. (PAN AAACU7110N), which is a wholly owned subsidiary (WOS) of U.T. Starcom Inc.”

6. Ld. PCIT further observed that assessee has claimed huge expenses particularly on account of salary and administrative expenses, which cannot be wholly and exclusively expended for the purpose of business as it lacks business prudence and require proper inquiry and verification. After citing various case laws, he held that there is vital flaw in the issue under consideration, and therefore, he had set aside the assessment order after observing and holding as under:-

“I have found vital flaws so far as the issue under consideration is concerned, attributable to the defiant and deliberate approach of the assessee. Therefore, considering the facts of the case and totality of circumstances, the assessment made by the Assessing Officer u/s.143 (3) of the Act, dated 30.03.2016 is treated as erroneous and prejudicial to the interest of Revenue on the issue under consideration as not only the assessment order is passed in haste and in a cryptic manner, but the A.O. has wrongly believed the version of the assessee as regards the allowability of income u/s.28 and also expenses u/s.37(1) of the Act. Therefore, the order passed by the Assessing Officer u/s.143(3) of the Act, dated 30.03.2016 is hereby cancelled and the Assessing Officer is hereby directed to make a fresh assessment order after considering the factual and legal position in this regard, as suggested in the order.”

7. Before us, learned counsel submitted that, nowhere the ld. Pr.CIT has pointed out what is the lack of inquiry on the part of the Assessing Officer while completing the assessment u/s.143(3). Here, in this case, ld. Pr.CIT is trying to make out a case that assessee has claimed huge expenses which cannot be said to be wholly and exclusively expended for the purpose of business as it lacks business prudence that require proper verification. Nowhere, he has pointed out as to how such expenses are not connected with the assessee's business or profession and simply stating that certain expenses debited in P&L account are on a higher side, i.e., salary and administrative expenses, will not make the assessment order erroneous. Because, Assessing Officer here in this case has issued various queries from time to time not only asking for each and every details of items appearing in the Profit & Loss account and balance-sheet but also required for month-wise detail of expenses shown under various heads including details of salary, wherein he has asked for person-wise and month-wise and benefit given to the employees along with wages and labour charges. After examining these details Assessing Officer has made certain disallowances. The entire impugned revision order is based on premise that in the assessment order of a different assessee, professional payment made to the assessee has been held to be for non business purpose. That fact itself does not mean that assessment order passed in the case of the assessee needs to be set aside, because these amounts have been shown as

income from profession on which assessee has offered tax. If such an amount has been offered for tax then how it can be held that to be prejudicial to the interest of revenue. Thus, the entire basis for setting aside is not only vague but also non appreciation of facts and material on record. He has also strongly relied upon the judgment of Hon'ble Delhi High Court in the case of Pr.CIT vs. Krishak Bharati Co-operative Ltd., ITAs No.578 & 579/2016 judgment and order dated 21.04.2017, wherein the Hon'ble High Court has observed that if Assessing Officer has made queries and also considered the explanation of the assessee, then such an assessment order cannot be held to be erroneous requiring revision. He also strictly relied upon the judgment of Hon'ble Bombay High Court in the case of CIT vs. Shri Nirav Modi, ITA No.117 & 119/2014, judgment and order dated 16th June, 2016.

8. On the other hand, ld. CIT-DR strongly relied upon the order of the Pr.CIT and submitted that, once material in the form of assessment order has come on record even though after completion of assessment and if such a material goes to show that assessment order passed is erroneous and prejudicial to the interest of Revenue, then also ld. Pr.CIT is within the jurisdiction to set aside such an assessment order passed u/s.263. He further submitted that, now in view of *Explanation 2* to Section 263, the statute lays down that, if no inquiry has been done by the Assessing Officer on the points raised by the ld. Pr.CIT, then such an assessment order is

deemed to be erroneous and prejudicial to the interest of revenue here. In support of this proposition that subsequent information or material can be considered as part of assessment record, he relied upon the judgment of Hon'ble Supreme Court in the case of CIT Vs Shri Manjunath Eeshware Packing Products and Camphor Works, 231 ITR 53 (SC). Here in this case, based on specific information in this particular case, ld. Pr. CIT has directed the Assessing Officer to carry out the inquiry and verification of expenses, for which there could be no grievance.

9. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as material referred to before us. As stated in the earlier part of the order, the assessee's case was selected for scrutiny and during the course of the assessment proceedings, the ld. Assessing Officer had raised specific query with regard to submitting of various details of expenses and receipts of professional income. From the perusal of the questionnaire / query letter dated 16.04.2014 issued by the ld. Assessing Officer (placed in the paper book at pages 13 and 14), it is seen that Assessing Officer had specifically required the assessee to furnish the details of; gross or net profit for the year under consideration compared with the earlier years; month-wise details and expenses shown under the various head in P&L account; details of salary given to each person and month-wise details including benefit given to the employees; list of job workers; statement of TDS deducted

thereon; labour and wages charges claimed, etc. Further, vide notice dated 11.04.2015, he again asked for various detail relating to entries in P&L account and balance sheet from the assessee. In response, the assessee has furnished these details along with books of account before the Assessing Officer and all these details which were furnished before the Assessing Officer along with their replies had also been furnished in the paper book. Thereafter, Assessing Officer completed the assessment after making various additions / disallowances.

10. Now, in the revisionary proceedings u/s 263, it is seen that, first of all, ld. Pr.CIT has observed that in the case of US based non-resident company, M/s. UT Starcom Inc., assessment order was completed which was after the date of completion of assessment order in the case of the assessee, wherein disallowance was made on account of payment made to the assessee by the said company claimed under the head 'Legal and Profession charges of Rs.4,03,44,630/-, on the ground that same cannot be held to be expenditure incurred wholly and fully for the purpose of business. Thereafter, the ld. Pr.CIT in a very casual manner has observed that assessee has claimed huge expenses that require verification, without even pointing out as to what verification/inquiry has not been carried out by the Assessing Officer for examination of expenses. He himself has noticed that the assessee has received various amounts towards professional charges from M/s. U.T. Starcom Inc. for various projects in India and

assessee was paid by M/s. U.T. Starcom India Telecom Pvt. Ltd., which was wholly owned subsidiary of M/s. UT Starcom Inc. There is no whisper or a finding in the impugned order or in the assessment order of M/s. UT Starcom Inc that, either the assessee was related to said non-resident company in any manner or assessee has not shown and offered this income as a professional income in her return of income. In fact, the amount received by M/s. U.T. Starcom Inc. has duly been shown as professional receipt/income which has been offered to tax by the assessee after deducting the expenditure. Even for argument's sake it is believed that in the case of M/s. U.T. Starcom Inc. such a payment has been disallowed for non-business purpose, but that does not mean that in the hands of the recipient such payment is undisclosed income. Here the present assessee has shown this payment as her professional income. Nowhere, it is the case of the ld. Pr.CIT that the professional income shown by the assessee was not a professional income or it is some kind of income from other sources. Once, the payment received from M/s. UT Starcom Inc. for sums amounting to Rs.4,03,44,630/- has been shown as professional income which has not been disturbed, then we are unable to apprehend how an adverse inference can be drawn in the case of the assessee.

11. Here in this case, ultimately, the reason for setting aside the assessment order by the ld. PCIT is that, assessee has claimed huge expenses particularly on account of salary and administrative expenses which may not be for wholly and

exclusively expended for the purpose of business as it lacks business prudence. Such an observation is delusive, because Ld. PCIT cannot question the business prudence of the assessee as to why such expenditure has been incurred or how much it has been incurred. If assessee has shown expenses on account of salary and administrative expenses, then same cannot be disallowed or questioned unless it has been found that any particular expenditure is not for the purpose of business. No such defect or short coming has been pointed out by the ld. Pr.CIT *qua* the expenses claimed under these heads. In any case, once the Assessing Officer has asked for the entire detail of expenditures and after examining the same has passed the assessment order, then where the question of any lack of inquiry or verification is. It is a trite and settled position of law is that, exercise of revisionary power u/s. 263 by ld. CIT/PCIT cannot be exercised merely for directing more inquiry to find out if the view taken by the Assessing Officer is erroneous or not when already a view and opinion has been formed by the Assessing Officer taken after proper inquiry and verification. Here, in this case, as stated above, Assessing Officer has raised specific query for each and every items of expenses including salary and administrative expenses, and in response to which, assessee has filed month-wise and person-wise details including all the bills and vouchers. All these details have not only been checked and verified by the Assessing Officer, but also, after noting specific discrepancy Assessing Officer has

disallowed certain expenditure under different heads. Thus, it cannot be a case of lack of inquiry at all. Nowhere in the impugned order, Ld. Pr.CIT has specified as to what is the lack of inquiry which Assessing Officer should have carried out nor has he pointed out any defect or discrepancy from the assessment records to show that the administrative and salary expenses are not for the purpose of business or are bogus claims. Ld. Pr.CIT before setting aside the assessment order on any point is at least required to conduct *prima facie* inquiry so as to come to a conclusion that the inquiry made by the Assessing Officer was not correct or there was a lack of proper inquiry. Once such an inquiry has not been done by the Ld. Pr.CIT himself, then he cannot negate the inquiry conducted by the Assessing Officer. Here, in this case, first of all, ld. Pr.CIT has tried to draw an adverse inference based on assessment order passed in case of some non-resident assessee which too was subsequent to the passing of impugned assessment order, which cannot be held to assessment record of assessee but of some different assessee and different assessment record. In that case, the payment made to the assessee has been disallowed on the ground it was for non business purpose. If the payment has been made after deducting TDS and assessee has duly disclosed this income as professional receipt and has offered to tax as professional income which has been accepted even by the Ld. PCIT, then how it is erroneous and prejudicial to the interest of revenue, is unfathomable. Moreover, it is not a case at all

here that there is evidence on record which establishes that there is any sham arrangement between the assessee and her client only to siphon of the money from the said company or to suppress the profit especially when accounts of the assessee has been duly audited by a reputed firm of Chartered Accountant, i.e., Price Waterhouse & Co. (PWC). Further, it is also not a case that assessee is a related party of the said non-resident company. The assessee is a practicing Chartered Accountant, who has rendered professional services and has duly offered to tax the payment received as a professional income and such receipts has neither been doubted by the Assessing Officer nor by the Ld. Pr.CIT. While setting aside the assessment order, Ld. PCIT's only observation is that certain expenditure needs further verification and that to be without pointing out any discrepancy or defect in such an expenditure claimed by the assessee. Thus, in the facts and circumstances of the case, we do not find any reason to uphold the impugned order, and therefore, the same is quashed. Accordingly, the impugned order passed u/s.263 is set aside and the assessment order passed by the Assessing Officer is restored.

12. In Assessment Year 2014-15 also, the ld. PCIT has cited precisely similar reasons and in this year also, he has held that assessee has claimed expenses which are on higher side particularly on account of salary and administrative expenses which cannot be said to be wholly and exclusively expended for the purpose of business. Here again, ld. PCIT has not

pointed out as to what is defect and discrepancy in the claim of such expenditure and how such an expenditure cannot be held to be wholly and exclusively expended for the purpose of business. As stated above, Ld. Pr. CIT has to conduct some *prima facie* inquiry to point out that either the inquiry conducted by the Assessing Officer was inadequate or he himself has found certain discrepancy in the claim of expenditure. Accordingly, in this Assessment Year also, the order of the ld. Pr. CIT u/s.263 is hereby quashed.

13. One more plea which has been raised by the ld. Counsel by way of alternative argument in this year, is that, assessment for the Assessment Year 2014-15 was selected for a limited scrutiny, which was with regard to; *firstly*, two entries in schedule for assets and liabilities; and *secondly*, higher turnover was reported in service tax return as against shown in the ITR. There was no mandate for the Assessing Officer to go beyond the points raised in the selected limited scrutiny in CASS. In support, he relied upon the CBDT Instructions 29th December, 2015, wherein CBDT has directed the Assessing Officer to communicate to the assessee only those issues which are selected for limited scrutiny and also the questionnaire should be called only on those points and issues for which case has been selected for scrutiny and the scope of inquiry shall be only circumscribed to limited issues. If only limited points were required to be examined, then where was the mandate to the Assessing Officer to examine other issues? Ld. PCIT in his revisionary jurisdiction

cannot transgress the scope of limited scrutiny matter so as to e expand it for other issues.

14. Though it is very valid point raised by him, but, since, we have quashed the impugned orders u/s 263, on merits; therefore, the argument raised by the learned counsel is treated as purely academic and is left upon.

15. In the result, the appeals of the assessee are allowed.

Order pronounced in the open Court on 14th February, 2018.

Sd/-
[L.P. SAHU]

ACCOUNTANT MEMBER

DATED: 14th February, 2018

Pkk

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER