

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No. 1865/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2013-14)

Madura Coats Private Limited 7 th Floor, Jupiter 2A Prestige Tech Park, Marathahalli – Sarjapur outer Ring Road, Marathahalli, Bengaluru, Karnataka 560 103.	बनाम/ Vs.	Pr. CIT Madurai -1, Madurai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AABCM-8279-K		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri. Ajay Rotti (CA) – Ld. AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri. ARV Sreenivasan (Addl. CIT) – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	05-04-2022
घोषणा की तारीख / Date of Pronouncement	:	11-04-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee contest legality of revisional jurisdiction u/s. 263 as exercised by Ld. Principal Commissioner of Income Tax, Madurai-1 (Pr. CIT) vide order dated 30.03.2019 against the assessment order framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s. 92CA(3) & 144C of the Act on 31.01.2017. The grounds raised by the assessee read as under:

1:0 Re: Validity of Order u/s. 263:

1:1 The learned Principal Commissioner of Income-tax ("PCIT") has erred in passing an Order u/s. 263 of the Income-tax Act, 1961 beyond the time limit prescribed.

Without prejudice to the foregoing

1:2 The learned PCIT failed to appreciate that the conditions precedent to passing an Order under the said section were not satisfied and hence the Order u/s. 263 of the Income-tax Act, 1961 is ultra vires and void.

1:3 The Appellant submits that the impugned Order u/s. 263 of the learned PCIT be struck down.

Without prejudice to the aforesaid:

2:0 Re: Buyback transaction of the Appellant with Coats International Pte Ltd ('CIPL') considered as reduction of share capital by the learned PCIT and accordingly treated as deemed dividend under section 2(22)(d) of the Income Tax Act, 1961:

2:1 The learned PCIT has erred in concluding that the buyback transaction entered into by the Appellant with CIPL is liable for dividend distribution tax under section 115-O of the Act.

3:0 Re: Capital gains on consideration received by CIPL on sale of shares to the Appellant treated as taxable in India in terms of section 46A of the Income Tax Act, 1961:

3 : 1 The learned PCIT erred in holding that capital gains earned by CIPL on such buyback of shares is taxable in India by ignoring the fact that CIPL, being a tax resident of Singapore is eligible for the beneficial provisions of India-Singapore tax treaty.

3:2 The learned PCIT erred in treating the Appellant as liable to be taxed as representative assessee of CIPL,

However, the grounds urged before us are ground nos. 1:2 and 3 only.

2. The Ld. AR, assailed the revision, inter-alia, on the ground that issue of buy back of shares was referred by Ld. AO to Transfer Pricing Officer for determination of Arms' Length Price (ALP) and the issue was duly examined by lower authorities. The Ld. AR also submitted the issue raised in the revisional order was duly examined and it was not the case the no enquiries were made by lower authorities. The Ld. CIT-DR on the other hand, justified the revisional proceedings on the ground that the issues flagged in the revisional order were never subject matter of verification and examination by lower authorities.

3. Having heard rival submissions and after going through the impugned order, our adjudication would be as given in succeeding paragraphs.

4. We find that the assessee being resident corporate assessee is stated to be engaged in manufacturing and trading of threads, zips and accessories. It was assessed for the year u/s 143(3) r.w.s. 92CA(3) & 144C of the Act on 31.01.2017. In the said assessment, Ld. AO has made certain Transfer Pricing Adjustment as well as disallowance u/s 14A. Since the assessee had entered into international transactions with its Associated Enterprises (AE), a reference was made to Ld. Transfer Pricing Officer (TPO) u/s 92CA(1) to determine Arm's Length Price (ALP) of these transactions. The details called for by Ld. TPO vide notice dated 31.03.2016 were furnished by the assessee on 13.05.2016. One of the transactions was payment made by the assessee towards share buy-back. The assessee, in its reply dated 14.09.2016 (page 312 of paper-book) to Ld. TPO, stated the reasons of buy-back. Further, in reply dated 23.09.2016 (page 314 of the paper-book), the assessee furnished manner of determination of buy back price and furnished equity valuation report etc. However, there is no discussion whatsoever about buy back of shares in the order of Ld. TPO as passed u/s 92CA(3) on 31.10.2016. The proposed adjustments made by Ld. TPO were incorporated in the assessment order dated 31.01.2017.

5. It could also be gathered that thereafter certain details were called for by Ld. AO vide notice u/s 142(1) dated 07.11.2016 wherein Ld. AO sought details of liability towards buy back of equity shares for Rs.69.58 Crores (page 102-103 of paper-book). In reply thereto on 21.11.2016 (page 104 of paper-book), the assessee submitted that the shares were

bought back at Rs.475/- per share. For the same, the assessee obtained share valuation report. The assessee also file copy of Form 4C as filed with the Registrar of Companies in respect of buy back of shares. However, we find that there is no discussion whatsoever in the assessment order dated 31.01.2017 with respect of buy back of shares.

6. Subsequently, Ld. Pr. CIT, upon perusal of case records, held an opinion that the order was erroneous and prejudicial to the interest of the revenue and accordingly, show-caused the assessee on 31.01.2019. The same stem from the observation of Ld. Pr. CIT that the assessee bought back the shares from its holding company M/s Coats International Pvt. Ltd., a Singapore incorporated entity. The consideration of buy-back was met out of general reserves and surplus. The payment so made was to be considered as distribution of accumulated profits to its holding company on the reduction of capital of the assessee company as envisaged in Sec. 2(22)(d). Accordingly, the assessee was liable to pay tax on distributed profits u/s 115-O besides payment of interest u/s 115P. Further, the excess consideration received by the holding company was to be treated as 'capital gains' and the assessee was to be treated as representative assessee of its holding company in terms of Sec. 160 & 163 of the Act to pay the tax in respect of the above gains. Since, the assessment was completed without proper enquiry and non-application of mind, the order was erroneous and prejudicial to the interest of the revenue.

7. The assessee assailed the revisional jurisdiction on legal grounds as well as on merits. However, Ld. Pr. CIT directed for revision of the assessment by observing as under: -

5. I have considered the submissions of the learned Counsel for the assessee in the light of the facts of the case, the provisions of the law and the material information available on records, it is an admitted fact that the payment made by the assessee to purchase its own shares from M/s. CIPL, Singapore amounting to Rs.69,58,75,000/- was out of accumulated profit including profit of current year leading to reduction of share capital and such payment was to be treated as dividend within the meaning of section 2(22)(d) of the Act Therefore, the sum of Rs.69,58,75,000/- is to be subjected to dividend distribution tax u/s. 115O of the Act along with interest u/s.115P of the Act. But the Assessing Officer did not enquire into this aspect during assessment proceedings,

5.1 Further, the amount received by M/s. CIPL, Singapore on sale of the shares to the assessee is to be treated sale consideration in the hands of M/s. CIPL, Singapore and capital gains arising on the transfer of shares is to be taxed in the hands of M/s. CIPL Singapore, in terms of section 46A of the Act, Moreover, in terms of section 5(2), any income which accrues or deemed to accrue in India to a non-resident or any income received or deemed to be received in India by a non-resident is to be taxed. Accordingly, the capital gain arising on sale of the shares is to be taxed in the hands of M/s. CIPL, *Singapore*. But in terms of section 163 of the Act, the assessee is to be treated as an agent of M/s CIPL, Singapore and in terms of 160 of the Act, the assessee is to be treated as representative in respect of the capital gain earned by M/s. CIPL, Singapore. Hence, the capital arising in the transaction amounting to Rs.68,12,25,000/- (Rs.69,58,75,000 sale value - Rs.1,46,50,000 being face value of 1465000 shares) is to be taxed in the hands of the assessee as representative assessee for M/s. CIPL, Singapore. But the Assessing Officer did not enquire into this aspect also during assessment proceedings,

6. It is judicially well settled that the powers under 263 of the Income Tax Act can be exercised by the Principal Commissioner or Commissioner where the order was passed by the Assessing Officer by incorrect application of Law or with incorrect assumption of facts or without arty inquiry into the matter or without application of mind [Malabar Industrial Company Lid, vs. CIT (243 ITR)]. The Hon'ble High Court of Allahabad in the case of Swarup Vegetable Products Vs CIT (187 ITR 412) has held that when the Assessing Officer accepted the claim without making proper enquiries, the Commissioner acting under section 263 was justified in setting aside the assessment order, Similar view been by the Madras High Court in Jai Bharath Tanners (264 ITR 673). The Hon'ble High Court of Madras in the case of Ashok Leyland Ltd Vs CIT (260 ITR 599) has held that when the Assessing Officer was required to examine the claim of the but has failed to do so, the order by him was not only erroneous but prejudicial to the interest of the revenue. Further, the Hon'ble Madras High Court in K A, Ramaswamy Chettiar vs. CIT (220 ITR 657) has held that when the Officer is expected to make an enquiry of income and if he does not make an enquiry as expected, it is to be a ground to interfere with the order passed by the Assessing Officer since such an passed by the officer is erroneous and prejudicial to the interest of revenue. When the Assessing Officer failed to discuss as to why and how the claim was accepted as correct, the revision powers under section 263 would be justified in view of the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs Raja Industries (340 ITR 344).

7, In view of the above, I am satisfied that the order dated 31,01 2017 passed by the Assessing Officer u/s 143(3) of the Income Tax Act is erroneous in so far it is prejudicial to the interest of the revenue. Accordingly, in exercise of powers

conferred u/s 263 of the Act, I set aside the aforesaid order with the direction to the Assessing Officer to frame the assessment after making necessary enquires with regard to the points discussed in para 5 and 5.1 above. The Assessing Officer shall allow reasonable opportunity of being heard to the assessee before passing the order.

Aggrieved as aforesaid the assessee is in further appeal before us.

8. From the facts as enumerated in the preceding paragraphs, the undisputed position that emerges is that the issue which has been raked up by Ld. Pr. CIT in the impugned order was never the subject matter of examination either by Ld. TPO or by Ld. AO during the course of regular assessment proceedings. The queries raised by lower authorities during the course of regular assessment proceedings and the assessee's replies thereto do not address the issue as highlighted by Ld. Pr. CIT in the impugned order. The Ld. Pr. CIT has flagged a pertinent issue and fully justified as to how the assessment order was erroneous as well as prejudicial to the interest of the revenue. Upon perusal of assessment orders, we find that this issue was never delved into by Ld. AO or Ld. TPO and there was complete non-application of mind on the sated issue. This being so, the observation made by Ld. Pr. CIT in the impugned order could not be faulted with. The revision jurisdiction is perfectly valid and justified. The case laws as cited by Ld. Pr. CIT in the impugned order clearly support his view. However, our aforesaid view would not be construed as expression on the merits of the case, in any manner.

9. The appeal stand dismissed in terms of our above order.

Order pronounced on 11th April, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 11-04-2022
JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF