

THE INCOME TAX APPELLATE TRIBUNAL
“A” Bench, Mumbai
Shri B.R. Baskaran (AM) & Smt. Kavitha Rajagopal (JM)

I.T.A. No. 710/Mum/2022 (A.Y. 2017-18)

Asian Star Company Ltd. 114-C, Mittal Court Nariman Point Mumbai-400 021. PAN : AAACA4856B (Appellant)	Vs.	PCIT (Central)-1 1001, 10 th Floor Pratishtha Bhavan Old CGO Building Annexe, M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Suchek Anchaliya
Department by	Ms. Shailja Rai
Date of Hearing	17.07.2022
Date of Pronouncement	12.08.2022

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the revision order dated 31.3.2022 passed by PCIT (Central), Mumbai-1 under section 263 of the Act for A.Y. 2017-18. The assessee is challenging the validity of revision order passed by PCIT.

2. The facts relating to the case are stated in brief. The assessee company is mainly engaged in the business of manufacturing, import and export of diamond and manufacturing of jewellery. The assessee is also engaged in the business of generation of wind power, against which the assessee has claimed deduction under section 80IA of the Act. The assessment for the year under consideration was completed by the Assessing Officer under section 143(3) of the Act on 28.12.2019. Upon examination of the assessment record, Ld. PCIT took the view that the AO has not properly made inquiries in respect of following two issues :

- a) The Assessing Officer has not examined properly the deduction claimed under section 80IA of the Act i.e., he has not called for the books of

accounts maintained separately for the units and therefore the AO has not conducted proper inquiry or there is no inquiry in this case. The production of separate books of accounts in respect of windmill is one of the mandatory conditions for claiming deduction u/s 80IA(4)(iv) of the Act.

- b) The assessee had made cash deposit of Rs. 79.98 lakhs during demonetization period. The Assessing Officer has accepted the cash deposited on the basis of reconciliation sheet and bank statement without examination of books of account.

Accordingly, the PCIT took the view that the assessment order is erroneous in so far as it is prejudicial to the interests of revenue. Accordingly, he initiated recent proceedings under section 263 of the Act.

3. The assessee objected to initiation revision proceedings, submitting that the assessing officer has made proper enquiries in respect of above said two issues and has accepted the explanations/claim of the assessee after due application of mind. However, rejecting objections raised by the assessee, the Ld PCIT passed the impugned revision order holding that the assessment order passed by the Assessing Officer is rendered erroneous in so far as it is prejudicial to the interest of Revenue. Accordingly, he set aside the assessment order dated 28.12.2019 passed by the Assessing Officer with the direction to complete the assessment after verifying the claim of deduction under section 80IA of the Act and also to verify the source of cash deposits made during demonetization period by calling for necessary supporting evidences.

4. Aggrieved by the order so passed by PCIT, the assessee has filed this appeal before the Tribunal.

5. The Learned AR submitted that the Assessing Officer has duly examined both the points discussed by PCIT in the revision order and has accepted the claim of the assessee after due application of mind. In support of this submission, the Learned AR invited our attention to the notice issued by the under section 142(1) of the Act during the course of assessment proceedings, wherein, the AO had called for various details, which, inter alia, included the

queries in respect of both the issues pointed by Ld PCIT. The Ld A.R invited our attention particularly to the following two queries raised in the above said notice :

- i) Please furnish point-wise justification of claim of deduction under section 80IA. Please support your claim with relevant documents.
- ii) Please furnish details of cash deposited in the bank during demonetization period.

The Learned AR submitted that the assessee, in response to the above said queries, has furnished required details to the AO as under:-

(A) With regard to the claim made u/s 80IA of the Act, the Ld A.R submitted that the assessee has furnished audit report in Form No. 10CCB of the Act. He submitted that the auditor has certified that he has examined the Balance Sheet and Profit and Loss account of the undertaking and further stated that these financial statements are in agreement with the books of accounts. The Ld A.R, accordingly, submitted that there cannot be any iota of doubt that the assessee has determined the amount of deduction allowable u/s 80IA of the Act on the basis of the financial statements of the undertaking, which are based on the books of accounts maintained for the undertaking. The Learned AR further submitted that deduction under section 80IA of the Act has been claimed in the past years also and claim of the assessee has been accepted. Accordingly, the Ld A.R submitted that the assessee has furnished required details before the Assessing Officer with regard to the deduction claimed u/s 80IA of the Act and the Assessing Officer has allowed the claim after due application of mind.

(B) With regard to the deposits made into the bank account, the learned AR submitted that the assessee has explained before the Assessing Officer that the cash so deposited mainly represented withdrawals made from the bank accounts on earlier dates. In support of the same, the assessee also furnished details of withdrawals made on earlier occasions

and the details of deposits made during demonetization period. He submitted that all the withdrawals and deposits have been duly recorded in the books of account, which have been duly audited. He further submitted that the details furnished by the assessee have been extracted from books of accounts only. The AO has accepted the explanations given by the assessee with regard to the cash deposits by understanding all these facts. Hence, it can be said that the AO has accepted the explanations of the assessee after due application of mind.

Accordingly, he submitted that the AO has taken a possible view in respect of both the issues. The Ld A.R invited our attention to the decision rendered by Hon'ble Bombay High Court in the case of CIT vs. Future Corporate Resources Ltd (2021)(132 taxmann.com 173)(Bom) and submitted that the Hon'ble jurisdictional High Court has expressed the view that the view taken by the AO if possible view, then the same cannot be interfered with by Ld PCIT u/s 263 of the Act. Accordingly he submitted that the Ld PCIT was not justified in passing the impugned revision order and the same is liable to be quashed.

6. On the contrary, the learned DR submitted that the Assessing Officer has accepted the claim of the assessee under section 80IA of the Act and also source of cash deposits made during demonetization period without examining books of account. Hence, learned PCIT has come to the conclusion that the Assessing Officer has not conducted adequate inquiries as required. He submitted that the Assessing Officer has merely sought information from the assessee with regard to deduction claim under section 80IA and source of cash deposits and it is not discernible from the assessment order that the Assessing Officer has actually applied his mind before accepting the claim of the assessee. Accordingly, the Ld D.R submitted that the order passed by the Assessing Officer without application of mind is susceptible to revision proceedings under section 263 of the Act. In support of this proposition, learned DR placed reliance on the following case laws :

- Sesa Starlite Ltd. Vs. CIT (2021) 123 taxmann.com 217 (Bom)
- Jeevan Investment & Finance (P) Ltd. (2017) 88 taxmann.com 552
- PCIT Vs. Zuari Maroc Phosphates Ltd. (2021) 126 taxmann.com 170 (Bom)

7. We have heard rival contentions and perused the record. The scope of revision proceedings initiated under section 263 of the Act was examined by Hon'ble Bombay High Court, in the case of Grasim Industries Ltd. V CIT (321 ITR 92) by taking into account the law laid down by the Hon'ble Supreme Court. The relevant observations are extracted below:

Section 263 of the Income-tax Act, 1961 empowers the Commissioner to call for and examine the record of any proceedings under the 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, to pass an order upon hearing the assessee and after an enquiry as is necessary, enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment. The key words that are used by section 263 are that the order must be considered by the Commissioner to be "erroneous in so far as it is prejudicial to the interests of the Revenue". This provision has been interpreted by the Supreme Court in several judgments to which it is now necessary to turn. In *Malabar Industrial Co. Ltd. v. CIT* [2000] 243 ITR 83, the Supreme Court held that the provision "cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer" and "it is only when an order is erroneous that the section will be attracted". The Supreme Court held that an incorrect assumption of fact or an incorrect application of law, will satisfy the requirement of the order being erroneous. An order passed in violation of the principles of natural justice or without application of mind, would be an order falling in that category. The expression "prejudicial to the interests of the Revenue", the Supreme Court held, it is of wide import and is not confined to a loss of tax. What is prejudicial to the interest of the Revenue is explained in the judgment of the Supreme Court (headnote) :

"The phrase 'prejudicial to the interests of the Revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law."

The principle which has been laid down in Malabar Industrial Co. Ltd. [2000] 243 ITR 83 (SC) has been followed and explained in a subsequent judgment of the Supreme Court in CIT v. Max India Ltd. [2007] 295 ITR 282.”

The principles laid down by the courts are that the **Learned CIT cannot invoke his powers of revision under section 263 if the Assessing Officer has conducted enquiries and applied his mind and has taken a possible view of the matter.** If there was any enquiry and a possible view is taken, it would not give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter. The consideration of the Commissioner as to whether an order is erroneous in so far it is prejudicial to the interests of Revenue must be based on materials on record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to start fishing and roving enquiries in matters or orders which are already concluded.

8. We shall now examine the facts prevailing in this case. The first issue considered to be erroneous and prejudicial to the interests of revenue by Ld PCIT relates to the deduction allowed u/s 80IA of the Act. The case of Ld PCIT is that the AO has not called for the books of accounts maintained separately for the units and hence it can be held that he has not conducted a proper enquiry or there is no enquiry in this case. According to Ld PCIT, production of separate books of accounts is one of the mandatory conditions for claiming deduction u/s 80IA(4)(iv) of the Act. The Ld CIT(A) is, apparently, referring to the provisions of sec.80IA(7) of the Act, which reads as under:-

“80IA(7) The deduction under sub-section (1) from profits and gains derived from an undertaking shall not be admissible unless the accounts of the

undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant, as defined in the *Explanation* below sub-section (2) of section 288, and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form duly signed and verified by such accountant.”

It can be noticed that the above said provision requires furnishing of audit report relating to the accounts of undertaking for which deduction is claimed. It does not mandates production of separate books of accounts before the AO, as opined by Ld PCIT. We notice that the assessee has furnished audit report in Form No.10CCB as per the requirement of sec. 80A(7) of the Act. We have gone through the audit report given in Form No.10CCB of the Act. In the said audit report, the auditor has declared as under:-

“We have examined the balance sheet of the above industrial undertaking or enterprise styled Asian Star Company Limited..... as at 31/03/2017 and the profit and loss account of the said industrial undertaking or enterprises for the year ended on that date **which are in agreement with the books of account maintained at the head office.....**

We have obtained all the information and explanations which to the best of our knowledge and belief were necessary for the purposes of the audit, in our opinion, **proper books of account have been kept by the head office and the branches of the industrial undertaking** or enterprise aforesaid visited by us so far as appears from our examination of books, and proper returns adequate for the purposes of audit have been received from branches not visited by us.....”

It can be noticed that the auditors have certified that the assessee has maintained proper books of account and the financial statements are in agreement with the books of accounts. Accordingly, the separate Balance sheets and Profit and Loss account has been prepared for each of the undertaking and they have been audited by the auditors. Hence there is no reason to presume that the assessee has not maintained separate books of accounts. In any case, we noticed that there is no mandatory requirement for

production of the separate books of accounts before the AO, as observed by Ld PCIT. Hence, the very basis on which the Ld PCIT came to the conclusion that the assessment order is erroneous and prejudicial to the interest of revenue would fail in respect of this issue. We also notice that the Delhi bench of Tribunal has held in the case of M/s Hughes Communication India Ltd vs. DCIT (ITA No.2273/Del/2014 dated 14.09.2021 relating to AY 2008-09 has expressed the view that there is no requirement of maintaining separate books of accounts for claiming deduction u/s 80IA of the Act, so long as it is possible to ascertain the profits of undertakings. Thus, the question raised by Ld PCIT is debatable one and on this reasoning also, his conclusion is liable to be rejected.

9. We noticed earlier that the assessing officer has raised a specific query with regard to the deduction claimed u/s 80IA of the Act and the assessee has furnished the required details before the AO. We noticed earlier that the assessee has furnished the audit reports in Form No.10CCB before the assessing officer, which is the mandatory requirement u/s 80IA(7) of the Act. Further, it is not the first year in which the deduction u/s 80IA(7) was allowed, i.e., the Ld A.R also submitted that the assessee has been allowed deduction in the earlier years also. Accordingly, the AO has allowed the deduction u/s 80IA of the Act. In our view, in the facts and circumstances of the case, the assessing officer has allowed the claim of the assessee after calling for necessary details, meaning thereby, he has allowed the claim of the assessee after due application of his mind. The view taken by him, in our view, is also a possible view on this issue.

10. With regard to the cash deposits made during demonetization period, we noticed that the AO has called for details during the course of assessment proceedings. It is the submission of the assessee that it had withdrawn cash from banks before announcement of demonitisation and the same cash has been deposited back into the bank accounts after announcement of

demonetization. We notice that the assessee has furnished the details of withdrawals of cash made from banks on earlier occasions and the details of deposits made during demonitisation period. The Ld A.R submitted that all these withdrawals and deposits have been duly recorded books of accounts, which have been duly audited. The reconciliation statement has been culled out from the books of accounts.

11. We notice that the Ld PCIT has expressed the view as under in respect of this issue:-

“The objection raised by the assessee is not acceptable since it was observed that the source of cash deposit, i.e., cash book was not produced by the assessee before the AO. The assessee only produced a reconciliation sheet and bank statement, thus the source of cash deposits remained unexplained. Also the assessee submission that the cash deposits were made out of cash withdrawals is not acceptable due to absence of supporting evidence...”

The above said observations made by the Ld PCIT, in our view, is too general in nature without actually appreciating the facts prevailing in the instant case. It is not the case of the Ld PCIT that the relevant bank accounts do not form part of books of accounts. The question of explaining sources of cash deposits would arise only with regard to the deposits made into a bank account, which is not disclosed in the books of accounts. However, in the instant case, the relevant bank accounts are duly disclosed in the books of accounts. We notice that the books of accounts have been accepted by the AO. When the books of accounts have been accepted, the source of deposits is the cash available in the books of accounts only, i.e., the sources would get automatically explained. In the instant case, it is also not the case of the Ld PCIT that the books of accounts are not reliable. The Ld A.R submitted that the reconciliation statement has been prepared by the assessee from the books of accounts only. Accordingly, we are of the view that the AO has accepted the explanations of the assessee after due application of mind and, in any case, his view is a possible view. Under these set of facts, in our view, the ld PCIT has only entertained a suspicion on this issue, which cannot be the reason for initiating

revision proceedings. Accordingly, in our view, the opinion expressed by Ld PCIT on this issue would also fail.

12. We have gone through the various decisions relied upon by Ld D.R. All those decisions deal with the nature of enquiries and application of mind by the assessing officer. There cannot be any dispute with regard to those legal propositions. However, in view of the foregoing discussions, we are of the view that there was proper application of mind on the part of the AO in respect of both the issues and he has taken a possible view in respect of the same.

13. Accordingly, we are of the view that the impugned revision order passed by Ld PCIT is not sustainable in law on both the issues. Accordingly we quash the impugned revision order passed by Ld PCIT.

14. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 12.08.2022.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 12/08/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS