IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESEIDENT
AND
SHRI PADMAVATHY S, ACCOUNTANT MEMBER

ITA Nos. 346 & 347/Bang/2022
Assessment years : 2017-18 & 2018-19

Terrier Security Services India Private Ltd., 3/3/2, Quess House, Sarjapur Main Road, Bellandur Gate, Bangalore – 560 102. **PAN: AADCT 1832F**	Vs.	The Principal Commissioner of Income Tax (Central), Bangalore.
ASSESSEE		RESPONDENT

Assessee by	:	Shri Padamchand Khincha, CA
Respondent by	:	Shri Rajesh Kumar Jha, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	17.08.2022
Date of Pronouncement	:	22.08.2022

O R D E R

Per Padmavathy S., Accountant Member

These appeals by the assessee are against the separate orders of the Principal Commissioner of Income Tax (Central), Bengaluru [PCIT] dated 30.3.22 & 29.3.2022 for the assessment years 2017-18 & 2018-19 respectively u/s.263 of the Income Tax Act 1961 (the Act). The issues raised are common in these appeals and hence heard

together and disposed of by this common order for the purpose of convenience and brevity.

2. The common grounds for both the assessment years read as under:-

1. General Ground

1.1 The learned Principal Commissioner of Income Tax (Central), Bengaluru (hereinafter referred to as "PCIT" for brevity) has erred in passing the revision order under section 263 of the Income tax Act, 1961 (-Act") in the manner passed by him. The order so passed is bad in law and liable to be quashed.

2. Grounds relating to exercising jurisdiction under section 263 of the Act

2.1 The learned PCIT has erred in passing order under section 263 of the Act based on grounds which are different from the grounds in the show cause notice.

2.2 The learned PCIT has erred in not providing any opportunity of being heard in relation to points on which the assessment order is considered to be erroneous or prejudicial to the interest of Revenue.

2.3 The learned PCIT has erred in concluding that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the revenue within the meaning of clause (a) of Explanation 2 to section 263.

2.4 The learned POT has erred in stating that the AO did not examine the allowability of claim under section 80JJAA.

2.5 The learned PCIT has erred in not appreciating that the deduction under 80JJAA was examined in detail by the learned AO during the assessment proceedings and thereafter the assessment order was passed.

2.6 Without prejudice, the learned POT observes that the learned AO should make a thorough verification and enquiries of the explanation provided by the Assessee; while it is concluding that points made in the show cause notice are factually correct. The learned POT has erred in making

contrary conclusions in the order as regards issues raised in the show cause notice under section 263.

2.7 Even otherwise, the learned PCIT has erred in concluding that issues raised in the show cause notice under section 263 are correct without factually examining the same or providing any reasons thereof.

2.8 The learned PCIT has erred in not accepting the submissions made by the Assessee substantiating that the none of the grounds raised in the show cause notice would cause the impugned assessment order to be erroneous in so far as it is prejudicial to the interest of Revenue.

2.9 Without prejudice, the learned PCIT has erred in invoking revisionary powers under section 263 on debatable issues identified in the impugned show cause notice.

2.10 The learned POT has erred in shirking and rejecting the explanations of the Assessee stating that such explanations are not acceptable under 263 proceedings. The learned POT has failed to appreciate that section 263 postulates an enquiry by him before arriving at a conclusion that the order if erroneous in so far as it is prejudicial to the interest of the revenue.

2.11 The learned PCIT has erred in relying on the survey proceedings which is bad in law as:

a) the findings in the survey proceedings are tentative;
b) the findings, it at all, are of the AO, which if relied on by the POT, would tantamount to borrowed satisfaction;
c) the AO has adequate powers to initiate proceedings to effectuate the survey findings, what the PCIT has impugned upon, without awaiting the logical conclusion of those proceedings.

2.12 The learned PCIT has erred in exercising jurisdiction under section 263 of the Act without appreciating that the assessment order under section 143(3) of the Act was passed after examining all facts relating to the issue on which impugned revision order is passed.

2.13 The learned PCIT has erred in not appreciating that section 263 of the Act does not permit substitution of AO's opinion.

2.14 Without prejudice to the above, in any case, the learned PCIT has failed to appreciate that inadequate inquiry, if any, cannot lead to revision under section 263 of the Act.

2.15 Without prejudice, the learned PCIT has erred in not appreciating that the jurisdiction under section 263 of the Act cannot be invoked where two views are possible and the AO has accepted one of the possible views while passim!, the assessment order.

2.16 Based on facts and circumstances of the case and law applicable, the revision order passed by the learned PCIT is bad in law and liable to be deleted.

3. **Prayer**:-

3.1. The Assessee prays that directions be given to grant all such relief arising from the grounds of appeal mentioned supra and all consequential relief thereto.

3.2. The grounds of appeal raised by the Assessee herein are without prejudice to each other. The Assessee craves leave to add to and or to alter, amend, rescind, modify the grounds herein above or produce further documents before or at the time of hearing of this Appeal. The Assessee prays accordingly."

3. The assessee filed return of income (revised) for AY 2017-18 on 31-10-2018 declaring total taxable income of Rs.11,63,81,273/- after claiming a deduction u/s.80JJAA of Rs.3,30,26,436. For AY 2018-19 the return was filed on 31.10.2018 declaring NIL income after claiming deduction u/s. 80JJAA of Rs.3,40,84,211. The case was selected for limited scrutiny for examination of the following issues:-

(1) Claim of any other amount allowable as deduction in Schedule BP.
(2) Refund claim.
(3) Deduction under Chapter VIA.

4. The AO called details from time to time and the assessee furnished the same. The AO concluded the assessment after examination of various details filed by the assessee accepting the returned income of the assessee.

5. The PCIT noticed that a survey u/s. 133A of the Act was conducted by the Office of the DCIT (Inv.), Unit 1(2), Bangalore in assessee's case on 8.7.2021 and that during the course of survey proceedings, evidence regarding wrong claim of deduction u/s. 80JJA of the Act by the assessee was found. The PCIT therefore issues a show cause notice to the assessee as to why the order of assessment u/s. 263 of the Act should not be enhanced / modified or the assessment order set aside for fresh assessment. The PCIT raised several points pertaining to claim of deduction u/s. 80JJA of the Act by the assessee in the show cause notice. The assessee provided clarification with regard to the queries raised by the PCIT. The PCIT did not go into the merits of the submissions and proceeded to set aside the order of assessment by invoking clause (a) of Explanation 2 to section 263 of the Act by observing that the AO did not examine the allowability of the claim of assessee u/s. 80JJAA and to that extent the order of the AO was erroneous and prejudicial to the interests of the revenue. The relevant extract of the order of the PCIT for AY 2017-18 is as under:-

> "5. I have considered the assessee's submissions and have gone through the assessment records. The assessee has made detailed submission in support of its claim that deduction u/s 80JJAA is allowable to the assessee. The assessee has submitted several

explanations which require thorough verification and enquiries by the Assessing Officer. Hence, the submissions made by the assessee are not acceptable at this stage.

6. It is a fact apparent from case records and submission made by the assessee that no verification or enquiry was carried out by the assessing officer during assessment proceedings on the allowability of deduction claimed u/s 80JJAA of I T Act. Subsequent survey proceedings in the case revealed the inconsistencies in the claim of deduction u/s 80JJAA made by the assessee company. The examination of accounts and findings of survey proceedings show that points raised in the showcause notice are factually correct. Hence, it is held that the Assessment Order passed by the Assessing Officer is erroneous so far as it is pre judicial to the interest of the Revenue as der the provisions of Clause (a) of Explanation (2) to the Section 263 of the Income Tax Act, 1961.

7. In view of the above, I, the Principal CIT (Central), Bengaluru, by virtue of powers conferred on me u/ s 263 of the Act, am satisfied that the assessment order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of revenue within the meaning of the clause (a) of Explanation 2 to the section 263 of the Income Tax Act, 1961, as the AO did not examine the allowability of claim of assessee company u/s 8OJJAA of I T Act as discussed above. Therefore the assessment order passed u/s 143(3) of I T Act dated 29.08.2019 is hereby set-aside to the file of the Assessing Officer for passing a fresh assessment Order after making verification and enquiry with regard to claim of deduction u/s 80JJAA. of I T Act."

6. Aggrieved, the assessee is in appeal before the Tribunal.

7. The ld. AR submitted that the case of the assessee was selected for limited scrutiny and that the AO has called for relevant details from time to time the details for which the assessee filed the details that were called for. The details of the notices issued and the details filed pertaining to AY 2017-18 are as given below –

(i) Notice under section 142(1) dated 07.06.2019 the AO sought details / evidence in respect of deductions under the Chapter VIA. The Assessee vide letter dated 17.06.2019 submitted its response to the aforesaid notice stating that the Assessee has claimed a deduction of Rs. 3,30,26,436 u/s. 80JJAA. It was further submitted that the Assessee is eligible for deduction under section 80JJAA in relation to the additional employee cost incurred during FY 2016-17 over a period of 3 years. A copy of the certificate from auditor in Form 10DA evidencing the claim of deduction under section 80JJAA was duly submitted.

(ii) The AO thereafter issued another notice under section 142(1) dated 20.08.2019 seeking the following details in respect of deduction under section 80JJAA:-

a) Payroll for the F.Y. 2015-16 and 2016-17.

b) Details of Additional employees who had been recruited in the F.Y. 2016-17 along with details of PAN, Amount of payment and mode of Transaction.

c) Details of period of employment (no. of days) for the above said employees.

d) Details of Pension (or) Provident fund paid to the new employees.

(iii) The assessee vide letters dated 23.08.2019 and 29.08.2019 filed its submission, along with evidence supporting the claim of deduction under section 80JJAA which *inter alia* included the following:-

a. Details of additional employees eligible for deduction under section 80JJAA, comprising of employee code, employee name, bank account details, date of joining, Universal Account Number (UAN) allotted by Employees' Provident fund Organisation;

b. number of days worked by each additional employee;

c. month wise details of salary paid to additional employees during the previous year under consideration;

d. Sample copies of contract of employment issued to the employees comprising of the terms and conditions of the employment, salaries, leaves, performance review, transfer, working

hours, duties and responsibilities, code of conduct, other regulations etc.;

e. Sample copies of payslips of employees for whom deduction under section 80JJAA was claimed.

8. The ld. AR further submitted that on examination and verification of the details filed by the Assessee, the assessment under section 143(3) was concluded by accepting the returned income vide assessment order u/s. 143(3) dated 29.08.2019. It was further submitted that the PCIT has not found anything erroneous in the order of the AO in relation to deduction u/s. 80JJA of the Act and the PCIT has not examined the merits of the case to conclude that there is an error in the deduction claimed. Therefore the PCIT is not right in holding that the order of AO is erroneous and prejudicial to the interests of the revenue to set aside the assessment order u/s. 263 of the Act.

9. The ld. DR submitted that Explanation 2 to section 263 is correctly invoked by the PCIT since as per clause (a) to Explanation to section 263, the order passed without making enquiries or verification **which should have been made** is erroneous insofar as it is prejudicial to the interests of the revenue. In the given case, one of the reasons the case was selected for scrutiny is the verification of deduction u/s. Chapter VIA and there is nothing coming out of the order of the AO that he has examined the various aspects with regard to the correctness of the claim of deduction u/s. 80JJA based on the details submitted by the assessee. The ld DR also submitted that mere calling of details without examination that should have been made is erroneous per se.

The ld DR further submitted that the PCIT has noticed the discrepancies in the deduction claimed based on survey proceedings and have brought out those aspects that are not examined by the AO in the show cause notice. The ld DR therefore submitted that there is nothing on record to show that the AO has done proper enquiry with regard to the correctness of the claim of deduction u/s.80JJAA and that the AO has not put across any relevant questions to check whether the assessee is eligible to claim deduction u/s. 80JJA. The ld. DR also submitted that nothing explicit is mentioned in the order of the AO with regard to whether any relevant enquiry with regard to the entitlement of the assessee was made and with regard to application of his mind before allowing the deduction u/s. 80JJA of the Act as claimed by the assessee. In this regard the ld DR relied on the decision of the Karnataka High Court in the case of CIT v. Infosys Technologies Ltd., 341 ITR 293 (Kar).

10. We have considered the rival submissions and perused the material on record. We will first look at the provisions of Explanation (2) to section 263 which reads as follows:-

> "*Explanation 2.*—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer **[***or 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 [95][Chief Commissioner or Chief Commissioner or 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 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."

11. The phrase 'should have been done' as provided in the newly inserted Explanation means the verification/ enquiry which ought to have been done. In the given case the assessee's case was selected for scrutiny and one of the reasons was examination of deduction from total income under Chapter VIA. The AO issued various notices calling for details including the details pertaining to section 80JJA deduction. However, in the assessment order as extracted below for AY 2017-18 the AO has not brought out anything explicitly and not recorded any finding with regard to the deduction claimed u/s.80JJAA and also there is nothing mentioned in the order that he has verified the eligibility and the correctness of the claim of deduction u/s. 80JJA.

"2. Subsequently, notice u/s 142(1) of the Act dated 19-02-2019 calling for relevant details in connection with the reasons for selection of the case for scrutiny was issued and served on the assessee. The assessee furnished details in support of the return of the return of income filed in response to the notices issued through the CPC E-filing portal. The details furnished by the assessee were examined.

3. The assessee-company is engaged in business of providing Manpower contract services and Human Resource related services. In support of the return filed, the assessee furnished copy of audited financial statements, Tax Audit Report in form 3CD, copy of ITR along with statement of computation of total and of r details called for during the assessment proceedings via ITBA e-proceedings he details filed by the assessee have been verified.

> 4. After examination and verification of the details filed by the assessee, the assessment is concluded by accepting the returned income as per computation sheet enclosed."

12. It may be said that the Income Tax Act nowhere provides the exact modalities to be followed to verify a specific claim made by the assessee prerogative of the AO to decide the extent of verification. However, it is necessary for the AO to record the extent of verification carried out by him and to record that he has taken a considered view on the matter by proper application of mind while allowing the claim of the assessee in the matter.

13. We notice that the Hon'ble Karnataka High Court in the case of *CIT v. Infosys Technologies Ltd. (supra)* has considered a similar issue and held that -

> "21. In the present case, while there is no doubt that the assessee is entitled to claim deduction in terms of Articles 23(3)(a) and 23(4) of the agreements between India with Canada and Thailand respectively. the question is one of what exactly the entitlement? In the absence of any discussion either in the assessment order or in the computation claim, particularly as the extent of relief that can be claimed under these two articles is only after a specific exercise and though Sri Sarangan has very vehemently urged that it is not necessary for the assessing authority to make all these things explicit, so long as he is satisfied, on the strength of the authority of the Supreme Court not only in the ease of Electro House (supra) and to more so on the basis of the observations and law as declared in the case of Malabar Industrial Co. Ltd. (supra) we are fully satisfied that a situation where a deduction of the present nature is allowed or in the sense deducted from out of the tax liability of the assessee without indicating the basis, can definitely be construed as an order both erroneous and prejudicial, has this is definitely a possibility and it is only because it is per se, not discernible in the revisional order, but definitely gives rise to a situation where the commissioner may

consider the order as erroneous and prejudicial and the commissioner having remanded the matter to the assessing authority, we are of the clear opinion that it cannot be characterized as a situation beyond the realm of Section 263 of the Act, as the order being erroneous and prejudicial is a clear possibility particularly the assessing authority not disclosing the basis.

22. To test this proposition, if an order which is explicit is passed by the assessing authority and indicating that the assessee is entitled to a particular extent of relief, but if it is with reference to relevant articles of the double taxation avoidance agreements and if it is not either a proper computation or not fully in consonance with the same and if it has resulted in a situation of granting a greater relief than the assessee is otherwise entitled to under these agreements and if the commissioner can revise such an order without any hassle in the exercise of revisional jurisdiction under section 263 of the Act and can correct the order which is erroneous and prejudice to the interest of the revenue, just because the assessing authority does not spell out the reasons and therefore can avoid scrutiny under Section 263 of the Act, is an argument which is not logical or rational and not acceptable and at any rate on the authority of the Supreme Court in the case of Malabar Industries Co. (supra) is not an acceptable submission.

23. Though learned counsel for the assessee have placed strong reliance on two judgments of the Bombay High Court and the Delhi High Court in the cases of Gabriel India Ltd. and Ashish Rajpal (supra) respectively and the Delhi High Court, in fact, has made reference to the decision of the Supreme Court in the case of Max India Ltd. (supra), with great respect, we are unable to apply the ratio of these two decisions to the present circumstance and we are quite satisfied that the law declared by the Supreme Court not only in the case of Electro House (supra) and also in the case of Malabar Industries Co. (supra) fully covers the situation, no further need to discuss with any greater elaboration on the view expressed by the Bombay and the Delhi High Courts.

24. In the present situation, the Commissioner having only directed the assessing authority to compute it or re-compute it and make it explicit as to the entitlement of the assessee, an order of this nature, in fact, could not have been contended as detrimental to the interest of the assessee, as it was always open to the assessee to justify the

claim in terms of the double taxation avoidance agreements. In a situation of this nature, we are also of the opinion that it was not a case which warranted interference by the tribunal, more so for setting aside the order of the commissioner and for ensuring that the order passed by the assessing authority was left in tact.

25. One should bear in mind that a relief which is required to be given to any litigant in any given case should be commensurate to the gravity of the situation, to the needs and necessity of the situation and warranting such relief and with reference to the governing statutory provisions. Just, because the tribunal has appellate jurisdiction over the orders passed by the commissioner, it does not mean that the tribunal should interfere with each and every order of the commissioner when it is really not warranted and in a situation of the present nature, by calling in aid all legal principles, particularly questions of jurisdiction and by interpreting a statutory provision, to limit or curtail the scope and operation of the provision even when there is no need for it.

26. We are also not in a position to accept the submission that, the materials had been placed before the assessing authority and therefore there should be a conclusion that the authority has applied his mind to the same and there was no question of the commissioner interfering by taking a different view etc.

27. Assessing authority performs a quasi-judicial function and the reasons for his conclusions and findings should be forthcoming in the assessment order. Though it is urged on behalf of the assessee by its learned counsel that reasons should be spelt out only in a situation where the assessing authority passes an order against the assessee or adverse to the interest of the assessee and no need for the assessing authority to spell out reasons when the order is accepting the claim of the assessee and the learned counsel submit that, this is the legal position on authority, we are afraid that to accept a submission of this nature would be to give a free hand to the assessing authority, just to pass orders without reasoning and to spell out reasons only in a situation where the finding is to be against the assessee or any claim put forth by the assessee is denied.

28. We are of the clear opinion that, there cannot be any dichotomy of this nature, as every conclusion and finding by the assessing authority should be supported by reasons, however brief it may be,

and in a situation where it is only a question of computation in accordance with relevant articles of a double taxation avoidance agreements and that should be clearly indicated in the order of the assessing authority, whether or not the assessee had given particulars or details of it. It is the duty of the assessing authority to do that and if the assessing authority had failed in that, more so in extending a tax relief to the assessee, the order definitely constitutes an order not merely erroneous but also prejudicial to the interest of the revenue and therefore while the commissioner was justified in exercising the jurisdiction under Section 263 of the Act, the tribunal was definitely not justified in interfering with this order of the commissioner in its appellate jurisdiction.

Therefore, we answer the question posed for our answer in the negative and against the assessee. Both appeals are allowed. Parties to bear their respective cost."

14. We also notice that the Hon'ble Delhi High Court in the case of Gee Vee Enterprises v .ACIT [1975] 99 ITR 375 (Del) has held as under –

"The reason is obvious. The position and function of the Income-tax Officer is very different from that of a civil court. The statements made in a pleading proved by the minimum amount of evidence may be accepted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which comes before it. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word "erroneous" in section 263 emerges out of this context. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct".

15. In the case under consideration the ld. PCIT has excised the revisionary powers u/s. 263 of the Act since he has noticed that during the survey u/s. 133A of the Act there were evidences regarding the wrong claim of deduction u/s. 80JJAA and that the AO has not brought out anything on record to show that he has examined the correctness of the claim for the year under consideration. It is noticed that the PCIT in the show cause notice has also listed out the discrepancies in the claim of deduction u/s.80JJAA which according to the PCIT 'should have been done' by the AO and to that extent the PCIT has found the order of the AO to be erroneous and prejudicial to the interest of the revenue.

16. In view of the above discussion and respectfully following the decision of jurisdictional High Court in the case of ***Infosys Technologies Ltd. (supra)*** and the Hon'ble Delhi High Court in the case of ***Gee Vee Enterprises(supra)*** we hold that the PCIT was justified in assuming the jurisdiction u/s 263 of the Act by setting aside the assessment order.

17. In the result, both the appeals of the assessee are dismissed.

Pronounced in the open court on this 22nd day of August, 2022.

Sd/-	Sd/-
(N V VASUDEVAN)	(PADMAVATHY S)
VICE PRESIDENT	ACCOUNTANT MEMBER

Bangalore,
Dated, the 22nd August, 2022.

/*Desai S Murthy /*

Copy to:

1. Assessee 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.