

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 537/DEL/2016 (A.Y 2011-12)

<p>M/s ADM Agro Industries Kota & Akola Pvt. Ltd. Vatika Professional Point, 3rd Floor, Golf Course Extension Road, Sector-66, Gurgaon (Haryana) PAN No. AABCS9646L (APPELLANT)</p>	Vs	<p>The Principal Commissioner of Income Tax-1, "Aayakar Bhawan" 48, Arera Hills, Hoshangabad Road, Bhopal (RESPONDENT)</p>
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Appellant by	Sh. Pradeep Dinodia, CA & Sh. R. K. Kapoor, CA
Respondent by	Sh. P. Praveen Sidharth, CIT DR

Date of Hearing	18.10.2022
Date of Pronouncement	19.01.2023

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee against the order dated 22/03/2016 passed by the Principal Commissioner of Income Tax-1, Bhopal for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

- "1. *That the Order passed by the learned CIT u/s 263 of the Income Tax Act is illegal and bad in law and is prayed to be quashed.*

2. *That the Order passed u/s 263 of the Income Tax Act directing the assessee to reframe the assessment is vague, mechanical and without application of mind by the Commissioner is bad in law and is prayed to be quashed.*

3. *That the CIT grossly erred in passing the Order when no issue was identified in the notices issued by the CIT on which the CIT alleged the Order passed by the Assessing Officer was erroneous and prejudicial to the interest of the revenue.*

4. *That the revision Order passed u/s 263 pursuant to the amendment made w.e.f. 1st June, 2015 is bad in law.*

5. *That the CIT grossly erred in law in holding that the Order passed by the Assessing Officer was very casual and passed in a hurried manner and was erroneous and prejudicial to the interest of revenue.*

6. *That the Order passed u/s 263 without giving a proper opportunity to the assessee to explain on the various items identified by the Commissioner in his Order is bad in law and prayed to be quashed.”*

3. Brief facts of the case are that, the assessee has filed return of income declaring the total income of the assessee as ‘NIL’ for the assessment year under consideration. The return was processed and the case was selected for scrutiny u/s 143(2) of the Income Tax Act, 1961 (hereinafter referred to as the “Act”). The detailed questionnaire was issued u/s 142(1) of the Act.

Subsequently, the case was assigned to Additional Commissioner of Income Tax, Range-1, Bhopal vide order dated 29/03/2014. Accordingly, notice u/s 142(2) of the Act was issued on 30/03/2014, the representative of the assessee has participated in the assessment proceedings and on the very same day i.e. on 30/03/2014 assessment order came to be passed, wherein the return income of Rs. 9,51,23,554/- of the assessee has been accepted.

4. The Ld. PCIT exercising the power conferred u/s 263 of the Act on examination of record found that, the said assessment order dated 30/03/2014 is erroneous and prejudicial to the interest of the Revenue on the following grounds.

“(i) As per Form 3CD, assessee has taken loan of Rs.2 crores from its sister concern M/s Geepee Softech P. Ltd. However, M/s Geepee Softech P. Ltd. filed its return of income for A. Y. 2011-12 declaring total income of Rs.43,554/- only, further during the year the assessee has also repaid considerable amount of the said loan. Accordingly, creditworthiness of the sister concern and genuineness of the transaction was not verified.”

(ii) Assessee has shown creditors of Rs. 17,59,82,616/- in its Balance sheet, details of such creditors and their creditworthiness was not examined.

(iii) On going through the schedules to the Financial Statements enclosed alongwith the Form 3CD it is noticed that the assessee has claimed Power and fuel expenses of Rs. 14,00,52,902/-, loss on settlement contact (net) of Rs.45,22,737/- travelling and conveyance expenses at Rs. 1, 13,97,855/-freight,

cartage and octroi at Rs. 18,04,14,071/-. Details of these expenses were not examined: -

iv) Advances from customers totaling to Rs. 95,11,270/- claimed by the assessee were not verified. ”

5. The Ld. PCIT had issued notice on 16/02/2016 and a written submission was filed by the AR of the assessee on 17/03/2016. The Ld. PCIT after examining the written submission filed by the AR found that, the contentions of the assessee are not acceptable on the following grounds.

‘ i. As per Form 3CD, assessee has taken loan of Rs.2 crores from its sister concern M/s Geepee Softech P. Ltd. However, M/s Geepee Softech P. Ltd. filed its return of income for A. Y. 2011-12 declaring total income of Rs.43,554/- only, further during the year the assessee has also repaid considerable amount of the said loan. Accordingly, creditworthiness of the sister concern and genuineness of the transaction should have been verified by A O.

ii. Assessee has shown creditors of Rs. 17,59,82,616/- in its Balance sheet, details of such creditors and their creditworthiness was not examined by A O during assessment proceedings ..

iii. On going through the schedules to the Financial Statements enclosed along with the Form 3CD it is noticed that the assessee has claimed Power and fuel expenses of Rs. 14,00,52,902/ loss on settlement contact (net) of Rs.45,22,737/- travelling and conveyance expenses at Rs.l, 13,97,855/-freight, cartage and octroi at Rs. 18,04,14,071/-. Details of these expenses should be compared and verified by A O which has not been done .

vi. Advances from customers totaling to Rs.95,11,270/- claimed by the assessee. The A O should have examined all details regarding advances .

6. The Ld. PCIT was of the opinion that the assessment order was made without conducting proper enquiry by the A.O. who has passed the assessment order further the assessing officer did not examine the facts of the case and the same was resulted into prejudice to the revenue. Accordingly, the Ld. PCIT cancelled the assessment order and directed to frame the assessment after examining the issues mentioned in the order by affording sufficient opportunity to the assessee. Thus, the Ld. PCIT has passed the order impugned on 22/03/2016 which is impugned in the present appeal.

7. Aggrieved by the order u/s 263 of the Act dated 22/03/2016, the assessee has preferred the present appeal on the grounds mentioned above.

8. The Ld. Counsel for the assessee vehemently submitted that the order u/s 263 of the Act is without application of mind, the Ld. PCIT has grossly erred in passing the order when no issue was identified in the notice issued by the Ld. PCIT on which the Ld. PCIT alleged that the order passed by the Assessing Officer was erroneous and prejudicial to the interest of the revenue. The Ld. Counsel for the assessee further submitted that the Ld. A.O. has verified the entire material on record, made detail enquiry and came to a just

conclusion in accepting the return income of the assessee and invoking the power conferred u/s 263 of the Act by the Ld. PCIT is illegal and arbitrary.

9. Per contra, the Ld. DR submitted that the case was assigned to Additional Commissioner of Income Tax, Range-1 based on the order of the Commissioner of Income Tax dated 29/03/2014. Since only one day was remaining for time barring assessments, on the very next day, the Ld. A.O. issued the notice u/s 143(2) of the Act i.e. on 30/03/2014. Further submitted that, on 30/03/2014 the assessment order came to be passed by the A.O. by accepting the return loss of Rs. 9,51,23,554/-. Thus, submitted that, the assessment order not only cryptic, but also the Ld. A.O. who has passed the order had not sufficient time to verify the material on record, make enquiry, apply his mind and to pass the assessment order. Therefore, the Ld. PCIT has rightly invoked Section 263 of the Act and passed the order impugned which requires no interference.

10. We have heard the parties, perused the material on record and gave our thoughtful consideration.

11. In so far as Item No. i of the order u/s 263 of the Act, regarding allegation of creditworthiness of unsecured loan of Rs. 2 crore, it is found that, during the regular assessment proceedings, the Ld. A.O. has issued notice on 20th February, 2014 and in response to the same, the assessee had filed submission on 07/03/2014 and also submitted details pertaining to

unsecured loan of Rs. 2 crore taken from Geepee Softech Pvt. Ltd. In so far as Item No. ii of the PCIT order, relating to allegation of creditworthiness of Sundry Creditors of Rs. 17,59,82,616/- is concerned, in response to Question No. 7 of the notice dated 20/02/2014, the assessee vide submission dated 07/03/2014 filed details of current liability (including Sundry Creditor). The list of Sundry Creditors submitted to the A.O. is produced as Annexure 1 to the written submission filed before us by the assessee.

12. The Item No. iii of the PCIT order is relating to the allegation of certain expenditure which were not examined during the assessment proceedings. It is found from the record that the assessee company has submitted comparative gross profit and net profit ratio with previous two years in response to Question No. 8 in the notice dated 20/02/2014 vide assessee's submission dated 07/03/2014. The said comparative chart of GP & NP ratio has also been made available before us as Annexure 2 to the written submission filed by the assessee. Further, the Item No. iv of the PCIT order is regarding allegation of advance customers of Rs. 95,11,270/- were not verified, the said issue has been enquired by the Assessing Officer vide Question No. 15 for which the assessee has provided the list of advance from customers to the A.O. The said list of advance from customers submitted to the A.O. has been once again produced before us as Annexure 3 to the written submission.

13. Thus, it is clear from the record that the Ld. A.O. had made enquiry by issuing questionnaires u/s 142(1) of the Act which has been replied by the assessee vide letter dated 07/03/2014. Therefore, in our opinion, the finding of the Ld.CIT(A) that the 'Assessing Officer did not examine the facts of the case and thus, the assessment order passed by the A.O. is erroneous and prejudicial to the interest of the Revenue' is erroneous and contrary to the facts.

14. It is not in dispute that the case was transferred on 29/03/2014 to the A.O. who has passed the assessment order on 30/03/2014 and the A.O. had only one day time to pass the assessment order since the case was getting time barred on 31/03/2014. The said facts cannot be ground for the PCIT to excise power conferred u/s 263 of the Act. In the present case, the assessment proceedings admittedly started on 28/08/2012 and it went on till 18/03/2014 for a period of 16 months and the A.O. has issued questionnaires, which have been answered by the assessee.

15. The main ground for entertaining u/s 263 is that, the Assessing Officer who passed the assessment order did not make any enquiry who received the file on 29/03/2014 and passed the order on the very next day. The assessment proceedings are a continuous one and we find that the A.O. had made enquiries vide letter dated 07/03/2014 and based on the reply given by the assessee the A.O. who has passed order has satisfied himself by accepting the

return income of the assessee.

16. In view of the above discussion, we are of the opinion that the Ld.CIT (A) has committed an error in exercising power u/s 263 and passing the order impugned. Ergo, we allow the Grounds of Appeal of the assessee.

17. In the result, Appeal filed by the assessee is Allowed.

Order pronounced in the Open Court on this 19th Day of January, 2023

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

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 19/01/2023
*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

