

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.176/Ahd/2020  
(Assessment Year: 2014-15)

Sandeep Jagdishchandra Dave, 203, Parshwa Tower, B/s Pakwan II, SG Highway, Ahmedabad-380015	Vs.	Principal Commissioner of Income Tax-3, Ahmedabad
[PAN No.ADDPD1528J]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri Dipen Shukhadia, A.R.
<b>Respondent by:</b>	Dr. Darsi Suman Ratnam, CIT D.R.

<b>Date of Hearing</b>	16.10.2023
<b>Date of Pronouncement</b>	12.01.2024

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. Principal Commissioner of Income Tax-3, (in short “Ld. PCIT”), Ahmedabad vide order dated 26.02.2019 passed for Assessment Year 2014-15.

2. The assessee has taken the following grounds of appeal:-

*“1. The Ld. Principal Commissioner of Income tax erred in initiating proceedings u/s 263.*

*2. The Ld. Principal Commissioner of Income tax erred in observing that the Assessing officer has passed an order u/s 143(3) without proper verification and it is erroneous and prejudicial to the interest of revenue. None of the issue raised by Ld. Principal Commissioner of Income tax has been unverified by A.O. and/or prejudicial to the interest of the revenue.*

*3. The Ld Principal Commissioner of Income tax has no jurisdiction to pass the order u/s 263.*

*The appellant craves leave to add to, alter amend, vary, modify or delete any of the grounds taken above.”*

3. At the outset, we observe that the appeal of the assessee is time-barred by 294 days. The assessee has filed application for condonation of delay stating that the assessee had consulted with his consultant who was handing assessee's audit and income tax matters on receipt of order passed under Section 263 of the Act. The then consultant advised him that no action was required to be taken against the said order. As per the advice of his regular consultant, the assessee had not taken any further action against the order under Section 263 of the Act. Therefore, the Assessing Officer passed another order under Section 143(3) r.w.s. 263 of the Act and made additions in the case of the assessee. Thereafter, the assessee had consulted a senior consultant Mr. S.A. Sukhadia on 10.02.2020 and after going through the case details, he advised the assessee to file an appeal against the order under Section 263 of the Act before Hon'ble ITAT. Before Income Tax Appellate Tribunal, the assessee submitted that the appeal in filing was due to lack of understanding of technicalities of Income Tax and a prayer was made that since the assessee has a good case on merits in the interest of justice, the delay in filing of appeal may kindly be condoned. Accordingly, looking into the facts of the case instant case, the delay of 294 days in filing of the present appeal is hereby condoned.

4. The brief facts of the case are that the assessee filed return of income for A.Y. 2014-15 on 10.03.2015 declaring total income at Rs. 13,70,850/-. The assessment was completed under Section 143(3) of the Act determining total income at Rs. 18,28,610/-. While finalizing assessment, the Assessing

Officer made addition of Rs. 4,57,757/- on account of late payment of employees' contribution towards ESIC/PF.

5. Subsequently, Ld. PCIT initiated proceedings under Section 263 of the Act on observing certain discrepancies / short-comings in the assessment order. The PCIT observed that the Assessing Officer did not verify the issue pertaining to Certificate under Section 197 of the Act and the Assessing Officer did not make any effort to retrieve Form 13 and verify the details therein. Secondly, the PCIT observed that the assessee had claimed a huge expenditure amounting to Rs. 11,68,57,134/-, which is apparently not commensurate to the business of the assessee. However, during the course of assessment, the Assessing Officer did not make any effort to verify the correctness and genuineness of claim of aforesaid expenses. Thirdly, the PCIT observed that on verification of Column 20(b) of Form 3CD, there was a late deposit of employees' contribution to PF and ESIC for a sum of Rs. 23,72,554/-, which was disallowable under Section 36(1)(va) of the Act. However, the Assessing Officer only disallowed a sum of Rs. 4,57,757/- and hence the difference of Rs. 19,25,016/- remained to be added. Fourthly, the PCIT observed that during the impugned year under consideration, the assessee had applied under Service Tax Voluntary Compliance Scheme, 2013 (VCES). The PCIT observed that assessee had claimed to have made disclosure of Rs. 46,92,264/- under this scheme. However, the assessee did not disclose the corresponding receipts in his Profit & Loss Account for the relevant period for income tax purposes. However, during the course of assessment proceedings, the Assessing Officer did not obtain the relevant details and did not verify the issue

appropriately. Fifthly, as per computation of income, the assessee had disallowed a sum of Rs. 3,26,594/- as “any sum payable to an employee as bonus or commission for services” and a sum of Rs. 95,628/- as “any sum in nature of tax, duty, cess or fee’ under Section 43B of the Act. However, as per Form 3CD, it was observed that there was an entry of Rs. 23,46,133/- as “any amount not paid on or before the aforesaid date under the head tax, duty, cess, fees etc”. The auditor of the assessee pointed out that the assessee has not paid an amount of Rs. 23,46,133/- being Service Tax (VCES) and this amount ought to have been disallowed in the computation of income. However, Ld. PCIT observed that neither the assessee and nor the Assessing Officer had disallowed the sum as required under Section 43B of the Act. Sixthly, the PCIT observed that the Audit Report has been finalized and signed after the due date prescribed under Section 44AB of the Act. Accordingly, the Assessing Officer ought to have initiated penalty proceedings under Section 271B of the Act, which he failed to do. Accordingly, in view of the above reasons, the PCIT held that the assessment order is erroneous and prejudicial to the interest of the Revenue and accordingly, the assessment order was set-aside for de-novo consideration. The assessee is in appeal before us against the aforesaid order passed by Ld. PCIT setting-aside the original assessment order.

6. On going through the records of the case and arguments put forth by the Assessee and Department before us, we are of the view so far as the first issue concerned (Certificate under Section 197 for NIL or lower rate of TDS) it is seen that the sum was neither produce before the Assessing Officer nor was the same produced before Ld. PCIT during the course of

263 proceedings. The Ld. PCIT has made a specific noting that even though the issue of TDS were raised by the Assessing Officer vide notice dated 13.05.2016, however, the assessee failed to comply with the aforesaid notice. Regarding, the second issue (Expenses amounting to Rs. 11.68 crores) the assessee did not furnish any details / evidences in support of the aforesaid expenses incurred towards salary of man-power employed by the assessee. The assessee simply stated that the expenses are verifiable from third party sources. Accordingly, the primary onus cast on the assessee to prove the genuineness of expenses has not been discharged. The Counsel for the assessee drew our attention to Page 54 of the Paper Book in which the details of expenses above Rs. 50,000/- were furnished to the Assessing Officer. However, in our considered view the above reply filed by the assessee is general in nature and does not support the case of the assessee on this issue. Regarding the issue concerning late deposit of PF/ESI we observe that evidently vide letter dated 22.07.2016, the assessee has admitted that there was late deposit of employees' contribution under Section 36(1)(va) of the Act. We are further unable to accept the fact that since this issue was discussed by the Assessing Officer during the course of assessment no disallowance is called for on account of late deposit of employees' contribution to PF/ESIC. Similarly so far as issue relating to late deposit of non-disclosure on account of VCES is concerned, evidently the assessee has failed to offer any explanation regarding the non-disclosure of the aforesaid amount in the return of income. Similarly, we are also of the considered view that the Assessing Officer has failed to examine the issue of disallowance of Rs. 23,46,133/- under Section 43B of the Act with respect to disclosure made under the Service Tax Voluntary Compliance

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Scheme, 2013, since the same remains as unpaid liability and the Assessing Officer ought to have examined the applicability of scope of Section 43B of the Act.

7. Accordingly, in light of the detailed observations made by the PCIT, whereas several discrepancies were pointed out in his original assessment order. We are of the considered view that the Ld. PCIT has correctly observed that the Assessing Officer has failed to apply his mind to various issues during the course of assessment proceedings. In our considered view, the Assessing Officer should have conducted due enquiries with respect to various issues as highlighted by the PCIT, in respect of which, the assessee has failed to give any plausible explanation even during the course of 263 proceedings. Accordingly, we find no infirmity in the order of Ld. PCIT under Section 263 of the Act, so as to call for any interference.

8. In the result, the appeal of the assessee is dismissed.

<b>This Order pronounced in Open Court on</b>	<b>12/01/2024</b>
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**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 12/01/2024

TANMAY, Sr. PS

**TRUE COPY**

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1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)**

**आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad**