

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “G”: NEW DELHI**

**BEFORE DR. BRR KUMAR, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 1879/Del/2023
Asstt. Year: 2017-18

Sampark Management Consultancy LLP, A-178, Sector – 40, Noida, Uttar Pradesh- 201 301. PAN ACSFS9969E	Vs.	Pr.CIT, Noida, Noida.
(Appellant)		(Respondent)

Assessee by :	Shri Amit Goel, CA & Shri Pranav Yadav, Adv.
Department by:	Ms. Monika Dhama, CIT(DR)
Date of Hearing:	13.02.2024
Date of pronouncement:	22.03.2024

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 27.03.2022 of the Ld. Principal Commissioner of Income Tax, Noida (**“PCIT”**) u/s 263 of the Income Tax Act, 1961 (**the “Act”**) pertaining to Assessment Year (**“AY”**) 2017-18.

2. The assessee has raised the following grounds of appeal:

“1. On the facts and circumstances of the case and in law, the Learned Principal Commissioner of Income Tax, Noida erred in passing the revisional order dated 27.03.2022 under section 263 of the act which is bad in law.

2. On the facts and circumstances of the case and in law, the Learned Principal Commissioner of Income Tax, Noida erred in passing the revisional order dated 27.03.2022 under section 263 of the act without appreciating that the order passed by the Learned Assessing Officer u/s 143(3) of the Act on 07.12.2019 was neither erroneous nor prejudicial to the interest of the Revenue and that the provisions of s.263 of the Act have been invoked without complying with the conditions stated in the said section.

3. On the facts and circumstances of the case and in law, the Learned Principal Commissioner of Income Tax, Noida erred in passing the revisional order dated 27.03.2022 under section 263 of the act after returning the finding that no material with regard to the "subjected issue" was on assessment record without appreciating the fact that all the requisite material was filed before the Learned Assessing officer (rather the material is already as a part of assessment record at the e-portal of Income tax website) after due deliberation he had passed the assessment order u/s 143(3) of the act.

4. On the facts and circumstances of the case and in law, the Learned Principal Commissioner of Income Tax, Noida erred in passing the revisional order dated 27.03.2022 under section 263 of the act only on the basis of surmises, conjecture and whims that either the material is not filed by the appellant in the assessment proceedings or Learned AO has not take the cognizance of the same which is bad in law.

5. The appellant craves leave to add/modify/alter/delete any or all Grounds of Appeal."

3. The appeal is late by 27 days. Vide application for condonation of delay filed on 20.07.2023, it is submitted that the delay is in filing of appeal in physical form, though the assessee had e-filed appeal before the Tribunal in time. It is urged that the delay, if any, be condoned.

3.1 After hearing the Ld. Representative of the parties, we condone the delay and proceed to decide the appeal on merits.

4. Before the Tribunal, the assessee has moved an application on 21.12.2023 for admission of following additional ground of appeal:

"i. On the facts and circumstances of the case and in law, the assessment order dated 07/03/2019 w/s 143(3) of the Income Tax Act, 1961 is without jurisdiction and bad-in-law as no notice u/s 143(2) of the Act was issued by

the jurisdictional assessing officer and, therefore, the said assessment order u/s 143(3) dated 07/03/2019 and the order dated 27/03/2022 u/s 263 of the Act passed by the Principal Commissioner of Income Tax are liable to be quashed.

ii. On the facts and circumstances of the case and in law, the assessment order dated 07/03/2019 u/s 143(3) of the Income Tax Act, 1961 is without jurisdiction.”

4.1 However, the above additional ground has not been pressed.

5. The brief facts are that the assessee firm is engaged in the business of trading in shares and securities. It filed its return for AY 2017-18 on 18.09.2017 declaring income of Rs. 1,83,99,800/-. The case was selected for scrutiny through CASS for the reasons, namely, reduction in profit due to application of Income Computation & Disclosure Standards (“**ICDS**”); excess claim of exemption of dividend income; large increase in unsecured loans during the year; large refund claimed out of advance tax. During the course of assessment proceedings, the Ld. Assessing Officer (“**AO**”) issued notice u/s 142(1) of the Act from time to time along with detailed questionnaire to examine and verify the above issues requiring the assessee to clarify and justify them. The assessee complied with the above and filed the necessary details along with documentary evidence.

5.1 The Ld. AO examined the details and supporting documentary evidence and came to the conclusion that –i) contrary to what is mentioned in the CASS reason there is in fact increase in the taxable profit on account of ICDS and not reduction in profit; ii) out of total accrued income of Rs. 8,93,38,723/- from dividend from shares and mutual funds, Rs. 8,89,01,128/- was received from mutual funds which is not within the purview of section 115BBDA and is exempt u/s 10(35) of the Act; iii) large increase in unsecured loans from Rs. 1,37,40,124/- to Rs. 3,90,67,223/- is attributable to increase in the amount of

loans obtained by the firm from its partner; and iv) the assessee claimed refund against the excess advance tax deposited by it.

5.2 Accordingly, the Ld. AO did not draw any adverse inference on the aforesaid issues mentioned in CASS reasons; accepted the income returned and completed the assessment on 07.12.2019 u/s 143(3) of the Act.

6. The Ld. PCIT examined the case records of the assessee. To him it appeared that impugned assessment order is erroneous and prejudicial to the interest of revenue. He, therefore invoked his powers u/s 263 of the Act and issued show-cause notice/hearing dated 08.02.2022 to the assessee pointing out certain discrepancies to which the assessee filed detailed reply on 15.02.2022 (reproduced in para 3 and 4 pages 2-21 of the order u/s 263 of the Act). The Ld. PCIT considered the submissions / Paper Book filed by the assessee in para 5 of his order and set aside the impugned assessment order observing and directing the Ld. AO in para 5.8 as under:-

“5.8 Accordingly, by exercise of powers conferred under Section 263, I set aside the assessment order dated 07.12.2019 u/s 143(3) of the Income Tax Act 1961 for AY 2017-18 and direct the Assessing Officer to conduct specific inquiry on following issues and pass an appropriate consequential order as per provisions of the Income Tax Act, 1961, after giving due and adequate opportunity of hearing to the assessee:-

(a) To reconcile the information on purchase of mutual fund units and examine the sources of investment therein

(b) To examine and reconcile the claim of dividend income and its exemption, vis-à-vis the ITR and independent documentary evidences.”

7. The assessee is dissatisfied and is in appeal before the ITAT. All the grounds relate thereto.

8. The Ld. AR submitted that the impugned assessment order is neither erroneous nor prejudicial to the interest of the revenue. The Ld. PCIT invoked powers vested in him u/s 263 without complying with the conditions precedent therefor. He further pointed out that directing the Ld. AO to make inquiries on issue not even part of reasons of selection of case for scrutiny is beyond the ambit of powers of the Ld. PCIT and cited several judicial precedents in support. According to the Ld. AR in the case of the assessee, the Ld. AO passed the assessment order after due examination and inquiry. It is a case where adequate inquiry has been made by the Ld. AO. It is neither a case of 'inadequate inquiry' nor 'lack of inquiry'. The Ld. AR took us through the assessment order to point out that the Ld. AO has clearly mentioned that details and evidences furnished by the assessee have been duly examined by him. Without prejudice to the above, the Ld. AR submitted that if the Ld. PCIT was of the view that assessment order was erroneous, instead of remitting the matter back to the Ld. AO for re-examination, inquiry should have been made by the Ld. PCIT. In support of this proposition, several case laws have been relied upon.

9. The Ld. CIT(DR) supported the order of the Ld. PCIT.

10. We have carefully considered the rival submissions and perused the records. It is manifest from the assessment order that the assessee's case was picked up for scrutiny under CASS for four specific reasons, namely, reduction in profit, excess claim of exemption of dividend income, large increase in unsecured loans during the year and large refund claimed out of advance tax. During the course of assessment proceedings, the Ld. AO issued six notices u/s 142(1) of the Act dated 13.09.2019, 03.10.2019, 10.10.2019, 17.10.2019, 14.11.2019 and 02.12.2019 along with questionnaire in each notice to which assessee submitted reply dated 10.10.2019, 15.10.2019, 25.10.2019, 08.11.2019, 21.11.2019 and 03.12.2019. Copies thereof are placed at pages 9-

315 of the Paper Book. In para 2 of the assessment order, the Ld. AO says that he issued the above notices along with questionnaire to examine and verify the correctness or otherwise of the reasons for which the assessee's case was selected for scrutiny. Clarification and justification was sought from the assessee. The Ld. AO admitted that the assessee complied and filed necessary details along with the documentary evidence which he examined. Thereafter he proceeded to discuss each reason assigned for selection of the case for scrutiny separately and devoted one para each (para 3 to 6) for dealing with the above said four reasons (issues) detailing therein the issue involved, submission of the assessee and his findings based on the documentary evidence produced by the assessee before him. It is after such an exhaustive exercise undertaken by him that the Ld. AO reached the conclusion that no adverse inference against the assessee can be drawn with regard to any of the issue examined by him and consequently accepted the income declared by the assessee in its return.

11. Such an assessment has been taken up by the Ld. PCIT for the exercise of revisional jurisdiction u/s 263 of the Act. Before we proceed further, let us keep in the back of our mind the fundamental vital pre-requisite for invoking the provisions of section 263 of the Act. In *Malabar Industrial Co. Ltd. vs. CIT* (2000) 243 ITR 83(SC), the Hon'ble Supreme Court observed as under:-

“A bare reading to section 263 of the Income Tax Act, 1961, makes it clear that the pre-requisite for the exercise of jurisdiction by the Commissioner suo-moto under it, is that the order of the ITO is erroneous insofar as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous ; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent - if the order of the ITO is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue - recourse cannot be had to section 263(1) of the Act. The provision cannot be invoked to correct each and every type of mistake or error committed by the ITO, it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without

applying the principles of natural justice or without application of mind. The phrase “prejudicial to the interests of Revenue” is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The scheme of the Act is to levy and collect tax in accordance with provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the ITO, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue. The phrase “Prejudicial to the interests of the Revenue” has to be read with conjunction with an erroneous order passed by the ITO. Every loss of Revenue as a consequence of the order of the ITO cannot be treated as prejudicial to the interests of Revenue, for example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of Revenue or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of Revenue unless the view taken by the ITO is unsustainable in law”.

12. The Hon’ble Supreme Court reiterated the above observation in CIT vs. Greenworld Corporation (2009) 181 Taxman 111 (SC) / (2009) 314 ITR 81 (SC).

The Hon’ble Apex court observed as under:-

“Section 263 provides for a revisional power. It has its own limitations. An order can be interfered with suo-moto by the said authority not only when an order passed by the Assessing Officer is erroneous but also when it is prejudicial to the interest of the revenue. Both the conditions precedent for exercising the jurisdiction under section 263 of the Act are conjunctive and not disjunctive. The scope of provisions of section 263 is no longer res integra. The power to exercise suo-moto revision in terms of section 263(1) is in the nature of supervisory jurisdiction and same can be exercised only if the circumstances specified therein, viz.,(1) the order is erroneous and (2) by virtue of order being erroneous, prejudice has been caused to the interest of the revenue, exist. An order of assessment passed by an Assessing Officer, therefore, it should not be interfered with only because another view is possible.”

13. In CIT vs. Amitabh Bachhan (2016) 384 ITR 200 (SC), the Hon’ble Supreme Court held that so long as the view taken by the Assessing Officer is a possible view it ought not to be interfered with by the Commissioner merely on the ground that there is another possible view of the matter.

14. The Finance Act, 2015 has inserted Explanation 2 w.e.f. 01.06.2015 and CBDT in Circular No. 19 of 2015, dated 27.11.2015: (2015) 379 ITR (st) 19 has explained that interpretation of the expression “erroneous in so far as it is prejudicial to the interests of the Revenue” has been a contentious one. In order to provide clarity on the issue, section 263 of the Income Tax Act has been amended to provide that an order passed by the Assessing Officer 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 Commissioner or Commissioner the order is passed without making inquiries or verification which, should have been made.

15. Thus, by the above amendment an assessment order passed without making requisite inquiries or verification shall be deemed to be erroneous in so far as it is prejudicial to the interest of Revenue. This will enable the Ld. PCIT to exercise jurisdiction u/s 263(1) of the Act in respect of such an assessment order passed by the Ld. AO.

16. Let us test the order of the Ld. AO/PCIT on the touchstone of the principles of law enunciated by the Hon’ble Supreme Court in their decisions (supra) and enshrined in the amended law which came into effect from 01.06.2015. As per show cause notice dated 08.02.2022 of the Ld. PCIT the assessment order passed by the Ld. AO is erroneous in so far as it is prejudicial to the interest of revenue because, in the opinion of the Ld. PCIT no exemption on account of dividend income could be claimed / allowed but the Ld. AO accepted the claim of the assessee regarding exempt income of Rs. 8,93,38,723/- on account of dividend.

16.1 One of the reasons inter alia for selection of assessee’s case for scrutiny under CASS was “excess claim of exemption of dividend income”. During the assessment proceedings the Ld. AO issued notice dated 02.12.2019 u/s 142(1)

of the Act requiring the assessee to give details of dividend income received by the assessee with narration. Also reconcile the same with DDT paid on them (copy at page 22 of the Paper Book). Reply of the assessee dated 03.12.2019 pursuant to the said notice is placed at pages 310-311 of the Paper Book. For ready reference it is reproduced below:-

“Excess Claim of exemption of Dividend Income

The Assessee Firm had made investments in various equity shares and units of mutual funds which yield Dividend Income during the year. The summery of such dividend Income is as under:

Particulars	Amount (Rs.)
<i>Dividend on Equity Shares</i>	<i>4,37,595</i>
<i>Dividend on units of Mutual Funds</i>	<i>8.89,01,128</i>
Total Dividend Income	8,93,38,723

*The Entire amount has been claimed as exempted income in the Income Tax Return filled. Such Dividend Income is included in the "Income from dealing in Shares and Securities and disclosed under the head "REVENUE FROM OPERATION" in the Financial Statement. For your kind perusal, we are enclosing the statement of mutual fund/portfolio statement as per **Annexure B***

It needs to be considered here that as per Section 115 BBDA of the I-T Act, 1961. dividend income distributed or paid by companies is subject to tax in excess of Rs 10 lakh. This does not include dividend distributed by mutual funds. Dividend income earned from investment in units of mutual fund is still exempt u/s 10(35) of the I-T Act. Hence the assessee firm is eligible to claim entire dividend income as exempted.”

16.2 It is observed from the above reply that the assessee explained to the Ld. AO that from investments made by it in equity shares and units of mutual funds, the assessee received during the year dividend of Rs. 4,37,595/- and dividend on units of mutual funds of Rs. 8,89,01,128/- aggregating to Rs. 8,93,38,723/- which has been claimed as exempt in the return. It was further explained that such dividend income is disclosed under the head “Revenue from operation” in the financial statement. The statement of mutual fund/

Portfolio statement were annexed. The provision of section 115BBDA inserted by the Finance Act, 2016 w.e.f. 01.04.2017 was also explained to the Ld. AO. It was also brought to his notice that income received in respect of units of the mutual fund is exempt u/s 10(35) of the Act.

16.3 It was on consideration of the above explanation of the assessee that the Ld. AO recorded the following finding in para 4 of the assessment order:

“4. Excess claim of exemption of dividend income: In this regard it is noticed that during the year under consideration the assessee has accrued income of Rs. 8,93,38,723/- from dividend from Shares and Mutual funds. Out of said dividend received Rs. 8,89,01,128/- was received by the assessee from Mutual Funds which is not within the purview of section 115BBDA of the I.T. Act, 1961 and are exempt u/s. 10(35) of the I.T. Act, 1961. Therefore, no adverse inference is drawn on this issue.”

17. On the factual matrix set out above, it is for our consideration whether the Ld. PCIT was justified in assuming jurisdiction u/s 263 of the Act. In response to show-cause notice dated 08.02.2022 on the issue of acceptance of assessee's claim of exemption of dividend income received during the year, the assessee in its submission filed before the Ld. PCIT on 15.02.2022 drew the attention of the Ld. PCIT to the Note No. 9 of the financial statement (page 85 of the Paper Book) and pointed out that the assessee has duly disclosed the segregation of income/revenue earned by it from its business activities which comprised of dividend income of Rs. 8,93,39,723/- forming part of income from dealing in shares and securities. With the help of “Schedule-E1” of the return (page 49 of the Paper Book) the assessee demonstrated that it has duly disclosed the dividend income which it claimed as exempt u/s 10(35) of the Act as revealed from computation of income appearing at page 75 of Paper Book.

18. The reason for total credit of Rs. 10,18,34,536/- to the P & L Account was explained to the Ld. PCIT as the amount representing sale of services and other income without including dividend income because while computing

income of Rs. 10,18,34,536/- the assessee added back NET income from dealing in shares and securities duly considering therein dividend income of Rs. 8,93,38,723/-. To make it clearer and to remove any doubt the assessee explained that minus income (loss) of Rs. 67,36,180/- from dealing in shares and securities (including the exempt dividend income) has duly been disclosed in expenditure side of the P & L Account in the return. The assessee thus refuted the allegation of no dividend income declared leveled by the Ld. PCIT and consequent denial of exemption thereof.

19. At pages 11-12 of order u/s 263 of the Act, the Ld. PCIT has extracted the questionnaire issued by the Ld. AO vide notice u/s 142(1) of the Act dated 13.09.2019, 03.10.2019, 17.10.2019 and 02.12.2019 with regard to dealing in shares and securities and income from dividend. It was brought to the notice of the Ld. PCIT that in its reply point no. (d) dated 08.11.2019 the assessee submitted details of income from dealing in shares and securities (Net) having a loss of Rs. 67,36,180/-. To substantiate the above, the assessee submitted the details of sale and purchase of shares and securities transactions along with proof of transaction ledger / DEMAT trading account (page 13 of section 263 order).

20. It is thus abundantly clear that the alleged discrepancy as per show-cause notice issued by the Ld. PCIT was reconciled by the assessee by bringing on record copies of documentary evidence filed before the Ld. AO. Ld. PCIT in para 5.1 of section 263 order has mentioned that the assessee explained that the amount of Rs. 9,49,93,747/- (revenue from operation) has been duly disclosed in Note no. 9 which includes an amount of Rs. 8,93,38,723/- as dividend income. In para 5.2 the Ld. PCIT mentioned further that the assessee claimed to have filed all requisite details before the Ld. AO, copies of which have been filed before the Ld. PCIT as well. Despite all that, the Ld. PCIT denied giving credence to them on the flimsy ground that these were not found

available on the assessment record. Note no. 9 forms an integral part of Annual Report of the assessee for the year 2016-17 which was submitted before the Ld. AO along with assessee's reply dated 06.09.2018 in response to Ld. AO's notice dated 20.08.2018 u/s 143(2) of the Act. For non-availability of the documentary evidence filed by the assessee in assessment record, assessee cannot be faulted and it will be against the principles of natural justice to draw adverse inference therefor.

21. It is now well established that an incorrect assumption of fact and an incorrect application of law will satisfy the requirement of assessment order being erroneous. In the assessee's case it would be obvious that the Ld. AO has neither assumed facts incorrectly nor there is incorrect application of law. On the contrary, he applied his mind. In our opinion, therefore the impugned order of the Ld. AO is not erroneous. If that be so, the question of it being prejudicial to the interest of Revenue will hardly arise in the given facts and law related to them.

22. The deeming provision contained in Explanation 2 to section 263(1) inserted w.e.f. 01.06.2015 referred to by the Ld. PCIT is inapplicable to the assessee's case in view of admitted submission of details, e.g. income from dealing in shares and securities (NET); sale and purchase of shares and securities along with proof of transaction ledger/trading account, DEMAT account; Form -10DB and evidence of dividend income in the form of Dividend Advice issued by Taurus Mutual Fund and JM Financial Mutual Fund before the Ld. AO/PCIT in reply to questionnaires dated 13.09.2019, 03.10.2019, 17.10.2019 and 02.12.2019. This amply demonstrates that adequate requisite enquiry was made by the Ld. AO on the issue of excess claim of exemption of dividend income and necessary verification was made by him examining the details and documentary evidence produced before him by the assessee. This finding recorded by the Ld. AO in the assessment order could not be

controverted by the Ld. PCIT. The direction of the Ld. PCIT to the Ld. AO to examine and reconcile claim of dividend income and its exemption is therefore unwarranted and to say the least superfluous.

23. The remaining direction of the Ld. PCIT to the Ld. AO to reconcile the information on purchase of mutual fund units and to examine the sources of investment therein is beyond the reason being not even part thereof for selection of assessee's case for scrutiny. The Ld. AR has relied on several judicial precedents in support of the view that revisionary powers u/s 263 of the Act can be exercised only on issues for which the case was selected for scrutiny under CASS. The details of purchase and sale of mutual fund units were furnished (page 249 of Paper Book) in reply dated 08.11.2019 to notice dated 17.10.2019 u/s 142(1) of the Act issued by the Ld. AO. Enquiry as to the source of investment in mutual fund units was neither envisaged nor called for.

24. In the light of the facts and circumstances enumerated above, we are of the opinion that suo-moto assumption of jurisdiction by the Ld. PCIT u/s 263 of the Act in the case of the assessee is not sustainable. We, therefore set it aside and restore the order of the Ld. AO.

25. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open court on 22nd March, 2024.

**Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

**sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 22/03/2024
Pooja

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	