

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “ए”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH ‘A’ CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SH. SANJAY GARG, JUDICIAL MEMBER &
SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA Nos. 123 & 124/CHD/2021
निर्धारण वर्ष / Assessment Year : 2016-17 & 2017-18

M/s A.P. Refinery Pvt. Ltd., Village – Tapper Harnia, Jalandhar Road, Jagraon, Distt. Ludhiana.	Versus	The Pr. Commissioner of Income Tax (Central), Ludhiana.
स्थायी लेखा सं./PAN NO: AAFCA1352B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

(Virtual Court)

निर्धारिती की ओर से/Assessee by : Shri Ashwani Kumar, C.A. &
Shri Aditya Kumar, CA &
Shri Bhavesh Jindal, CA

राजस्व की ओर से/ Revenue by : Smt. C. Chandrakanta, CIT

सुनवाई की तारीख/Date of Hearing : 24.08.2021

उद्घोषणा की तारीख/Date of Pronouncement : 04.10..2021

आदेश/Order

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

The present appeals relate to the same assessee and are against separate orders both dated 31.03.2021 of the Principal Commissioner of Income Tax (Central), Ludhiana(in short referred to as “PCIT”), passed in exercise of his revisionary jurisdiction u/s 263 of the Income Tax Act,1961,(hereinafter

referred to as “Act”) for assessment year(A.Y) 2016-17 & 2017-18 respectively.

It was common ground that the revision order in both the years had been passed in identical facts and circumstances. Therefore both the appeals were taken up together for hearing and are being disposed off by a common consolidated order.

2. Briefly stated the assessee had returned an income of Rs. 9,49,54,390/- and Rs. 9,91,49,440/- respectfully for the two assessment years involved and the assessment was completed u/s 153A read with Section 143(3) of the Act for assessment year 2016-17 at the returned income and u/s 143(3) for assessment year 2017-08 at an income of Rs. 10,06,43,151/-. Thereafter, the ld. PCIT noted that there was mis-match in the amounts reflected against certain items in the financial statements of the assessee and that reflected in the details furnished by the assessee during assessment proceedings, for the two years involved. The mis-match related to the following :

Assessment year 2016-17

Nature	As reflected in Profit & Loss Account/Balance Sheet	As reflected in detail filed during assessment	Difference
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	(Rs.)	(Rs.)	(Rs.)
Sales	354,89,20,000/- (inclusive of Excise Duty)	360,32,95,532/- (list of sales > 5lacs)	5,77,66,719/-

Trade Receivables	1278.77 lacs	2159.08 lacs	880.31 lacs
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Assessment year 2017-18

Nature	As reflected in Profit & Loss Account/Balance Sheet	As reflected in detail filed during assessment	Difference
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	(Rs.)	(Rs.)	(Rs.)
Sales	429,55,17,000/- (inclusive of Excise Duty)	439,78,68,281/- (list of sales > 5lacs)	10,23,51,281/-
Trade Receivables	3122.36 lacs	3305.05 lacs	1,82,69,000/-
Trade Payables	361.45 lacs	472.36 lacs	1,10,91,000/-

3. Accordingly, Show Cause Notice was issued to the assessee as to why the provisions of Section 263 of the Act be not invoked on the issue of taxability of unexplained sales, receivables and payables as mentioned above. Due reply was filed by the assessee contending that the difference was on account of detail of sales and purchase filed during assessment proceedings being inclusive of indirect taxes which, it was contended, had been specifically mentioned in the detail whereas the financial statements, which included the Profit & Loss Account, mentioned a note by the auditors that the sales was exclusive of indirect taxes. The difference relatable to trade receivables and payables was also explained as including all debit or credit balances on whatever account i.e. on account of sales, purchase, advance to suppliers or customers or from customers, advances of capital account etc., while that

reflected in the financials was specific to that relating to trade debtors/creditors only. The assessee explained that the entire books of account were produced before the AO who after examining the same had, therefore, made no addition. He further submitted to the Ld.PCIT the reconciliation of all these figures of sales, trade receivables and debtors as reflected in the financial statements of the assessee and the details furnished to the AO. The ld. PCIT after considering the reply of the assessee stated that the details now submitted by the assessee needed verification which having not been done by the AO, the order was erroneous so as to cause prejudice to the Revenue. He therefore set aside the order passed by the AO directing him to examine the issues afresh after conducting necessary enquiries and verifications. The relevant findings of the ld. PCIT at para 5 & 6 of the order in assessment year 2016-17 which is identical to that in assessment year 2017-18 also, is reproduced hereunder :

5. *On merit, the record and above submission show that the sales and receivables as mentioned above in the books of account, Balance Sheet and P & L Account vis-a-vis details filed in these regards during the assessment proceedings differ a lot and a reconciliation of these details are called for ascertaining that whether these details are inclusive/exclusive of indirect taxes, etc.. Details of sales return have to be also verified with the concerned parties' ledger accounts. Receivables/payables with respect to the capital goods, advances received from buyers, advances paid to suppliers, etc. as submitted above also need in-depth verifications and reconciliations . The assessee's submission itself demonstrates that various requisite verifications, enquiries, reconciliations, etc as required to be done have not been done by the AO. The assessment record shows that the accounting treatments of Sales and Receivables/payables have not been examined and verified by the AO. Had it been done during the assessment proceedings, such details would have been*

filed before the AO. The submission of the assessee filed before me needs verification after consequential enquiry, If any, on the above mentioned issues. According to me, the proper submission would have been done during the assessment proceedings clarifying the above anomalies. Thus, according to me the record shows that the necessary inquiries which should have been made particularly in respect of the above mentioned issues and in the Show-Cause Notice (SCN), have not been made, making the order erroneous and prejudicial to interest of revenue.

6. *In view of the above, it is evident that the assessment was completed without making in-depth inquiries or verifications which should have been made on the issues sales of Rs.5,77,66,719/- and receivables of Rs.8,80,31,000/- as detailed above and in the Show Cause Notice, rendering the order erroneous and prejudicial to the interests of revenue within the meaning of section 263 of the Act read with clause (a) of Explanation 2 there under. After careful consideration of the material available on the record, the submission made by the assessee and in the light of the above facts, it is held that impugned order of AY 2016-17 passed u/s 153A/143(3) of the Act by the AO on 28.12.2018 is erroneous and prejudicial to the interest of the revenue on the issue highlighted above and in SCN. I, therefore, in exercise of powers conferred u/s 263 of the Act hereby set aside the order passed by the AO u/s 153A/143(3) of the Act for the AY 2016-17 to be made afresh on the issue highlighted above and in SCN after examining the evidences and the materials on the record, conducting inquiries and verifications after affording sufficient opportunity to the assessee."*

4. Before us, ld. counsel for the assessee reiterated the submissions made before the ld. PCIT that there was actually no difference as noted by the ld. PCIT and was explainable from the details furnished to the AO itself alongwith the books of account produced. That in any case, the assessee had reconciled the difference to the ld. PCIT who without conducting any enquiry/examining the same himself had held the order of the AO erroneous directing him to make enquiries on the reconciliation filed. The ld. counsel for the assessee stated that the powers u/s 263 could not be exercised for directing further enquiries and it is clear that the same can be exercised only on finding the Assessing Officer's order

erroneous so as to cause prejudice to the revenue. He contended that ld. Pr. CIT himself ought to have looked into the reconciliation filed by the assessee and only after pointing out any anomaly in the same could have held the order of the AO erroneous. That without doing so and setting aside the order to the AO asking him to make enquiries was not within the purview of Section 263 of the Act. The ld. DR on the other hand relied on the order of the Pr. CIT.

5. We have heard both the parties, gone through the documents referred to before us and have also carefully gone through the order of the Ld.PCIT .

6. We are in agreement with the Ld.Counsel for the assessee that there was no finding of error by the Pr.CIT in the orders of the AO for both the years and the revisionary jurisdiction exercised was not in accordance with law.

7. The assessee we find had explained that there was no error as noted by the Ld.Pr.CIT and had even furnished a reconciliation to substantiate his explanation but the Ld.Pr.CIT simply restored the matter to the AO to examine the assessee's explanation, without examining and inquiring into the assessee's explanation himself. The Ld.Pr.CIT therefore has not

arrived at a finding of error but has in fact restored it to the AO to arrive at the finding.

8. In both the present cases, the error noted by the Pr. CIT was that of the AO having not inquired into the difference in the amount of sales, trade receivables and trade payments as reflected in the financial statements of the assessee and that submitted in the details to the AO, causing prejudice to the Revenue on account of income relating to sales to that extent having escaped assessment or there being unexplained investments of the assessee .

9. But, we find, that the assessee had explained the differences to the ld. Pr. CIT stating that the detail furnished with respect to sales related only to those exceeding Rs. 5 lacs party-wise and amounts mentioned were inclusive of indirect taxes while the Profit & Loss Account reflected sales exclusive of indirect taxes. That this had been submitted to the AO also while specifically mentioning in the details submitted to him that the amounts were inclusive of indirect taxes and the auditors had pointed out in their tax audit report that the sales were exclusive of indirect taxes. The assessee also filed a reconciliation of the figures of sales as per details and as per the Profit and loss account to the Pr. CIT clearly reflecting

therein the difference in the two figures of sales as being on account of indirect taxes not included in the amount of sales mentioned in the Profit & Loss Account. Vis-à-vis the trade receivables and trade debtors, similarly the assessee had contended that it included all debits/credits respectively whether relating to trade debtors, advances or on capital account while that reflected in the balance sheet related only to trade receivables or trade payables. The reconciliation of the figures mentioned in the details with that mentioned in the financial statement explaining the difference as stated above was also filed to the Pr. CIT.

10. It was incumbent upon the Ld.Pr.CIT, at this point , to have verified the explanation by making necessary enquiries and only after having found anomaly in the explanation leading to the order of the AO being unsustainable ,could he be said to have arrived at a finding of error in the order of the AO.

11. None of the aforesaid exercise has been done by the Ld.PCIT in the present case. Instead of himself arriving at a finding of error, he has restored the matter to the AO to decide whether his non inquiry into the issue lead to any error in his order.

12. This is clearly beyond the scope of section 263 of the Act. We find that the essential prerequisite for assuming revisionary jurisdiction u/s 263 of the Act, of a clear finding of error in the order of the AO by the Ld.PCIT is completely lacking in the present cases.

13. It is a settled proposition of law that for assuming revisionary jurisdiction u/s 263 of the Act there has to be a clear finding of error by the PCIT/CIT in the order so sought to be revised. And this finding has to be arrived at after conducting necessary inquiry if required. In cases of inadequate inquiry there has to be a finding that the inquiry made was erroneous. And this can happen only when the PCIT/CIT himself conducts an inquiry and verification and establishes therefrom the error made by the AO, making his order unsustainable in law. The finding must be clear, unambiguous and not debatable. The matter cannot be remitted for a fresh decision to the AO to conduct further inquiries without a finding that the order is erroneous. Various courts have interpreted the provisions of section 263 as above, to which our attention was drawn by the Ld.Counsel for the assessee as under:

CIT vs Goetze(India) Ltd.361 ITR 505

"This distinction must be kept in mind by the CIT while exercising jurisdiction under Section 263 of the Act and in the absence of the finding that the order is erroneous and prejudicial to the interest of Revenue, exercise of jurisdiction under the said section is not sustainable. In most cases of alleged "inadequate investigation", it will be difficult to hold that the order of the Assessing Officer, who had conducted enquiries and had acted as an investigator, is erroneous, without CIT conducting verification/inquiry. The order of the Assessing Officer may be or may not be wrong. CIT cannot direct reconsideration on this ground but only when the order is erroneous. An order of remit cannot be passed by the CIT to ask the Assessing Officer to decide whether the order was erroneous. This is not permissible. An order is not erroneous, unless the CIT hold and records reasons why it is erroneous. An order will not become erroneous because on remit, the Assessing Officer may decide that the order is erroneous. Therefore CIT must after recording reasons hold that the order is erroneous. The jurisdictional precondition stipulated is that the CIT must come to the conclusion that the order is erroneous and is unsustainable in law. We may notice that the material which the CIT can rely includes not only the record as it stands at the time when the order in question was passed by the Assessing Officer but also the record as it stands at the time of examination by the CIT [see CIT v. Shree Manjunathesware Packing Products, 231 ITR 53 (SC)]. Nothing bars/prohibits the CIT from collecting and relying upon new/additional material/evidence to show and state that the order of the Assessing Officer is erroneous.

Sh Narayan Tatu Rane vs ITO (2016)47 CCH 309(Mum)

"The law interpreted by the High Courts makes it clear that the Ld Pr. CIT, before holding an order to be erroneous, should have conducted necessary enquiries or verification in order to show that the finding given by the assessing officer is erroneous, the Ld Pr. CIT should have shown that the view taken by the AO is unsustainable in law. In the instant case, the Ld Pr. CIT has failed to do so and has simply expressed the view that the assessing officer should have conducted enquiry in a particular manner as desired by him. Such a course of action of the Ld Pr. CIT is not in accordance with the mandate of the provisions of sec. 263 of the Act. The Ld Pr. CIT has taken support of the newly inserted Explanation 2(a) to sec. 263 of the Act. Even though there is a doubt as to whether the said explanation, which was inserted by Finance Act 2015 w.e.f. 1.4.2015, would be applicable to the year under consideration, yet we are of the view that the said Explanation cannot be said to have over ridden the law interpreted by Hon'ble Delhi High Court, referred above. If that be the case, then the Ld Pr. CIT can find fault with each and every assessment order, without conducting any enquiry or verification in order to establish that the assessment order is not sustainable in law and order for revision. He can also force the AO to conduct the enquiries in the manner preferred by Ld Pr. CIT, thus prejudicing the independent application of mind of the AO. Definitely, that could not be the intention of the legislature in inserting Explanation 2 to sec. 263 of the Act, since it would lead to unending

litigations and there would not be any point of finality in the legal proceedings. The Hon'ble Supreme Court has held in the case of Parashuram Pottery Works Co. Ltd Vs. ITO (1977)(106 ITR 1) that there must be a point of finality in all legal proceedings and the stale issues should not be reactivated beyond a particular stage and the lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity.

20. Further clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the AO vis-à-vis its reasonableness in the facts and circumstances of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquiries or verification that would have been carried out by a prudent officer. Hence, in our view, the question as to whether the amendment brought in by way of Explanation 2(a) shall have retrospective or prospective application shall not be relevant.

Amira Pure Foods Pvt. Ltd.vs PCIT (2018) 63 ITR(Trib) 355(Del)

"The assessee had filed various replies to the Id. PCIT in response to notice u/s 263 of the Act stating that all the issues raised by the Id. PCIT have been examined by the AO during the course of assessment. The Id. PCIT has ignored the replies of the assessee. He merely states that the reply has been filed by the assessee but he nowhere discusses the contentions raised by the assessee and why he does not agree with the contentions of the assessee. The Id. PCIT has merely remitted the matter back to the AO without making any enquiry himself. The Id. PCIT has mentioned that the fresh loans have not been examined by the AO. The Id. PCIT has not considered the contentions of the assessee that there is no fresh loan. Similarly, the other replies of the assessee filed during the course of assessment and in response to notice u/s 263 of the Act have been totally ignored. No enquiry has been made by the Id. PCIT. It was incumbent for the Id. PCIT to make some minimum independent enquiry to reach to the conclusion that the order of the AO is erroneous and prejudicial to the interest of revenue. The reliance is rightly placed on the decisions of Delhi High Court in Id. PCIT v. Delhi Airport Metro Express Pvt. Ltd. (supra) and Income Tax Officer v. DG Housing Projects Limited

(supra). The Hon'ble Delhi High Court in *Delhi Airport Metro Express Pvt. Ltd. (supra)* has made the following observation:

"10. For the purposes of exercising jurisdiction under Section 263 of the Act, the conclusion that the order of the AO is erroneous and prejudicial to the interests of Revenue had to be preceded by some minimal inquiry. In fact, if the Id. PCIT is of the view that the AO did not undertake any inquiry, it becomes incumbent on the LD. PCIT to conduct such inquiry."

31. The Id PCIT has not referred to Explanation 2 of section 263 of the Act which has been inserted with effect from 01.06.2015 however we agree with the finding of the coordinate bench in the case of Narayan Tatu Rane (supra), wherein it has been held that Explanation cannot said to have overridden the law as interpreted by the various High Courts, where the High Courts have held that before reaching a conclusion that the order of the AO is erroneous and prejudicial to the interest of revenue, the Commissioner himself has to undertake some enquiry to establish that the assessment order is erroneous and prejudicial to the interest of revenue. In the case of Narayan Rane a doubt is also expressed regarding the applicability of Explanation 2, which was inserted by Finance Act 2015 w.e.f. 01.06.2015, the bench also observed that if the Explanation is interpreted to have overridden the law as laid down by various High Courts, then the same would empower the Pr. CIT to find fault with each and every assessment order and also to force the AO to conduct enquiries in the manner preferred by the Pr. CIT, thus prejudicing the mind of the AO, however, the intention of the legislature behind the explanation could not have been so as the same would lead to unending litigation and no finality in the legal proceedings.

14. In the facts of the present case where the assessee we find had duly furnished an explanation of the issue not allegedly found to have been examined by the AO and the Ld.Pr.CIT having not even made an effort of examining the explanation simply restoring it to the AO to do so, there is we hold no finding of error by the Ld.PCIT in the order of the AO.

15. In view of the same, we hold that the orders passed by the Id. Pr. CIT being beyond the scope of section 263 of the Act are not valid. Accordingly we set aside the revision orders passed by the Ld.PCIT for the two years under consideration.

16. In the result, both the appeals of the assessee are allowed.

Order pronounced on 4th October, 2021.

Sd/-
(संजय गर्ग)
(SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

Poonam

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant -
2. प्रत्यर्थी/ The Respondent -
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

Sd/-
(अन्नपूर्णा गुप्ता)
(ANNAPURNA GUPTA)
लेखा सदस्य/ Accountant Member

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar