

आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, PUNE

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 216/PUN/2021
निर्धारण वर्ष / Assessment Year : 2014-15

Gestamp Automotive India Private Limited
E-1, MIDC, Industrial Area,
Phase-III, Chakan, Nigoje Malunge,
Kharabwadi, Taluka- Khed,
Pune-410 501
PAN : AADCG1520D

.....अपीलार्थी / Appellant

बनाम / V/s.

The Pr. Commissioner of Income Tax-3,
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Mutha

Revenue by : Shri Shekhar L. Gajbhiye &
Shri A.M Mahadevan Krishnan

सुनवाई की तारीख / Date of Hearing : 13.10.2021

घोषणा की तारीख / Date of Pronouncement : 20.10.2021

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of the
Ld. Pr. Commissioner of Income Tax, Pune-3 dated 31.03.2021 for the
assessment year 2014-15 as per the grounds of appeal on record.

2. That going by the grounds of appeal in the appeal memo, the crux of the grievance of the assessee is with regard to assumption of revisionary jurisdiction u/s.263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the Ld. Pr. Commissioner of Income Tax holding that the assessment order is erroneous so as to be prejudicial to the interest of the revenue since the Assessing Officer failed to conduct any enquiry and verification on various aspects of the matter as evident in the order passed u/s.263 of the Act.

3. The Ld. Pr. Commissioner of Income Tax had issued a show cause notice to the assessee and the reasons enshrined therein, also finds place in the order of Ld. Pr. Commissioner of Income Tax wherein he enumerated the reasons for assuming revisionary jurisdiction u/s.263 of the Act. The assessee has furnished detailed written submissions before the Ld. Pr. Commissioner of Income Tax in response to the show cause notice and after considering the submissions of the assessee at Para 4, it was observed by the Ld. Pr. Commissioner of Income Tax that one of the reasons for selecting of the case is "low net profit or loss shown from large gross receipts".

4. From perusal of the all the notices issued by the Assessing Officer, it was observed that the Assessing Officer did not ask even a single question on this issue. The assessee vide submission dated 17.03.2021 had submitted that the main reason for reduction of net profit is due to increase in foreign exchange loss. On perusal of records, it was seen that there is exponential increase in foreign exchange loss from Rs.82,23,143/- to Rs.82,83,74,234/- i.e. Rs.82,01,51,091/-. The Assessing Officer has not examined the reasons for the same. Further, it was also observed by the Ld. Pr. Commissioner of Income Tax that during the course of assessment proceedings, the Assessing

Officer did not examine the expenses of domestic transactions correctly which reduced net profit of the assessee. Therefore, the Assessing Officer had failed to verify the reasons for low net profit despite having large gross profit of Rs.5,24,45,50,421/- due to domestic transactions.

5. That while opening his arguments, the Ld. Counsel demonstrating through statement of accounts, computation of income submitted that there had been increase in foreign exchange loss. It was explained before the Assessing Officer through various submissions which are also annexed in the paper book at pages 95, 96 and 98 wherein the assessee had given detailed reasons before the Assessing Officer regarding the increase of foreign exchange loss. In the letter dated 30.08.2017 at Column 5, the assessee has provided to the Assessing Officer working of foreign exchange difference with attachment 3 and in the said attachment 3, the entire working of foreign exchange fluctuation loss has been provided by the assessee and therein, it has been explained the net foreign exchange fluctuation loss as per financials at Rs.82,83,54,234/-.

6. The Ld. Counsel for the assessee also brought to our notice a letter annexed at Pages 125 to 128 of the paper book dated 01.11.2017 written to the Assessing Officer wherein the assessee has explained at Column 4 i.e. "Details of other expenses debited to profit and loss account" and there also, the assessee has mentioned exchange difference at Rs.82,83,74,234/-. Thereafter, the assessee GAIPL submitted that it had incurred book loss during the assessment year 2014-15 mainly due to foreign exchange loss of Rs.82,83,74,234/- which is debited to the profit and loss account. The assessee has also given another letter dated 03.10.2017 to the Assessing Officer wherein it had provided purchase register in respect of raw material,

consumable and spares and fuel for the month of May 2013, September 2013 and January, 2014 and the copy of purchase register is enclosed as attachment 1 in the paper book at Pages 101 to 123.

7. Through these details, the Ld. Counsel for the assessee submitted that whatever has been contention of the Ld. Pr. Commissioner of Income Tax at Para 4 of his order, these entire issues have been examined by the Assessing Officer and the assessee has provided detailed explanations in respect of foreign exchange loss in the relevant assessment year. Therefore the contention of the Department that the Assessing Officer has failed to conduct any enquiry or verification on this aspect is not a correct statement of fact.

8. The Ld. DR also could not refute the fact that all these explanations and documents were filed before the Assessing Officer while completing the assessment proceeding. The Ld. DR could not bring on record any material or evidences to show that there was no enquiry or verification on this aspect by the Assessing Officer.

9. The Ld. Counsel further submitted that even at Para 4.1, the contention of the Ld. Pr. Commissioner of Income Tax has already been met with since it is in connection with Para 4 of his order. However, on the remaining part of the order of the Ld. Pr. Commissioner of Income Tax at Para 4.1 that there might be certain domestic transactions of the company which may had impact on the decline of net profit drastically compared to assessment year 2013-14, the Ld. Counsel contended that the Ld. Pr. Commissioner of Income Tax is only anticipating without any specific reasons for his findings. The Ld. Counsel for the assessee also submitted that the Ld. Pr. Commissioner of Income Tax in his order should enshrine reasons why

the order of the Assessing Officer is erroneous so as to be prejudicial to the interest of the Revenue and no such reasons have been given by the Ld. Pr. Commissioner of Income Tax.

10. On the contrary, it has been demonstrated that the Assessing Officer has made sufficient enquiry and the assessee had responded to by filing entire details called for by the Assessing Officer explaining the increase of foreign exchange loss and decrease in net profit. Even though there is huge loss shown by the assessee in its profit & loss account but such loss is mainly because of forex loss debited to profit & loss account which amount has actually been added back in computation of total income. In other words, the assessee did not claim any deduction for the forex loss. If the effect of such forex loss from profit & loss account is removed, there is, in fact, positive income which is rather progressive vis-à-vis the preceding year. In fact the assessee had submitted vide letter dated 16.03.2021 before the Ld. Pr. Commissioner of Income Tax that there was increase in profit (excluding forex loss) vis-à-vis increase in turnover. The assessee has explained under tabulated form which is on record as part of the submissions made before the Ld. Pr. Commissioner of Income Tax and from the table it is evident that profits (excluding foreign exchange loss) for the year have increased by 18.35% vis-à-vis increase in turnover is meager 4.77%. The Ld. Pr. Commissioner of Income Tax has not specifically dealt with these details filed by the assessee.

11. That at Para 4.2, the Ld. Pr. Commissioner of Income Tax has observed that Rs.0.847 crores were paid to Viraj Enterprises for contractual labour supply for the whole year for production etc. and that payment of Rs.3.447 crores was given to Gestamp Global Tooling for technical assistance for tools etc. That further during assessment proceeding, the assessee had declared

sub-contracting charges dues to its sister concern of Rs.1.027 crores. The Ld. Pr. Commissioner of Income Tax stated that the Assessing Officer did not make any enquiry in this aspect. It was demonstrated before us by the Ld. Counsel for the assessee that in fact, during assessment proceedings before the Assessing Officer, they had furnished a letter dated 08.09.2017 wherein they had explained all these issues before the Assessing Officer. Furthermore, it was brought to our notice that so far as sub-contracting charges paid to Gestamp Global Tooling figure was not Rs.3.447 crores but was Rs.1.02 crores.

12. In so far as Rs.0.847 crores paid to Viraj Enterprises for contractual labour supply for production etc. is concerned, the Ld. Pr. Commissioner of Income Tax summarily mentioned that the amount was paid to this extent. He has not stated as to why this amount was not to be allowed by the Assessing Officer. Simply because certain amount has been paid to labour contractor cannot, in itself, render the assessment order erroneous so as to be prejudicial to the interest of the revenue.

12.1 As regards the payment of Rs.3.447 Crores paid to Gestamp Global Tooling for technical assistance for tools and die setting etc., it is seen that the assessee, in fact, paid Rs.1.027 crores and not Rs.3.447 crores as alleged by the Ld. Pr. Commissioner of Income Tax. The version of the assessee is fortified from Form 3CEB wherein payment of Rs.1.027 crores has been shown as paid to Gestamp Global Tooling as sub-contracting charges. However, the assessee suo-motu disallowed the same amount in its computation of total income u/s.40(a) of the Act, as is verifiable from Page 38 of the paper book which is part of Form 3CEB furnished by the assessee. If the amount of Rs.1.027 crores has been suo-motu disallowed by the

assessee, this, in itself, cannot render the assessment order prejudicial to the interest of the revenue.

12.2 The next issue discussed by the Ld. Pr. Commissioner of Income Tax at para 4.3, by which he has noted that the assessee did not pay tax arrears and filed Form No.4 qua Vivad se vishwas Act, 2020. He held that Vivad-se-vishwas Act, 2020, provides for an immunity for the issues which are verified and additions made against them and dismissed the appeal and not for the issues which remained unverified. We fail to comprehend as to how amount paid or not paid under Vivad se vishwas Act, 2020, renders the assessment order erroneous so as to be prejudicial to the interest of the revenue. Availing benefit of this scheme post, the passing of the assessment order cannot be construed as determinative of assessment order amenable to revisionary jurisdiction u/s.263 of the Act.

12.3 In this regard, the Ld. Counsel for the assessee has placed strong reliance on the decision of the Pune Bench of the Tribunal in the case of **Nalco Company USA Vs. CIT, ITA No.1217/KOL/2017** for the assessment year 2011-12 dated 05.02.2021 and on the decision in the case of **Spectra Shares & Scrips (P). Ltd. Vs. Commissioner of Income Tax, (2013) 36 taxmann.com 348 (Andhra Pradesh)**.

13. Per contra, the Ld. DR has supported the order of the Ld. Pr. Commissioner of Income Tax and has placed reliance on the decision of the Hon'ble Bombay High Court in the case of **Vedanta Ltd. Vs. Commissioner of Income Tax (2021) 124 taxmann.com 435 (Bombay)** wherein it has been held that where assessment was completed without proper inquiries, Commissioner was competent to invoke revisional jurisdiction and direct Assessing Officer for fresh assessment. We find that this decision is substantially different in facts as compared to the case before us since in the

facts and situation of the case before the Hon'ble Bombay High Court, there was finding no enquiry was conducted by the Assessing Officer. However, in the present case, we have examined in reference to the shortcomings in the assessment order as alleged by the Ld. Pr. Commissioner of Income Tax vide Paras 4, 4.1 and 4.2 of his order, that the assessee had demonstrated each and every aspect of such queries raised before the Assessing Officer. The Ld. DR also could not refute the fact that necessary documents were placed before the Assessing Officer and he also could not bring on record any material/evidence to show that the Assessing Officer has not conducted any enquiry. Rather, we have observed that questions were asked and in response thereto, the assessee had given reply to each and every queries raised by the Department.

14. It is a settled position of law while assuming jurisdiction u/s.263 of the Act, the Ld. Pr. Commissioner of Income Tax should specifically state the reasons why the order of the Assessing Officer was erroneous in so far as prejudicial to the interest of the revenue by supporting factual evidences and reasoning which in this case is absent. We take guidance from the decision of the Hon'ble Andhra Pradesh High Court in the case of **Spectra Shares & Scrips (P) Ltd Vs. Commissioner of Income Tax (supra.)** wherein it was held by the Hon'ble High Court that *"the correspondence exchanged between the parties shows that the Assessing Officer raised specific queries about the business activity of the assessee. The assessee had also given details computation of capital gains under various categories. It is settled law that the Assessing Officer is not called upon to write an elaborate judgment giving detailed reasons. Merely because the order does not contain reasons as to why he accepted the case of the assessee, his order does not become susceptible for revision."*

15. The Pune Bench of the Tribunal in the case of **Nalco Company USA Vs.**

CIT (supra.) on this issue has held and observed as follows:

“13. Having found that the ld. CIT was not justified in revising the assessment order under the normal provisions of section 263, let us have a look at enlarged scope of revision under Explanation 2 to section 263(1), which was taken recourse to by him. We have held supra, in principle, that the Explanation is applicable to the assessment year under consideration. This Explanation states that an assessment order shall be deemed to be erroneous and prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner, the assessment order is deficient on any one or more of the four counts. The words ‘if, in the opinion of the Principal Commissioner or Commissioner’, used in the opening part of the Expl. 2 before referring to four situations as discussed in clauses (a) to (d), do not denote any arbitrary, subjective or unsubstantiated opinion of the CIT. Such an opinion as to the prevalence of one or more of such situations must be objective, logical and tenable in law. If albeit the Pr. CIT or CIT opines about the existence of one of the four clauses, but, on the facts and in the circumstances of the case, the same is non-existent, then the formation of such an opinion cannot be countenanced. To put it differently, the existence of one or more of the four situations discussed in the clauses (a) to (d) is a sine qua non for exercise of the jurisdiction under the Explanation 2.

14. Now, we proceed to examine if the case falls in either of the four clauses of the Explanation 2. Though the ld. CIT has taken express recourse to the Explanation 2 but he did not specify any particular clause.

15. Clause (a) deems an assessment order erroneous and prejudicial if it is passed without making inquiries or verification which should have been made. On facts, it is established that the AO did make preliminary inquiry at the first instance by seeking relevant explanation and then after verification, carried out a detailed enquiry on the aspect, which was elaborately replied by the assessee. Thus, the case cannot fall under clause (a).

16. Clause (b) is triggered where the order is passed allowing any relief without inquiring into the claim. Here again, we find that the prescription of this clause is not satisfied. Though the order was passed allowing relief but it was not ‘without inquiring into the claim’. The inquiry was duly conducted and the reply of the assessee was sought which was also given and then examined.

17. Clause (c) is magnetized where the order has not been made in accordance with an order of direction or instruction issued by the Board u/s.119. The ld. CIT has not referred to violation by the AO of any order, direction or instruction issued by the CBDT.

18. Clause (d) is attracted when the order passed by the AO is not in accordance with any decision rendered by the jurisdictional High Court or the Supreme Court in the case of the assessee or any other person. This clause refers to the decisions rendered by the jurisdictional High Court or Supreme Court only and not other judicial authorities. The ld. CIT, in the impugned order, has referred to certain decisions to support his case which have been discussed on pages 17 to 19 of his order. The

first decision is of the Tribunal, the second of the AAR, the third and the fourth again of the Tribunal and the last of the AAR, which do not satisfy the requirement of the decisions rendered by the jurisdictional High Court or Supreme Court. Only one decision satisfying the requirement of clause (d) is that of Hon'ble Supreme Court in GVK Industries Ltd. (supra). That was a case in which the appellant, an Indian company, was incorporated for setting up the MW Gas based power project in Andhra Pradesh. With intention of utilizing the expert services of qualified and experienced professionals who could prepare a scheme for raising the required finance and tie up the required loan, it sought services of a consultant and thereafter entered into an agreement with ABB - Projects & Trade Finance International Ltd., Zurich, Switzerland. The Switzerland company offered its services as Financial Advisor to its project for which it was paid a certain amount as 'Success fee'. The assessee's request for no deduction of tax at source was not accepted. When the matter came up before the Hon'ble Supreme Court, it was held that the Consultancy Services rendered by the Switzerland company were in the nature of 'Fees for Technical services' and the income was to be charged in the country where the source of payment was located. On going through the factual panorama in the case of GVK Industries (supra), we find that it is an absolute mismatch to the Head Quarter service fee received by the assessee under consideration. Thus, clause (d) also fails.

19. Even though the ld. CIT was rightfully entitled to take recourse to the Explanation 2, but thereafter he needed to bring the case within any one or more of the four clauses given therein. It is palpable that none of the four clauses of the Explanation 2 applies to the case under consideration. The sequitur is that the revisionary power, even under the enlarged scope of the Explanation 2, was not legally exercisable. Ex consequenti, we set aside the impugned order.”

16. Taking totality of facts and circumstances and aforesaid judicial pronouncements, we hold that resorting to revisionary jurisdiction u/s.263 of the Act by the Ld. Pr. Commissioner of Income Tax in this case is not valid in law and hence, we quash the impugned order of the Ld. Pr. Commissioner of Income Tax.

17. In the result, **appeal of the assessee is allowed.**

Order pronounced on 20th day of October, 2021.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 20th October, 2021.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT, Pune-3
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच,
पुणे / DR, ITAT, "C" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	12.10.2021	Sr.PS/PS
2	Draft placed before author	18.10.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		