



IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.265/CTK/2018
Assessment Year : 2013-14

Emerald Minerals Exim (P) Ltd., At:Mastana Road, Buxi Bazar, Cuttack	Vs.	Pr. CIT, Cuttack
PAN/GIR No.AABCE 3472 A		
(Appellant)	..	(Respondent)

Assessee by : Shri K.K.Bal, AR
Revenue by : Shri M.K.Gautam, CIT, DR

Date of Hearing : 21/10/ 2020
Date of Pronouncement : 10/12/2020

ORDER

Per C.M.Garg,JM

This is an appeal filed by the assessee against the order u/s.263 of the Act of the Pr. CIT, Cuttack dated 30.3.2018 for the assessment year 2013-14.

2. The appeal is time barred by 6 days. After considering the submission of the assessee and the condonation petition, we are satisfied that the assessee was prevented by sufficient cause for filing the appeal belatedly by 6 days. Hon'ble Allahabad High Court in the case of Ganga Sahai Ram Swarup and another vs. ITAT, 271 ITR 512 (All) held that the delay of short period should be condoned because the assessee was not

going to gain anything out of it. In view of above, we condone the delay of 6 days and admit the appeal for adjudication.

3. The assessee has raised the following grounds:

"1. For that the order of the forum below is arbitrary and illegal in the facts and circumstances of the case, hence liable to be quashed.

2. For that in course of assessment, AO enquired into all the issues including the issues raised by Id CIT by issuing questionnaires. After examining the details furnished and discussion with AR of the assessee, AO allowed the claims of the assessee without discussing about the issue in the assessment order, which does not mean that he has not made any enquiry.

3. For that Pr. CIT intends to reframe the assessment by substituting his subjective opinion in place of the AO which is not permissible under the law.

4. For that the AO has made enquiry and even if it is inadequate that would not by itself give rise an occasion to the CIT to pass an order u/s.263 of the Income tax Act. Therefore, the present order is without jurisdiction and liable to be quashed.

5. For that the fact which has already been examined by the AO the direction of the pr. CIT to reexamine amounts change of opinion. Therefore, the order passed by exercising u/s.263 is illegal and liable to be quashed."

4. Briefly stated the material facts are that the assessee company was engaged in the business of trading/commission sales of Iron Ore Fines under the name and style of M/s. Emera land Mining Private Limited. In the assessment order under section 143(3), passed on 29.3.2016, the Assessing Officer determined the total income at Rs.17,39,400/-, inter disallowing the claim of the assessee under the various heads as under:

- i) Disallowance of ground loss : Rs.5,25,500/-
- ii) Disallowance of mining expenses: Rs.4,32,036/-
- iii) General Expenses : Rs.2,35,994/-
- iv) Registrar of companies expenses: Rs. 12,700/-

Thereafter, Learned Pr. Commissioner of Income Tax (PCIT), on verification of assessment record noticed that there are some discrepancies in the assessment order, which rendered the order erroneous and prejudicial to the interest of the revenue. He noted the following discrepancies:

- i) Unsecured loan of Rs.10,00,000/- taken from creditor Shri Pradip Mandal.
- ii) Rent of Rs.80,000/- paid by the assessee to M/s. Kwality Confront Pvt Ltd.,
- iii) Professional fees of Rs.2,35,000/- paid in excess of Rs.20,000/- on different dates.

Therefore, the Pr. CIT on 18.7.2017, required the assessee to show cause as to why the assessment order so allowing the claim not be subjected to revision under section 263. In response to show cause notice, it was submitted by the assessee as under:

- i) As regards unsecured loan of Rs.10,00,000/- from Shri Pradip Mandal, the assessee submitted that the loan of Rs.9,00,000/- was given by HSBC vide cheque No.049550 dated 2.9.2011 and Rs.1,00,000/- was given by SBI vide cheque No.047545 dated 2.9.2011

- and the entire amount was refunded alongwith interest.
- ii) Security deposit of Rs.80,000/- paid to M/s Kwality Confront Pvt Ltd., was debited to P&L account as the contract was for a period of 4 years and as the assessee left the place before the stipulated period and the security deposit was forfeited as per the terms of the agreement.
 - iii) Regarding cash payment of rs.2,35,000/- in six different dates to Advocate Neeraj Singh, it was submitted that those expenses are out of pocket expenses for getting fight tickets for two arbitrators and once senior lawyer from Kolkata and their hotel accommodation at Delhi including charges of Arbitration and local conveyance."

None of these submissions, however, impressed the Id PCIT. With regard to loan creditor of Rs.10,00,000/- the PCIT was of the view that the assessee failed to furnish necessary details regarding creditworthiness of the loan creditor Shri Pradip Manda but the AO overlooked this aspect while completing the regular assessment. The AO could have issued summons to the creditors under section 131 of the Act, which was also not done. As regards to security deposit of Rs.80,000/-, Id PCIT was of the view that the security deposit is in the nature of capital expenditure and refundable but the AO has failed to verify this aspect and allowed the claim of the assessee. With regard to professional fees of Rs.2,35,000/- paid to Advocate, Id Pr CIT was of the view that the payment was made in contravention of provisions of section 40A(3) of the Act, hence, it was to be disallowed. The AO had not examined the application

of section 40A(3) of the Act on the payments of Rs.2,35,000/-. In view of above, Id PCIT observed that the assessment order u/s.143(3) of the Act dated 29.3.2016 is erroneous and prejudicial to the interest of the revenue and set aside the assessment order and directed the AO to reframe the assessment order after proper appreciation of facts and application of law with the following directions:

- i) The AO is directed to examine the genuineness and creditworthiness of the unsecured loan credit Sri Pradip Mandal of Rs.10,00,000/-. He would conduct necessary inquiries to satisfy himself about the genuineness and creditworthiness of the creditor. In case, the assessee fails to satisfy him, the AO would invoke section 68 of the Act and made necessary addition.
- ii) With regard to security deposit of Rs.80,000/-, the AO would disallow the same as the amount was refundable and thus capital expenditure in nature, unless the assessee is able to prove its claim of pre-mature termination and forfeiture of deposit.
- iii) With regard to violation of provisions of section 40A(3), amounting to Rs.2,35,000/-, the AO would call for necessary bills and vouchers with documentary proof and find out whether the claim of the assessee falls within the exceptional circumstances mentioned in Rule 6DD of the I.T.Rules, 1962. Otherwise, he would make necessary disallowance.

5. Ld counsel submitted that the Assessing Officer issued statutory notices u/s.143(2) and 142(1) of the Income tax Act, 1961 (in short 'the Act'), which was served on the assessee for

necessary compliance and in response to the said notices, the assessee filed reply and also submitted books of account and other relevant documents as called for by the Assessing Officer for examination and there was sufficient and adequate enquiry by the AO. Ld A.R. submitted that the Assessing Officer had made enquiry and after considering and examining the relevant materials placed before him, he completed the assessment. Therefore, it cannot be said that the Assessing Officer has not made any enquiry before passing the assessment order. Ld A.R. submitted that one has to keep in mind the distinction between "lack of enquiry" and "inadequate enquiry". If there was any enquiry, even inadequate that would not be by itself give occasion to Pr. CIT to pass order under section 263 of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of enquiry" that such a course of action would be open.

6. Further reliance was placed on another decision of Hon'ble Delhi High Court in the case of CIT vs International Travel House Ltd., 344 ITR 554 (Del) to submit that the Pr. CIT has no valid jurisdiction to begin a fresh litigation because of the view entertained by him especially in a case when the AO has made sufficient and adequate enquiry on the issue alleged by Id Pr. CIT.

7. Replying to above, Id CIT DR strongly supported the action of

the Id. Pr. CIT and submitted that the AO has not made any enquiry on all three issues noted by Id. Pr CIT in the order in para 2 i.e. show cause notice issued to the assessee u/s.263 of the Act. Further, drawing our attention towards relevant operative part of the impugned order u/s.263 of the Act in paras 7 to 10, Id CIT DR submitted that there was no enquiry by the AO on the issue of loan creditor Shri P.K.Mandal of Rs.10,00,000/-, on security deposit of Rs.80,000/- deposited with Kwality Confront Pvt Ltd., and professional fees paid to various Advocates in contravention of section 40A(3) of the Act. Ld CIT DR vehemently pointed out that the case laws relied by Id counsel for the assessee are quite dissimilar and distinct, therefore, they have no application in favour of the assessee in the present case.

8. Placing rejoinder to above, Id A.R. again drew our attention towards pages 9-14 of APB and submitted that the AO, during the assessment proceedings, issued questionnaire dated 29.10.2015, wherein, Q. No.7 has been posed to the assessee asking the details of long term borrowing from sister concerned, loan from directors, their relatives and associates and other loan & advances and in Q. No.15, the AO asked the assessee to produce the ledger of expenses made by the assessee on various issues including rent, rates and taxes and professional fees, therefore, the AO has

raised queries on all three issues. Ld counsel further drew our attention towards pages 10 to 14 of APB and submitted that the assessee filed all relevant documents before the AO explaining all three issues, therefore, it is a clear case of adequate enquiry and merely because Pr. CIT has not agreed to the view taken by the AO, which was a sustainable view, as per the facts and circumstances of the case, the revisionary authority does not have valid jurisdiction to revise the assessment order u/s.263 of the Act. Ld counsel also placed reliance on the decision of Hon'ble Gujarat High Court in the case of ITO vs Arvind Jewellers, 259 ITR 502 (Guj) and submitted that since the materials are there on the record and same has been considered by the AO and a particular view was taken, the mere fact that a different view can be taken, should not be the basis for an action under section 263 of the Act and it cannot be held to be justified. He, therefore, urged that since the Assessing Officer after conducting proper enquiry and examining the relevant records necessary for assessment has passed assessment order u/s.143(3) of the Act, the revisional proceedings u/s.263 is not justified and same should be quashed.

9. We have heard the rival submissions and perused the record of the case. A perusal of the order dated 30.3.2018, passed under [section 263](#) of the Act makes it evidently clear that the Id Pr. CIT held that the

Assessing Officer had not carried out any enquiry to verify three issues i.e. (i) unsecured loan of Rs.10,00,000/-, (ii) rent of Rs.80,000/- paid to M/s. Kquality Confronts Pvt Ltd., and (iii) professional fees of Rs.2,35,000/- paid in excess of Rs.20,000/- and that the submissions made by the assessee had been accepted by the Assessing Officer without verification and proper enquiry.

10. As regards to loan of Rs.10,00,000/-, the Id Pr. CIT has observed that the assessee has failed to furnish the necessary details regarding the creditworthiness of the loan creditor and, the AO has overlooked this aspect while completing the assessment. From the ledger copy furnished by the assessee in its book, we observe that the assessee has shown closing balance of Rs.10,00,000/- as on 31.3.2013, meaning thereby that the entire loan of Rs.10,00,000/- has been refunded to the loan creditor. When the loan receiving and repaying is reflected in the assessee's book, the transaction between the assessee and loan creditor is proved. Hence, it cannot be said the AO has not enquired the matter. As regards to security deposit of Rs.80,000/- and professional fees of Rs.2,35,000/- towards cash payment, we observe that the AO has not made proper enquiry into the matter and, therefore, the Pr. CIT is justified in directing the AO to revise the assessment order. This omission by the AO tagged the impugned assessment order as erroneous and prejudicial to the interest of the revenue. In view of this, since the assessment has already been

set aside and the AO has been directed by the Id PCIT to re-frame it afresh after giving opportunity to the Assessee and after considering assessee's explanation and all relevant material in accordance with law, therefore, we agree with the CIT and in our opinion, no interference is called for in the order of Id Pr. CIT. We, therefore, dismiss the appeal filed by the assessee by upholding the order passed u/s 263. However, we may note that while passing the fresh assessment order, the AO should take into consideration the repayment of loan of Rs.10,00,000/- by the assessee to the loan creditor, as is reflected in the ledger copy furnished by the assessee. Regarding other two addition, the AO will enquiry into the matter and pass order accordingly.

11. In the result, appeal of the assessee is dismissed with the liberty to assessee to place his explanation to the AO on all three issues restored to his file by Id Pr. CIT by passing order u/s.263 of the Act.

Order pronounced on 10/12/2020.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 10 /12/2020

B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Emerald Minerals Exim (P) Ltd.,
At:Mastana Road, Buxi Bazar, Cuttack
2. The Respondent. Pr. CIT, Cuttack
4. CIT(A) Cutack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack