

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER
VIRTUAL HEARING

ITA No.119/Ind/2021
Assessment Year: 2015-16

M/s. Sahita Construction Company
Bhopal

PAN No.AAQFS2422J : Appellant

V/s

Pr. CIT-1

Bhopa : Respondent

Appellant by	Shri S.S. Deshpande AR
Respondent by	Shri P.K. Mitra, CIT-DR
Date of Hearing	06.01.2022
Date of Pronouncement	07 .02.2022

ORDER

PER MANISH BORAD, A.M.:

The above captioned appeal filed at the instance of the Assessee is directed against the order u/s 263 of the Act of Pr. Commissioner of Income Tax (in short CIT-1, Bhopal dated 25.03.2021 which is arising out of the order u/s 143(3) of the

Income Tax Act 1961(In short the 'Act') dated 11.09.2017 by ITO-3(3)-Bhopal.

The Assessee has raised following grounds of appeal in:

“1.On the facts and in the circumstances of the case of the assessee Ld. Pr. CIT was not justified in holding that the assessment order passed under section 143(3) was erroneous and/or prejudicial to the interests of the revenue.

2. On the facts and in the circumstances of the case of the assessee ld. Pr. CIT was not justified in setting aside the order passed under section 143(3) by the assessing officer by invoking the provisions of section 263.

2. Brief facts of the case as culled out from the records are that the assessee is a partnership firm engaged in the business of civil contractor. Return of income for A.Y. 2015-16 filed on 30.09.2015 declaring income of Rs. 11,13,860/-. Case selected for limited scrutiny through CASS for verifying the contract receipts/fees mismatch, sales turnover mismatch and tax credit mismatch. Notice u/s 143(2) of the Act was served. During the assessment proceedings assessee submitted clarification regarding contract receipts/fees mismatch, sales turnover mismatch and tax credit mismatch which were verified by the ld. AO during the assessment proceedings and after being satisfied the returned income was accepted as assessed income vide assessment order dated 11.09.2017 framed u/s 143(3) of the Act.

3. Subsequently, Ld.Pr. CIT assumed jurisdiction u/s 263 of the Act and issued show cause notice observing that the assessee had made payment of Rs.1,16,71,785/- to the contractor whereas income tax at source was deducted only on payment of Rs.39,49,265/-. Based on this observation Ld. Pr. CIT held that the Ld. AO did not make any enquiry about the fact that whether the assessee was liable to deduct TDS on the balance amount of payments and nothing is on record to show that Ld. AO had made verification as per the provisions of section 194C of the Act. Accordingly the assessment order dated 11.09.2017 framed u/s 143(3) of the Act was held as erroneous and prejudicial to the interest of revenue and the same was set aside with a direction to the Ld. AO to make it *denovo* after proper examination enquiry and verification on all aspects related deduction of tax at source u/s 194C of the Act.

4. Aggrieved assessee is now in appeal before this Tribunal.

5. At the outset, Ld. counsel for the assessee submitted that the case of the assessee was selected for limited scrutiny for verification of limited issues and the same were examined in detail by the ld. AO. The issue of verification of payment to contractors

and application of provision of section 194C of the Act was not part of the limited scrutiny notice nor the case of the assessee was controverted into compulsory scrutiny and therefore there was no occasion for the Ld. AO to examine the issue of payment to contractors in light of provisions of section 194C of the Act. It was also stated by the Ld. counsel for the assessee it has been consistently held by Coordinate Benches of Hon'ble I.T.A.T., that if assessee's case is of limited scrutiny to examine particulars issues then the assessment order cannot be held to be erroneous and prejudicial to the interest of revenue u/s 263 of the Act for those issues for which Ld. AO is not empowered to conduct any verification/examination. To support this contention reliance placed on the following decisions:

- i. *Agrawal Promoters vs. Pr. CIT in ITANo.1708/CHD/2017 (I.T.A.T., Chandigarh)*
- ii. *Mrs. Sonali Bhavsar vs. PCIT ITANo.742/Mum/2019 (I.T.A.T., Mumbai)*
- iii. *Rakesh Kumar vs. CIT ITANo.6187/Del/2015 (I.T.A.T., Delhi)*
- iv. *Baby Memorial Hospital vs. ACIT ITANo.420/Coch/2019 (I.T.A.T., Cochin)*

6. Per contra ld. DR supported the order of Ld. Pr. CIT.

7. We have heard rival contentions, perused the records placed before us. Through this appeal assessee has challenged the

revisionary power assumed by Ld. Pr. CIT u/s 263 of the Act. In the show cause notice u/s 263 of the Act it is stated that Ld. AO has not verified the issue of tax deducted at source on the payments made to contractors in light of the provisions of section 194C of the Act.

8. Now first we need to examine that *“whether the ld. AO was required to examine the issue for payment to contractors and tax deducted thereon”* Perusal of records shows that assessee’s case was selected for limited scrutiny through CASS for verification of “contract receipts/fees mismatch, sales turnover mismatch and tax credit mismatch”. The issue of payment to contractors and tax deducted thereon was never a part of reasons for the limited scrutiny. Therefore, there was no occasion for the Ld. AO to examine this issue for payment to contractors. It is well settled that in case of limited scrutiny matter Ld. AO has to work within the parameters observed by the Central Board of Direct Taxes; instruction dated 29.12.2015 and various other circular issued in this behalf. Since the assessee’s case was selected for limited scrutiny on certain issues and Ld. AO has examined these issues and framed the assessments and the issue of examination of

payment to contractors was not a part of the limited scrutiny reasons, in our considered view, Ld. Pr. CIT erred in assuming jurisdiction u/s 263 of the Act and also erred in holding that assessment order is erroneous and prejudicial to the interest of revenue.

9. We find that our view is supported by the decision of Coordinate Bench Delhi in the case of *Rakesh Kumar vs. CIT ITANo.6187/Del/2015* dated 20.12.2018 which has adjudicated the similar issue observing as follows:

On the 2nd Issue the learned CIT has held that the AO has failed to verify the cash payment made for purchase of goods which are not in conformity with the provisions of section 40A (3) of the income tax act. It is apparent from the audit objection filed before us at page number 30 of the paper book that the case of the assessee was selected for the scrutiny to verify only the cash deposit in the bank account of the assessee. The issue before us is whether assessing officer has made any enquiry with respect to the above purchases. Though, learned assessing officer has obtained the explanation of the assessee with respect to the purchases made by the assessee in cash, whether the learned assessing officer is required to make any such enquiry or not is also an issue. This because of the reason that the learned assessing officer was only required to verify the cash deposit in the bank account of the assessee. In this respect instruction dated 29/12/2015 issued by the central board of direct taxes is very relevant. Apparently the selection of the scrutiny in case of the assessee was also only on the parameters of AIR information. According to para number 2 (iii) the scope of enquiry should be limited only on that aspect only. In such cases, the assessing officer are also directed to confine themselves by questionnaire only to the specific issues pertaining to AIR data and further the wider scrutiny in those cases can only be conducted as per the guidelines and procedures stated in instruction number 7/2014. Therefore according to us when the learned assessing officer was not required to enquire on those issues such as purchases in cash more than specified sum, the learned CIT was not correct in holding that the learned assessing officer has not made due inquiries on that ground

as the verification of the purchases exceeding specified limit in cash was not an issue before the assessing officer. Naturally, he should not have made any enquiry on that aspect. Even though the learned assessing officer has raised the specific questions on that aspect and verified the requisite detail. Therefore, it cannot be said that the order of the learned assessing officer is erroneous and prejudicial to the interest of the revenue on this ground also.

10. In view of this, according to us the order of the learned CIT in assuming jurisdiction under section 263 of the income tax act holding that the order of the learned assessing officer passed under section 143 (3) of the act is erroneous and prejudicial to the interest of the revenue is not correct. Accordingly, the order passed by the learned CIT is unsustainable.

10. In the above referred decision Tribunal has held that when the assessment is taken up for limited scrutiny, Ld. Pr. CIT/CIT cannot hold the assessment order as erroneous and prejudicial to the interest of revenue in respect of issue which was not a reason for selection of the case for limited scrutiny. Similar view also taken in the following decision:

(i) [The Deccan Paper Mills Co. Ltd. v. CIT](#) [1013 & 1035/Pun/2014 - order dated 10.10.2017], ITAT Pune Benches.

(ii) [M/s.Aggarwal Promoters v. Pr.CIT](#) [1708/Chd/2017 - order dated 16.04.2019] ITA Chandigarh Benches.

(iii) [Sanjeev Kr. Khemka v. Pr.CIT](#) [1361/Kol/2016 - order dated 02.06.2017] ITAT Kolkata Benches.

(iv) [M/s. R & H Property Developer Pvt.Ltd. v. Pr.CIT](#) [1906/Mum/2019 - order dated 30.07.2019] ITAT Mumbai Benches.

(v) [Mrs.Sonali Hemant Bhavsar v. Pr.CIT](#) [742/Mum/2019 - order dated 17.05.2019] ITAT Mumbai Benches.

11. We, therefore, respectfully following the judicial precedents and the finding of Coordinate Bench Delhi in the case of *Rakesh Kumar (supra)* hold that Ld. Pr. CIT erred in assuming revisionary powers

u/s 263 of the Act. The impugned order of Ld. Pr. CIT is quashed. Thus in our considered view assessment order dated 11.09.2017 u/s 143(3) of the Act is neither erroneous nor prejudicial to the interest of revenue and the same is restored. All the grounds raised by the assessee are allowed.

12. In the result, Assessee's appeal ITANo.119/Ind/2021 is allowed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 07.02.2022.

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 07.02.2022

Patel/Sr. PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/
DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore