

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य

BEFORE: SMT. DIVA SINGH, JM & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA NO. 30/Chd/2021

निर्धारण वर्ष / Assessment Year : 2016-17

M/s Longia Engineers, # 3082, Sector 20-D, Chandigarh	बनाम	The Pr. CIT Chandigarh-1
स्थायी लेखा सं./PAN NO: AADFL0404G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Tejmoohan Singh, Advocate

राजस्व की ओर से/ Revenue by : Shri Sandip Dahiya, CIT, DR

सुनवाई की तारीख/Date of Hearing : 24/11/2022

उद्घोषणा की तारीख/Date of Pronouncement : 06/12/2022

आदेश/Order

PER VIKRAM SINGH YADAV, A.M.:

This is an appeal filed by the assessee against the order of Learned Principal Commissioner of Income Tax , Chandigarh-1 [in short the 'Ld. Pr. CIT'] passed u/s 263 of the Income Tax Act, 1961 (in short 'the Act') dated 23/03/2021 for assessment year 2016-17, wherein the assessee has taken the following grounds of appeal:

"That the Ld. Principal Commissioner of Income Tax has wrongly assumed jurisdiction under section 263 of the Act to set-aside the assessment order dated 25.08.2018 passed by the Assessing Officer in as much as the order is neither erroneous nor prejudicial to the interest of Revenue and as such the assumption of jurisdiction under section 263 of the Act is beyond his competence.

That the Ld. Principal Commissioner of Income Tax has erred in failing to consider the various replies and submissions placed on record in proceedings before her in the correct perspective which is arbitrary and unjustified.

That the assessment order having been passed by the Assessing Officer after due application of mind and taking into consideration the various replies, material on record and books of account, the action resorted to by the Principal Commissioner of Income Tax is unwarranted and uncalled for.

That the Ld. Principal Commissioner of Income Tax has failed to carry out any enquiry during the course of revisionary proceedings in respect of the issues being raised by her which is mandatory and as such the order passed by her is arbitrary and unjustified.

That the issues in respect of sales/turnover/receipt was scrutinised by the Assessing Officer in depth and as such revising the order passed by the Assessing Officer is arbitrary and unjustified

That the order of Commissioner of Income tax is erroneous, arbitrary, opposed to the facts of the case and is unsustainable in law."

2. Briefly the facts of the case are that the assessee has filed his return of income declaring total income of Rs. 4,71,510/- which was selected for limited scrutiny under CASS and thereafter, after issuance of notice and calling for necessary information / documentation, the assessment was completed under section 143(3) of the Act vide order dt. 25/08/2018 wherein the returned income filed by the assessee was accepted. Subsequently, the assessment records were called for and examined by the Ld. Pr. CIT and a show cause dt. 06/03/2021 was issued and thereafter, after taking into consideration the submissions filed by the assessee but not finding the same acceptable, the assessment order passed by the AO was held erroneous in so far as it was prejudicial to the interest of the Revenue and same were set aside to the file of the AO to pass a fresh order after making necessary inquiry / investigation in light of discussions made in the impugned order.

3. Against the said findings and the order of Ld. Pr. CIT, the assessee is in appeal before us.

4. During the course of hearing, our reference was drawn to the various notices/questionnaire issued by the AO dated 3/07/2017, 28/07/2017, 8/06/2018, 27/06/2018, 29/06/2018 and 13/07/2018 and the responses/submissions filed by the assessee from time to time in response to the said notices during the course of assessment proceedings and it was submitted that the matter has been duly examined by the AO. Further, our reference was drawn to the relevant findings of the Ld. Pr. CIT which are contained at para 5 to 5.1 of the impugned order which read as under:

“5. The facts of the case are that the assessee is a contractor and he is also selling the goods to different parties. The assessee is having retail outlet for electric goods and is doing contractor work for Air Force. As per Profit and Loss account, the assessee has declared sales/receipts from job work at Rs. 1,36,73,469/-, the breakup of which is as under:-

State	Work done
Chandigarh	71,06,3707/-
Punjab	20,87,241/-
Haryana	19,29,821/-
Labour charges not considered Work Contract	25,50,037/-
Total	1,36,73,469/-

From the above table, it is seen that the receipt of Rs. 25,50,037/- are on account of labour charges and has not been considered as work contract. Hence these receipts has not been taken for the purpose of Section 194 C and no TDS has been deducted on these

receipts. Hence the assessee from contract has shown the receipts at Rs. 1,11,23,432/-. On perusal of 26 AS, the assessee has received the following receipts:-

Name of the Party	Total amount received u/s194 C on which Tax has been deducted.
Garrison Engineer Chandigarh	Rs. 87,63,891/-
Garrison Engineer IR and D	Rs. 33,10,3507-
Garrison Engineer Jutooh Shimla	Rs. 10,20,000/-
Total	Rs. 1,30,94,241/-

Hence there is a difference in the receipts as shown by the assessee viz.a.viz. as per Form 26 AS, the detail of which is as under:

State	Receipts as per 26 AS	Receipts declared/ assessed	Non/short assessed
Chandigarh	1,20,74,241 (87,63,891+33,10,350)	71,06,370	49,67,871
Punjab		20,87,241	0
Haryana		19,29,821	0
Himachal	10,20,000	0	10,20,000
Total			59,87,871/-

However, the AO has not taken note regarding the difference in the receipts as per 26 AS and as declared by the assessee and not raised a single enquiry. The AO should call for the bills raised by the assessee and verify the payments received during the year. No third party verification was made to examine whether the receipts shown by the assessee are correct or not. Without examining the facts and documents placed on file, the AO simply accepted the version of the assessee that the receipts shown are excessive than the receipts as per Form 26 AS.

5.1 Even during the course of proceedings u/s 263, the assessee simply stated that Defence department being a Central Government Department its jurisdiction is not limited state wise. The Garrison Engineer Chandigarh is looking after the work at Chandigarh and Punjab and Himachal also and Garrison Engineer IR and D looks after the area falling in Haryana State. The assessee has not furnished any evidence to reconcile the receipts as per 26 AS and as shown by the assessee. The assessee has not filed any documents which proves that all the receipts have been accounted for by the assessee. Even if the claim the assessee is accepted, even then the assessee has declared the total receipts from contract at Rs. 1,11,23,432/-, whereas the total receipts as per form 26 AS are Rs. 1,30,94,241/-. Since the AO has not made any enquiries and has not verified the receipts, the issue remains unexamined and unverified. The assessment made by the assessing officer is therefore held to be erroneous so far as it is prejudicial to the interest of revenue."

4.1 In this regard, it was submitted that as can be seen from above, the Id. PCIT has incorporated a chart in Para 5 of the impugned order passed u/s 263 wherein the assessee has shown contract receipts in the return of income in which total of contract work has been shown as 1,36,73,370/- which is as per the record. It is submitted that in the Income Tax Return, the assessee firm had declared the gross work done in all the States namely Chandigarh, Punjab and Haryana, though allotted by the 3 Garrison

engineers, two stationed at Chandigarh and one at Jatogh Himachal Pradesh. The figures submitted by the assessee in the above mentioned chart appearing at page no 9 of order passed under section 263 of Income Tax Act was for the purpose of reconciliation of figures as per Income Tax return with the figures as per VAT returns filed in the state of Chandigarh, Punjab and Himachal Pradesh. The Ld. PCIT is not correct in mentioning that Rs. 25,50,037/- which is on account of small contracts involving labour charges in which no material is used and is not considered as works contract under VAT law has also not been taken as work done under section 194C, and no tax was deducted on it. The definition of works contract under the VAT Act is different than under the Income Tax. Under the VAT Act, pure labour jobs are non-taxable and are not to be reported in the VAT returns while it is taxable under the Income Tax Act and is also considered for deduction of tax at source under section 194C. It was submitted that the this observation of the Pr. CIT is incorrect that no TDS was deducted on it.

4.2 It was further submitted that the PCIT in para 5.1 of the impugned order stated that the contract income to the tune of Rs 1,11,23,432/- only was shown in the books of accounts and return of income is therefore incorrect. The Pr. CIT has arrived at this figure after deducting labour charges of Rs.25,50,037/- from the declared receipts of Rs. 1,36,73,469/- which do not form part of the works contract under VAT Acts on the presumption that no deduction under section 194C was also made on these labour charges and are not reflected in the Form 26AS. It may be mentioned that the assessee had accounted for a total receipt from contract as Rs 1,36,73,469/- against Rs 1,30,94,241 reported in Form 26AS. In the chart prepared and incorporated at Page 10 of the impugned order, there is mix and match of the facts and figures. The figures in 26AS have been compared with the VAT returns and not with the figure declared in the balance sheet and the return of income. The certificate from the Garrison engineer that the contract awarded by GE Chandigarh extends to the States of Punjab, Chandigarh and Haryana and the work allotted by Garrison engineer Jatogh Shimla HP was for work done in Haryana are enclosed herewith as the jurisdiction of these officers extend across the States wherein the extent of amount released by them is also mentioned which tallies with the amount shown in Form 26AS.

4.3 It was accordingly submitted that as such, there is no difference in the gross receipts declared. On the contrary, it is more than that is reflected in Form 26AS. This confusion it seems has arisen because of issue of jurisdiction of the respective GEs. The certificate from the three GEs are appended herewith which give the extent of their jurisdiction and also certify the amount released to the assessee by them during the year under consideration. The certificate of TDS made by Garrison Engineers under VAT Act were also submitted to prove the extent of work done in each state though allotted by the GE -Chandigarh or HP and this fact is also mentioned on page no 8 of the order passed under section 263 .The certificates were issued by the GE stationed in Chandigarh/Himachal Pradesh but the TDS deducted under VAT was deposited in the States of Punjab, Haryana and Chandigarh. Further, our reference was drawn to the comparative position of receipts as per 26AS, VAT returns and receipts as per books of accounts:

Sr. No	Garrison Engineer of Area	Receipt as per 26AS	Receipt of work contract declared under VAT	Labour charges not forming part of receipt under VAT	Receipt as per books of account	Difference under VAT Act/26AS/Books
1	Chandigarh	Rs. 1,20,74,241/- (87,63,891+33,10,350)	Rs. 71,06,370/- was declared in Chandigarh VAT return. Rs. 20,87,241/- was declared as work done in the State of Punjab. The total receipt out of Rs. 91,93,611/- out of above Rs.1,20,74,241/- allotted by the GE Chandigarh was declared in these two states . (The balance of amount available is Rs. 28,80,630/- out of total receipt as per 26AS-(Rs.1,20,74,241) after deduction of the amount declared under vat returns in Chandigarh and Punjab . This amount of balance also includes a sum of Rs 25,50,037/- which is not chargeable to vat and hence does not form part of the vat returns in these two states . After deduction of amount of Rs 25,50,037/-(which does not fall in the definition of works contract under VAT)from the balance of Rs . 28,80,630 ,the balance figure remains as Rs.3,30,593/-	Rs. 25,50,037/- was on account of labour charges not taxable under VAT receipt,	Rs. 1,20,74,241/- on which TDS deducted under section 194C	
2	Garrison Engineer Jatogh HP	Rs. 10,20,000/-	Shown in work done in Haryana, Rs. 10,20,000/- along-with work allotted by Garrison Engineers at Chandigarh (Rs. 1020,000+ Rs.330593 plus the excess amount of Rs.5,79,228/- declared as work done in the balance sheet over and above the amount as per 26AS)which is Rs 19,29,821/-		Rs. 10,20,000/- plus Rs. 5,79,228/- on which TDS was not deducted being	

					small works orders	
	Total work	Rs 1,30,94,241/-	Rs. 1,11,23,432/-	Rs. 25,50,037/-	Rs. 1,36,73,469/-	NIL

4.4 It was further submitted that the matter relating to wages/labour expenses was not subject matter of limited scrutiny and hence, the same cannot be raised in revisionary proceedings u/s 263 for the first time as held by the various Benches of the Tribunal and that too, without confronting the same to the assessee either as part of the show-cause notice or even during the revisionary proceedings.

4.5 It was accordingly submitted that there is no basis for invocation of section 263 by the Id PCIT as the order passed by the AO is neither erroneous nor prejudicial to the interest of the Revenue.

5. Per contra, the Ld. CIT DR submitted that it is a matter relating to reconciliation of receipts as per Form No. 26AS and the receipt declared by the assessee in the VAT Return and in the income tax return, therefore it would be appropriate that the matter is examined by the AO and in that context, it was submitted that the order so passed by the Ld. Pr. CIT is justified as the AO has failed to carry out necessary and proper inquiries either from the assessee or from the third parties in respect of receipts shown by the assessee during the financial year relevant to the impugned Assessment Year and the matter has accordingly been set-aside to the file of the AO. He accordingly, supported the order and the findings of the Ld. Pr. CIT.

6. We have heard the rival contentions and perused the material available on record. Firstly, on perusal of the notices/questionnaire issued by the AO and the responses/submissions filed by the assessee during the course of assessment proceedings, we find that it is not a case of lack of enquiry on part of the AO and rather, we find that the matter has been thoroughly examined by the AO and after going through the financial statements, tax information available on the IT portal (Form 26AS), the tax returns filed under VAT and service tax laws, the contract receipts have been accepted by the AO as duly offered by the assessee in its return of income.

7. On perusal of the Profit and Loss account, it is noted that the assessee has declared sales/receipts from job work at Rs. 1,36,73,469/- and as per Form 26 AS, the

assessee has been shown as having receipts from three Garrison Engineers totaling to Rs 1,30,94,241/- (on which TDS of Rs 2,68,577/- has been deducted) and the difference is on account of receipts totaling Rs 579,228/- on which TDS has not been deducted. There is nothing on record to support the findings of the Id PCIT that the labour charges amounting to Rs 25,50,037/- are not subjected to TDS u/s 194C and are not forming part of receipts of Rs 1,30,94,241/- as shown in Form 26AS. The fact that the labour charges are not treated as works contracts under VAT laws doesn't take the same outside the ambit of section 194C of the Act. The receipts thus disclosed by the assessee in its profit/loss account and correspondingly, in the return of income are thus reconciling and in any case, the receipts reported in the return of income are more than disclosed in Form 26AS and thus, on this account, where the AO has accepted the receipts disclosed in the return of income, the order so passed by the AO cannot be held to be erroneous in so far as prejudicial to the interest of the Revenue.

8. Further, on perusal of records, it is also evident that the assessee has been allotted work by three Garrison Engineers under the Ministry of Defence, namely, Garrison Engineer, Chandigarh, Garrison Engineer, I R& D and Garrison Engineer, Jutogh and the execution of work is spread over two states namely, Punjab, Hayana and UT Chandigarh requiring the assessee to seek separate VAT registrations and file separate VAT returns in these states/UT. As per VAT returns, the total receipts have been shown at Rs 1,11,23,432/- which after adding receipts of Rs 25,50,037/- towards labour charges (not subject to VAT and hence, not part of disclosure under VAT returns) equates with total receipts of Rs 1,36,73,469/- as shown in the profit/loss account. On this account as well, we find that there is no error in the order of the AO while accepting the gross receipts as declared by the assessee in the return of income and the order so passed by the AO cannot be held to be erroneous in so far as prejudicial to the interest of the Revenue.

9. Lastly, we agree with the contention of the Id AR that the matter relating to wages/labour expenses which was not subject matter of limited scrutiny cannot be raised in revisionary proceedings u/s 263 for the first time. It is now a settled position as held by the various Benches of the Tribunal that the matter which was not subject matter of limited scrutiny cannot be raised in revisionary proceedings u/s 263 and

thereby enlarging the scope of limited scrutiny and broadening the scope of jurisdiction that was originally vested with the A.O.

10. In light of the aforesaid discussions and in the entirety of facts and circumstances of the case, we are of the considered opinion that there is no justifiable basis to invoke the provisions of section 263 as the order passed by the AO cannot be held to be erroneous in so far as prejudicial to the interest of the Revenue and the order so passed by the Id PCIT is hereby set-aside and that of the AO is sustained.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 06/12/2022.

Sd/-

दिवा सिंह
(DIVA SINGH)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

Date: 06/12/2022

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

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar