

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

आ.अ.सं./ITA No.322/SRT/2023 (AY 2018-19)

(Hearing in Physical Court)

Hasumatiben Jagdishbhai Patel 80 Shree Ram Estate, Opp. Pandesara Petrol Pump Bhedwad, Surat-394220 PAN : AAOPP 1698 K	Vs	Principal Commissioner of Income-tax, Valsad, 301, 3 rd Floor, Income Tax Office, Palak Arcade, Shanti Nagar, Tithal Road, Valsad-396001
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारित की ओर से /Assessee by	Shri Rasesh Shah, CA
राजस्व की ओर से /Revenue by	Shri Ashish Pophare, CIT-DR
अपील पंजीकरण/Appeal instituted on	08.05.2023
सुनवाई की तारीख/Date of hearing	22.11.2023
उद्घोषणा की तारीख/Date of pronouncement	22.11.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of learned Principal Commissioner of Income tax-Valsad [for short to as 'Ld. PCIT'] passed under section 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.03.2023 for assessment year (AY) 2018-19. The assessee has raised the following grounds of appeal:-

"1. On the facts and circumstances of the case as well as law on the subject, the learned Pr. CIT has erred in passing the order u/s 263, although the assessment order passed u/s 143(3) r.w.s. 143(3A) & 143(3B) of the I.T. Act, 1961 was neither erroneous nor prejudicial to the interest of the revenue.

2. On the facts and circumstances of the case as well as law on the subject, the learned Pr. CIT has erred in holding that loan processing charges of Rs.3,68,630/- are capital in nature and required to be disallowed and thereby erred in setting aside the assessment with the direction to frame the assessment de novo after inquiring into the issue of disallowance of loan processing charges.

3. It is therefore prayed that above order passed by Pr. CIT u/s 263 may please be quashed or modified as your honours deem it proper.

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

2. Further vide application dated 04.10.2023, the assessee has raised following additional grounds of appeal:

- *On the facts and in circumstances of the case as well as law on the subject, the learned PCIT has erred in raising other issues in the order u/s 263 dated 31.03.2023 without referring them in the show cause notice issued u/s 263 on 10.03.2023.*

3. Brief facts of the case are that assessee is an individual engaged in the trading of acid and chemicals, filed her return of income for assessment year 2018-19 declaring total income of Rs.2.06. crores. The case was selected for “limited scrutiny” on the issue of unsecured loan and details of assets and liabilities. The Assessing Officer after serving statutory notices under section 143(2) issued on 28.09.2019 and further issued notice under section 142(1) for calling for details on the reasons of selection of scrutiny. The assessee filed her reply on 28.02.2020, along with detailed explanation and documents in support thereof. The Assessing Officer on receipt of such reply accepted the returned of income filed by the assessee. Subsequently, the assessment was revised by Ld. PCIT by exercising his jurisdiction

under section 263 of the Act vide order dated 31.03.2023. Before passing the assessment order, Ld. PCIT issued show cause notice to the assessee vide notice dated 10.03.2023. In the show cause notice, Assessing Officer noted that on verification of record, he noted that assessee has debited an amount of Rs.3.68 lakhs on loan processing fees, which is in the nature of capital expenditure. The Assessing Officer should have disallowed the same, however, the same has not been done. The assessee was asked to file her explanation within ten days of receipt of show cause notice. The assessee filed her reply dated 15.03.2023. The contents of show cause notice and reply of assessee is recorded by Ld. PCIT in para-3 and 4 of his order. In the reply, assessee submitted that her case was selected for “limited scrutiny” on two issues (i) unsecured loan and (ii) details of assets and liabilities. On furnishing complete details along with documentary evidence in support thereof, the assessment was completed by accepting her return of income. The assessee further explained that issue of loan processing fees, is no way directly or indirectly connected with any of the aforesaid “limited scrutiny” issue, which cannot be considered as a mistake apparent on record and no addition is called by disallowing the legitimate expenses of Rs.3.68 lakh on account of r loan processing fees during the year under consideration. The assessee requested to drop revisional proceedings. The assessee in her without prejudice submission, submitted that even otherwise, no disallowance is called for the

reasons that assessee carrying business of trading of acid & chemicals, *wherein* majority of goods are purchased from Limited Companies and sales thereof is made to various persons. The assessee engaged in trading activities and no manufacturing activities was carried out by assessee. The assessee neither owned any factory building or plant & machinery in earlier year nor purchased any factory building or plant & machinery in the year under consideration for her business activities. Such fact can be verified from the audited annual accounts, copy of which was furnished as majority of purchase from limited companies. The payments for purchase acid and chemical had to be made an advance to the said companies, *wherein* the sales were made on credit basis giving credit of minimum 90 days to customers. Thus, funds were required for working capital in the business. For business purposes, assessee availed overdrafts facilities from HDFC Bank in earlier year and also availed overdrafts facilities from Axis Bank during the year under consideration for day-to-day requirements. The assessee incurred expense of Rs.3,68,630/- for cash credit renewal charges, franking charges (stamp duty), mortgage of assets, loan processing fees for new sanction of overdraft facility, which is purely in the nature of revenue and cannot be capitalized. The assessee furnished copy of ledger account with complete details of such expenses. The assessee reiterated that such expenses are purely revenue in nature

and cannot be capitalized. The assessee made prayer to drop the proceedings under section 263.

4. The Ld. PCIT after considering the submission of assessee held that as per the contention of assessee, loan processing charges were paid for obtaining overdrafts fees. However, assessee failed to establish the use of overdrafts amount which would have established the nature of loan processing fees whether the capitalized or not and which is yet to be plugged. The other issues involved in the assessment order, are pertaining to unsecured loan and ascertain liabilities. The Ld. PCIT further noted that assessee has claimed interest for unsecured loan of Rs.7,94,882/- to pay non-resident Indian (NRI) against unsecured loans, which is reflected in the audited report and amount of loan taken as per audited report do not tally with the loan. The Tax Deducted at Sources (TDS) payable to huge expenses, however, interest on delayed payment of TDS is not accounted nor paid. The Assessing Officer has not verified the issue pertaining to unsecured loan and ascertaining liability on account of capital and loan. The Ld. PCIT by referring certain case law of higher courts held that assessment order is passed without making enquiry and through verification on the issues which ought to have been made in the present case. The assessment order was held to be erroneous and in so far as prejudicial to the interest of revenue. The assessment order passed on 08.09.2020 was set aside with a direction to frame assessment *de novo* after giving reasonable opportunities of being

heard to assessee. Aggrieved by the order of Ld. PCIT assessee has filed present appeal before Tribunal.

5. We have heard the submission of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Commissioner of Income-Tax-Departmental Representative (Ld.CIT-DR) for the Revenue. The Ld.AR for the assessee submits that case of assessee was selected for “limited scrutiny” on the issue of unsecured loan and details of assets and liabilities. Such issue was thoroughly examined by Assessing Officer by issuing necessary questionnaire and assessee filed completed details with evidence. The assessing officer on receipt of such explanation and evidence, was fully satisfied and accepted the return of income without any variation. As the case was selected for “limited scrutiny” the Assessing Officer has no authority to examine any other issue except on which it was selected. The Ld. AR for the assessee submits that Ld. PCIT in his show cause notice identified the issue other than the issue of “limited scrutiny”. The assessee while filing her reply against show cause notice explained the fact that loan processing fees is in no way directly or indirectly connected with the issues of “limited scrutiny”. Even on merit, the assessee explained that assessee availed loan for day-to-day working capital for making advance payment for purchase of goods / chemicals from limited companies as the sales were made on credit. The loan credit facilities / overdrafts were availed in earlier year from HDFC Bank and new overdrafts facilities from Axis Bank during the year under

consideration. The old overdrafts were availed for day-to-day working capital requirement the expenses incurred for such expenses were revenue in nature and were not to be capitalized. The assessee furnished complete details thereof. The Ld. PCIT instead of giving his finding on the issue identified in his show cause notice, exceeded his jurisdiction by examining the other issue which was not subject-matter of show cause notice and giving opportunity of hearing on such issue without issuing any show cause, gave his finding that assessee claimed interest expenses to NRI and such incurred huge expenses on interest on account of delayed payment of TDS or that such issues were not verified. The Ld. PCIT gave his observation / findings without giving any opportunity of such additional issue. The Ld. AR for the assessee submits that without giving any opportunity on the issue which was not subject-matter of show cause, the order passed by Ld.PCIT under section 263 to that extent is absolutely illegal invalid and *ab initio*. So far as primary issue, which was identified in the show cause notice, no finding on the issue was given by Ld. PCIT nor considered the explanation and evidence furnished by assessee and simply directed the Assessing Officer to frame “the assessment order *de novo*”. The Ld. AR for the assessee further submits that it was not open for the Commissioner to exercise his jurisdiction to find fault in the assessment order on the issue which was not covered in the “limited scrutiny”. To support such view, Ld. AR for the assessee relied upon the decision of Hon’ble Orissa High

Court in the case of PCIT Vs. Shark Mines and Minerals (P.) Ltd. [2023] 151 taxmann.com 71 (Orissa) [02-03-2023] and also other various case laws of various Benches of Tribunal, including in JRD Tata Trust Vs. DCIT [2020] 122 taxmann.com 275 (Mumbai – Trib.); M/S Sahita Construction Co. Vs. PCIT in ITA No.119/Ind/2021 dated 07.02.2022.

6. The Ld. AR for the assessee further submits that even otherwise that loss of revenue has consequent of order of Assessing Officer cannot be treated as prejudicial to the interest of revenue, when the Assessing Officer has adopted courses permissible in law and it has resulted in loss of revenue; *where* two views are possible and the Assessing Officer has taken one of the view, to which the Commissioner does not agree with and treated as an erroneous and prejudicial to the interest of revenue, unless the view by Assessing Officer is unsustainable in law. To support such view Ld. AR for the assessee relied on the decision of Hon'ble Apex Court in the case of Malabar Industrial Co. Ltd. vs. CIT [200] 109 Taxman 66 (SC) [2000] 243 ITR 83 (SC)/[2000] 159 CTR 1 (SC)[10-02-2000] and CIT vs. Kwaliti Steel Suppliers Complex [2017] 84 taxmann.com 234 (SC)/[2017] 250 Taxman 23 (SC)/[2017] 395 ITR 1 (SC)/[2017] 297 CTR 553 (SC)[21-03-2017]. The Ld. AR for the assessee submits that he has also raised an additional ground of appeal, which is purely a legal issue and does not require to bring any new facts on record. The

facts for adjudication of additional ground of appeal is emanating from the order passed by Ld. PCIT itself.

7. On the other hand, Ld. CIT-DR for the Revenue supported the order of Ld. PCIT. The Ld.CIT-DR for the revenue submits that Assessing Officer has passed a very cryptic order and accepted the return of income filed by assessee, in writing two sentences only “that notice under section 142(1) were issued calling for details on the reasons for selection of scrutiny” or that assessee has filed her reply. The assessment order is silent on the issue of scrutiny. The Ld.CIT-DR for the Revenue submits that Ld. PCIT while passing final order has given direction to the Assessing Officer to pass *de novo* assessment order after given full opportunity to assessee.
8. We have considered the rival submission of both the parties and have gone through the order of lower authorities carefully. We have also deliberated on various case law relied by Ld. AR for the assessee. We find that assessment order was selected for “limited scrutiny” on the issue of unsecured loan and details of assets and liabilities. We find that Assessing Officer on seeking certain details on the issue accepted the return of income filed by assessee though the Ld. PCIT revised the assessment order by taking view that expenses of Rs.3,68,630/- on account of loan processing fees was in the nature of capital expenditure. On such issue, the Ld. PCIT issued show cause notice. We find that in reply to the show cause notice issued by Ld.PCIT, the assessee explained complete facts in details and submitted that such

expenses were incurred / debited on account of availing credit facilities (overdraft facilities) and paid franking charges, loan processing fees for new sanction of overdrafts facility. The assessee clearly explained that overdrafts facilities were availed by smooth running of business. The overdrafts facilities were availed for day-to-day working capital requirement. The assessee also explained that she was engaged in trading activities of acid and chemicals and such overdrafts were availed for making advance payments to the manufacturer / suppliers for such goods. We find that to support such contention, the assessee furnished complete details of her financial statement in the form of audited accounts. We find that such reply was not considered by Ld. PCIT, which was coupled with evidence, however, while passing the order under section 263, he identified some other issues which was related with repayment loan and interest to NRI, which was not subject-matter of notice issued under section 263 of the Act. Admittedly, no notice under section 263 or opportunity on such new issue was given by Ld. PCIT. Thus, we are of the considered view that issues, which was not the subject-matter of the show cause notice or neither any opportunity of being heard was granted to assessee on such new issue, the same cannot be made basis for revising the assessment order.

9. So far as primary issue identified in the show cause notice under section 263, we find that once the assessment was selected for “limited scrutiny” and the Assessing Officer examined such issue, it is

not open for the ld PCIT to exercise his jurisdictional power under section 263 on the issues which were not covered in the “limited scrutiny”. Therefore, action initiated by Ld. PCIT for revising such issue was not justified in nature. Even on independent examination of issue we find that the assessee incurred expenses of Rs. 3.68 lakhs for availing overdraft facilities, which was otherwise in the nature of revenue expense and was not to be capitalised, therefore, in allowing/ accepting such expenses, the assessment order is not be branded as erroneous. Therefore, the twin conditions for revising the assessment order will not be otherwise available to the ld PCIT. In view of the aforesaid discussion and observation, order passed by Ld. PCIT under section 263 is quashed. This ground of assessee’s appeal is allowed.

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

Order pronounced in the open court on 22/11/2023.

Sd/-

(Dr ARJUN LAL SAINI)

[लेखा सदस्य/ACCOUNTANT MEMBER]

Surat, Dated: 22/11/2022

Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. PCIT
4. DR
5. Guard File

// True Copy //

Sd/-

(PAWAN SINGH)

[न्यायिक सदस्य JUDICIAL MEMBER]

By order

Sr.P.S./Assistant Registrar, ITAT, Surat