

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "B", CHANDIGARH**

**BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
Shri R.L NEGI, JUDICIAL MEMBER**

आयकरअपीलसं./ITA No.27/CHD/2021

निर्धारणवर्ष / Assessment Year :2015-16

M/s Kay Em Kay Industries, 13-H, Textile Colony, Ludhiana	बनाम	Pr. Commissioner of Income Tax-1, Ludhiana
स्थायीलेखासं./PAN NO: AAEFK8838L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing through video Conferencing

निर्धारितीकीओरसे/Assessee by : Sh. Ashwani Kumar, CA &

Sh. Bhavesh Jindal, CA

राजस्वकीओरसे/ Revenue by : Smt. C. Chandrakanta, CIT

सुनवाईकीतारीख/Date of Hearing : 09.08.2021

उदघोषणाकीतारीख/Date of Pronouncement : 02.11.2021

आदेश/Order

Per R.L. Negi, Judicial Member:

The assessee has filed the present appeal against the order dated 31.03.2021 passed by Principal Commissioner of Income Tax, Ludhiana-1 [for short 'the PCIT'] for the assessment year 2015-16, whereby the Ld. PCIT has set aside the assessment order passed u/s 143(3) of the Income Tax Act, 1961 [for short 'the Act'] holding the same erroneous and prejudicial to the interest of the revenue and directed the AO to pass assessment order afresh after conducting proper enquiry.

2. The brief facts emanating from the record and pleadings of the parties are that the assessee filed its return of income for the assessment year under consideration declaring total income of Rs. 3,72,470/-. The case was selected for scrutiny and the AO passed assessment order u/s 143(3) of the Act and accepted the returned income. Subsequently, the Ld. PCIT set aside the assessment order exercising power u/s 263 of the Act.

3. The assessee has challenged the impugned order passed by the Ld. PCIT on the following grounds: -

1. *That order passed u/s 263 of the Income Tax Act, 1961 by the ld. Principal Commissioner of Income Tax (Central), Ludhiana is against law and facts on the file in as much he has failed to show as to how the assessment order passed by the Ld. Assessing officer is erroneous in as much as prejudicial to the interest of Revenue.*
2. *That the Ld. Pr. CIT was not justified to hold that lack of enquiry on the part of the Ld. Assessing Officer is clearly established from perusal of the record without pin-pointing as to what sort of enquiry should have been made by him.*
3. *That the Ld. Pr. CIT was failed to appreciate the import of detailed submissions made during the course of proceedings u/s 263 while coming to the conclusion that the order passed by the Ld. Assessing officer is erroneous in as much as prejudicial to the interest of the Revenue.*

4. Before us, the Ld. counsel for the assessee submitted that the action of the Ld. PCIT is contrary to the settled principles of law and contrary to the evidence on record. The Ld. counsel further contended that the Ld. PCIT has wrongly held that the AO has passed the assessment order without making proper enquiry. The Ld. counsel

invited our attention to page 28 to 30 of the paper book, which is the copy of notice/letter dated 02.03.2017 and 07.06.2017 issued by the AO to the assessee calling details and documents in connection with assessment proceedings u/s 143(3) of the Act. The Ld. counsel further invited our attention to the copy of point-wise reply to the said letters submitted before the AO, which are available at page 31 &32,33 &34,35 and 36 & 37 of the paper book, to demonstrate that the AO has passed the assessment order after conducting enquiries and accepting explanations of the assessee on each and every point discussed by the Ld. PCIT in order u/s 263 of the Act. The Ld. counsel further pointed out that the assessee in its reply to the notice u/s 263 of the Act made detailed written submissions on merits and on the law points. The Ld. counsel placing reliance on the judgement of the Hon'ble Supreme Court in the case of *Malabar Industrial Co.Ltd. vs. CIT 243 ITR 83 (SC)*, judgment of the Hon'ble Calcutta High Court in the case of *Dwjee Dadabhoy and Co. Vs. SP Jain 31 ITR 872(Cal)*, Hon'ble Karnataka High Court in the case of *CIT vs. Narayana Pal 98 ITR 422 (Karn.)* and Hon'ble Bombay High Court in the case of *CIT vs. Gabriel India Ltd.203 ITR 108(Bom)* submitted that since the order passed by the Ld. PCIT is not in accordance with the ratio laid down by the Hon'ble Supreme Court and the Hon'ble High Courts referred above, the same is liable to be set aside.

5. On the other hand, the Ld. departmental representative DR supporting the order passed by the Ld. PCIT, submitted that since the AO had passed the assessment order without any proper enquiry, the Ld. PCIT has rightly set aside the assessment order holding the same erroneous and prejudicial to the interest of the revenue. The Ld. DR invited our attention to the Explanation 2 to section 263 of the Act which contemplates that an order passed by the AO shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if in the opinion of the PCIT the order is passed with making enquiries or verification which should have been made. The Ld. DR further relying on the cases referred and relied upon by the Ld. PCIT in the order, submitted that since the impugned order is in consonance with the settled principles of law, no further action is required in this matter. The Ld. DR accordingly submitted that the appeal of the assessee is devoid of any merit and liable to be dismissed.

6. We have heard the rival submissions of the parties and also perused the material on record including the cases relied upon by the parties. As pointed out by the Ld. counsel, the Ld. PCIT has revised the assessment order passed by the AO basically on the ground of insufficient enquiry. As pointed out by the Ld. counsel, the assessee has furnished the details of various expenses debited to P &L Account along with comparative chart and vouchers in response to the query No. 3, raised by the AO vide notice/letter dated 02.03.2017. Further, the

assessee has placed on record the details of loan and advances. Reply of the assessee to query No.19 raised by the AO reads as under:-

“Point No.19

As regards details of loans and advances, the detail of the same has been given in schedule ‘F’ attached to Balance Sheet. The loans and advances include advance to others, advance tax, VAT recoverable, TDS recoverable, advance to suppliers, etc. The assessee firm has charged interest on some of the advances given to others. However, interest on advances on which no interest has been charged, has been disallowed by the assessee firm. Accordingly, interest expenditure has been reduced to that extent. Necessary evidence in support of the same are enclosed. As desired, details of sundry sum payable amounting to Rs. 5,26,274/- are enclosed along with proof of payment.”

7. Similarly, the assessee has stated in reply to query No 5 raised by the AO regarding payments exceeding Rs. 50,000/- in contravention of section 40A(3) of the Act, that during the year under consideration, the assessee firm has not made payment exceeding Rs. 20,000/- in contravention of section 40A(3) of the Act.

8. Perusal of the copies of the notices issued by the AO during the course of assessment proceedings and the reply filed along with documents and details filed in response to the said notices suggests that the AO has passed the assessment order after due verification and application of mind on the issues raised by the Ld. PCIT.

In the case of Malabar Industries Co Ltd.vs CIT (supra), the Hon'ble Supreme Court has held that CIT has to be satisfied of twin conditions, that the order sought to be revised is erroneous and that the order is prejudicial to the interest of the revenue. The Hon'ble Court further held that power u/s 263 cannot be invoked to correct each and every type of mistake committed by the AO. In the case of *ITO vs. DG Housing Projects Ltd.* 343 ITR 329 (Delhi) the Hon'ble Delhi High Court has held that revisional power u/s 263 of the Act is normally exercised in the case of no enquiry and not in the case of inadequate enquiry. In the present case the Ld. PCIT has revised the assessment order on the ground of lack of enquiry or inadequate enquiry, which is contrary to the evidence on record. Further the Ld. PCIT has referred and relied Explanation 2 to section 263 of the Act, inserted w.e.f. 01.06 2015 to substantiate his action. The Mumbai Bench of the Tribunal in the case of *Narayan Tatu Rane vs. ITO Mumbai*, 70 taxmann.com 227 (Mumbai-Trib.) has held that the explanation does not authorize or gives unfettered powers to the commissioner to revise each and every order passed by the AO if in his opinion same has been passed without making enquiries or verification which should have been made. In the present case since the AO has passed the assessment order after due application of mind and after accepting the explanation given by the assessee, the same cannot be termed as erroneous. We are therefore of the considered view that the order passed by the AO is not *ex facie* erroneous,

therefore the Ld. PCIT has wrongly directed the AO to pass assessment order afresh. In our considered view the observation of the Ld. PCIT that AO has passed the order without making proper enquiries is not factually correct.

9. Hence, in view of the discussions made in the foregoing paras in the light of the cases referred and relied upon by the assessee, we hold that the findings of the Ld. PCIT that the AO has passed the assessment order without making proper enquiry is contrary to the evidence on record. Therefore, the order passed u/s 263 is not in accordance with the settled principles of law. Hence, we find merit in the contention of the Ld. counsel for the assessee that the impugned order passed by the Ld. PCIT is bad in law. We accordingly allow the appeal of the assessee and set aside the impugned order passed by the Ld. PCIT.

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

Order pronounced on 2nd Nov., 2021.

Sd/-

(N.K. SAINI)

उपाध्यक्ष /Vice President

Dated : 02.11.2021

“आर.के.”

Sd/-

(R.L.NEGI)

न्यायिकसदस्य/ Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT

4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar