

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAIPUR” BENCH, RAIPUR**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI N. K. CHOUDHRY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 263/RPR/2017)
(निर्धारण वर्ष / Assessment Year : 2012-13)

M/s. Bharat Agro Industries Near Bajrang Power, Rajiv Gandhi Ward, Urla Sarora Road, Urla Industrial Area, Raipur (C.G.)	बनाम/ Vs.	Income Tax Officer, Ward 1(3), Raipur
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAHFB8665M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri R. B. Doshi, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri P. K. Mishra, CIT.DR

सुनवाई की तारीख / Date of Hearing	28/07/2021
घोषणा की तारीख /Date of Pronouncement	13/08/2021

आदेश/O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Principal Commissioner of Income Tax-1, Raipur (‘PCIT’ in short), dated 31.03.2017 passed under s.263(1) of the Income Tax Act, 1961 (the Act) whereby the assessment order passed by the Assessing Officer (AO) dated 20.03.2015 under s. 143(3) of the Act concerning AY 2012-13 was sought to be set aside assessment in terms of supervisory directions.

2. As per the grounds of appeal, the assessee has sought to challenge the jurisdiction assumed by the PCIT under s.263 of the Act and as a corollary, sought to impugn the revisional order passed by the PCIT under s.263 of the Act.

3. Briefly stated, the assessee has derived income from manufacturing and trading of Cassia Tora seeds, guwar and tora splits. The assessment order under s.143(3) of the Act for A.Y. 2012-13 was completed by the AO wherein after making some adjustments, the income of the assessee was assessed at Rs.14,61,036/- under s.143(3) of the Act vide order dated 20.03.2015. Thereafter, the PCIT in exercise of its revisionary powers issued show cause notice dated 17.03.2017 under s.263 of the Act requiring the assessee to show cause as to why the assessment so framed under s.143(3) of the Act should not be modified/revised on the ground that such order is erroneous in so far as it is prejudicial to the interest of the Revenue. The show cause notice issued in this regard is extracted herein for ready reference:

“Sub:- Show cause notice for revision u/s 263 of the Act in the case of M/s Bharat Agro Industries, Bhanpuri, Raipur, (C.G.) PAN : PAN: AAHFB8665M for A.Y. 2012-13-regarding

This is to inform you that the undersigned has examined your assessment records for AY. 2012-13 and from the examination of the assessment order passed in your case u/s 143(3) of the Act dated 20.03.2015, it is seen and observed that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of revenue. In the assessment order the AO has allowed deduction and expenses without making proper verification in regard to the allowability of the same. Thus the assessment order being erroneous in so far as it is prejudicial to the interest of revenue, it is proposed to take revisionary proceedings u/s 263 of the Act in this case.

2. However, in the interest of natural justice and fair play, I am giving you an opportunity of being heard and opportunity to furnish

your submission in writing along with documentary evidences if any with regard to following points.

2.1 It is observed that you have paid total amount of Rs.171,22,879/- in cash as shown in the table below for purchase of Cassia Tora Seed, fire wood, rent payment, wage payment exceeding Rs.20,000/- at a time in violation of section 40A(3) of the Act. It is seen that although in the ledger account the same have written as paid through cheque, they have been paid through self cheques. The bifurcation of the sum so paid is as under:

<i>Sl. No.</i>	<i>Name of the Commodity</i>	<i>Agency to whom payment made</i>	<i>Amount</i>
<i>1</i>	<i>Cassia Tora Seed etc.</i>	<i>Various agencies/dalal</i>	<i>Rs.14821817/-</i>
<i>2</i>	<i>Fire wood purchases</i>	<i>Bhawana Timber and Ganesh Timber</i>	<i>Rs.1541029/-</i>
<i>3</i>	<i>Wages</i>	<i>Moti Sahu, Uttam and Swarrop</i>	<i>Rs.610383/-</i>
<i>4</i>	<i>Packing material</i>	<i>Manoj</i>	<i>Rs.100900/-</i>
<i>5</i>	<i>Rent</i>		<i>Rs.48,750/-</i>

However, they are found not disallowed by you as per the provisions of section 40A(3) of the Act. This issue has not been examined by the AO properly.

2.2 It is seen that you have debited Rs.56,92,936/- as Administrative and Selling Expenses in Profit and Loss Account which includes Rs.663558.50 as offices expenses and which have been paid to various agency for the purpose of furniture fitting. Out of the above, expenses of Rs.2,27,000/- incurred in respect of furniture fittings are found to be capital expenditure However, you have not shown such expenditure as capital expenditure and instead you have claimed the same as revenue expenditure and the AO has not examined and verified this issue properly.

2.3 It is observed that you have paid a sum of Rs.118830 /- to Magma Finance as interest without making TDS u/s 194A of the Act. Similarly, a sum of Rs. 147153/- has been paid to Jaika Automobiles for servicing and repair without making TDS u/s 194C of the Act. Further, brokerage of Rs. 8010/- to Fair deal and Rs.7980/- to Goyal sales have been paid without making TDS . The above expenses are not allowable as per the provisions of section 40(a)(ia) of the Act. However, you have not disallowed such expenses u/s 40(a)(ia) of the Act and the AO has not examined and verified this issue properly.

3. In view of the above lapses on the part of the AO such as lack of examination and verification on the part of the AO in respect of the above issue, I find that the assessment order passed by the AO as on 20.03.2015 to be erroneous in so far as it is prejudicial to the interest of the revenue. Hence, it is proposed to revise the said order of assessment by virtue of power vested in me u/s 263 of the Income tax Act, 1961.

4. You are requested to submit your written explanation alongwith the documentary evidences if any as stated above. The hearing in this case

is fixed on 24/03/2017 at 3.30 P.M in my above mentioned office address. Kindly note that in this regard no further adjournment shall be granted and in the case of noncompliance from your side the revisionary proceedings shall be finalized on the basis of the material available on record.”

4. As per the show cause notice, the Revisional Commissioner alleged that; (i) the assessee has incurred an amount of Rs.1,71,22,879/- in cash for purchase of cassio tora seed, fire wood and other expenses such as rent payment, wage payment exceeding Rs.20,000/- in violation of Section 40A(3) of the Act; (ii) A sum of Rs.2,27,000/- incurred towards furniture fitting have been claimed as revenue expenditure whereas such expenditure is capital in nature & (iii) a sum of Rs.1,18,330/- was paid to NBFC company, namely, Magma Finance as interest without making TDS deduction under s.194A of the Act. Similarly, a sum of Rs.1,47,153/- was incurred for servicing and repair without meeting the obligation of deducting TDS under s.194C of the Act. Likewise, allegations were made that brokerage of Rs.8010/- to fair deal and Rs.7980/- to Goyal Sales is without making deductions of TDS. The PCIT accordingly concluded that the provisions of Section 40A(ia) of the Act gets attracted for non-deduction of TDS which has not been examined and verified by the AO properly.

5. Aggrieved by the revisional order in the wake of such allegations, the assessee preferred appeal before the Tribunal.

6. As pointed out to us, there is a delay of about 136 days in filing the appeal. The assessee adverted to his application dated 16.11.2017 seeking condonation of such short delay. It was pointed out that the assessee has changed his counsel after the revisional order which resulted in delay in collecting information and preferring the appeal before the Tribunal. We do not see any

serious prejudice caused to the Revenue for such delay. Keeping in mind, the principles laid down by the Hon'ble Supreme Court in *Collector of land acquisition vs. Mst. Katiji & Ors. 167 ITR 471 (SC)*, we find merit in admitting the appeal of the assessee on merits after condoning the delay. While doing so, we also note that in the similar circumstances, the co-ordinate bench of Tribunal in *Perfect Scale Co. (P) Ltd. vs. DCIT (2013) 60 SOT 255 (Mumbai)*, has noted that such delay is a bonafide error which requires to be condoned. Delay occurred in filing appeal before the Tribunal is thus condoned.

7. We have carefully considered the rival submissions on merits.

7.1 The first allegation concerns infringement of Section 40A(3) of the Act and consequent applicability of Section 40(a)(ia) of the Act. In this regard, it is the case of the assessee that purchases were made from villagers/Tribals who are procuring the seeds and supplying the same to the assessee. Payments were made to the suppliers only. The Sarpanch of several villages have provided sworn statements to the effect that supplies of seeds were made. The copy of identity proof of Sarpanch, villagers and tribals were also furnished. It is thus contended that the payments made by the assessee are covered by the exceptions provided to Rule 6DD(e). It was pointed out that the village area etc. is naxalite prone resulting in handicap in strict compliance of cheque payment. It is thus the case of the assessee that in such a situation, where the PCIT has not raised any doubt about the genuineness of the expenditure, provisions of Section 40A(3) of the Act is not necessarily attracted in view of the several decisions rendered in this regard; viz.: *CIT vs. M/s. Sitaram Anilkumar in Income Tax Reference No. 102 of 1999, order dated 23.08.2011, DCIT vs. Amisha-in-Sky Creations in*

ITA No. 351 to 354/RPR/2014, ACIT vs. R. P. Real Estate Pvt. Ltd. in (2015) 44 CCH 699 (Trib.-Raipur), Anupam Tele Services vs. ITO (2014) 366 ITR 122 (Guj.), A. Daga Royal Arts vs. ITO (2018) 53 CCH 86 (Jaipur Trib.) (2018) 196 TTJ 541 (Jp.) & CIT vs. Samwon Precision Mould Mfg. India P. Ltd. (2018) 401 ITR 486 (Del.).

7.2 It is further claimed that the PCIT was himself under some obligations to carry out the minimal enquiry as held in: *Magic Landcon LLP & Anr. Vs. Pr.CIT (2020) 204 TTJ 785 (Del.)*; *Pr.CIT vs. Delhi Airport Metro Express P. Ltd. (2017) 398 ITR 8 (Delhi)*; & Mumbai ITAT in *Narayan Tatu Rane vs. ITO* in *ITA No. 2690/Mum/2016*.

7.3 We find merit in the plea of the assessee. In the course of hearing, the learned counsel for the assessee in response to an enquiry from the bench presented cassia tora seeds for which expenses were incurred. The Cassia tora seeds, which is used for the business of the assessee which are procured from villagers and tribals in naxalite area. The case of the assessee is thus quite peculiar. Coupled with this, the purchase of cassia tora seeds is not under any kind of doubt. The view taken by the AO in favour of the assessee appears to be consistent with the long line of judicial precedent and thus plausible. Hence, the view of the AO admitting the bonafide claim towards purchase and other expenses while framing assessment order cannot be attacked as 'erroneous' *per se*. The action of the AO being consistent with the fact situation and judicial view, ought not to have been set aside by the Revisional Commissioner. In this view of the matter, we set aside the action of the PCIT under s.263 of the Act on this score.

7.4 The second issue concerns expenditure of Rs.2,27,000/- incurred for furniture fittings which is alleged to be capital expenditure instead of revenue expenditure in the revisional order. It is the case of the assessee that it has purchased glass material and other items from various parties for maintenance of rented office premises. The fittings were fixed and on its removal it is not reusable. Thus, such expenditure is not a capital expenditure. We find force in the plea of the assessee that the issue about nature of expenditure is not free from the debate. The AO has taken a view in favour of the assessee which is quite plausible. Therefore, such action of the AO cannot be termed as 'erroneous' *per se*. Hence, action against the assessee under revisional jurisdiction is not sustainable in law.

7.5 The third issue concerns non-deduction of TDS on payment of interest on car loan amounting to Rs.1,18,830/-. In this connection, it was pointed out on behalf of the assessee that interest was paid to Bank of India as interest on car loan and not to Magma finance as misunderstood by PCIT. The ledger copy of Bank of India Car loan account was relied upon. Thus, where interest has been actually paid to Bank, no obligation for deduction of TDS under s.194A of the Act would arise. With reference to TDS on brokerage amounting to Rs.8010/- and Rs.7980/- without deducting TDS, it is the case of the assessee that the allegation made for non-deduction of TDS is untrue. The TDS was actually deducted for which payment proof was placed on record. As regards non deduction of TDS on payment of Rs.1,47,153/- to Jaika Automobiles, it is the case of the assessee that the major component of cost involved supply of spare parts for repair of car engine for which separate invoice was raised. Hence, liability under s.194C of the Act does not arise on purchase of spare parts. We find that the assessee has

given a plausible reply in the revisional proceedings on all these points. The PCIT has not rebutted any of the submissions of the assessee while coming to adverse conclusion. Such course is not permissible while fixing serious consequences and thus cannot be endorsed. Hence, the action of the PCIT on this issue is set aside and action of the AO is restored.

8. Consequently, revisional order of the PCIT is set aside and quashed.

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

This Order pronounced in Open Court on 13/08/2021

Sd/-
(N. K. CHOUDHRY)
JUDICIAL MEMBER
Raipur: Dated 13/08/2021

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर /
DR, ITAT, RAIPUR
6. गार्ड फाइल / Guard file.

By order,

Sr. Private Secretary
ITAT, Raipur (on Tour)