

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH**

**BEFORE: SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No. 106/Ahd/2022
(Assessment Year: 2017-18)**

Radiant Safe doors Pvt. Ltd. 539, Phase-II, GIDC, Vatva, Ahmedabad - 382445	V/S	Pr.CIT-3 Ahmedabad
(Appellant)		(Respondent)

PAN: AAACR7448G

Appellant by	: Shri S. N. Divatia & Shri Samir Vora, A.Rs.
Respondent by	: Shri Sudhendu Das, CIT. D.R.

(आदेश)/ORDER

Date of hearing : 09 -08-2023
Date of Pronouncement : 06 -11-2023

PER WASEEM AHMED, ACCOUTANT MEMBER:

The appeal has been preferred by the assessee against the order of the Principal Commissioner of Income Tax-3, Ahmedabad ('PCIT' in short) dated 10.03.2022 arising in the assessment order dated 12.12.2019 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2017-18.

2. The only issue raised by the assessee is that the learned PCIT erred in holding the assessment order framed under section 143(3) of the Act as erroneous insofar prejudicial to the interests of Revenue.

3. The facts in brief are that the assessee, a private company, is engaged in the business of manufacturing and supply of Fire-Proof Steel doors. The assessee company for the year under consideration declared income at Rs. 22,40,210/- only which was accepted in the assessment order framed under section 143(3) of the Act vide order dated 12-12-2019.

4. The learned PCIT on perusal of assessment records found that the assessee during the year claimed deduction on account of bad debts for Rs. 33,54,067/- against three parties detailed as under:

- (i) L & T Bhilai Site Rs. 3,38,070/-
- (ii) Simplex Infrastructure Ltd Rs. 11,53,580/-
- (iii) S.R. Technologies Rs. 18,62,416/-

5. The assessee during the assessment proceedings filed the details of debtors showing opening balance, amount debited/credited and closing balance. But the names of above parties were not found in the detail of debtors filed by the assessee. Thus, the ld. PCIT, prima facie, was of the view that the income against the amount claimed as bad debt were not offered to tax either in the year under consideration or earlier years which necessary to claim the deduction of the bad debts. However, the AO did not verify this aspect while finalizing the assessment. Accordingly, the learned PCIT proposed to revise the impugned assessment order under section 263 of the Act being erroneous insofar prejudicial to the interest of the revenue vide notice dated 12-09-2019.

6. Subsequently, the learned PCIT further found that the assessee claimed the deduction of the commission expense for Rs. 14,50,187/- only. The assessee during the assessment proceedings only furnished a ledger copy of commission expense. But the AO accepted the genuineness of commission expense without verifying any supporting corroborative evidence.

7. Likewise, the PCIT found that the assessee during the year deposited employee contribution to EPF/ESI after the due date prescribed in the respective Act and therefore as per the provision of section 36 (1)(va) r.w.s. 2(24)(x), the same was required to be treated as income of the assessee but the AO failed to do so.

8. Accordingly, the learned PCIT proposed to revise the impugned assessment order under section 263 of the Act being erroneous insofar prejudicial to the interest of the revenue vide notice dated 12-09-2019.

9. The assessee in response to the notice issued under section 263 of the Act submitted that the AO during the assessment proceeding raised query regarding the claim of deduction of bad debts which was duly replied with the details such as ledger copies of parties, from starting of transaction with partes to the date of writing off the balance as bad debts. From the ledger copies, it can be seen that all the amounts written off bad debts were arising out of sales made in the earlier years. The assessee accordingly contended that the AO after verification of ledger copies was satisfied with the genuineness of claim of deduction of bad debts. Therefore, the view taken by the AO after necessary inquiry cannot be said as erroneous insofar prejudicial to the interest of the Revenue. The AO besides the above also furnished additional documentary evidence before the learned PCIT in the form of sales invoices issued to the above parties, details of civil suit filed against the party namely M/s SR Technologies for the recovery of dues along with

interest thereon. The assessee also furnished details of correspondence with other two parties for the clearance of outstanding amount. Accordingly, the Assessee contended that the deduction of bad debt claimed by it is genuine and as per the provisions of law. The assessee in support has also relied on various case laws including the land-mark judgment of Hon'ble Supreme Court in the case of M/s TRF Ltd reported in 323 ITR 397.

10. Likewise, the assessee submitted that the AO during the assessment proceeding also made enquiries about the commission expenses and in response to the same, it (assessee) provided the ledger copy of the commission expense. The AO also inquired regarding the deduction of tax at source (TDS) and after due verification, disallowed the expenses on which tax at source was liable but not deducted. Thus, the AO after verification has taken one of the possible views. Hence, no error committed by the AO which is prejudicial to the interest of the revenue.

11. The assessee regarding the late deposit of employee's contribution towards EPF/ESI submitted that the amounts were deposited before filing of return under section 139 of the Act. Therefore, such amount cannot be treated as income as per the provisions of section 43B of the Act. Thus, the AO rightly allowed the deduction of late deposit of employees EPF/ESI.

12. However, the Ld. PCIT disagreed with the contention of the assessee and concluded that the order passed by the AO as erroneous in so far prejudicial to the interest of the Revenue by observing as under:

"10. In view of the above discussion, it is held that the assessee has not been able to establish that the bad debts for which it has claimed deduction is a bad debt and arose out of and as an incident to the trade. A debt could be considered to be bad debt or not, must depend on the facts and circumstances of each case. Also, the question must be looked at from the practical point of view whether the debt has become irrecoverable and bad. There

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may be circumstances which may enable the creditor to come with a proceeding for enforcement of debt even after the expiry of the normal period of limitation as provided in the Limitation Act. Mere entry in the books of account of the debtor made unilaterally without any act on the part of the creditor will not enable the debtor to say that the liability has come to an end. The assessee could not provide any documentary evidences for carrying out proceedings for enforcement of debt except in the case of S.R. Technologies. In the case of S.R. Technologies, the said party has filed Objection in the Court against ex-parte decree. Therefore, the debt has not finally become bad debt. In the remaining two cases, assessee has not submitted any documentary evidences to show that it has undertaken any proceedings for enforcement of debt. Therefore, in all the three cases, it is held that the debt for which the assessee has claimed deduction as bad debt is not a bad debt and hence, cannot be allowed. It is important to mention that Hon'ble Supreme Court in the case of TRF Ltd. vs. CIT (323 ITR 397(SC) has held that after 01.04.1989 to claim deduction of bad debt, it is enough if the bad debt is written off as irrecoverable in accounts of the assessee. However, the above decision has been considered and distinguished in the case of Embassy Classic Pvt. Ltd. vs. DCIT 2010- TIOL591 (ITAT Bengaluru) wherein it was held that writing off debt is not an empty formality- assessee cannot convert any live amount to a bad debt only on the basis of technical rule of write off. Besides this, neither the Assessing Officer called for sales invoices nor assessee supplied them to prove that debt amount was actually taken into computation of income in past. Hence, it is proved that the AO has failed to bring all the necessary details on record and did not verify the same in its right perspective on the above lines. It is therefore, evident from the above that the AO while finalizing the assessment proceedings, erroneously allowed the claim of bad debt to the tune of Rs.33,54,067/- without making proper enquiry/verification.

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11.5 In view of the above, it is evident that in the instant case, the payment of Employees PF and ESIC contribution were made after the due date as prescribed by the PF& ESIC Act. Therefore, as per the provisions of Section 36(1)(va) r.w.s.2(24)(x) of the Act, the amount of Rs.50,401/-was required to be disallowed on this count and added to the total income of the assessee-company. However, the AO has failed to examine the issue by bringing the required details on record and he did not verify the same in view of present legal position. Hence, undisputedly Ld. AO committed an error while passing the assessment order. It is therefore evident from the above that the AO erroneously allowed the claim of employees' contribution to PF & ESCI to the tune of Rs.50,401/- while finalizing the assessment proceedings.

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12.7 In view of the above, it is established that the commission expenses are not laid or expended wholly and exclusively for the business and assessee failed to prove the business expediency. The burden is squarely on the assessee and it had failed to discharge the same by furnishing the corroborative details and supporting documentary evidences during the course of assessment proceedings and even during the proceedings u/s.263 of the I. T. Act to justify the claim of expenses.

12.8 The AO has obviously failed to bring these details on record and did not verify the same in its right perspective or on the above lines. It is therefore evident from the above that the AO erroneously allowed the claim of Commission Expenses to the tune of Rs.14,50,187/- while finalizing the assessment proceedings without conducting any enquiry."

13. The Id. PCIT in view of the made certain observations in the concluding paragraph detailed as under:

"20. Keeping in view the above discussion, I am of the considered view that this is a fit case for invoking provision of Section 263 of I. T. Act as the twin conditions namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the revenue are satisfied. Accordingly, the impugned assessment order is set aside and restored to the file of AO with a direction to the Assessing Officer to make requisite inquiries and proper verification with regard to the issues mentioned above and redo the assessment de-novo after due consideration of the facts and law in this regard. The Assessing Officer is also directed to verify (i) the applicability of the provisions of the Sec.36(2) and 36(1)(vii) of the Act in respect of claim of bad debt of Rs.33,54,067/-; and (ii) the applicability of TDS made on Commission Expenses as the assessee has made TDS @ 10% on one agent and @ 5% on remaining agents and also verify the genuineness of claim of commission expenses in the light of services rendered by the agents (iii) apply the provision of Section 36(1)(va) r.w.s. 2(24)(x) of the Act in the light of decision of Hon'ble Gujarat High Court in the case of Gujarat State Road Transport Corporation. The assessee will be at liberty to adduce the necessary evidences/details as deemed relevant before the assessing officer at the time of fresh assessment proceedings in consequence to this order and the Assessing Officer shall allow the assessee adequate opportunity of being heard and to make relevant submissions.

21. Assessing Officer shall ensure that the fresh assessment order is passed within the prescribed time limit as stipulated under section 153(3) of the Act."

14. Being aggrieved by the order of the Ld. PCIT, the assessee is in appeal before us.

15. The Ld. AR before us filed a paper book running from Pages 1 to 150 and submitted that the deduction claimed by the assessee with respect to the bad debts and commission expenses were duly verified by the AO during the assessment proceeding. The Ld. AR in support of his contention has drawn our attention to the notice issued by the AO under Section 142(1) of the Act placed on Page Nos. 149 to 150 of the paper book. The Ld. AR also drew our attention on

the replies made by the assessee in response to the notices issued under section 142(1) of the Act which are placed on Page Nos. 53 to 64 of the paper book. Thus, it was contended by the Ld. AR that the assessment has been framed by the AO under section 143(3) of the Act after verification of the necessary documents and application of mind. Thus, the Ld. PCIT erred by setting aside the assessment order passed under Section 143(3) of the Act to the file of the AO for fresh verification as per the provisions of law.

16. As regards the delayed contribution of employees' PF/ESI, the Ld. AR submitted that there were different views of the different Hon'ble Courts and some of them were in favour of the assessee too. Therefore, the view taken by the AO is one of the possible views and, hence the same cannot be made subject to the revision under Section 263 of the Act. On the contrary, the Ld. DR vehemently supported the orders of the authorities below.

17. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the assessment framed by the Ld. AO under section 143(3) of the Act was set aside by the Ld. PCIT under Section 263 of the Act for fresh adjudication as per the provisions of law after providing the opportunity to the assessee. The controversy arises once the AO has already verified the claim made by the assessee during the original assessment proceeding, can the same be set aside to the AO again for fresh verification in the given facts and circumstances. In this regard, we note that the AO during assessment proceeding has directed the assessee to furnish the details of the accounts with respect to commission expenses and bad debts along with supporting documents. However, the assessee has only furnished the copies of the ledgers without any supporting documents. Admittedly, the ledger copy is the important piece of documents, but the same cannot be accepted as gospel truth in the absence of supporting documents. On perusal of the paper book, we note that

the supporting documents were furnished by the assessee first time before the Ld. PCIT which can be verified from the correspondence of the assessee placed in the paper book. Thus, in such a situation, we hold that the assessment was framed without conducting proper enquiries so as to draw the logical conclusions. The Hon'ble Gujarat High Court in the case of Designmate India (P.) Ltd. v. Commissioner of Income-tax-1 reported in 85 taxmann.com 204 wherein it was held as under:

11. Thus, the mere fact that the Assessing Officer carried out inquiries with respect to a certain claim of the assessee by itself would not mean that his order cannot be taken in revision by the Commissioner if it is found that the order passed was erroneous and prejudicial to the interest of revenue.

18. From the above judgment, we note that the AO is supposed to carry out the necessary verification after receipt of the documents. As such, the AO in the present case has not conducted sufficient enquiries to draw logical inference with respect to the deduction claimed by the assessee. As such, the AO allowed the deduction to the assessee despite non-availability of documents desired by him (the AO) as evident from the show cause notice issued under section 142(1) of the Act.

19. With respect to the employees' contribution towards PF/ESIC, the issue stands covered against the assessee by virtue of the judgment of the Hon'ble Gujarat High Court in the case of CIT vs. Gujarat State Road Transport Corporation India Limited reported in 366 ITR 170 wherein it was held as under:

8. In view of the above and for the reasons stated above, and considering section 36(1)(va) of the Income Tax Act, 1961 read with sub-clause (x) of clause 24 of section 2, it is held that with respect to the sum received by the assessee from any of his employees to which provisions of sub-clause (x) of clause (24) of section (2) applies, the assessee shall be entitled to deduction in computing the income referred to in section 28 with respect to such sum credited by the assessee to the employees' account in the relevant fund or funds on or before the "due date" mentioned in explanation to section 36(1)(va). Consequently, it is held that the learned tribunal has erred in deleting respective disallowances being employees' contribution to PF Account / ESI Account made by the AO as, as such, such

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sums were not credited by the respective assessee to the employees' accounts in the relevant fund or funds (in the present case Provident Fund and/or ESI Fund on or before the due date as per the explanation to section 36(1)(va) of the Act i.e. date by which the concerned assessee was required as an employer to credit employees' contribution to the employees' account in the Provident Fund under the Provident Fund Act and/or in the ESI Fund under the ESI Act.

20. However, the AO has made the assessment by allowing deduction claimed by the assessee for the late deposit of employees' contribution towards PF/ESIC account which is contrary to the judgment of Hon'ble Gujarat High Court as discussed above. In view of the above and after considering the facts in totality, we do not find any reason to interfere in the order of Ld. PCIT passed under Section 263 of the Act. Hence, the ground of appeal of the assessee is hereby dismissed.

21. In the result, the appeal of the assessee is hereby dismissed.

Order pronounced in Open Court on 06 -11- 2023

Sd/-

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad: Dated 06/11/2023

Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER

True Copy

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT, Ahmedabad