

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

BEFORE SH. G.C.GUPTA, V.P. AND SH. PRASHANT MAHARISHI, AM

ITA No. 2056/Del/2013: Asstt. Year: 2008-09

Universal Product (P) Ltd., Dholki Mohalla, Sadar Meerut	Vs	CIT Meerut
(APPELLANT)		(RESPONDENT)
PAN No. AAACU2882P		
Assessee by		Sh. K. Sampath , Advt., Sh. V.K. Goel, Adv.
Revenue by		Sh. O.P.Modi, CIT, DR
Date of Hearing : 11.09.2015		Date of Pronouncement : 08.10.2015

ORDER

Per Prashant Maharishi, AM:

01. This appeal, by the assessee, is directed against the order dated 25/03/2013 u/s 263 of the Income-tax Act, 1961, passed by the Commissioner Of Income Tax ,Meerut for A.Y. 2008-09.
02. Brief facts of the case is that Assessee Company is engaged in the business of repairs of transformers and also sale of spare parts. Assessee filed its e- return of income on 30-9-2008 declaring income of Rs 4970/- for AY 2008-09. AO completed the assessment u/s 143(3) after examining the details, explanations and the books of account at returned income. Subsequently, Id. CIT examined the records and issued notice u/s 263 dated 4/3/2013 alleging that order passed by AO is erroneous and prejudicial to the interest of revenue because
 - i. Net profit shown by the assessee is only 0.18% of the turnover and in absence of stock register the books are liable for rejection.
 - ii. Sundry creditors of Rs. 1423436/- have not been inquired properly by AO
 - iii. Unsecured loan of Rs. 10565133/- have not been inquired properly by AO

- iv. Total Interest was disallowable as no TDs has been made by assessee, AO has not inquired in these aspect.
 - v. Based on the TDS, gross receipts shown by assessee is lower than what it should have been.
03. On 11/3/2013 assessee submitted its reply in response to above notice stating that all the details with respect to above issues were submitted before AO and same were examined properly and after that assessment order is passed. It was further submitted that order is neither erroneous and nor prejudicial to the interest of revenue.
04. However Ld. CIT was of the view that order passed by AO is erroneous and prejudicial to the interest of the revenue On some issues directions were given and on some issues additions were made as under :-
 - i. Rejecting the books of accounts in absence of stock register to take on sales of Rs 12466181 net profit rate of 8 % i.e. Rs 997294/- and on job work receipt of Rs 2026651/- net profit rate @ 20 % i.e. Rs 350335/- Therefore making addition on this account of Rs 1320978/-
 - ii. Sundry creditors of Rs. 1423436/- have not been inquired properly by AO
 - iii. Unsecured loan of Rs. 10565133/- have not been inquired properly by AO
 - iv. To verify whether TDS is made on interest payments of Rs 469432/-.
 - v. Based on the TDS deducted the gross receipts shown by the assessee is lower than what it should have been, addition of Rs 391600/- was made.
05. Against the above order u/s 263, where partly additions have been made and on some issues directions are given for further verification, assessee is in appeal raising several grounds of appeal originally but subsequently raised an additional ground that the order passed by CIT u/s 263 of the act is arbitrary, erroneous and illegal and must be quashed. Ld.DR did not express any serious reservation against admission of this ground of appeal. As this ground appeal is mainly reiteration of many grounds of appeal raised in original appeal memo, in the interest of justice same is admitted. Further additional ground raised covers the main issue, only that ground is adjudicated.
06. Now we proceed to examine each of the issues raised in order u/s 263 and contention of rival parties.
 - i. Lower Gross and net profit shown by assessee

On this Ld. AR submitted that during the course of assessment proceedings u/s 143(3), AO issued notice dated 10th May, 2010 wherein AO raised query vide para no. 8 for gross profit and net profit rate for last 3 years and reasons for decrease therein. In response to that assessee submitted a comparative chart of the gross profit for last three years. According to that chart the assessee has disclosed from AY 2005-06 to AY 2008-09 gross profit earned, net profit thereon and the percentage thereof. The NP percentage were in the range of 0.30% to 0.18% for all these years. Along with the chart assessee submitted the assessment orders for all the years which are made u/s 143(3) of the Act. According to the chart, the gross profit ratio has increased to 12.09% compared to 11.51% in preceding previous year. During the assessment proceedings the books of accounts, bills and vouchers were produced before the assessing officer. In subsequent communication explanation for decrease in net profit was also explained with quantity details of number of transformers repaired. Ld. AR further submitted that the letter dated 19.07.2010 submitted before the assessing officer has made absolutely clear with respect to all the details regarding repair charges earned by the assessee, gross profit and net profit. The reason for falling the net profit is because of payment of interest was also explained therefore, the finding of the CIT that AO has not verified or inquired into all the about details is devoid of any merit. Therefore, the contention of the AR was that AO has made inquiry on this issue and after that accepted the book results.

ii. Sundry Creditors of Rs. 14,23,436/-

Ld. CIT has stated that AO has not verified the sundry creditors of Rs. 1423436/- properly. Regarding this AR of appellant submitted that during the course of assessment proceedings vide para no. 5 of the notice dated 10th May, 2010, AO has asked for the confirmation of sundry creditors along with their PAN etc. In respect of to this vide letter dated 20th May, 2010, assessee has submitted complete details of sundry creditors and submitting their ledger accounts for the nine creditors. Assessee submitted copy of the account of those creditors from the books of the assessee as well as confirmation of major creditors stating their names, address and

Permanent Account No. These details were accepted by AO. Therefore the contention of Ld. CIT that these creditors remain unconfirmed is incorrect.

iii. On Unsecured loan of 105,65,133/-

AR of the appellant submitted that confirmations of account were submitted along with detailed chart of unsecured loan. All confirmations were showing the name, address and Permanent Account No. along with copy of Income Tax Return as well as balance sheet of the lenders for new loans. This submission was made in response to para no. 7 of notice dated 10th May, 2010 of AO which was complied with by letter dated 20th May, 2010 vide para no. 7. As per chart it was also mentioned that most of the loans are old loans and carried over from earlier years. Hence, contention of Ld. CIT that these creditors remain unconfirmed is incorrect. Further when the transactions are supported by the balance sheet of the lender, their identity, creditworthiness and genuineness of the transactions is established.

iv. Non-deduction of tax at sources on interest

Ld. AR submitted that in para no. 9 of letter dated 10th May, 2010 the details of TDS were asked for and same were submitted by letter dated 20th May, 2010. Assessee submitted form no. 27A along with the provisional receipts issued for filing of TDS return along with the copy of the challan of tax deduction at source of Rs. 48,249/- on interest payment made on 28th May, 2008. Therefore, the issue of deduction tax at source on interest payment is examined by AO.

v. Estimation of Turnover based on TDS deducted of assessee

In this regard AR of the appellant submitted that AO has written a letter to almost all the parties who has deducted taxes at source on payments made to the appellant and No discrepancy was noticed. Therefore, there cannot be any reason for saying that AO has not inquired into the tax deduction at source vis a vis gross receipts earned by the assessee.

07. Further Ld. AR submitted that order passed by the assessing officer might not have discussed all these things in the body of the order but he has called for exhaustive details and based on that assessment is framed. Further he submitted that it is not a case of lack of inquiry but there is an inquiry made by AO and details were examined by him. Hence, that

assessment cannot be termed as erroneous as well as prejudicial to the interest of Revenue. Several Decisions of coordinate benches were cited wherein the above view has been considered.

08. In response to this Ld. DR submitted that details were not thoroughly examined by assessing officer but he has just taken the details on record and did not conduct any verification of those details. He further submitted that order also does not show fact of inquiry conducted. He submitted that even a single error found in the order of assessing officer CIT can revise that order. For various contentions raised, he relied on decision of Hon'ble Delhi High Court in case of Gee Vee enterprises vs. Additional CIT 99 ITR 375 (Delhi).
09. We have carefully considered the rival submissions as well as the order passed by the assessing officer u/s 143(3), perused the details submitted during the course of assessment proceedings and order passed by Ld. CIT u/s 263 of the Act. It is an admitted position of law that CIT has been conferred with wide revisionary powers u/s 263 of the Act for calling for and examination of such records in order to find out that whether the order passed by the assessing officer is erroneous and prejudicial to the interest of revenue. However, Ld. CIT before stating so must have some material to hold a prima facie opinion about the error in the order and thereby making that order prejudicial to the interest of revenue. However, if AO has made inquiries during the course of assessment proceedings on the issues covered u/s 263 notice and assessee has submitted explanation on those issues and further AO being satisfied by explanation submitted then in our view it cannot be said that the order passed by AO is erroneous. It is not material that in case of inquiries made whether AO makes detail discussion on those issues. In the case before us there were specific issues covered in notice and in response to that assessee has made detailed submission producing all the relevant details called for. Ld. CIT simply stated that AO had not made proper inquiry but from the order of Ld. CIT it is not mentioned that what inquiry other than already made by AO is required to be made. Facts relating to each of the above issues and our findings thereon is discussed hereunder :-
- (a) Net profit working of the assessee –
AO has raised a query during the course of assessment proceedings about the gross profit working as well as the net profit working of the

assessee with respect to early arrears and reasons if there is a decrease in that. In response to that AO gave detailed chart for assessment year 2005-06 till assessment year 2008-09. Further all the orders concerning those years were also submitted wherein on identical facts the books results of the assessee was accepted either during the assessment proceedings or in appellant proceedings. For assessment orders for those years are passed u/s 143(3) of the act. The past history of the assessee also shows that in none of the years books of accounts were rejected in absence of stock register. In AY 2007-08, the gross profit ratio of assessee was 11.51 % and in the current year it is 12.09% respectively therefore there is increase in the gross profit rate further the letter dated 19.07.2010 of the assessee also showed number of transformers repaired by the assessee. The letter also clearly explains the fall in the net profit ratio is because of payment of higher interest. The Ld. CIT has presumed net profit ratio of 8% on sales as well as 20% on job working without giving any comparable cases or any other reason. Therefore we do not find any reason to confirm AO has not made requisite inquiry on this aspect, Hence, considering the totality of the facts, We are of the view that Ld. CIT was not justified in making addition of Rs. 13,20,978/- on account of gross profit. We do not find any error in the order of assessing officer on this count.

(b) Regarding verification of sundry creditors on unsecured loan.

During the course of assessment proceedings AO has asked for the confirmation of sundry creditors of Rs. 14,23,436/-. This issued was inquired by AO vide letter dated 28th May, 2010. The creditors were duly confirmed by the assessee during the course of assessment proceedings further when the bills and vouchers of such purchases are produced before AO, We are of the view that such bills are contemporaneous confirmation given by the sundry creditors. When copies of accounts of such creditors from their books stating

permanent account numbers and address is provided and in absence of any suspicion, AO is justified in accepting the same. Assessee has produced all such submission in paper books and same were also not controverted by Ld. DR. Hence, we are of the opinion that order of assessing officer is not erroneous and further Ld. CIT has also erred in stating that they remain unconfirmed.

Regarding the loans taken by the assessee during the year as well as outstanding from earlier years amounting to Rs. 1,05,65,133/-, assessee has submitted chart wherein details of eight lenders were tabulated stating their name, address, permanent account number; the rate of interest, period since when this loans are outstanding etc. During the year most of the loan accounts are carried over from earlier years except in case of Shri Rakesh Mohan Gupta and Smt. Umang Gupta. For these new loans assessee has submitted confirmation of the parties stating their name, address & permanent account number as well as the copy of ITR along with balance sheet. The AO on specific inquiry received these details and accepted that creditworthiness in view of copies of the balance sheet submitted by them. In view of this the finding of Ld. CIT that they remain totally unconfirmed is totally unfounded. Looking to the totality of the facts, we are of the view that the order of the assessing officer is not erroneous on this count.

(c) TDS made on the interest

Regarding tax deduction at source specific inquiry was made and assessee has submitted the TDS returns filed by the assessee along with the copies of the challans. Therefore, these details have already been verified on payment of interest of Rs. 4,69,432/-. The CIT does not speak about what further inquiry is to be made and what inquiry AO has failed to make. In absence of any such direction it cannot be said that AO has made even in proper inquiries on this count,

therefore, the order of the AO cannot be found to be erroneous on this count.

(d) Gross receipt based on TDS certificates

In this case the assessing officer has made detailed inquiry about the full amount of TDS deducted of appellant from various parties who have deducted taxes at source of the appellant. Their confirmations were obtained and based on their confirmation AO has found there is no suppressed of gross receipt or access claim of TDS amount. The Ld. CIT has made an addition of Rs. 3,91,600/- to the income of the assessee by applying the rate of TDS on the amount of TDS and then estimated the turnover of assessee and compared it with the book turnover and difference is added to the income of assessee.. We cannot approve of such a thumb rule approach adopted by Ld. CIT. The detail submitted during the course of assessment proceedings shows various TDS certificates issued by various government agencies. Further when third party confirmations are obtained by AO for TDS and on verification of them AO did not find any infirmity in this certificates, We are of the view that CIT is not justified to estimate turnover based on applying the TDS rates and thereby making an addition of Rs. 3,91,600/-. In our view this cannot be approved of in view of details available in assessment proceedings. In view of this order of Ld. CIT holding that order of AO is erroneous is not correct.

10. We are further of the view that all the issues involved in order of Ld. CIT, AO has made some inquiry and Ld. CIT is of the view that proper inquiry has not been made by AO, therefore this case is not the case of lack of inquiry. Ld. CIT has also not mentioned that in the facts and circumstances of the case what further inquiries AO should have made. In the case of CIT v. Sunbeam Auto Ltd. [2011] 332 ITR 167 (Delhi), the Delhi High Court was considering this aspect, when there is no proper or full verification, and it was held as under (page 179) :

"We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income-tax under section 263 of the Income-tax Act. As noted above, the submission of learned counsel for the Revenue was that while passing the assessment order, the Assessing Officer did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order, which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the Assessing Officer had not applied his mind on the issue. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between 'lack of inquiry' and 'inadequate inquiry'. If there was any inquiry, even inadequate that would not by itself give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter. It is only in cases of 'lack of inquiry' that such a course of action would be open. In Gabriel India Ltd. [1993] 203 ITR 108 (Bom), law on this aspect was discussed in the following manner (page 113):

' . . . From a reading of sub-section (1) of section 263, it is clear that the power of suo motu revision can be exercised by the Commissioner only if, on examination of the records of any proceedings under this Act, he considers that any order passed therein by the Income-tax Officer is "erroneous in so far as it is prejudicial to the interests of the Revenue". It is not an arbitrary or unchartered power, it can be exercised only on fulfilment of the requirements laid down in sub-section (1). The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue, must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity (See Parashuram Pottery Works Co. Ltd. v. ITO [1977] 106 ITR 1 (SC) at page 10) . . .

From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be formed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion . . . There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed . . .”

We may now examine the facts of the present case in the light of the powers of the Commissioner set out above. The Income-tax Officer in this case had made enquiries in regard to the nature of the expenditure incurred by the assessee. The assessee had given detailed explanation in that regard by a letter in writing. All these are part of the record of the case. Evidently, the claim was allowed by the Income-tax Officer on being satisfied with the explanation of the assessee. Such decision of the Income-tax Officer cannot be held to be "erroneous" simply because in his order he did not make an elaborate discussion in that regard."

Now examining the facts of the present case before us, Assessee has furnished required details called for along with explanations in writing as well as all confirmations of the sundry creditors as well as lenders stating their name, address and PAN and also contra accounts along with the balance sheet and income tax returns of lenders. In case of TDS credit given to assessee AO has made inquiries from third parties. Further Id. CIT is

under belief that sundry creditors and lenders remains unconfirmed which fact is not borne out from submission made by assessee and not controverted by revenue. Therefore order passed after such verification cannot be termed as erroneous.

11. Regarding non-mentioning of the inquiry in order Hon. Delhi high court In CIT v. Vikas Polymers 341 ITR 537 has held that :

"This is for the reason that if a query is raised during the course of scrutiny by the Assessing Officer, which was answered to the satisfaction of the Assessing Officer, but neither the query nor the answer was reflected in the assessment order, that would not by itself lead to the conclusion that the order of the Assessing Officer called for interference and revision."

12. Hon Bombay High court in Income Tax Appeal No. 296 of 2013 (CIT v. Fine Jewellery (India) Ltd. [2015] 372 ITR 303 (Bom)) decided on February 3, 2015, following its earlier decision in Idea Cellular Ltd. v. Deputy CIT [2008] 301 ITR 407 (Bom) has taken a similar view that :

". . . if a query is raised during the assessment proceedings and responded to by the assessee, the mere fact that it is not dealt with in the assessment order would not lead to a conclusion that no mind had been applied to it."

13. Accordingly we are of the view that assessment order dated 12/11/2010 passed by AO u/s 143(3) in case of the assessee is not erroneous and prejudicial to the interest of revenue. Therefore order dated 25/03/2013 passed by the Ld. CIT u/s 263 of the Act is set aside and the assessment order framed by the AO is restored.

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

(Order Pronounced in the Court on 08/10/2015)

Sd/-
(G.C.Gupta)
VICE PRESIDENT

Sd/-
(Prashant Maharishi)
ACCOUNTANT MEMBER

Dated: 08 /10/2015

B. Rukhaiyar

Copy forwarded to:

1.Appellant a

- 2.Respondent
- 3.CIT
- 4.CIT(Appeals)
- 5.DR: ITAT

ASSISTANT REGISTRAR

		Date	<u>Initial</u>	
1.	Draft dictated on	15/09/2015		
2.	Draft placed before author	15/09/2015		
3.	Draft proposed & placed before the second member			
4.	Draft discussed/approved by Second Member.			
5.	Approved Draft comes to the Sr.PS/PS			
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			