

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 181/Ind/2023
Assessment Year: 2018-19

AL A S Real Estate and Developers Private Ltd., 82, Nolaipura, Ratlam (Appellant/Assessee)	<u>बनाम/</u> Vs.	Pr. Commissioner of Income-tax-1, Indore (Respondent/Revenue)
PAN: AAKCA 0026 H		
Assessee by	Shri Rajesh Mehta, CA & AR	
Revenue by	Ms. Simran Bhullar, CIT DR	
Date of Hearing	10.01.2024	
Date of Pronouncement	08.02.2024	

अदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by revision-order dated 27.03.2023 passed by learned Pr. Commissioner of Income-Tax, Indore-1 ["PCIT"] u/s 263 of Income-tax Act, 1961 ["the Act"], which in turn arises out of assessment-order dated 24.03.2021 passed by learned National e-assessment Centre, Delhi ["AO"] u/s 143(3) of the act for Assessment-Year ["AY"] 2018-19, the assessee has filed this appeal on the grounds raised in Appeal-Memo (Form No. 36).

2. The background facts leading to present appeal are such that the assessee filed return of income of relevant AY 2018-19 declaring a total income of Rs. Nil. The return was selected under scrutiny-assessment for “verification of genuineness of expenses” and statutory notices u/s 143(2)/142(1) were issued. Ultimately, the AO completed assessment u/s 143(3) vide order dated 24.03.2021 accepting the returned income declared by assessee. Subsequently, Ld. PCIT examined the record of assessment-proceeding and viewed that the assessment-order passed by AO is erroneous in so far it is prejudicial to the interest of revenue which attracts revisionary-jurisdiction u/s 263. Accordingly, the PCIT issued show-cause notice dated 04.03.2023 and finally passed revision-order dated 27.03.2023. Aggrieved by such revision-order, the assessee has come in this appeal before us.

3. Ld. AR for assessee carried us to Para No. 4 and 5 of show-cause notice to point out the premise on which the PCIT has conducted revision. These paras are re-produced below:

“4. On perusal of Assessment records, it is found that during the course of scrutiny assessment the genuineness of the payment of Rs. 2,76,06,810/- done by the assessee company to the M/s. A.D. Enterprises, Prop. Nilima W/o Ashish Daniel has not been verified. The AO should have called for the complete vouchers details of the job work done by M/s. AD Enterprises by referring the matter to the Verification Unit for physical verification but the AO failure to do so, resulted in the under assessment of income to the tune of Rs. 2,76,06,810/-. After going through the case history in the departmental ITBA database of the said case, it was observed that during the course of assessment proceedings, the assessee submitted its copy of bank statement showing the payment against job work done by the M/s. AD Enterprises, copies of TDS challan and ledger of M/s. AD Enterprises. It is evident from the documents presented by the assessee that the payment was done to M/s. AD Enterprises, but the fact remains unverified whether the work for which the payment to the tune of Rs. 2,76,06,810/- was made, actually done by M/s.

AD Enterprises or they were just bogus entries. It is also to be noted that M/s. AD Enterprises Prop. Nilima W/o Ashish Daniel did not file her ITR for the A.Y. 2018-19 despite receiving huge payments from the assessee. During the course of assessment proceedings M/s. AD Enterprises was issued notice u/s 133(6) but no response was received. Therefore, the expenses made by M/s. AD Enterprises of the job work viz. Moram filling, Chambers, Cement Concrete Road, boundary wall, drainage line etc. were still unverified.

5. During the course of assessment proceedings, you have neither furnished any details nor explained the issues involved with relevant documentary evidence with regard to issues narrated above. It appears that submission and details available on records was not enough to verify the reasons for selection of security under CASS. The AO has not at all verified these issues and relevant facts involved therein while completing the assessment without any application of mind, without conducting proper inquiries and due verification. As such, the assessment is erroneous in the sense that it is prejudicial to the interest of revenue. You are, therefore, required to show cause why provisions of section 263 be not invoked in your case for the reasons mentioned above as the order of AO dated 24.03.2021 for A.Y. 2018-19 is erroneous in so far as it is prejudicial to the interest of revenue."

4. Ld. AR then carried us to Para No. 2 of revision-order to show that the assessee filed a detailed reply to Ld. PCIT in response to above show-cause notice but the PCIT rejected assessee's reply. Further, the PCIT also observed that since the section 263 has been amended and Explanation 2 as reproduced below had been introduced therein, the assessment-order is deemed to be erroneous-cum-prejudicial to the interest of revenue if the same had been passed without inquiries or verification which should have been made:

"Explanation 2 – "For the purpose of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of revenue, if in the opinion of the Principal Commissioner or Commissioner -

- (a) The order is passed without making inquiries or verification which should have been made;*
- (b) The order is passed allowing any relief without inquiring into the claim;*
- (c)*

(d) ...”

5. Having shown the aforesaid background of case, Ld. AR submitted that the PCIT has wrongly invoked revisionary action. To explain this, Ld. AR *firstly* submitted that the assessment u/s 143(3) had been made by AO which is ‘National e-assessment Centre’ as per procedure of a rigorous verification evolved by Govt. and therefore, there is no question of lack of *bona fides* on the part of AO. *Secondly*, the documents forming part of assessment-record held on record clearly show that during the course of assessment proceeding, the AO has issued several notices u/s 142(1) to assessee and the assessee has also filed adequate replies. This is evident from following documents filed in Paper-Book:

(a) Paper-Book Page 25-26:

The AO issued notice dated 18.12.2020 u/s 142(1) and raised three specific queries to assessee, viz. (i) to submit financial statements alongwith annexure and computation of income, (ii) to provide details of all payments above Rs. 10,000/- at one time and Rs. 50,000/- in aggregate, made to contractors giving name, PAN, current address, phone number of the contractors alongwith comparative details of payments made in current year, immediately preceding year and subsequent year, and (iii) to provide the details of services rendered by the contractors.

(b) Paper-Book Page 27:

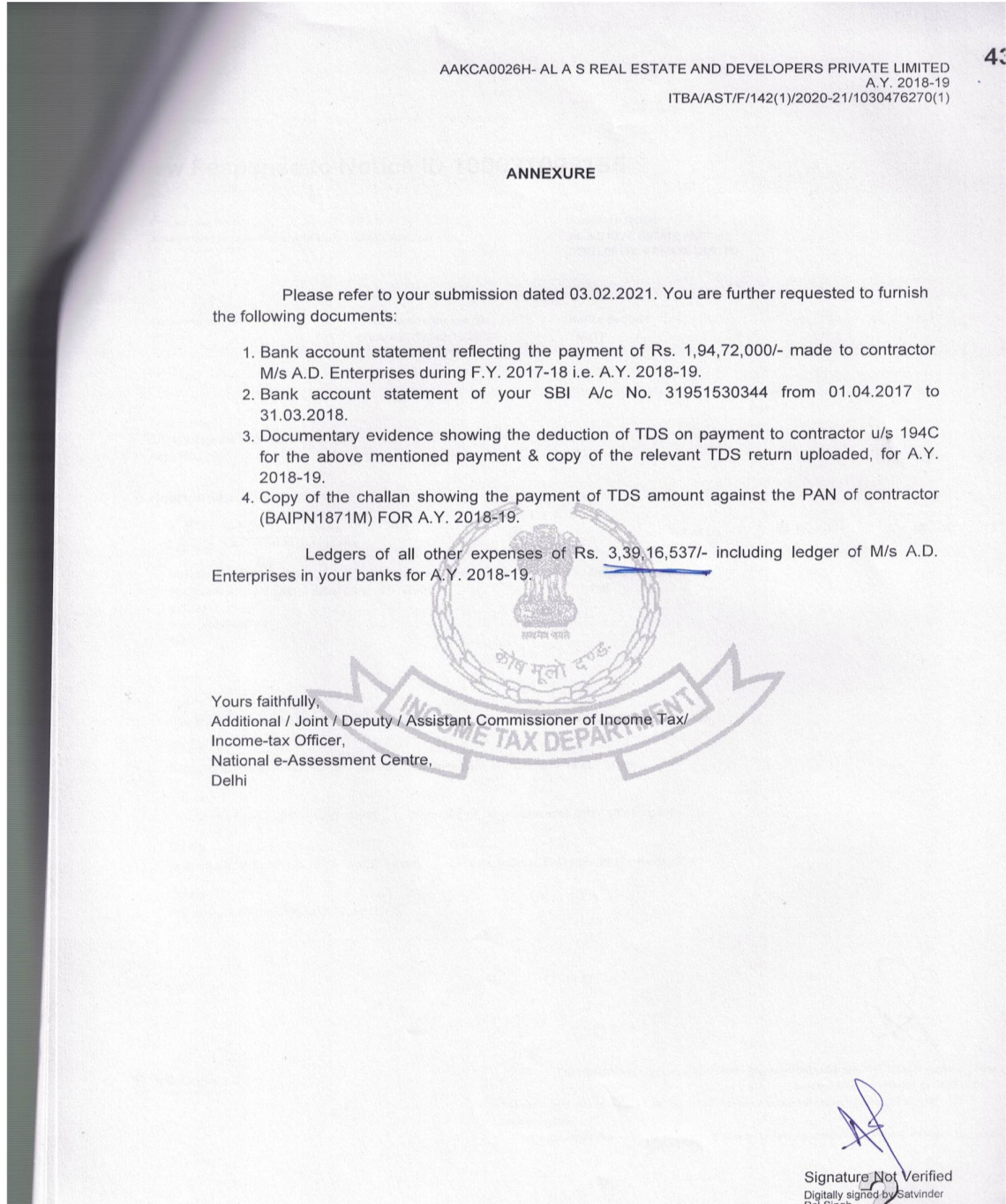
The AO again issued notice dated 01.02.2021 u/s 142(1) requiring assessee to provide details as per aforesaid notice dated 18.12.2020.

(c) Paper-Book Page 28-30:

The assessee filed reply on 04.02.2021. In Point No. 1 to 3 of reply, the assessee filed complete details as required by AO. The assessee submitted complete set of financial statements including P&L A/c and annexures. The assessee also submitted specific details of M/s AD Enterprises, PAN of proprietor Smt. Nilima as BAIPN1871M, Current address and phone number of Smt. Nilima. The assessee also filed details of payments made during current year, preceding year and subsequent year to M/s AD Enterprises. The assessee also narrated the details of services rendered by M/s AD Enterprises.

(d) Paper-Book Page 42-43:

The AO issued follow-up notice dated 09.02.2021 u/s 142(1) making exclusive queries qua M/s AD Enterprise in Annexure to the said notice, re-produced below:



(e) Paper-Book Page 44-94:

The assessee filed a detailed reply dated 12.02.2021 which is reproduced below:

From :-
AL A S Real Estate and Developers Private Limited,
82, Nolaipura, Ratlam – 457001 (M P)

PAN: AAKCA0026H

Date: 12/02/2021

To,
Additional/Joint/Deputy/Assistant Commissioner of Income Tax/
Income Tax Officer,
National e-Assessment Centre,
DELHI

Respected Sir,

Ref: Notice No. ITBA/AST/F/142(1)/2020-21/1029092410(1) dated 18/12/2020, followed
By Notice No. ITBA/AST/F/142(1)/2020-21/1030476270(1) dated 09/02/2021.
Sub: Compliance of Notice u/s 142(1) of the Income Tax Act, 1961 for A.Y. 2018-19 – reg.

With reference to above, we hereby furnish the following further information as required by you: -

1. Bank account statement of ICICI Bank A/c No. reflecting the payment of Rs. 1,94,72,000/- made to the contractor M/s. A D Enterprises during F.Y. 2017-18 i.e. A.Y. 2018-19.
2. Bank account statement of SBI A/c No. 31951530344 from 01/04/2017 to 31/03/2018.
3. Copy acknowledgement of filing of Statement of TDS & Form 27A along with Form 26Q for F.Y. 2017-18.
4. Copies of challans showing the payment of TDS amount against the PAN of contractor (BAIPN1871M) for A.Y. 2018-19.
5. Ledgers of all other expenses of Rs. 3,39,16,537/- and ledger of M/s A D Enterprises in the books of account of the Company for A.Y. 2018-19.

P. Bhandari



We hope that you will find the above reply and relevant information in order. We shall be glad to provide any other information if required.

Thanking you.

Yours truly,

For AL A S Real Estate and Developers Pvt. Ltd.

C. P. Bhandari

(Chandra Prakash Bhandari)

Director

Encl: As above.



The assessee filed all documentary evidences as mentioned in the above reply copies whereof are also filed in the Paper-Book. These documents include complete Ledger A/c of M/s AD Enterprises as extracted from books of assessee, bank statements from which payments were made to M/s AD Enterprises and the TDS returns showing deduction and remittance of TDS to Income-tax Department out of payments made to M/s AD Enterprises.

6. Clearly therefore, Ld. AR contended, the AO has made queries and the assessee has filed all details/documents to AO. These contemporary documents clearly show that it is not a case of “no enquiry” as alleged by Ld. PCIT. Ld. AR submitted that the PCIT has wrongly mentioned in Para No. 3.1 of revision-order that the *“assessing officer has not considered and examined the issue for which the selection for scrutiny was made”* whereas the AO has clearly noted in Para No. 1 and 2 of assessment-order as under:

“1. The case was selected for Limited Scrutiny assessment under the e-assessment scheme, 2019 on the following issues:-

S.No. Issues

i. Verification of Genuineness of Expenses

2. On the above issue, no addition is made and the returned income of the assessee is accepted.”

Ld. AR submitted that the above noting made in assessment-order by the AO who happens to be the National e-assessment Centre, Delhi is very clear and leaves no ambiguity at all. This noting coupled with all queries raised by AO through various notices u/s 142(1) and replies filed by assessee, as

narrated in foregoing paragraph, clearly demonstrate that the AO has aptly considered the item of scrutiny and after due consideration, did not make any addition and accepted the returned income of assessee.

7. With aforesaid submissions, Ld. AR contended that the revision-order passed by PCIT is very much invalid in this case and the same must be quashed.

8. Per contra, Ld. DR for revenue supported the revision-order. He submitted that the PCIT has noted certain vital aspects in revision-order, namely (i) Smt. Nilima proprietor of M/s AD Enterprises has not filed any income-tax return of AY 2018-19, (ii) The AO issued notice u/s 133(6) to Smt. Nilima but no response was received. Therefore, the expenses made by M/s AD Enterprises for job work remained unverified, and (iii) The AO could have referred matter to the Verification Unit for physical verification but it was not done. Ld. DR emphasized that the AO could have made further enquiries for ascertaining genuineness of the claim made by assessee. Since the AO has not stepped further, the PCIT was very much correct in holding that the assessment-order is erroneous-cum-prejudicial to the interest of revenue.

9. In re-joinder, replying to the contentions raised by Ld. DR, the Ld. AR for assessee submitted that the AO was very much concerned with the genuineness of payments made to M/s AD Enterprises and that is why made repeat enquiries from assessee through series of notices u/s 142(1)

and the assessee also filed complete point-wise replies to AO; that all payments to M/s AD Enterprises were made through banking channel and the bank statements were duly filed; that the assessee deducted TDS and filed copies of TDS returns/challans; that the assessee filed PAN, current address and phone number of Smt. Nilima, proprietor of M/s AD Enterprises enabling the AO to issue notice u/s 133(6). Ld. AR raised a question that how the non-filing of income-tax return and non-response of notice u/s 133(6) by Smt. Nilima, proprietor of M/s AD Enterprises is within the control of assessee and how can assessee be punished for such failures by Smt. Nilima? Ld. AR submitted that how the PCIT's observation that due to non-response to notice u/s 133(6), the *"expenses made by M/s AD Enterprises for job works remained unverified"*, was relevant to assessee? Ld. AR went on submitting that the assessee is engaged in the business of real estate and the services in the nature of various job works like moram filling, chambers, road, boundary wall, drainage line, etc. were very much required by assessee and therefore taken from M/s AD Enterprises. Ld. AR raised another question that without such services, how can one expect that the assessee would be able to develop the required structures for real estate business?

10. We have considered rival submissions of both sides and perused the impugned order as well as the material held on record to which our attention has been drawn. On a careful consideration, we find that the AO has made a clear-cut finding in assessment-order Para No. 1 and 2 that the

issue of scrutiny namely "*Verification of Genuineness of Expenses*" has been examined and no addition is made and the returned income is accepted. This finding by AO is fully supported from various documents placed in the Paper-Book as discussed in foregoing paras of this order, which clearly show that the AO has issued multiple questionnaires u/s 142(1) and made repeat enquiries to examine the expenses claimed by assessee in general and payments made to M/s AD Enterprises in particular. The assessee also filed complete replies to those questionnaires. To this extent, there cannot be any dispute or rebuttal by revenue. Clearly, therefore, it is discernible that the AO has considered those replies/submissions and thereafter taken a plausible view. Further, the action of AO in accepting the replies/submissions of assessee cannot not lack bona fides and cannot be said to be faulty specially when the assessment of assessee has been made by National e-assessment Centre, Delhi. With regard to various objections raised by PCIT in revision-order and also contended by Ld. DR *qua* M/s AD Enterprises, we find that the Ld. AR for assessee is very much correct in arguing that the assessee filed complete point-wise replies to AO; that all payments were made through banking channel and bank statements were duly filed; that the assessee deducted TDS and filed copies of TDS returns/challans; that the assessee filed PAN, current address and phone number of Smt. Nilima, proprietor of M/s AD Enterprises. In fact, the assessee has also filed details of payments made to M/s AD Enterprises not only in current year but also the payments made in preceding year and subsequent year.

Ld. AR is also justified in submitting that non-filing of income-tax return and no response of the notice u/s 133(6) by Smt. Nilima is not under the control of assessee and the assessee cannot be punished for this. The submission of Ld. AR that the assessee is engaged in the business of real estate and the services taken from M/s AD Enterprises in the nature of various job works like moram filling, chambers, road, boundary wall, drainage line, etc. were very much required by assessee to build the structures, is also meritorious. We may mention here that the assessee has deducted substantial amount of TDS from payments made to M/s AD Enterprises, remitted the proceeds of TDS to income-tax department and also filed statutory returns of TDS giving each item of payment, TDS etc. against the payee M/s AD Enterprises. The TDS returns also contain PAN of Smt. Nilima proprietor of M/s AD Enterprises. The PAN so mentioned is verified and accepted as valid and correct by TDS Wing of Income-tax Department and that is why they have not created demand of higher amount of TDS u/s 206AA of the Act. Therefore, just by saying that the payee has not filed income-tax return, the authorities cannot punish the assessee. So far as non-response of notice u/s 133(6) is concerned, the assessee has very much discharged his duty by providing current address and current phone number of M/s AD Enterprises which has enabled the AO to issue notice u/s 133(6). But thereafter, non-response by the payee to the statutory notice directly issued by AO, is not within the reach and control of assessee. Hence, we are unable to understand as to how the

assessment-order of assessee can be considered as erroneous for no fault of assessee.

11. In view of above discussions and for the reasons stated therein, we are persuaded to hold that the facts of the present case do not warrant application of section 263. Therefore, the revision-order passed by Ld. PCIT is not a valid order. We, thus, quash the revision-order and restore the original assessment-order passed by AO. The assessee succeeds in this appeal.

12. Resultantly, this appeal of assessee is allowed.

Order pronounced in open court on 08.02.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 08.02.2024

CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore