IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

[Coram: Pramod Kumar, (Vice President)
And Kuldip Singh, Judicial Member]

ITA No. 1010/Mum/2021
Assessment Year: 2015-16

Reliance Payment Solutions Limited **…….……Appellant**
5th floor, Court House, Lokmanya Tilak Marg,
Dhobi Talao, Mumbai 400002 [PAN: AADCR7144Q]

Vs

Principal Commissioner of Income Tax-8
Mumbai **……Respondent**

Appearances:
Nimesh Vora *for the Appellant*
Sandeep Raj *for the Respondent*

Date of conclusion of hearing : 04.01.2022
Date of pronouncement of order : 21.03.2022

O R D E R

Per Pramod Kumar, VP:

1. By way of the present appeal the appeal, the assessee has challenged correctness of the order dated 24th March 2021 passed by the learned Principal Commissioner under section 263 r.w.s. 143(3) of the Income Tax Act, 1961, on the following grounds:-

Order u/s.263 of the Act is bad in law, illegal, ultra-vires

1. erred in passing the order under section 263 of the Income-tax Act, 1961 (the Act), by holding that the Assessment Order passed by the Deputy Commissioner of Income Tax - 8(1)(1), Mumbai (hereinafter referred to as AO) u/s.143(3) of the Act dated 29.06.2017 is erroneous and prejudicial to the interest of the revenue;

2. erred in holding that AO has failed to make necessary enquiry and bring on record all facts without appreciating that specific query was raised in the assessment proceedings on issue under consideration of claim of depreciation of Rs.6,87,12,817/- and all relevant details in response thereof was filed;

3. failed to appreciate that the assessment order was neither erroneous nor prejudicial to the interest of the revenue and thus order u/s 263 is bad in law, illegal, ultra-vires, in excess of and/or in want of jurisdiction and otherwise void;

Claim of depreciation on Computer including Computer software

4. failed to appreciate that the addition / classification of assets by the Appellant for Income-tax purpose is as per Section 32 of the Income-tax Act, 1961 read with Rule 5 (New Appendix -I) of the Income-tax Rules. 1962 and the addition / classification as per the Companies Act is not relevant

5. failed to appreciate the detailed break-up and description of additions to the block of assets along-with supporting invoices submitted by the Appellant

2. To adjudicate on this appeal, only a few material facts need to be taken of the assessee is engaged in the business of "operation of semi closed prepaid instrument by the RBI". The assessment was picked up for scrutiny assessment, and one of the reasons for selection of case for scrutiny was "depreciation claimed at higher rate". During the course of scrutiny assessment proceedings, it appears that this issue was raised, and in reply thereto, the assessee, vide letter dated 22nd June 2017, *inter alia*, stated as follows:-

7. The Company has claimed Tax Depreciation of Rs. 688.07 lakhs during the year. The tax depreciation schedule along with details of assets on which depreciation has been claimed by the company is enclosed as Annexure 7 and Annexure 8. From the said Annexures, your goodself will note that the depreciation claimed by the Company is as per the rate of depreciation prescribed under the provisions of the Income-tax Act, 1961 read with Rule 5 (New Appendix I) of the Income-tax rules, 1962 and thus, there is no excess depreciation claimed by the Company.

3. In the assessment order, however, the Assessing Officer did not make any observations on this aspect of the matter. It was in this backdrop that the revision proceedings by the learned Principal Commissioner initiated the revision proceedings under section 263. The justification for this initiation of revision proceeding has been set out by the learned Principal Commissioner as follows:-

2. On perusal of the assessment records it was seen that, note 7 of the Financial Statement for the year ended 31 March 2015 (relevant to AY 2015-16) reveals that, the company was making expenditure under Capital Work in Progress and Intangible Asset under development, and had capitalized during the year software expenses of Rs.6.45 crore under the head Intangible Assets. Further under the Plant and Machinery head, total block of Rs.5.47 crore was reflected. However, while claiming depreciation under Income Tax Act, both of these assets were shown as computers with aggregate value of Rs.11,47,71,456 and depreciation @ 60% amounting to Rs.6,87,12,817 has been claimed by the assessee and allowed in assessment. The rates of depreciation can be different as per Companies Act and as per Income Tax Act, however the value of addition or classification of block of asset must not change. From the breakup of the project development expenditure also it was clear that these expenses are not classifiable as computers. Hence there was excess claim of depreciation by the assessee which was allowed by the AO.

3. The aforesaid aspects, which, prima facie warranted inquiry on the facts and circumstances of the case, have not been inquired into while completing the assessment. On the facts and circumstances of the case, it is clear that in respect of the aforesaid aspects, the order of the A.O. suffers from error within the meaning of

Section 263 of the I.T Act 1961. This error has resulted in prejudice to the revenue within the meaning of Section 263 in as much as the claim of the assessee is allowed in excess and/or income of the assessee has been under assessed. Accordingly, in respect of the aforesaid aspects, enumerated in foregoing paragraphs as above, provision of Section 263 of the Income Tax Act, 1961 are clearly attracted to the facts of this case.

4. The assessee, in reply, submitted as follows:-

4. Assessee in its reply submitted that, "The Assessee vide its submission dated 27th June 2017 during the course of assessment proceedings submitted facts related to depreciation. Further, the supporting invoices for addition to Fixed Assets were also submitted by the Company. Hence AO has verified this aspect. For the purpose of the Income Tax Act, the Company has correctly capitalized hardware and software under "Computers including computer software" which forms part of the "Plant and Machinery" block. There are no provisions under the Act requiring the Company to follow the classification of assets as per the Companies Act and the capitalization / classification for the purposes of the Income Tax Act has to be only as per section 32 read with Rule 5 (New Appendix I) of the Income-tax rules, 1962. Depreciation of Rs.6,45,61,542 comprises of amount paid to the vendor for software license to use the base features and for customization & development of additional features all of which are loaded onto a computer and used as integral part of the platform for proper operation and functioning of the overall digital payment services. Note No. 7 to the Appendix I read with Rule 5 of the Income-tax Rules, 1962 defines 'computer software' to mean "any computer programme recorded on any disc, tape, perforated media or other information storage device". Without prejudice to the above, even if it is falsely assumed that the depreciation claimed by the Company is in excess of what is allowed under the provisions of the Act, there is no loss of revenue to the exchequer as change in the rate of depreciation only results into a timing difference and would not have any impact as the Company is into losses.'

Assessee has placed its reliance on following judicial pronouncements:

CIT v. Gabriel India Ltd. (1993] 203 ITR 108 (Bom)

CIT vs. Vikas Polymers (2012] 341 ITR 537 (Del)

Mumbai Tribunal in the case of Netscribes (India) Pvt. Ltd. vITO (2014-TIOL-933-ITAT-MUM)

Hindustan Construction Co. Ltd. v. DCIT (2013| 140 ITD 642 (Mum.)

5. None of these submissions however impressed the learned PCIT who rejected these submissions and observed as follows:-

5. The contention of the assessee, that the Order passed by the AO is not erroneous in so far as being prejudicial to the interest of the revenue, is not found to be acceptable. Assesse stated that there is no loss of revenue to the exchequer as change in the rate of depreciation only results into a timing difference and since company is in losses it will have no impact of revenue. This argument can not be entertained as Income Tax Act prescribes to tax the revenue in correct year. Using these methods assessee can defer payment of tax which is detrimental to the interest of revenue. Just because assessee company is in loss does not mean that its wrong claim can be allowed. If assessee's wrong claim is allowed then assessee company would continue giving same treatment when it starts making profit

and defer the payment of taxes. Case was selected for scrutiny under CASS. One of the reason for selection of scrutiny was, Depreciation claimed at higher rate'. Hence, AO was duty bound to verify all aspect related to depreciation claimed by the assessee. AO vide its notice u/s 142(1) dated 10.03.2017 and 22.5.2017 has not raised any query regarding depreciation. Assessee submitted the details regarding depreciation vide its submission dated 27-6-2017. A has accepted assessee's submission without making any further verification in this regard. There is no order sheet entry suggesting that the AO made any inquiry at all regarding depreciation despite 'Higher Depreciation', being one of the reasons for selection for scrutiny assessment. AO has failed to verify whether the depreciation of Rs. 6,45,61,542 claimed by the assessee under the head computer was allowable expense as per Income Tax Act.

AO passed the assessment order u/s 143(3) on 29.06.2017 without making any further inquiry. In absence of any specific inquiry made by the AO or recording his reason for accepting assessee's submission without any appropriate evidence, it cannot be said that documents submitted by the assessee were duly verified by the AO.

6. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position.

7. We find that there was a specific question and detailed reply submitted by the assessee during the assessment proceedings. Yet, learned CIT(A) has subjected the assessment order to revision proceedings on the short ground that the Assessing Officer passed the assessment order "without making any further enquiry" and concluded that "in the absence of any specific inquiry made by the Assessing Officer or recording his reason for accepting assessee's submission without any appropriate evidence, it cannot be said that documents submitted by the assessee were duly submitted by the assessee". Everything thus hinges on whether assessee's submission being accepted can be faulted with, whether the assessee ought to have produced the appropriate evidence and whether non-recording of the reasons for accepting explanation will render the order erroneous and prejudicial to the interest of the revenue.

8. In the case of ***JRD Tata Trust vs DCIT [(2012) 122 taxman.com 275 (Mum)]***, a coordinate bench of this Tribunal, speaking through one of us (i.e. the Vice President) and in the context of exercised of powers under section 263, observed as follows:-

21. That brings us to our next question, and that is what a prudent, judicious, and responsible Assessing Officer is to do in the course of his assessment proceedings. Is he to doubt or test every proposition put forward by the assessee and investigate all the claims made in the income tax return as deep as he can? The answer has to be emphatically in negative because, if he is to do so, the line of demarcation between scrutiny and investigation will get blurred, and, on a more practical note, it will be practically impossible to complete all the assessments allotted to him within no matter how liberal a time limit is framed. In scrutiny assessment proceedings, all that is required to be done is to examine the income tax return and claims made therein as to whether these are prima facie in accordance with the law and where one has any reasons to doubt the correctness of a claim made in the income tax return, probe into the matter deeper in detail. He need not look at everything with suspicion and investigate each and every claim made in the income tax return; a reasonable prima facie scrutiny of all the claims will be in order, and then take a call, in the light of his expert knowledge and

experience, which areas, if at all any, required to be critically examined by a thorough probe. While it is true that an Assessing Officer is not only an adjudicator but also an investigator and he cannot remain passive in the face of a return which is apparently in order but calls for further inquiry but, as observed by Hon'ble Delhi High Court in the case of Gee Vee Enterprises v. ACIT [(1195) 99 ITR 375 (Del)], "it is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. (Emphasis, by underlining, supplied by us). It is, therefore, obvious that when the circumstances are not such as to provoke an inquiry, he need not put every proposition to the test and probe everything stated in the income tax return. In a way, his role in the scrutiny assessment proceedings is somewhat akin to a conventional statutory auditor in real- life situations. What Justice Lopes said, in the case of Re Kingston Cotton Mills [(1896) 2 Ch 279, 288)], in respect of the role of an auditor, would equally apply in respect of the role of the Assessing Officer as well. His Lordship had said that an auditor (read Assessing Officer in the present context) "is not bound to be a detective, or, as was said, to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watch-dog, but not a bloodhound. ". Of course, an Assessing Officer cannot remain passive on the facts which, in his fair opinion, need to be probed further, but then an Assessing Officer, unless he has specific reasons to do so after a look at the details, is not required to prove to the hilt everything coming to his notice in the course of the assessment proceedings. When the facts as emerging out of the scrutiny are apparently in order, and no further inquiry is warranted in his bonafide opinion, he need not conduct further inquiries just because it is lawful to make further inquiries in the matter. A degree of reasonable faith in the assessee and not doubting everything coming to the Assessing Officer's notice in the assessment proceedings cannot be said to be lacking bonafide, and as long as the path adopted by the Assessing Officer is taken bonafide and he has adopted a course permissible in law, he cannot be faulted- which is a sine qua non for invoking the powers under section 263. In the case strial Co Ltd v. CIT [(2000) 243 ITR 83 (SC)], Hon'ble Supreme Court has held that "Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law." The test for what is the least expected of a prudent, judicious and responsible Assessing Officer in the normal course of his assessment work, or what constitutes a permissible course of action for the Assessing Officer, is not what he should have done in the ideal circumstances, but what an Assessing Officer, in the course of his performance of his duties as an Assessing Officer should, as a prudent, judicious or reasonable public servant, reasonably do bonafide in a real-life situation. It is also important to bear in mind the fact that lack of bonafides or unreasonableness in conduct cannot be inferred on mere suspicion; there have to be some strong indicators in direction, or there has to be a specific failure in doing what a prudent, judicious and responsible officer would have done in the normal course of his work in the similar circumstances.

9. Clearly, therefore, as long as the action of the Assessing Officer cannot be said to be lacking bonafides, his action in accepting an explanation of the assessee cannot be faulted merely because it could have been lawful to make mere detailed inquiries or because he did not write specific reasons of accepting the explanation. As for learned PCIT's observations regarding accepting the explanation "without appropriate evidence", there is nothing to question the bonfides of the Assessing Officer or to elaborate as to what should have been

'appropriate' evidence. The fact remains that the specific issue raised, in the revision order was specifically looked into, detailed submissions were made and these submissions were duly accepted by the Assessing Officer. Merely because the Assessing Officer did not write specific reasons for accepting the explanation of the assessee cannot be reason enough to invoke powers under section 263, and non-mentioning of these reasons do not render the assessment order "erroneous and prejudicial to the interest of the revenue".

10. In view of the above discussions, as also bearing in mind entirety of the case we vacate the impugned revision order. The assessee gets the relief accordingly.

11. In the result, this appeal is allowed. Pronounced in the open court today on the 21st day of March 2022.

Sd/-	Sd/-
Kuldip Singh	**Pramod Kumar**
(Judicial Member)	(Vice President)

Mumbai, dated the 21st day of March 2022.

Copies to:	*(1)*	*The Appellant*	*(2)*	*The respondent*
	(3)	*CIT*	*(4)*	*CIT(A)*
	(5)	*DR*	*(6)*	*Guard File*

By order

Assistant Registrar/Sr.PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai