IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.362/Bang/2023		
Assessment Year : 2018-19		
M/s. Seiko Watch India Pvt. Ltd., #874, Ground Floor Temple Vista, Shri Krishna Temple Road, Indiranagar I Stage, Bengaluru – 560 038. **PAN : AAKCS 6484 K**	Vs.	The Principal Commissioner of Income Tax, Circle – 6(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Nithin Surana, CA
Revenue by	:	Shri. D. K. Mishra, CIT(DR), ITAT, Bengaluru.
Date of hearing	:	01.08.2023
Date of Pronouncement	:	01.08.2023

O R D E R

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against PCIT's order dated 27.03.2023, passed under section 263 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2018-19.

2. The grounds raised read as follows:

1. <u>General Grounds</u>

1.1 The Principal Commissioner of Income Tax, Bengaluru-1, Bengaluru (Pr. CIT') erred in passing the order under section 263 of the Income Tax Act (the Act') by holding that the order passed by the Deputy Commissioner of Income Tax, Circle - NFAC (`AO') as

erroneous and prejudicial to the interest of the revenue. The order passed under section 263 is bad in law and liable to be quashed.

1.2 The learned Pr. CIT erred in disregarding the submissions made by the Appellant and remanding all the issues to the learned AO to verify and pass a suitable order demonstrating the fact that the learned Pr. CIT is seeking to make fishing and roving enquiry, which is not permissible under the provisions of section 263 of the Act.

2. <u>Grounds relating to the order passed under section 263</u>

2.1 The learned Pr. CIT erred in holding that the assessment order passed u/s 143(3) was erroneous in so far as it is prejudicial to the interests of revenue as per clause (a) of explanation 2 of section 263.

2.2 The learned Pr. CIT erred in concluding that the assessment order passed under section 143(3) was made without making proper inquiries or verification regarding the allowability of certain expenditures.

2.3 The learned Pr. CIT failed to appreciate that:

*a) the issues proposed to be revised in the order passed under section 263 were verified by the learned AO during the assessment proceedings under section **143(3).***

*b) Inadequacy of enquiry by the learned AO during the assessment proceedings under section 143(3) cannot be a ground to assume jurisdiction under section **263.***

c) the principles of res-judicata are inapplicable to appellate proceedings under the Act and that assessment of one year cannot govern the assessment of another/later years.

2.4 Without prejudice, the learned Pr. CIT erred in not appreciating that revision under section 263 cannot be made where two views are possible and the AO has accepted one of the possible views while passing the assessment order.

2.5 Without prejudice, the learned Pr. CIT has erred in not appreciating that the assessment order passed under section 143(3) accepting the payment of sales incentives without deduction of TDS was not prejudicial to the interests of revenue as the same was offered to tax by the respective dealers in their return of income filed for AY 2018-19.

2.6 On facts and circumstances of the case and in law, the assumption of jurisdictional by the learned Pr. CIT under section 263 is bad in law and the consequent order is to be quashed in its entirety.

3. <u>Grounds relating to applicability of section 194H</u>

3.1 The learned Pr. CIT erred in holding that sales incentives paid to dealers to the tune of Rs. 9,38,92,257 is liable to tax deduction at source under section 194H of the Act.

3.2 The learned Pr. CIT failed to appreciate that the provisions of section 194H are inapplicable in the absence of a principal-agent relationship.

3.3 The learned Pr. CIT erred in stating that disallowance under section 40(a)(ia) is to be made in line with assessments concluded for earlier assessment years i.e., AY 2016-17 and AY 2017-18.

3.4 On facts and circumstances of the case and in law, the proposed invocation of the provisions of section 194H in relation to the payment made towards sales incentives to dealers is bad in law and deserves to be quashed.

4. <u>Grounds relating to addition of deferred tax</u>

4.1 The learned Pr. CIT erred in holding that a deduction was claimed to the tune of Rs.42,87,627 towards provision for deferred tax under section 40(a)(ii) of the Act.

4.2 The learned Pr. CIT failed to appreciate that the provision for deferred tax was added back to book profits to arrive at the figure of taxable profits for the purposes of the Act.

4.3 Without prejudice to the above, addition of an amount of Rs. 42,87,627 towards provision for deferred tax would lead to double addition and the same is against the basic cannons of taxation.

4.4 On the facts and circumstances of the above, the proposed addition of the provision for deferred tax is bad in law and deserves to be deleted.

5. Grounds relating to disallowance of service charges relating to club expenses

5.1 The learned Pr. CIT erred in proposing to add back an expenditure of Rs. 13,476 relating service charges paid towards club expenses as being personal in nature under section 37 of the Act.

5.2 The learned Pr. CIT failed to appreciate that service charges paid towards club expenses is allowable as an expenditure since it satisfies all the pre-requisites of section 37 of the Act.

5.3 On the facts and circumstances of the above, the proposed disallowance of service charges relating to club expenses is bad in law and deserves to be deleted.

3. Brief facts of the case are as follows:

Assessee is a company. It filed the return of income on 30.11.2018 declaring total income at Rs.6,09,29,350/-. The return of income was processed under section 143(1)(a) of the Act assessing total income of Rs.6,10,29,750/-. Thereafter, the assessment was selected for scrutiny and notice under section 143(2) of the Act was issued on 23.09.2019. The assessment was completed under section 143(3) of the Act vide order dated 13.02.2021 assessing the total income at Rs.6,10,29,750/- (the same assessed figure as in intimation under section 143(1) of the Act).

4. Subsequently, the PCIT initiated revisionary proceedings under section 263 of the Act vide notice dated 02.03.2022. The PCIT was of the view that the Assessment Order passed under section 143(3) dated 26.03.2021 was erroneous and prejudicial to the interest of the Revenue as the AO had failed to make enquiries / verification, which should have been made. In this context, the PCIT relied on clause (a) of explanation 2 to section 263 of the Act. The assessee, in response to the notice, filed written submissions dated 10.03.2023. The summarized written submissions have been reproduced at para 2.1 of the impugned order of the PCIT, hence, the same is not reiterated herein. The PCIT, by placing reliance on explanation 2 to section 263 of the Act and various judicial pronouncements, held that the AO has not made enquiry which he ought to have made while allowing the deduction of commission payments which was not subjected to TDS under section 194H of the Act. The PCIT also referred to the Assessment Orders for Assessment Years 2016-17 and 2017-18 wherein similar additions were made under section 40(a)(ia) of the Act for non-deduction of the tax under section 194H of the Act on such sales incentives. The PCIT concluded by directing the AO to carry out necessary enquiry / verification after giving sufficient opportunity of being heard to the assessee.

5. Aggrieved, assessee has filed the present appeal before the Tribunal. The assessee has filed a Paper Book enclosing therein the audited financial statement for the relevant Assessment Year, various notices and replies submitted during the course of assessment proceedings, details of the sales promotion expenses, etc. The assessee has also filed another Paper Book enclosing therein the case laws relied on. The learned AR submitted that during the course of assessment proceedings, the AO had called for the details of the payments of sales incentives and assessee had satisfactorily explained the same to the AO. It was submitted that the AO, having been convinced that the payments of sales incentives is on principal-to-principal

basis, had allowed the claim of deduction. Therefore, it was contended that the AO has taken a plausible view and the order of the PCIT invoking the revisionary jurisdiction is not in accordance with law. The assessee also relied on various case laws relating to the provisions of section 194H of the Act and contended on the facts of the instant case that sales incentives are nothing but discounts and not commission *per se.* Therefore, the learned AR submitted that the PCIT's order may be quashed.

6. The learned DR, on the other hand, submitted that for identical issue in Assessment Years 2016-17 and 2017-18, disallowance of expenditure was made by invoking provisions of section 40(a)(ia) of the Act. It was submitted by the learned DR that when identical issue had come up for the relevant Assessment Year, the AO ought to have examined / scrutinized the matter carefully before allowing the claim of deduction since there was no deduction of tax under section 194H of the Act with reference to the commission payments made to the dealers.

7. We have heard the rival submissions and perused the material on record. As per clause (a) to explanation 2 to section 263 of the Act, the Assessment Order is deemed to be erroneous and prejudicial to the interest of the Revenue if the order has been passed without making enquiries or verification which should have been made. The explanation 2 to section 263 of the Act reads as follows:

> *[Explanation 2.—For the purposes 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 interests of the revenue, if, in the opinion of the Principal [1][Chief Commissioner or Chief Commissioner or 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)		*the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or*
(d)		*the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.]*

8. The major issue for the PCIT to invoke revisionary jurisdiction is regarding the allowability of sales promotion incentive which was admittedly not subjected to TDS under section 194H of the Act. If the sales incentive is a payment made on principal-to-principal basis, the same need not be subjected to TDS under section 194H of the Act. However, if the said expenditure incurred is on a principal to agent basis, the said payment would come within the purview of commission under section 194H of the Act, and non-deduction of TDS would entail the expenditure to be disallowed under section 40(a)(ia) of the Act. To determine whether the sales incentive which is paid by the assessee to its dealers is in the nature of 'discount' or 'commission', necessarily the agreement between the assessee and its dealers has to be examined. On an query from the Bench during the course of hearing, the learned AR candidly admitted that the agreement between the assessee and its dealers for making the payments of sales incentive was never placed before the AO during the course of assessment proceedings. Mere furnishing of sales ledger, credit note, etc., by itself would not be a determining factor whether the sales incentive would be in the nature of 'commission' or 'discount'. We fail to understand how the AO has allowed the impugned expenditure without examining / verifying

the agreement entered into between the assessee (the payer) and its dealers (the payees). Therefore, on the facts of the instant case, the Assessment Order has been passed without verification, which should have been made, and the PCIT was well within the jurisdiction to have invoked the revisionary powers under section 263 of the Act.

9. Moreover, we find that on identical issue, the matter is pending before the CIT(A) for Assessment Years 2016-17 and 2017-18. The PCIT has only directed the AO to carryout necessary enquiry / verification after affording sufficient opportunity of being heard to the assessee. Therefore, in the strict sense, there is no prejudice caused to the assessee. For the aforesaid reasoning, we uphold the order of the PCIT as correct and in accordance with law. It is ordered accordingly.

10. In the result, appeal filed by the assessee is dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	**Sd/-**
(LAXMI PRASAD SAHU)	**(GEORGE GEORGE K)**
Accountant Member	**Vice President**

Bangalore.
Dated: 01.08.2023. /NS/*

Copy to:

1.	Appellants	2.	Respondent
3.	CIT	4.	CIT(A)
5.	DR, ITAT, Bangalore.	6.	Guard file

By order

Assistant Registrar,
ITAT, Bangalore.