

No sec. 263 revision on ground that AO allowed CSR exp. without mentioning about it in assessment order

Summary – The High Court of Bombay in a recent case of MOIL Ltd., (the Assessee) held that Where Assessing Officer allowed corporate social responsibility expenditure along with some other claims without specifically mentioning about corporate social responsibility expenditure in assessment order, Commissioner could not invoke revisional jurisdiction holding that order was passed without making any enquiry in respect of allowability of claim of corporate social responsibility

Facts

- The assessee was a public sector undertaking wholly owned by the Government of India. The notice under section 142(1) for furnishing the details in respect of twenty items mentioned in the notice was served on the assessee. The assessee was asked to give a detailed note of expenditure for the Corporate social responsibility along with the bifurcation of the expenses under different heads. The assessee in its reply gave the bifurcation of the expenses under various heads towards the Corporate Social responsibility claim.
- The Assessing Officer had dealt with various claims of deductions. In respect of the claim for the Corporate social responsibility and some other claims that were allowed by the Assessing Officer, he had not made a specific reference in the assessment order. He had expressed in detail about the claims that were disallowable. Where the claims were allowable, he had not referred to those claims.
- The Commissioner invoked the jurisdiction under section 263 after holding that the Assessing Officer had passed the assessment order without making any enquiry regarding the allowability of expenses claimed by the assessee under the head 'Corporate Social Responsibility'. Hence, the order was erroneous and prejudicial to the interest of the revenue.
- On appeal against the exercise of jurisdiction by the Commissioner under section 263, the Tribunal dismissed the appeal filed by the assessee and upheld the order of the Commissioner invoking the jurisdiction.
- In instant appeal, the assessee submitted that the details were furnished by the assessee regarding the Corporate Social Responsibility expenditure and the Assessing Officer was satisfied about the explanation tendered by the assessee and hence, the Assessing Officer had allowed the said claim. It was, further, submitted that during the previous assessment years similar claims made by the assessee were allowed by the Assessing Officer and there was no interference with the assessment orders during the previous years. The Commissioner had wrongly invoked the jurisdiction under section 263 though the Assessing Officer had applied his mind to the explanation tendered by the assessee and while allowing the said claim had refused to allow the others after recording reasons for doing so.

Held

- The assessment order had been minutely perused. The claims for deductions were made by the assessee at least under 20 heads and queries were made in the notice under section 142(1) to the assessee in respect of nearly all of them. However, it is found from the assessment order that the Assessing Officer has dealt with nearly nine claims of deductions. These claims have been specifically mentioned in the assessment order and they have been discussed therein because the Assessing Officer appears to have disallowed those claims either partially or totally. In respect of the claim for the Corporate Social Responsibility and some other claims that were allowed by the Assessing Officer, the Assessing Officer has not made a specific reference in the assessment order. It is apparent from the assessment order that the Assessing Officer has expressed in detail about the claims that were disallowable. Where the claims were allowable, it is found from the reading of the assessment order that the Assessing Officer has not referred to those claims. The Corporate Social Responsibility claim is one of them. It is apparent from the notice under section 142(1) that a specific query in regard to the claim pertaining to the Corporate Social Responsibility was made and a detailed note after giving bifurcation of the expenses under different heads was sought. The response in respect of this query which is exhaustive is perused. It is found that the assessee has given the details, as are sought under query in the notice under section 142(1). Considering the explanation of the assessee in this case, the Assessing Officer had taken a possible view. In the instant case, it is found that the Assessing Officer has applied his mind to the claims made by the assessee and wherever the claims were disallowable they have been discussed in that assessment order and there is no discussion or reference in respect of the claims that were allowed. It would be necessary to hold that in the circumstances of the case, it cannot be said that merely because the Assessing Officer had not specifically mentioned about the claim in respect of the Corporate Social Responsibility, the Assessing officer had passed the assessment order without making any enquiry in respect of the allowability of the claim of Corporate Social Responsibility. The provisions of section 263 could not have been invoked by the Commissioner in the circumstances of this case. The Tribunal was not justified in holding that the query under section 142(1) was very general in nature and the reply of the assessee was also very general in nature. The query pertaining to Corporate Social Responsibility was exhaustively answered and the assessee had provided the data pertaining to the expenditure under each head of the claim in respect of Corporate Social Responsibility, in detail. The Tribunal was not justified in holding that the reply/explanation of the assessee was not elaborate enough to decide whether the expenditure claim was admissible under the provisions of the Income Tax Act. The Assessing Officer is not expected to raise more queries, if the Assessing Officer is satisfied about the admissibility of claim on the basis of the material and the details supplied. In the facts and circumstances of the case, the question of law is answered in negative and against the revenue.