

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH

**Before: Ms. Suchitra Kamble, Judicial Member
And Shri Makarand V. Mahadeokar, Accountant Member**

**ITA No. 1133/Ahd/2024
Assessment Year 2013-14**

Synwave Industries, 242, New Cloth Market, O/S Raipur Gate, Ahmedabad-380002 PAN: AAUFS0675H (Appellant)	Vs	The Principal Commissioner of Income Tax, Ahmedabad-1 (Respondent)
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**Assessee by: Shri Y.K. Batra, A.R.
Revenue by: Shri V. Nandakumar, CIT-D.R.**

Date of hearing : 10-12-2024
Date of pronouncement : 01-01-2025

आदेश/ORDER

PER : SUCHITRA KAMBLE, JUDICIAL MEMBER:-

This is an appeal filed against the order dated 29-03-2024 passed by Id. Principal Commissioner of Income Tax, PCIT, Ahmedabad-1 for assessment year 2013-14.

2. The grounds of appeal are as under:-

“1. The Ld. Pr.CIT grossly erred in law and on facts by assuming jurisdiction u/s 263 of the income tax Act. 1961 and holding the reassessment order dated 29.03.2022 as erroneous as well prejudicial to the interest of revenue and that too by recording incorrect facts and findings.

2. The Ld. Pr.CIT grossly erred in law and on facts holding the impugned assessment order erroneous and prejudicial to the interest of revenue simply because the assessing officer had not made any addition on the reasons for which the assessment was reopened.

2.1. The Ld. Pr.CIT grossly erred in law and on facts in ignoring the clear cut findings of the Assessing Officer recorded in the assessment order regarding verification of details filed by the appellant during the assessment proceeding.

2.2 The Ld. Pr.CIT grossly erred in law and on facts wrongly relying on alleged note recorded by the assessing officer after completion of assessment proceedings that too without the knowledge of the appellant in total disregard of the principles of natural justice.

2.3 The Ld. Pr.CIT grossly erred in not appreciating that the alleged note recorded by the assessing officer is totally opposite what he has held in the assessment order.

2.4 The Ld. Pr.CIT grossly erred in not appreciating that there is no whisper in the assessment order about alleged late filing of details by the appellant during the assessment proceedings.

3. The ld. Pr.CIT grossly erred in law and on fact that the alleged statement of Shri Alpeshkumar V Patel was general in nature and copy of such statement was not provided to the appellant during the assessment proceedings for cross verification.

4. It is prayed that the order passed by the Ld. Pr.CIT under section 263 of the Income tax act shall be set aside as having been made on frivolous grounds. The assessment made by the Assessing Officer is neither erroneous nor prejudicial to the interest of revenue, therefore shall be restored.

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5. The appellant crave liberty to add or alter the grounds of appeal at any stage of proceedings keeping in view of the facts and circumstances of the case and legal provisions in this regard.”

3. The assessee filed return of income for assessment year 2013-14 on 11-09-2023 declaring total loss of Rs. (-) 26,27,196/-. The assessment was passed u/s. 147 r.w.s. 144B of the Income Tax Act, 1961 on 29-03-2022 thereby assessing nil income u/s. 148 of the Act. The Pr. CIT noticed that the case of the assessee was reopened on the basis of information that the assessee has made transaction totaling to Rs. 17,94,345/- with Umiya Industries, Perfect Steel Corp. and Bhoomi Traders, Prop. Alpeshkumar V Patel and other two companies in his statement recorded on 23-01-2019 and 24-01-2019 admitted that all the three proprietary concerns were engaged in providing accommodation entries. There was a specific reason for reopening of this issue but the Assessing Officer has not made any addition as observed by the Pr. CIT and therefore the Pr. CIT issued notice u/s. 263 of the Income Tax Act dated 13-02-2024. The assessee replied the same on 27-02-2024. After taking cognizance of the same, the Pr. CIT passed order u/s. 263 of the Income Tax Act, dated 29-03-2024 and directed the Assessing Officer to pass an assessment order.

4. Being aggrieved by the order u/s. 263 of the Act, the assessee filed appeal before us.

5. The Id. A.R. submitted that the Pr. CIT was not justified in setting aside the earlier assessment order dated 29-03-2022 as the finding given by

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the Assessing Officer recorded verification of details filed by the assessee are recorded in para 2 and 4 of the assessment order. The Pr. CIT has relied on the note recorded by the Assessing Officer after completion of assessment proceedings that too during the invocation of section 263 proceedings is not justified as the Assessing Officer has passed valid order u/s. 147 r.w.s. 144B which is a reopening and the reopening was on the very basis of the search/inquiry conducted in case of Umiya Industries, Perfect Steel Corp. and Bhoomi Traders, Prop. Alpeshkumar V Patel. The ld. A.R. submitted that the assessee has revealed all the details during assessment proceedings and the Assessing Officer has verified it time to time. The ld. A.R. submitted the reply to the notice u/s. 142(1). The Assessing Officer clearly reveals that the assessee company has given all the bank statements as well as the submission states that there was no linking about the persons based on whose allegations, the reopening has proceeded. The ld. A.R. submitted that the bank statement and the details thereof was also given including that of journal and cash book/ledger as well as audited accounts with Form No. 3CD was available before the Assessing Officer. Thus, the issue was verified by the Assessing Officer and after verifying the same has passed the reopening order u/s. 147 r.w.s. 144B of the Act. The ld. A.R. relied upon the decision of Hon'ble Calcutta High Court in case of Smt. Sumitra Devi Khirwal vs. CIT 84 ITR 26.

6. The ld. D.R. submitted that the Pr. CIT has rightly set aside the assessment order as the Assessing Officer has not verified the accommodation entries totaling to Rs. 17,94,345/- received from Umiya

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Industries, Perfect Steel Corp. and Bhoomi Traders, Prop. Alpeshkumar V Patel. Thus, the Pr. CIT has rightly invoked section 263 of the Act.

7. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that the assessee at the time of reopening proceedings of the assessment has given the details related to the reopening which is on the issue of details of all transactions made with Umiya Industries, Perfect Steel Corp. and Bhoomi Traders, Prop. Alpeshkumar V Patel during assessment year 2013-14 which is specifically asked vide notice u/s. 142(1) dated 19-03-2022 by the Assessing Officer to the assessee. The answer to the same notice was given by the assessee and prior to the same, the assessee has also objected the reopening. The answer to the queries was replied in respect notice u/s. 143(2) that the concerned person who has transferred in assessee's account whether is from Umiya Industries, Perfect Steel Corp. and Bhoomi Traders or Alpeshkumar V Patel from his personal bank account is not specified in the notice for reopening and in fact the transactions related to Rs. 17,94,345/- was explained by the assessee as not concerned with Alpeshkumar V. Patel or any of the three concerns. This categorically has been explained into details from the bank statements by the assessee during the reopening proceedings and the Assessing Officer has taken a plausible view adhering to the evidences produced during assessment proceedings. Subsequent opinion expressed during 263 proceedings by the Assessing Officer will be held as a second opinion and cannot be the reason for inception/initiation of section 263 proceedings as per Income Tax Act, 1961. Thus, invocation of section 263 itself is not justified. The appeal of the assessee is allowed.

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

Order pronounced in the open court on 01-01-2025

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER
Ahmedabad : Dated 01/01/2025

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद