IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'C' PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1287/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Alfa Laval Lund AB C/o Alfa Laval (India) Ltd., Office No.301, Global Port Building, Survey No.45/1-10, Mumbai Bangalore Highway, Baner, Pune – 411045 PAN: AAJCA0052G	Vs.	CIT(IT/TP), Pune
Appellant		Respondent

Assessee by : Shri Aliasger Rampurawala
Revenue by : Smt. Divya Bajpai

Date of hearing : 01-11-2021
Date of pronouncement : 02-11-2021

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order dated 30.03.2017 passed by the ld. CIT u/s 263 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the A.Y. 2012-13.

2. Succinctly, the factual panorama of the case is that the assessee is a foreign company incorporated in Sweden. A return of income was filed by it declaring Nil income. The assessment u/s 143(3) of the

Act was completed on 27.03.2015 at the same Nil income. Thereafter, a proposal for revision was received from the AO, based on which, the ld. CIT carried out the revision by observing that the assessee entered into an agreement on 01.01.2011 with its related concern in India, viz., M/s. Alfa Laval India for supply of software licenses and IT support services. As per the Agreement, the assessee collected software license requirements of the Alfa group; negotiated with the third party vendors; and distributed such licenses usage to the group entities. Under the same Agreement, the assessee also provided other Information Technologies services to Alfa Laval India, which included overall IT support, internet connectivity, global service desk, desktop management, intranet portal and other IT communication services. The amount of service fee received from the Indian entity, collected on the basis of number of users, was claimed as not chargeable to tax in India within the meaning of Article 12 of India-Sweden Double Taxation Avoidance Agreement. The ld. CIT opined that the receipt from the Indian entity was in the nature of 'Royalty' and not 'Fees for Technical Services'. On being show caused, the assessee urged that the assessment order was not erroneous and

prejudicial to the interest of the revenue. In the ultimate analysis, the ld. CIT held the assessment order to be erroneous and prejudicial to the interests of revenue. He, therefore, set aside the same and remitted the matter to the AO for treating the amount received from Indian entity as 'Royalty' chargeable to tax u/s 9(1)(vi) of the Act. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

3. We have heard both the sides through Virtual Court and gone through the relevant material on record. It can be seen from para 4 of the ld. CIT's order that: "A proposal for revision u/s 263 of the IT Act, 1961 was received from DCIT(IT)-1, Pune through the Jt.CIT(IT), Pune vide letter No. Pn/Jt.CIT(IT)/263/2016-17/61 dated 23.05.2016". It is thus manifest that the edifice of the revision in the extant case has been laid on the bedrock of receipt of the proposal from the AO. At this stage, it would be worthwhile to have a glance at sub-section (1) of section 263 of the Act, which runs as under:-

> "The Commissioner may *call for and examine the record of any proceeding* under this Act, *and if he considers* that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he, may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order

enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."

4. Sub-section (1) of section 263 of the Act is an enabling provision which confers jurisdiction on the CIT to revise an assessment order which he considers erroneous and prejudicial to the interests of revenue. The process of revision u/s 263 of the Act initiates only when the CIT calls for and examines the record of any proceeding under this Act *and* considers that any order passed by the AO is erroneous and prejudicial to the interests of the revenue. The twin conditions of – (i) the CIT calling for and examining the record; succeeded by (ii) his considering the assessment order as erroneous etc. – are *sine qua non* for the exercise of power under this section. The use of the word *`and'* between the expression `call for and examine the record ….' and the expression `if he considers that any order … is erroneous …' abundantly demonstrates that both these conditions must be cumulatively fulfilled by the CIT and in the same order, that is, the first followed by the second. In other words, the kicking in point for invoking jurisdiction u/s 263 is calling for and examining the record of any proceedings under the Act by the CIT

leading him to consider the assessment order erroneous etc. A communication from the AO is not *`the record of any proceedings under this Act'*. To put it simply, the consideration that the assessment order is erroneous and prejudicial to the interests of the revenue should flow from and be the consequence of his examination of the record of proceedings. If such a consideration is not preceded by the examination of record of the proceedings under the Act, the condition for revision does not get magnetized.

5. It is trite that a power which vests exclusively in one authority, can't be invoked or cause to be invoked by another, either directly or indirectly. Section 263 of the Act confers power on the CIT to revise an assessment order, subject to certain conditions. Instantly, we are confronted with a situation in which the revision was initiated on the basis of the AO sending a proposal to the CIT and not on the CIT *suo motu* calling for and examining the record of the assessment proceedings and thereafter considering the assessment order erroneous and prejudicial to the interests of the revenue. The AO recommending a revision to the CIT has no statutory sanction and is a course of action unknown to the law. If AO, after passing an assessment order,

finds something amiss in it to the detriment of the Revenue, he has ample power to either reassess the earlier assessment in terms of section 147 or carry out rectification u/s 154 of the Act. He can't usurp the power of the CIT and recommend a revision. No overlapping of powers of the authorities under the Act can be permitted. As the revision proceedings in this case have triggered with the AO sending a proposal to the ld. CIT and then the latter passing the order u/s 263 of the Act on the basis of such a proposal, we hold that it became a case of jurisdiction deficit resulting into vitiating the impugned order. Without going into the merits of the case, we quash the impugned order on this legal issue itself.

6. In the result, the appeal is allowed.

Order pronounced in the Open Court on 2nd , November, 2021.

Sd/-	Sd/-
(S.S. VISWANETHRA RAVI)	**(R.S.SYAL)**
JUDICIAL MEMBER	**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 2nd November, 2021
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. DR, ITAT, 'C' Bench, Pune
4. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	01-11-2021	Sr.PS
2.	Draft placed before author	02-11-2021	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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