

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH: KOLKATA

Before: **Shri M. Balaganesh, Accountant Member** and
Shri S.S. Viswanethra Ravi, Judicial Member

I.T.A No. 1974/Kol/2016

A.Y: 2009-10

D.C.I.T Cir-22, Kolkata

Vs.

M/s. Lovelock & Lewes

PAN: AABFL 5878L

[Appellant]

[Respondent]

For the Appellant : Shri Arindam Bhattacharya, Addl.CIT, Id. Sr.DR

For the Respondent : Shri Bikash Kr. Jain, Shri Alpesh Gupta, Id.ARs

Date of hearing : 11-01-2018

Date of pronouncement : 06-04-2018

ORDER

Shri S.S.Viswanethra Ravi, JM:

This appeal by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals), 6, Kolkata dt. 20-07-2016 for the A.Y 2009-10.

2. The only issue is to be decided as to whether the CIT-A is justified in quashing the order passed by the AO passed u/s. 263/143(3) of the Act in the facts and circumstances of the case.

3. Brief facts of the case are that the assessee is a firm and derives its income from profession, house property & rent and conducts its business under the name & style of M/s. Lovelock & Lewes. The assessee filed its original return of income declaring a total income of Rs.24,84,85,909/- within due date i.e on 30-09-2009. Subsequently, the assessee filed a revised return declaring total income at Rs.25,37,78,154/-. The AO determined the same at Rs.25,41,15,580/- by making the following additions and disallowances of Rs.3,37,430/- by an order dt. 28-12-2011 passed u/s. 143(3) of the Act:-

a)	service tax write off	Rs. 27,815/-
b)	motor car expenses	Rs. 1,29,619/-
c)	depreciation u/s. 38(2) of the Act	Rs.1,79,996

4. Thereafter, the CIT u/s. 263 by exercising his revisional on jurisdiction held that the original order dt. 28-12-2011 passed by the AO u/s. 143(3) of the Act is erroneous and prejudicial to the interest of revenue and directed the AO to conduct enquiry in respect of issues relating to PWC Global Service charges and Accountant Risked Policy premium. In pursuance to which direction of the CIT u/s. 263 of the Act, the AO determined the revised total income of assessee at Rs. 28,52,95,220/- vide his order dt. 25-03-2015 passed u/s. 263/143(3) of the Act by making additions of Rs.2,13,90,329/- and Rs.97,89,308/- under the heads mentioned above.

5. Being aggrieved, the assessee preferred an appeal before the CIT-A contending that the assessment order dt. 25-03-2015 passed u/s. 263/143(3) of the Act is liable to be quashed as the order u/s. 263 of the Act has been quashed by the Tribunal vide its order dt. 11-05-2016 in assessee's own case, ITA No. 1278/Kol/2014 for the A.Y 2009-10.

6. The CIT-A considering the submissions and on examination quashed assessment order dt. 25-03-2015 passed u/s. 263/143(3) of the Act. The relevant portion of order of CIT-A is as under:-

4. The ARs of the appellant furnished a written submission and paper book on 19.07.2016, in which attention was drawn to the above referred order of Hon'ble ITAT, "D" Bench, Kolkata. The ARs, relying upon various case laws, pleaded that the assessment order under appeal is liable to be quashed as the relevant order u/s. 263 of the Act has been quashed by the Hon'ble Tribunal. In one of the cases, CIT v Hari Om Agarwal[249 ITR 382(All)], relied upon by the appellant, it has been held that -

"The order under section 263 having been cancelled by the Tribunal, the very basis of jurisdiction vanished and the reassessment orders passed by the Assessing Officer became res nullius and even without any appeal etc. they could not be enforced. "

Similarly, in CIT v Shivabhai B. Patel [239 ITR 919(Guj)], it has been held that -

"Once an order under section 263 was set aside it resulted in restoration of the original assessments on record, there cannot be any room for fresh assessment orders even if the same have come into existence in pursuance of a direction issued under section 263". Therefore, respectfully following the above judicial pronouncements, ground no.1 of the appeal stands allowed and the AO is directed to give effect to the order of the Hon'ble ITAT and consequently cancel the assessment order passed in pursuance of the

directions u/s. 263 of the Act. As the order under appeal has become null and void, the other grounds need no adjudication. "

7. Against which, now the revenue is in appeal and submitted the ITAT, Kolkata was not justified in not relying on the objection raised by the Revenue Audit that accountant risked policy premium of Rs.97,89,308/- debited in the P & L account should have been disallowed and a sum of Rs. 2,13,90,329/- debited in the P & L account as PWC Global Services Charges is not allowable as the PWC Global Services has no direct or indirect nexus in running or functioning of assessee's business. The Id.DR submitted that the order of CIT-A is not justified and relied on the order of AO passed u/s. 263/143(3) of the Act.

8. On the other hand, the Id.AR relied on the order of the CIT-A.

9. Heard both the parties and perused the record. We find that the Id.AR has rightly pointed out that the order passed by the CIT u/s. in 263 is no more in existence. Accordingly, the assessment order passed u/s. 263/143(3) of the Act passed in pursuance of the direction of CIT is to be held as invalid. On perusal of the impugned order of the CIT-A, we find that the CIT-A in directing the same to the AO has relied on two judgments, i) of the Hon'ble High Court of Allahabad in the case of Hari Om Agarwal reported in 249 ITR 382 (All), *held that order u/s. 263 having been cancelled by the Tribunal, and re-assessment order(s) passed held to be invalid* & ii) Hon'ble High Court of Gujarat in the case of Shivabhai B. Patel reported in 239 ITR 919 (Guj.), *held once an order u/s. 263 was set aside it results into restoration of the original assessments on record.*

10. In view of above, we find no infirmity in the order of CIT-A and it is justified. Therefore, ground nos. (i) & (ii) raised by the revenue are dismissed and ground no.(iii) being general and needs no adjudication, hence, it is dismissed.

11. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 06-04-2018

Sd/-
M. Balaganesh
Accountant Member

Sd/-
S.S. Viswanethra Ravi
Judicial Member

Dated : 06-04-2018

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Revenue : The DCIT, Cir-22, 54/1 Rafi Ahmed Kidwai Road, 4th Floor, Kolkata-16.
2. Respondent /Assessee: M/s. Lovelock & Lewes, Plot N.Y 14, Block EP, Sector-V, Salt Lake, Kolkata-91.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy, By order,

Sr.PS/H.O.O
ITAT Kolkata