

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH : KOLKATA

[Before Hon’ble Shri S.S. Godara, JM & Shri M.Balaganesh, AM]

I.T.A No. 828/Kol/2018

Assessment Year : 2013-14

Shri Shibsankar Ghosh
[PAN: AGPPG 7784 E]
(Appellant)

-vs-

Pr. CIT-14, Kolkata
(Respondent)

For the Appellant : Shri K.M.Roy, FCA
Shri P. S. Gupta, Advocate

For the Respondent : Shri Md. Usman, CIT DR

Date of Hearing : 24.07.2018

Date of Pronouncement : 01.08.2018

ORDER

Per M.Balaganesh, AM

1. This appeal by the assessee arises out of the order of the Learned Principal Commissioner of Income Tax-14, Kolkata [in short the ld. CIT] in Memo no. Pr. CIT-14/AGPPG7784E/263/2017-18/6301-03 dated 20.03.2018 passed u/s 263 of the Act against the order passed by the ACIT, Circle-41, Nadia [in short the ld. AO] under section 143(3) of the Income Tax Act, 1961 [in short “the Act”] dated 23.09.2015 for the Assessment year 2013-14.

2. The only issue to be decided in this appeal is as to whether the Id. CIT was justified in invoking the revisionary jurisdiction u/s 263 of the Act, in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee individual is a civil contractor. The return of income for the assessment year 2013-14 was filed on 09.09.2013 declaring total income of Rs. 42,64,920/-. The assessment was completed u/s 143(3) of the Act on 23.09.2015 accepting the income returned. The Id. AO noted in the assessment order that the assessee produced the books of accounts, supporting evidences and explained the return together with the audited accounts. This assessment was sought to be revised by the Id. CIT u/s 263 of the Act, that the assessee was in receipt of loan from Smt. Shampa Ghosh amounting to Rs. 10,08,000/-. The Id. CIT observed that the Id. AO had not made proper enquiries with regard to this loan taken from Smt. Shampa Ghosh in the sum of Rs. 10,08,000/- which made his order erroneous inasmuch as it is prejudicial to the interest of the revenue and accordingly, the Id. CIT passed an order u/s 263 of the Act on 12.03.2018 setting aside the assessment order for verification of this specific issue with the additional direction that the Id. AO should also examine the assessee's contention whether the loan is brought forward from earlier year. Aggrieved the assessee is in appeal before us.

4. We have heard rival submissions. At the outset, we find that the assessee had received loan of Rs. 10,08,000/- in the financial year 2011-12 relevant to assessment year 2012-13. Hence, it could be safely concluded that this loan was not received during the year under appeal. The assessee has specifically brought this point to the notice of the Id. CIT together with the dates of receipt of loans from Smt. Shampa Ghosh; sources from which Smt. Shampa Ghosh had given this loan to the assessee and circumstances

under which the assessee was forced to avail loans from Smt. Shampa Ghosh. Apart from this, we also find that the assessee had placed the copy of PAN card, the relevant page of the bank statement of Smt. Shampa Ghosh maintained with United Bank of India, Chakdah Branch before the Id. AO together with the copy of sale deed of Smt. Shampa Ghosh executed on 27.12.2011 explaining the source for Smt. Shampa Ghosh to advance loans to the assessee during the earlier assessment year 2012-13. These facts are placed before the Id. AO which are enclosed in pages 16 to 21 of the paper book. Moreover, we also find that the Id. AO had examined Smt. Shampa Ghosh on oath and recorded sworn statement u/s 131(1) of the Act on 04.09.2015 wherein he had categorically stated that she had advanced loan to the assessee in the sum of Rs. 10,08,000/- during the financial year 2011-12 and that the said loan was outstanding as on 31.03.2013. In the said sworn statement, she had also stated the source for advancing loan to the assessee. The copy of the said sworn statement is enclosed of pages 22 and 23 of the paper book. The Id. AO after examining all these facts brought on record had taken a conscious decision and the correct view in the matter that no addition is warranted towards the loan amount of Rs. 10,08,000/- in the case of the assessee. Hence, the possible view taken by the Id. AO cannot be sought to be disturbed merely because the Id. CIT is of a different view. This is nothing but the Id. CIT trying to substitute his view over the view taken by the Id. AO in the revisionary jurisdiction u/s 263 of the Act, which in our considered opinion, is not permissible as per law. Reliance in this regard is placed on the decision of the Hon'ble Bombay High Court in the case of CIT vs. Gabriel India Pvt. Ltd. reported in 203 ITR 108. Moreover, we find that in any case the loan was received by the assessee only in the earlier assessment year 2012-13 and not in assessment year 2013-14. Hence, in any case, there cannot be any addition that could be made in the hands of the assessee for the assessment year 2013-14 i.e. the year under appeal in respect of the said loan. Hence the order of the Id. AO cannot be treated as erroneous and prejudicial to the interest of the revenue.

5. In view of the aforesaid observations, in the facts and circumstances of the case, we have no hesitation to quash the revision order passed by the Id. CIT u/s 263 of the Act. Accordingly, grounds raised by the assessee are allowed.

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

Order pronounced in the Court on 01.08.2018

Sd/-

[S.S. Godara]
Judicial Member

Sd/-

[M.Balaganesh]
Accountant Member

Dated : 01.08.2018
SB, Sr. PS

Copy of the order forwarded to:

1. Shri Shibsankar Ghosh, C.O. P.S. Gupta, Advocate, 100, Bank Lane, Hatarpara, P.O.-Krishnagar, Dist. Nadia-741101.
2. Pr. CIT-14, Kolkata, 3 No. Govt. Place(West), 2nd Floor, Kolkata-700001.
- 3..C.I.T.(A)- 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches