

IN THE INCOME TAX APPELLATE TRIBUNAL “C”BENCH: KOLKATA
[Before Shri A. T. Varkey, JM & Dr. (Shri) A.L. Saini, AM]

I.TA No. 1306/Kol/2018
A.Y 2012-13

Selehium Trading Pvt. Limited PAN: AADCS 7717E	Vs.	P.C.I.T-1, Kolkata
Appellant		Respondent
Date of Hearing	09.12.2019	
Date of Pronouncement	28.02.2020	
For the Appellant	Shri Miraj D.Shah, Id.AR	
For the Respondent	Dr. P.K. Srihari, CIT, Id.DR	

ORDER

PER SHRI A.T. VARKEY, JM

This appeal is preferred by the assessee against the order of Ld. PCIT, Kolkata-1, Kolkata dated 22-03-2018 passed u/s. 263 of the Income-tax Act, 1961 (in short hereinafter, the ‘Act’).

2. The assessee has raised the following grounds of appeal:-

GROUND OF APPEAL BEFORE ITAT

1. For that in the facts and circumstances of the case the notice u/s 263 of the Income Tax Act 1961 issued by the Learned Principal Commissioner of Income Tax was without jurisdiction and time barred. Thus, the order passed on the basis of such notice was bad in law hence the same be quashed and or annulled.

2. For that in the facts and circumstances of the case the Learned Principal Commissioner of Income Tax erred in holding that the assessment order passed by the learned assessing officer in the case of the appellant was erroneous and prejudicial to the interest of revenue and thereby setting aside the said assessment order by invoking the provisions of section 263 of the Income Tax Act 1961.

3. For that on the facts and in the circumstances of the case, the learned Principal Commissioner of Income Tax erred in holding that the Ld AO did not make any proper enquiry regarding assessment of interest income credited in the books with the interest appearing in the bank statement of the assessee. Such finding of the learned Principal Commissioner of Income Tax was perverse and therefore the order passed u/s.263 of the Income Tax

Act, 1961 is based on wrong appreciation of facts of the case and hence bad in law.

4. Without prejudice to the above, the view of the Ld AO with respect to the interest income offered to tax was on the basis of a reconciliation which was filed before him and was substantiated with the bank statement, the same was verified and accepted by the Ld AO in the course of assessment procedure. Hence, the Hon'ble Principal Commissioner of Income Tax erred in invoking provisions of section 263 of the Income Tax Act, 1961 is bad in law.

5. For that in the facts and circumstances of the case the order passed by the Learned Commissioner of Income Tax u/s 263 of the Income Tax Act 1961 just to re-look the issue to ensure correctness of interest income offered for taxation without considering the submission made by the assessee is not justified and the hence the same be quashed.

6. For that in the facts and circumstances of the case the order passed by the Learned Commissioner of Income Tax u/s 263 of the Income Tax Act 1961 is based on wrong appreciation of facts of the case and is bad in law.

7. For that in the facts and circumstances of the case the order passed by the Learned Commissioner of Income Tax u/s. 263 of the Income Tax Act 1961 is without any basis and hence the same be quashed.

8. The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of the appeal.

3. However, the main grievance of the assessee is against the action of the ld. PCIT invoking the provisions of section 263 of the Act, which according to the assessee is without satisfying the conditions precedent as prescribed by statute.

4. Brief facts of the case as noted by the ld. PCIT is that the assessee company filed its return of income declaring total loss of Rs. 17,35,145/-, which was scrutinised u/s. 143(3) of the Act vide order dt. 29-03-2015 at a total income of Rs. 13,10,858/-. According to ld. PCIT when he perused the assessment record of the assessee he noted from the P/L account that the assessee had credited interest income of Rs. 17,71,542/- for the period FY 2011-12 (AY 2012-13), but from the bank statement submitted in the course of assessment, it could be seen that the interest income was to the tune of Rs. 19,33,810/-, which according to the ld. PCIT was overlooked by the AO while framing of assessment order, thereby causing under assessment of income of Rs. 1,62,268/-. He, therefore, issued show cause notice u/s. 263 of the Act to the assessee pointing out this fact, but after hearing the assessee on this issue, he was pleased to set aside the assessment order dt. 29-03-2015 passed u/s. 143(3) of the Act and direct the

AO to pass fresh assessment order limited to the aforesaid interest income in accordance with law. Aggrieved, the assessee is before us.

5. Assailing the decision of the Id. PCIT, the Id. AR submitted that the jurisdictional condition as precedent as required u/s. 263 of the Act to revise the order of the AO is absent in this case, since the order of the AO cannot be termed as **‘erroneous as well as prejudicial to the interest of the revenue’**. According to the Id. AR, the order of the AO passed u/s. 143(3) of the Act cannot be termed as **‘erroneous’** since the AO had in fact enquired about mis-match between the interest income that was reflected in the bank statement and as offered by the assessee for taxation. According to the Id. AR, proper re-conciliation of the mis-match was, in fact, filed by the assessee before the AO during the assessment proceedings and after satisfying about the same, the AO had accepted the interest income at Rs. 17,71,542/- in place of Rs. 19,33,810/-. Therefore, according to the Id. AR the order of the AO in respect of interest income cannot be found fault with as **erroneous** for lack of enquiry on the part of the AO on this issue and moreover there is no prejudice caused to the revenue since the amount of Rs. 1,62,268/- (difference amount was taxed) in the earlier AY 2011-12 and, therefore, there is no under assessment of Rs.1,62,268/- as found by Id. PCIT.

6. The Id. AR explained that the assessee received total interest of Rs.19,33,810/-, which fact is evident from the bank statement. As against this, the assessee company had already shown a sum of Rs.5,28,118/- out of this amount of Rs. 19,33,810/- in A.Y. 2011-12 (previous year) and offered the same to tax in AY 2011-12. The balance amount of Rs.14,05,691/- was offered to tax in AY 2012-13 along with the interest for the year i.e.Rs.1,77,150/- and Rs. 1,80,700/-. Thus, according to Id.AR, the assessee had offered to tax the bank interest of Rs.17,71,542/- for the year under consideration which included Rs.14,05,691/-, Rs.1,77,150/- and Rs.1,88,700/- which has been duly disclosed in the books of accounts and the return of income. Thus, according to Id.AR, the assessee has booked the interest over two years i.e. AY 2011-12 and AY 2012-13. Thus, the Id. AR reconciled the difference in the bank interest figure with the bank statement and 26AS statement. So according to

Id.AR since part of the interest has already been offered to tax in the earlier year, the assessee has rightly offered the balance amount to tax in the year under consideration and therefore, there is no under assessment of income during the year under consideration as alleged by Id. PCIT. It was reiterated by the Id. AR that all these facts were explained before the AO during assessment proceedings and the AO, after examining the same has accepted the interest income as offered by the assessee. It was also brought to the notice of the AO as well as the Id. PCIT that the following documents were also filed before the AO as well as the Id. PCIT to reconcile the mismatch:

- a. Reconciliation of interest for AY 2011-12 and 2012-13
- b. Interest ledger and TDS ledger for AY 2012-13
- c. 26A statement of AY 2011-12 and 2012-13
- d. Bank statement for AY 2012-13 reflecting the interest amount.

Thus, according to the Id. AR from the aforesaid facts and circumstances and explanation it is clear that the interest income has been properly offered to tax and during assessment proceedings the AO has made necessary enquiries on this issue and hence, the assessment order in any event cannot be termed to be **'erroneous as well as prejudicial to the interest of the revenue'**. Therefore, since the condition precedent for assuming the jurisdiction u/s. 263 of the Act by the Id. PCIT is absent, the very assumption of jurisdiction is invalid and therefore, the same needs to be quashed.

7. Per contra, Id. CIT/DR supporting the impugned order of the Id. PCIT submitted that the AO has simply gulped whatever the assessee has stated before him without making any enquiry. So the order of the AO in respect of interest income is erroneous as well as prejudicial to the interest of the revenue. Therefore, the Id. PCIT has rightly invoked his jurisdiction u/s. 263 of the Act to interdict and direct the AO to pass a fresh assessment order on the issue of interest income as pointed out by him in his order passed u/s. 263 of the Act. Therefore, he does not want us to interfere with the impugned order of the Id. PCIT.

8. After hearing both the parties and on perusal of the records, we note that the condition precedent for invoking jurisdiction u/s. 263 of the Act is that the order of the AO should be **erroneous as well as prejudicial to the interest of the revenue.**

According to us, the present order of AO passed u/s. 143(3) of the Act cannot be termed as **erroneous** since enquiry was, in fact, carried out by him on the issue on which the Id PCIT has found fault with and has taken a plausible view. We note that the AO has made enquiry during the assessment proceedings about mis-match between the offer of interest income to the tune of Rs. 17,71,542/- during the relevant AY i.e under consideration (2012-13), when the fact was that bank statement reflected interest amount of Rs. 19,33,810/- during the period (AY) under consideration. According to the Id. PCIT there is under assessment of income to the tune of Rs. 1,62,628/-, which has been overlooked by the AO while framing the assessment, which contention of the Id. PCIT cannot be countenanced for the simple reason that AO had, in fact, made enquiry, which fact is discerned from the averments of the of the Id. PCIT itself, wherein he (PCIT) states “..... *instead of merely accepting assertion of the assessee* ’. This averment of Id. PCIT implies that he understood that during the assessment proceedings, on this issue the AO had accepted the assertion of the assessee after perusal of the reconciliation of interest income for the AYs 2011-12 and 2012-13 made before him (AO). And the only fault discernible from the averment of Id. PCIT is that AO after listening to the explanation of the assessee on this issue and after perusal of the reconciliation has accepted, which action of AO according to Id PCIT is not an enquiry as desired by him and therefore he suggested that the AO ought to have ascertained further by obtaining statements to reconcile the accounts over the last 4-5 years and then come to clear finding of facts. However, we note that the AO enquired during assessment proceedings and the assessee had filed the reconciliation of the interest income for the AYs. 2011-12 & 2012-13 and submitted the interest ledger and TDS ledger for the AY under consideration and bank statements for the AY 2012-13, therefore, the AO’s action of accepting the claim of the assessee is that it had interest income during the AY under consideration only of Rs. 17,71,542/-, even though an amount of Rs. 19,33,810/- was credited by the bank in the accounts of the assessee during the year under consideration is a view which is a conclusion based on facts laid before him, and therefore, **cannot be termed as erroneous**. So we find that the AO’s action cannot be termed “**erroneous**”. Since not only enquiry was carried out by the AO on the issue under consideration and based on the evidence

gathered he has taken a plausible view, which at any rate cannot be called as an unsustainable view. We also note that during the revisional proceedings before the Id. PCIT the assessee had already brought to the notice of the Id. PCIT's following facts pertaining to the issue.

5. Without prejudice to the above, we submit that the total interest as received in the bank statement by the bank was Rs.19,33,810/-. As against this, the assessee company had already accrued a sum of Rs.5,28,118/- out of this amount of Rs. 19,33,810/- in A.Y. 2011-12 and offered the same to tax in AY 2011-12. The balance amount of Rs.14,05,691/- was offered to tax in AY 2012-13 along with the interest for the year i.e.Rs.1,77,150/- and Rs. 1,80,700/-. Thus, the assessee offered to tax bank interest of Rs.17, 71,542/- for the year under consideration which included Rs.14,05,691/-, Rs.1,77,150/- and Rs.1,88,700/- which is duly disclosed in the books of accounts and the return of income. You will find that the assessee has booked the interest over two years i.e. AY 2011-12 and AY 2012-13 and AY 2-13 and thus, there is an apparent difference in the bank interest figure when compared with the bank statement and 26AS statement. However, as a part of the interest has already been offered to tax in the earlier year, the assessee has rightly offered to tax the balance amount in the year under consideration and therefore, there is no escapement of income during the year under consideration. All these facts were explained before the AO and the AO, after examining the same, accepted the interest income as offered by the assessee.

9. From the aforesaid facts and we also find that re-conciliation in respect of mis-match of interest income was filed also before the Id. PCIT to show that AO's action is correct after enquiring on this issue. Thus, we note that the assessee was able to bring to the notice of the Id. PCIT, there was no under assessment of income of Rs. 1,62,268/- as alleged by the Id. PCIT in his show-cause notice issued u/s. 263 of the Act. Though the Id. PCIT has taken note that these facts were brought to the notice of the AO during the assessment proceedings, but, he did not bother to make any finding of fact, which could have shown that the AO's action of accepting the claim of the assessee's interest income to the of Rs. 17,71,542/- during the AY 2012-13 was erroneous. Therefore, we are of the considered opinion that AO's order cannot be termed as ***erroneous as well as prejudicial to the interest of the revenue*** and therefore, jurisdictional condition precedent as prescribed by statute for invoking revisional jurisdiction is absent and therefore, we are inclined to quash the impugned order dt. 22-03-2018 of the Id. PCIT.

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

Order Pronounced in the Open Court on Feb. 28.02.2020

Sd/-

A.L. Saini
Accountant Member

Sd/-

A.T. Varkey
Judicial Member

Dated 28-02-2020

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Assessee: M/s. Selehium Trading Pvt. Ltd Unit No. A7, 1st Fl., 41 B.B. Ganguly St., Bowbazar, Kolkata-700 012.
2. Respondent/Revenue: The Pr. Commissioner of Income-tax-1, P-7 Chowringhee Sq., 7th Fl., Aaykar Bhawan, Kolkata-107.
3. CIT,
4. CIT(A), Kolkata.
5. DR, Kolkata Benches, Kolkata

**PP/SPS True Copy By By Order Assistant Registrar
ITAT Kolkata