

IN THE INCOME TAX APPELLATE TRIBUNAL “A”, BENCH KOLKATA

BEFORE SHRI S. S. GODARA, JM & Dr. A. L. SAINI, AM

आयकर अपीलसं/I.T.A No.1150/Kol/2018

(निर्धारण वर्ष / Assessment Year: 2010-11)

Pradeep Kumar Sonthalia 34, Pankaj Mallick Sarani, Jayantika Apartment, 1 st Floor, Ballygunge, Kolkata – 700019.	Vs.	PCIT, Central-1, Kolkata.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AHFPS8270A		
(Appellant)	..	(Respondent)

Appellant by : Shri Nirav Shesth, ACA

Respondent by : Shri Ram Bilash Meena, CIT

सुनवाई की तारीख/ Date of Hearing : 30/12/2019

घोषणा की तारीख/Date of Pronouncement : 28/02/2020

आदेश / O R D E R

Per Shri S. S. Godara:

This assessee’s appeal for assessment year 2010-11 arises against the Principal Commissioner of Income Tax, Central-1, Kolkata’s order dated 15.01.2018 involving proceedings u/s 263 of the Income Tax Act, 1961 (in short ‘the Act’).

Heard both the parties. Case file perused.

2. Coming to the basic relevant facts, we notice that the PCIT’s revision directions/order under challenge dated 15.01.2018 have assumed jurisdiction vested u/s 263 of the Act to hold the regular assessment in question dated 30.12.2016 as an erroneous one causing prejudice to interest of the Revenue on the ground that the Assessing Officer had failed to carry out necessary factual enquires/investigation regarding the tax-payer’s deduction claim raised u/s 54 r.w.

section 54F of the Act. We notice at the outset that the Assessing Officer had framed his search assessment u/s 153A/143(3) forming subject matter of instant revision proceedings in furtherance to the search dated 05.08.2014 in case of 'M/s Kushal Group'. And also that the assessee had filed his regular return on 18.02.2011 admitting total income of Rs.63,74,890/- as per the assessment order in issue.

3. Learned CIT-DR vehemently supported the PCIT's assumption of revision jurisdiction on the ground that the Assessing Officer had not carried out the necessary enquire(s) on the issue of assessee's impugned deduction claim. He fails to dispute that we are dealing an unabated assessment since time limit of issuance of scrutiny notice(s) regarding the impugned assessment year 2010-11 was no more available to the Assessing Officer on the date of search falling on 05.08.2014. There is further no quarrel the impugned revision proceedings relevant to the regular assessment are not based on any incriminating material found/seized during the course of search. The Assessing Officer's assessment order dated 30.12.2016 invoked section 14A disallowance of Rs.62,091/- only. All these facts and circumstances categorically suggest that since the impugned assessment proceedings pertain to an unabated assessment not based on any incriminating material found/seized during the course of search, the Assessing Officer could not have either taken up or disallowed the assessee's long term capital losses or gains (supra) as per CIT vs. Kabul Chawla (2016) 380 ITR 573(Delhi), CIT vs. Continental Warehousing Corporation (2015) 374 ITR 645 (Bom) and PCIT vs. Salasar Stock Broking Ltd. GA 1929 of 2016 ITAT No.264/2016 dt. 24.05.2016 (Cal) to this effect. That being the case, the PCIT has erred in law and on facts in holding the Assessing Officer's assessment in question to be an erroneous one causing prejudice to interest of the Revenue; simultaneously, as held in hon'ble apex court's landmark decision in Malabar Industries Co. 243 ITR 83(SC) and Max India vs. CIT 295 ITR 282. We therefore reverse the PCIT's revision directions for this reason alone. The Assessing

Officer's assessment in question dated 30.12.2016 stands restored as a necessary corollary.

4. This assessee's appeal is allowed.

Order is pronounced in the open court on 28.02.2020.

Sd/-
(A. L. Saini)
ACCOUNTANT MEMBER

Sd/-
(S. S. Godara)
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 28/02/2020

RS

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

1. The Appellant - Pradeep Kumar Sonthalia
2. The Respondent- PCIT, Central-1, Kolkata.
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.