

IN THE INCOME TAX APPELLATE TRIBUNAL, “B” BENCH, KOLKATA
[Before Shri P.M. Jagtap, V.P (KZ) and Smt. Madhumita Roy, JM]**I.T.A. No. 528/Kol/2020**
Assessment Year:2010-11

Rakesh Kr. Chaudhary PAN: AEAPC 6754K	Vs.	ACIT-2, Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	23-08-2021
Date of Pronouncement	25-08-2021
For the Appellant	Shri Udayan Dasgupta, Ld.AR
For the Respondent	Shri Vijay Shankar, CIT, Ld.DR

ORDER**Per Smt. Madhumita Roy, JM**

The instant appeal filed by the Assessee is directed against the order dated 13-03-2020 passed by the Ld. Pr. CIT, Burdwan, Durgapur [in short, the Ld. PCIT] u/s. 263 of the Income Tax Act, 1961 (hereinafter referred to as “ the Act”) for the Assessment Year 2010-11.

2. There is delay of 34 days in filing the instant appeal before us. The submissions made by the Ld. AR in explaining the delay as also appearing from the application filed on 03-08-2020 in support of such explanation the delay is due to lock down declared from last week of March, 2020. Though the order impugned was passed on 13-03-2020 but due to lock down declared and continued, it was not possible for the assessee to file the instant appeal within 60 days i.e. on 9th September, 2020 as plea taken by the AR. Hence, the assessee took 34 days more to file the instant appeal upon complying all the formalities. Such stand taken by the assessee seems to be genuine and justified. Moreso, the Ld. DR with all his fairness has also not objected such plea taken by the ld. AR.

3. Having heard the learned representatives appearing for the parties and having regard to the facts and circumstances of the case, particularly, the reason of lock down, which said to have been prevented the assessee to file the instant appeal in time, we condone the delay.

4. Brief facts involved in this particular case is this that the re-assessment was completed in the instant case u/s. 143(3)/147 of the Income-tax Act, 1961 (hereinafter, referred to as 'the Act') on 28-12-2017 assessing total income at Rs.8,74,850/- against returned income of Rs.8,59,845/- for the relevant Assessment Year 2010-11

5. Further, fact as called out from the order passed by the Ld. AO is this that the assessee has shown Rs. 20,20,000/- as 'work-in-progress' in the audited trading and Profit & Loss account for the F.Y 2009-10 relevant to the A.Y 2010-11. According to the Ld. PCIT, the assessee has not shown the same in the balance sheet as work in progress/closing stock of Rs. 20,20,000/- resulting an undisclosed asset or Rs.20,20,000/-. On this premise, the ld. PCIT ultimately found that the order dt. 28-12-2017 passed by the ld. AO is erroneous in so far as it is prejudicial to the interest of the revenue and, therefore, upon setting aside the impugned assessment order dt. 28-12-2017, he has directed the ld. AO to frame the assessment afresh in view of observations made by the Ld. PCIT in the order passed u/s. 263 of the Act.

6. Apart from the ld. PCIT further noticed that the assessee has made investment in the year ending on 31.03.2020 in shares and mutual funds of Rs.78,37,593/- whereas total investment mentioned in the balance sheet as of Rs.16,917,243/- and interest expenses of Rs.6,17,745/- claimed in the P & L A/c, some exempted income was also capitalized in the balance sheet. This requires disallowance of expenses u/s 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 as of the view of the ld. PCIT. This Ground too was not considered by the ld. Assessing Officer and hence show-cause notice was issued upon the assessee to reply the same. The assessee filed the following reply on 17.02.2020 in respect to show-cause notice issued to him :

"1) All books of accounts supported by all documentary evidences including all Bank transactions has been produced before the AO for examination in course of proceedings u/s 143(3)/147 of the Act, and the AO has examined and verified all transactions and entries in the regular books of accounts, and no defect has been found, and nothing is mentioned in the assessment order passed u/s 147 dated 28/12/2017.

2) That the AO has indeed passed a short and a cryptic assessment order, but it does not mean that he has not verified, the return and documents on record, and all entries, relating to investment in shares and mutual funds has been verified with bank records and its source thereof, and he also arrived at the correct conclusion that provisions of section 14A is not applicable to this case.

3) The assumption of jurisdiction u/s 263 of the Act 61, has been taken on two separate issues, first the non reflection of WIP of Rs. 20,20,000/- in the ASSET side of the balance sheet as on 31/03/2010.

4) This aspect of the matter was also enquired by the AO in course of reassessment proceedings and the assessment has clarified that the work in progress, is the amount of work that has already been executed by the assessee, but the bills of which has not been drawn and or received, because the same is not yet passed by the principal contractor. In other words, the said amount has not formed a part of the Gross Contract receipts of Rs.1.69 (one point six nine) crores as reflected in credit of profit and loss account. So naturally the said amount remains as receivables, by the assessee from the contractor, as on 31/03/2010, and in the balance sheet, the AUDITOR has reflected the same under the head: "SUNDRY DEPOSIT"

5) That the total of "Sundry Deposit" is Rs. 31.07 lakhs, (Thirty one point zero seven) which contains the amount of Rs. 20.20 lakhs (Twenty point twenty), which is again reflected under the head WIP in the credit of profit and loss account.

6) There is nothing wrong in the accounting entries, and the journal entries in the regular books of accounts, which has been finally drawn out by the Chartered accountant himself and placed under respective heads and the same has been produced and verified and examined by the AO in course of scrutiny and the same has been accepted by the AO without any hesitation.

7) The A.O has applied his mind to the facts of the case and has examined all balancing figures appearing in ledger accounts as at 31/03/2010, and reflected in balance Sheet, and the books of accounts reflects a true and fair picture of the entire business concern.

8) That the second issue regarding to proposed disallowing u/s 14A of Act'61, relating to investment made by the assessee in mutual funds, it is categorically submitted that the source of investments are established beyond doubt in reassessment proceedings and all materials in this respect has been submitted by the assessee along with written explanation on 17th November, 2017, which has been considered and accepted and accepted by the AO in proceedings u/s 147.

9) That regarding applicability of section 14A of the Act 61, it is stated, that the assessee has claimed that no expenditure has been incurred for earning exempted income and secondly, even if the provisions of Rule 8D of the IT Rules 62, is made applicable for the purpose of calculation, then also it will be a futile exercise because disallowance u/s 14A cannot exceed the exempted income of Rs.3,759/-, which is a very meagre amount, not worth the proceedings, considering its tax effect, and there is LOSS from MF also.

10) That considering all the factual aspects of the matter, in this case, both the conditions of section 263 of the Act 61, are not satisfied, because the order passed is neither erroneous nor prejudicial to the interest of revenue.

11) That even application of mind by the AO is evident from the assessment records and the AO has arrived at a conclusion after application of mind and conducting enquiry in all respects, so even if the order is short one, it is legally not erroneous.

12) That even if the applicability of section 14A has not been considered in reassessment proceedings, the NET Tax effect is negligible, so the same is not prejudicial to the interest of revenue.....”

7. However, such submission of the assessee was not found acceptable and the Id. PCIT ultimately passed orders directing the Id. Assessing Officer to frame the assessment afresh considering the observation made in his orders and the orders, in this regard, passed by the different legal forums.

8. We have heard the rival submissions made by the respective parties. We have also perused the relevant materials available on record. We have carefully considered the submissions made by the assessee before the Id. PCIT also. On the other hand, while completing the reassessment u/s 143(3) read with section 147 of the Act, the Id. A.O observed as follows:

“As per 26AS, the assessee had received interest of Rs.1,40,922/- However, the same was not offered for taxation under the head "Income From other sources" nor under shown in the P&L A/C (Under Other income). As per AIR information, the assessee had deposited Rs.76,33,700/- in cash in savings bank account. However at 'Schedule AIR' of the I.T Return, the same has been declared to be 'Nil' (0). Besides this, as per AIR information, the assessee had paid Rs. /0,12,304/-for purchases of Mutual funds. However at 'Schedule AIR' of return, the Same has been declared "Nil" (0). AS such the income of Rs.1,47,87,926/- (Rs.1,40,922/- + 76,34,700/- + Rs. 70,12,304/-) has escaped assessment for the A.Y.2010-11.

Notice u/s 148 of the IT Act, 1961 dated 31.03.2017 issued and served on the assessee on the same date. In response, the assessee filed return of income on 28.04.2017 by declaring total

income of Rs.8,59,845/-. Further, notice u/s 142(1) dated 30.08.2017 and 143(2) dated 03.11.2017 also issued and served on the assessee.

In response to the above notices, the assessee, himself, appeared from time to time and furnished relevant documents. The case was discussed with him. The documents have been verified and placed on records

During the year under question, the assessee was engaged in business activity civil & mechanical contractor.

The total income of the assessee is accepted as per income returned which is as under:

<i>Return income:</i>	<i>Rs.8,59,845/-</i>
<i>Add: exemption claimed:</i>	<i><u>Rs.1,15,000/-</u></i>
	<i><u>Rs.9,74,845/-</u></i>
<i>Less exemption allowed:</i>	<i>Rs.1,00,000/-</i>
<i>Assessed income:</i>	<i>Rs.8,74,850/-</i>

9. The order passed by the Id. Assessing Officer does not suggest that non-reflection of working progress of Rs.20,20,000/- in assets side of the balance sheet as on 31.03.2010 has been considered by the Id. Assessing Officer in its proper perspective. The clarification given by the assessee in support of his case, on this issue, before the Id. PCIT neither seems to be enquired nor explained by the assessee before the Assessing Officer; no such deliberation is seen in the order passed by the Id. Assessing Officer. The order passed by the Id. Assessing Officer while completing the reassessment u/s 143(3) r.w. section 147, neither suggests that any such enquiry on the proposed disallowance u/s 14A of the Act as raised by the Id. PCIT has been made. If the proof of such enquiry is not reflecting in the order passed by the Id. Assessing Officer which ought to have been done by him at the time of reassessment, requirement of further enquiries/verifications u/s 263 of the Act, in our considered view, cannot be brushed aside.

10. We have further considered the judgment passed by the different forums on this aspect and we have fortified by the principles laid down therein particularly in the case of Malabar Industries Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC). The principle laid down by the Hon'ble Apex Court in the case of Rampyari Devi Saraogi vs CIT reported in (1968) 67

ITR 84 (SC), to this effect that non-enquiry also renders a particular order passed by the lower authorities as erroneous and prejudicial to the interest of Revenue has also been considered by us. Thus, under the facts and circumstances of the present case, after considering the proposition/principle laid down by the Hon'ble Supreme Court, the order passed by the Id. PCIT in setting aside the order of reassessment dated 18.12.2017 and in directing the Id. Assessing Officer to frame the assessment afresh, in our considered opinion, is without any ambiguity so as to warrant interference, hence we confirm the same. The assessee's appeal is thus dismissed.

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

Order is pronounced in the open court on 25-08-2021

Sd/-
(P.M. Jagtap)
Vice-President(KZ)

Sd/-
(Madhumita Roy)
Judicial Member

Dated :25 -08-2021

**PP(Sr.P.S.)

Copy of the order forwarded to:

1. Respective Appellant/Assessee: Rakesh Kr. Chaudhary M/s. R.K. Engineering Works, C/6/6 Alauddin Khan Bithi, City Centre, Durgapur, West Bengal 713216. Kolkata-.
2. Respondent/Department: ACIT-1, Circle-1, Durgapur-713216
3. CIT(A),
4. CIT- ,
5. DR, ITAT, Kolkata.

/True Copy,

By order,

Senior Private Secretary/D.D.O