

आयकर अपीलिय अधीकरण, न्यायपीठ –“A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
 [Before Shri A. T. Varkey, Judicial Member and Dr. M. L. Meena, Accountant Member]

I.T.A. No. 481/Kol/2020
Assessment Year: 2015-16

Bhawani Conclave Pvt. Ltd. (PAN: AADCB 6131 D)	Vs	PCIT-5, Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	04.08.2021
Date of Pronouncement	16.09.2021
For the Appellant	Shri Miraj D Shah, A.R
For the Respondent	Shri Praveen Kishore, CIT

ORDER

Per Bench:

This is an appeal preferred by the assessee against the order of the Ld. Pr. CIT-5, Kolkata dated 19.03.2010 for AY 2015-16 passed u/s. 263 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”).

2. At the outset, it has been brought to our notice that the assessee has challenged the action of the Ld. Pr. CIT invoking revisional jurisdiction u/s. 263 of the Act without satisfying the condition precedent as required by the statute i.e. without holding that the AO’s order was erroneous and prejudicial to the interest of the revenue.

3. In order to appreciate the legal issue raised by the assessee let us have a look at the relevant portion of the Show Cause Notice (SCN) issued by the Ld. Pr. CIT conveying his desire to invoke his revisional jurisdiction u/s. 263 of the Act which is as under:

“7. In order to elicit the reaction of the Assessee on the conclusion of lack of enquiry drawn by the undersigned, a show cause notice was issued in the following terms:

“Related to the AY 2015-16, your case was completed u/s 143(3) of the Income Tax Act, 1961 on 18.12.20217 at an assessed income of Rs. 2,99,720/- against the returned income of Rs. 84,450/-. The assessment order was passed making the following additions:

i) Disallowance of Motor Charges Rs. 1,76,000/-

- ii) Disallowance of Donation Rs. 15,000/-
- iii) Disallowance of Travelling & conveyance Rs. 23,070/- & Penalty Rs. 1,200/-.

In order to judge the merits of the order passed by the AO, the assessment records were perused. The records available revealed that the Rental income of Rs. 73,34,817/-. Interest expenses of Rs. 63,03,557/-, identity, creditworthiness and genuineness of transaction of unsecured loan of Rs. 1,08,08,062/- source document of repayment of loan of Rs. 23,33,337/-, payment to specific person u/s 40a(2)(b) paid rent to Bhawani Construction Pvt. Ltd. of Rs. 89,700/-, Maintenance charges to B & B Marketing Pvt. Ltd of Rs. 3,27,088/- & Electric charge paid to Bhawani Construction Pvt. Ltd. of Rs. 2,93,002/-. Stock in trade of Rs. 20,36,045/- were not properly examined by the AO while passing the assessment order u/s 143(3) of the Income Tax Act, 1961.

In view of the above facts, the order passed u/s 143(3) of the Income Tax Act, 1961 on 28.12.2017 for the AY 2015-16 appears to be erroneous in so far as it is prejudicial to the interest of revenue on this point .”

4. From a perusal of the SCN it can be noted that the main allegation of the Ld. Pr. CIT was that the AO did not *properly examine* the issues which he has discussed in the SCN. Thereafter, the assessee filed detailed reply which the Ld. Pr. CIT has reproduced from page 3 – 6 at para 8. Thereafter, the Ld. Pr. CIT has recorded the following finding to set aside the matter back to the AO with a direction to examine the issues:

*“9. The written submission of the assessee were thoroughly gone through by me. On an application of mind and after due consideration of the material evidence and documents relied on by the assessee I am of the considered view that the Assessing officer admittedly brought on record all the relevant evidence specified in the show cause notice. However, the records revealed that **the Assessing officer did not carry out any enquiries** in respect of the following items under the various provisions of the I. T. Act for verifying the genuineness of the claims made by assessee.*

- i) Interest expense: Rs.63,03,557/-
- ii) Unsecured Loan Rs.1,08,08,062/-
- iii) Repayment of loan Rs.23,33,337/-

Hence the order passed by the Assessing Officer was erroneous and prejudicial to the interests of revenue.” (emphasis supplied by us)

5. Aggrieved by the aforesaid order of the Ld. Pr. PCIT the assessee is before us.

6. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the Ld. Pr. CIT has found fault with the action of the AO in respect of three issues i.e. (i) interest expenses to the tune of Rs.63,03,557/-; (ii) unsecured loan to the tune of Rs.1,08,08,062/- and (iii) repayment of loan to the tune of Rs.23,33,337/-, which according to the Ld. Pr. PCIT, the AO *has not made any enquiries*. So, finally the Ld. Pr. CIT has found that the AO has not carried out any enquiry on the three items as mentioned above. It is also interesting to note that the Ld. Pr. CIT in the same breath has admitted that

the AO has brought on record all the relevant evidence specified in the SCN. However, the only allegation is that the AO did not carry out any enquiry in respect of the three issues specified above; and, therefore, according to the Ld. Pr. CIT on these three items since the AO has not made any enquiry, the order of the AO erroneous as well as prejudicial to the interest of the revenue on these issues. There is no quarrel that if there is no enquiry made by the AO on an issue which has been picked up by the CASS then on that issue the order of the AO could be held to be erroneous as well as prejudicial to the interest of revenue. We are very well aware that AO has a dual role to discharge while framing an assessment i.e. as an investigator as well as that of an adjudicator. And if he fails in any of this role/duty, then the order of the AO would be held as erroneous as well as prejudicial to the interest of the revenue. Here in this case, since the only fault pointed out by the Ld. Pr. CIT in respect of the scrutiny assessment of the assessee is that since AO has not conducted any enquiry on three issues (supra), we have to examine as to whether the AO has made no enquiry on these three items. While addressing this aspect, the Ld. AR drew our attention to the fact that the assessee had brought to the notice of the Ld. Pr. CIT that on these three issues the AO had enquired about these three (3) items and the assessee had in fact replied along with supporting documents to substantiate its stand and this fact has been reproduced by the Ld. Pr. CIT from page 3 to page 6 para 8. The relevant portion regarding these three items has been found reproduced by the Ld. Pr. CIT in his impugned order as under:

2) Interest expenses Rs.63,03,557/- (as per schedule 17 of the balance sheet as per annexure 'D')

Interest expenses consists of following:

a) Interest on loan	Rs.62,73,934/-
b) Interest to Bank	Rs.5,958/-
c) Interest to others	Rs.23,665/-

As per query as regards the interest on loan amounting to Rs.62,73,934/- Your assessee had filed letter dated 06/12/2017.(copy enclosed as per annexure 'E'). The interest amounting to Rs.62,73,934/- was paid to the West Bengal Financial Corporation, a State Government undertaking. In the letter details discussion was made as regards purpose of loan and alongwith the repayment schedule. Therefore, The ITO has examined payments of interest alongwith books of accounts and details filed had satisfied himself about the payment of interest amounting to Rs.63,03,557/- and made the assessment.

3&4) Identity, creditworthiness & genuineness & transaction of unsecured loan and repayment of loan.

Moreover, as at the close of the business as at 31th March, 2015 the total unsecured loan payable and repayment of loans are much more than Rs.1,08,062/- and Rs.23,33,337/- as evident from annexed balance sheet and tax audit report (as per annexure-'G').

7. From a perusal of the aforesaid averments made by the assessee before the Ld. Pr. CIT which has been reproduced by him, it is clear that the AO has enquired about these three items and the assessee has replied along with documents which fact has been accepted by the Ld. Pr. CIT by observing in his own words "*I am of the considered view that the AO admittedly brought on record all the relevant evidence specified in the SCN.*" Therefore, this fact has been accepted by the Ld. Pr. CIT then inference u/s. 114 of the Indian Evidence Act, 1872 (hereinafter IEA) can be drawn i.e. the court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case and in this case the relevant illustration is (e) of Section 114 of IEA that *judicial and official acts have been regularly performed.* Therefore, we are inclined to presume the existence of the fact that the AO while discharging his quasi-judicial function has regularly performed his duty by issuing notice u/s. 142(1)/143(2) of the Act by raising queries on these three items and after receipt of reply and supporting documents from the assessee has taken a plausible view. Moreover, it is not the case of the Ld. Pr. CIT that the view taken by the AO on these three items in the light of the replies/documents given by the assessee to AO is unsustainable in law. Therefore, the action of the Ld. Pr. CIT in invoking his jurisdiction u/s. 263 of the Act is on a wrong assumption of fact i.e. the AO had not made any enquiry whereas we have found that the AO has in fact made enquiries on the three (3) issues. So, this is not the case of lack of enquiry but inadequate enquiry and it is settled law that lack of enquiry is a ground for interference by invoking revisional jurisdiction but inadequate enquiry does not confer the power to Ld. Pr. CIT to invoke section 263 of the Act. However, in a case of such a nature i.e. Pr. CIT is of the opinion that inadequate enquiry was conducted by the AO, then, the Ld. Pr. CIT has to enquire himself and thereby demonstrate that enquiry conducted by the AO was itself wrong or mis-directed and the finding of AO is unsustainable in law, thus making the AO's view erroneous as well as prejudicial to the Revenue, which action the Ld. Pr. CIT did not take, so his impugned action is unsustainable.

8. Before parting, we would like to address a contention that has been raised by the Ld. CITDR that in the AO's order he did not mention any thing about the enquiry conducted on these three items and it is only a two pages order, so according to Ld. DR, the necessary

inference is that AO has not enquired about these three (3) items found fault by Ld PCIT. We do not agree with the aforesaid contention of the Ld. DR for the simple reason that the issues raised on which limited scrutiny was ordered [*including these three (3) items*] was confronted to the assessee by the AO and pursuant to the same the assessee had replied by filing documents and explanations have been given to the AO which fact even the Ld. Pr. CIT has accepted in his own words (supra). So after enquiry the AO in his wisdom being satisfied with the reply and documents in support of the claim has taken a conscious decision not to draw any adverse inference on those three items, so he has not recorded anything in the assessment order on the issues which he was satisfied. After we having perused the queries of the AO on these three (3) issues and reply of the assessee we are of the opinion that AO's view on the three issues is a plausible view. Therefore, the AO's action of non-recording about his enquiry while framing the assessment order on these three items does not make the order bad for lack of enquiry. For this, we rely on the decision of the Hon'ble jurisdictional High Court in the case of J. L. Morrison 366 ITR 593(Cal). In the light of the aforesaid discussion we hold that the Ld. Pr. CIT has erroneously assumed jurisdiction u/s. 263 of the Act, therefore, the impugned order of the Ld. Pr. CIT is quashed.

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

Order is pronounced in the open court on 15th September, 2021.

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(A. T. Varkey)
Judicial Member

Dated: 15th September, 2021

Jd, Sr. PS

Copy of the order forwarded to:

1. Appellant- Bhawani Conclave Pvt. Ltd., 241/ 16, G.T. Road (N), Liluah, Howrah-711204
2. Respondent – PCIT-5, Kolkata
3. The ITO, Ward-15(3), Kolkata
4. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Senior Private Secretary/DDO
ITAT, Kolkata Benches, Kolkata
