

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No.915/KOL/2018
Assessment Year: 2013-14**

Shri Surendra Kumar Daga, vs. Income Tax Officer, Ward-36(2),
C/o. Maya Rui Bhandar , Kolkata.
Chudi Lane, Edward Road,
Sadar Bazar,
Raipur (CG)
[PAN – ACVPD 7464 L]
(Appellant) (Respondent)

Appellant by : Shri R.B. Doshi, A.R.
Respondent by : Shri R.K. Singh, CIT D.R.

Date of hearing : 29.07.2021
Date of pronouncement : 12.10.2021

ORDER

PER PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the assessee against the revisional order of the Principal Commissioner of Income Tax (PCIT in short), Kolkata communicated to assessee on 27.03.2018 passed under section 263 of the Income Tax Act, 1961 (the Act in short) whereby the assessment order passed by the Assessing Officer (A.O.) dated 30.03.2016 under section 143(3) of the Act concerning Assessment Year (A.Y.) 2013-14 was sought to be set aside for reframing the assessment in terms of supervisory jurisdiction.

2. As per its grounds of appeal, the assessee has challenged the revisional action of the PCIT whereby the Assessing Officer (A.O.) was directed to pass the assessment order *denovo* after making enquiries on the points set out in the notice which has already examined and considered during the original assessment proceedings concerning A.Y. 2013-14. The assessee has challenged the assumption of jurisdiction by the PCIT under section 263 of the Act on the

ground that the Assessment Order under revision is neither erroneous nor prejudicial to the interest of the revenue.

3. Briefly stated, the assessment in the instant case was passed under section 143(3) of the Income Tax Act, 1961 (the Act in short) vide order dated 30.03.2016 by the A.O. stationed at Kolkata (ITO, Ward-36(2), Kolkata whereby income returned at Rs.6,11,178/- was assessed at Rs.9,77,970/-. The case records of the assessment so made were called by the Revisional Commissioner (PCIT), Kolkata. The PCIT observed that the impugned assessment order is erroneous in so far as it is prejudicial to the interest of revenue. A show cause notice dated 08.11.2017 was issued to the assessee in this regard by the PCIT, Kolkata. As per the show cause notice, the Revisional Commissioner alleged that:

- i) The assessee filed a submission before the A.O. stating that his case might be transferred to Raipur as the assessee has already shifted to Raipur. However, the case could not be transferred till the month of January 2016 because of lack of substantial compliance on the part of the assessee.
- ii) Against the show cause notice under section 142(1) issued on 17.02.2016, part details were submitted on 14.03.2016 while some more documents were received on 29.03.2016 and that even such compliance was not complete.
- iii) The assessment order was passed without making necessary and proper enquiries for want of time for total investment to the tune of Rs.2,22,57,150/- made in the land property but the source was not explained by the assessee. Not satisfied with the defence of the assessee to the show cause notice, the impugned assessment order for the A.Y. 2013-14 was set aside with a direction to the A.O. to make necessary investigation on loans against the investments in the land made by the assessee and passed the assessment order after making enquiries in this regard.

4. Aggrieved by the revisional order passed by the PCIT, the assessee preferred appeal before the co-ordinate bench of the Tribunal at Kolkata. The case records were thereafter transferred to Raipur Bench of Tribunal for disposal of the appeal by the administrative order.

5. When the matter was called for hearing, the learned counsel for the assessee submitted that the key point of his submissions are :

- i) The assessment order itself is illegal as the A.O. who passed the Assessment Order at Kolkata did not have lawful jurisdiction to indulge in assessment for the reason that the jurisdiction over the assessee vested with the A.O. at Raipur at the relevant time whereas the assessment was completed by the ITO 36(2), Kolkata. Hence, earlier the original assessment was passed by non-judicial Officer rendering it illegal, such *non-est* order could not have been revised under section 263 of the Act.
- ii) The case was remanded by the PCIT for making proper enquiries allegedly not carried out by the A.O. but such directions could not have been given without the PCIT himself making some minimal enquiry on the facts already on record and enquired by A.O..
- iii) All the relevant details in respect of investment of land were filed before the A.O. and the assessment order was passed after due application of mind thereon and hence a further enquiry contemplated by the PCIT is not warranted in the facts of the case.

6. It was contended that the first ground towards lack of jurisdiction of the A.O. concerned to assess the present assessee is fundamental and goes to the root of the matter. In demonstration of this plea that the ITO, 36(2) Kolkata could not have passed the Assessment Order and thus order passed under section 263 of the Act is wholly illegal and *void ab initio*, the learned counsel pointed out that the jurisdiction over the assessee as per PAN database was with the A.O. Raipur. The assessee has shifted from Kolkata to Raipur and, therefore, request was made way back on 05.10.2012 to NSDL for incorporating the change of address in the PAN database. In consequence of such request, the change in address was

carried out by NSDL and a new PAN Card was issued to the assessee on 16.10.2012 as per which a new address was incorporated in the database w.e.f. 16.10.2012. The shift in the jurisdiction from Kolkata to Raipur was thus carried out much before the issue of notice under section 143(2) of the Act by the A.O. of Kolkata on 05.09.2014. The learned counsel thereafter adverted to jurisdiction notification issued under section 120(1) as per which the address of the assessee would fall under the jurisdiction of the ITO-4(2) Raipur. It was pointed out that the return of income for A.Y. 2012-13 & 2013-14 was also filed with the A.O. at Raipur. The learned counsel for the assessee, thereafter, earnestly pointed out that the assessee also moved an application dated 31.08.2012 to the CIT-12, Kolkata for transfer of case records from Kolkata to Raipur as appearing at page no.15 of the Paper Book. Thus, it was pointed out that the request to the CIT-12, Kolkata was also made in August 2012 long before the issue of notice in September 2014. The learned counsel, thereafter, adverted to rule 12E of I.T. Rules, 1962 which specifies authority who is empowered to issue notice under section 143(2) of the Act. Rule 12E says that authority entitled to issue such notice is the authority which is authorised by CBDT for this purpose. It was submitted that such authorisation is given to CBDT under section 120 of the Act and as a consequence, such authority only issues notification for jurisdiction under section 120(1) & (2) thereof. It is that authority which is conferred jurisdiction over the assessee in terms of notification under section 120(1) only can issue notice under section 143(2) to the assessee. It was submitted that since jurisdiction was vested with A.O. at Raipur in terms of notification by CBDT under section 120(1), the A.O. at Kolkata was ousted and could not have issued notice under section 143(2) of the Act. It was thus contended that the issuance of notice under section 143(2) by the A.O. at Kolkata itself is illegal and thus based on such illegal notice the assessment could not have been set into motion and concluded. Thus, the assessment based on such illegal notice is also *void ab initio* and could not have been revised under section 263 of the Act. The learned counsel further contended that apart from all the efforts put by the assessee towards bringing to notice of the appropriate authorities for change of jurisdiction, the jurisdiction assumed by the A.O. at Kolkata was not valid because the assessee neither carried business at Kolkata nor residing there at the relevant time. Significantly, the return of income for the year under appeal was also filed with ITO, Raipur as can be seen from the Income Tax acknowledgement, filed at Paper Book page

no.20. The A.O. at Kolkata very well knew that he did not have jurisdiction over the assessee and which fact is evident from notice under section 142(1) of the Act dated 17.02.2016 (page 21 of Paper Book) as per which the A.O. clearly noted that the request of the assessee for transfer of case to Raipur was already pending with CIT-12, Kolkata but the jurisdiction was not shifted and transferred by the CIT-12, Kolkata. The learned counsel next submitted that as per the Income Tax records, jurisdiction of the assessee was eventually transferred to Raipur vide order dated 28.08.2018 in pursuance of his sole application dated 31.08.2012. The learned counsel submitted that the jurisdiction was promptly challenged by the assessee before the A.O., Kolkata vide letter dated 09.10.2014 i.e. within thirty days of receipt of notice under section 143(2) and at the time of challenge, a time of more than three months were available before the A.O. for transfer of the case to the lawful jurisdiction. Thus, failure of the A.O. to follow the notification issued by the CBDT on correct jurisdiction as well as the prescribed law in this regard is squarely attributable with the Department. He thus, in essence, contended that, from the sequence of events, it is manifest that the assessee has acted promptly, applied for the change of jurisdiction much prior to the issuance of notice under section 143(2) and immediately placed objections before the A.O. on issuance of notice after section 143(2) of the Act. In the circumstances, the assessment order passed by the A.O., Kolkata in defiance of prescribed law without holding jurisdiction over the assessee is fatal and non-est and the provisions of section 263 could not be utilised to improve upon such non-est order. The learned counsel thus contended that on this sole point of total lack of jurisdiction on the A.O. passing the assessment order, whole proceeding is a nullity and the revisional action under section 263 of the Act on a non-est order is required to be set aside at the threshold.

6.1. Without prejudice, it was contended that the PCIT has wrongly remanded the matter to the file of the A.O. perfunctorily for making enquiry to pass fresh order on certain points. Before doing so, the PCIT ought to have carried out some enquiry on the bonafides of the submissions made by the assessee in support of the factual position which is the requirement of law as per several judicial precedents.

6.2. On merits, the learned counsel submitted that all the relevant details were called for in the course of assessment and the A.O. already made suitable enquiry from the assessee. The initial burden casts under section 68 of the Act was thus discharged by the assessee towards nature and source of credit and the extent of enquiry desired in a given case is left to the discretion of the A.O. Once the lenders have admitted having given the loan, no addition could have been made in the hands of the assessee as held in several judicial precedents. The learned counsel submitted that the enquiry as envisaged by the PCIT is towards source of source of the lender which, in turn, means affairs of the lenders are sought to be examined under revisional direction in the garb of enquiry. Such directions are contrary to several judicial precedents holding the field including PCIT vs. Shreeji Prints (P) Ltd. (Guj.) Tax Appeal No.828 of 2019 - judgement dated 03.02.2020.

6.3 The learned counsel adverted to the reasons given by the PCIT that no objection can be taken towards lack of jurisdiction after the completion of the assessment. It was contended that such line of argument is fallacious on the face of it where the assessee has already taken objections before the A.O. immediately on issuance of notice under section 143(2) of the Act and long before completion of the assessment and significantly within time allowed under section 124(3) of the Act. It was thus contended that the assessee has done everything within his command to desist the A.O. at Kolkata to continue with the assessment and thus cannot be blamed for total disregard of the prescribed statutory procedure enjoined in law to assume jurisdiction for carrying out the assessment.

6.4 The leaned counsel thus submitted in conclusion that the show cause notice on an illegal and non-est assessment order is void on the face of it and on merit also the direction given in the revisional order is without authority of law.

7. Per contra, the learned CIT DR for the revenue strongly supported the revisional action and contended that it is not a matter of dispute that originally, the jurisdiction over the assessee lay with the ITO, Kolkata. Such jurisdiction was not transferred from Kolkata to Raipur by any order under section 127 of the Act and, therefore, the jurisdiction continued with the A.O., Kolkata. Thus, in terms of valid & subsisting jurisdiction available to the A.O., Kolkata, the notice issued under section 143(2) of the Act and hence, consequent Assessment Oder cannot be

assailed. The learned D.R. further submitted that the assessee has participated in the assessment proceedings and, therefore, it is not open to him to contend that the A.O., Kolkata was precluded from continuing with the assessment.

8. We have carefully considered the rival submissions. To begin with, we advert to the main contention of the assessee that the Assessment Order passed is without jurisdiction and, therefore, non-est and consequently such assessment order cannot be subject matter of revisional proceedings. From the facts demonstrated on behalf of the assessee, it is observed that the PAN records of the assessee were changed to incorporate the change of address and jurisdiction in October 2012. Pertinently, the return of income was also filed at Income Tax Office, Raipur in pursuance of such change. The notice under section 143(2) of the Act, however, was issued by the A.O., Kolkata in September 2014. Noticeably, the assessee filed objection to the jurisdiction before the A.O. under section 124(3) of the Act along with earlier petition for transfer under section 127 dated 31.08.2012 immediately on issuance of such scrutiny notice. Another objection was filed to the A.O., Kolkata on jurisdiction and for seeking transfer of case to Raipur counterpart on 20.07.2015. The Assessment Order was however ultimately passed without paying any heed to the attempts of the assessee for corrective action and for appropriate jurisdiction.

9. The jurisdiction of the A.O. is by virtue of section 124 of the Act which, in turn, refers to notification issued under powers conferred by section 120(1) & (2). In terms of notification under section 120(1), the jurisdiction for assessment lies with the A.O. at Raipur. The return for A.Y. 2013-14 in question as well as the return of the earlier year 2012-13 was filed by the assessee with appropriate jurisdiction of the A.O. at Raipur. As per rule 12E of the I.T. Rules 1962, the authority to issue notice under section 143(2) of the Act is the authority authorised by the Board. Such authorisation is given by the Board under section 120 of the Act. Hence, on a combined reading, only the A.O. notified under section 120(1) & (2) can issue notice under section 143(2) in respect of an assessee. The assessee herein is notified for jurisdiction at Raipur counterpart. Having regard to the fact that the assessee was neither carrying business at Kolkata nor residing there, the Kolkata A.O. did not even have any remote authority whatsoever to issue notice under section 143(2) and take command over the jurisdiction to

assess the income. Noticeably, no return was available before the A.O., Kolkata. The A.O. well knew that he does not have jurisdiction over the assessee. In the circumstances, it is plain and simple that notice issued under section 143(2) of the Act is neither in conformity with the provisions of the Act nor is in conformity with the notification of the Board. The action of A.O., Kolkata to issue notice under section 143(2) is thus totally indefensible and consequently jurisdiction exercised for the assessment is illegal, rendering the Assessment Order null and void.

10. The co-ordinate bench of Tribunal in Supersonic Technologies Pvt. Ltd. and Others vs. PCIT in ITA No.2269/DEL/2017 & Others, order dated 10.12.2018, have expressed the view that revision under section 263 of the Act is not permissible where the underlying Assessment Order in itself suffers from vice of illegality. In consonance with the decision of the co-ordinate bench, we find merit in the plea of the assessee that the impugned Assessment Order passed without jurisdiction cannot be subject matter of revision under section 263 of the Act.

11. Having regard to the delineations on the point of jurisdiction noted above, we do not consider it necessary to address ourselves on aspects of merit advanced by the assessee on inapplicability of section 263 of the Act.

12. Revisional order passed under section 263 of the Act is accordingly quashed.

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

PRONOUNCED ON 12.10.2021 as per Rule 34(4) of the Income Tax Appellate Tribunal Rules,1963.

Sd/-
(N.K. CHOUDHRY)
Judicial Member

Sd/-
(PRADIP KUMAR KEDIA)
Accountant Member

True Copy

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
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By order

Assistant Registrar
Income Tax Appellate Tribunal
Raipur Bench, Raipur