

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 469/Kol/2020
Assessment Year : 2015-16

Rita Transport (PAN: AAIFR 4520 L)	Vs.	ITO, Ward-1(1), Burdwan
Appellant		Respondent

Date of Hearing	15.03.2022
Date of Pronouncement	21.04.2022
For the Appellant	Shri U. Dasgupta, Advocate
For the Respondent	Shri Amol Kamat, CITDR

ORDER

Per Shri Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Pr. Commissioner of Income Tax- Durgapur [hereinafter referred to as ‘CIT(A)’] passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) dated 29.05.2020 for the assessment year 2015-16.

2. The assessee has challenged the order of Ld. PCIT passed u/s 263 of the Act on the ground that the jurisdiction u/s 263 has wrongly been invoked without satisfying the necessary conditions.

3. Facts in brief are that the case of the assessee was taken up for the scrutiny and assessment was framed u/s 143(3) vide order dated 20.12.2017 assessing the income at Rs. 11,02,990/- as against the return of income of Rs. 5,81,590/-. Thereafter the PCIT, upon examination of assessment records, came to the conclusion that the AO has framed assessment without enquiring into certain issues and accordingly a show cause notice u/s 263 of the Act dated 17.03.2020 was issued to the assessee which is reproduced as under for the sake of convenience:

“2. The assessment record for the AY 2015-16 and the assessment order dated 20.12.2017 passed u/s 143(3) has been examined and found the following error has been committed by the AO in the assessment order in determining the assessed income:

2.01. That an amount of Rs. 5,00,000/- was shown as outstanding unsecured loan liability in the name of Coalfield Transporter in the balance sheet. However, as per bank statement there was repayment of Rs. 3,00,000/- which implies that loan liability should have been Rs. 2,00,000/-. So Rs. 3,00,000/- was required to be disallowed as bogus liability. Similarly there is discrepancy of Rs. 50,000/- in the case of Mukti Pada Paul (creditor) between the reply u/s 142(1) and the balance sheet.

2.02. The assessee debited an amount of TDS (for transporter) for Rs.89,820/- in the P/L account which was required to be disallowed as the hire charges amounting to Rs. 5,28,99,035/- consisted of the same amount.

2.03. An amount of Rs. 1,10,641/- on account of electricity was debited by the assessee. It was further revealed that neither fixed asset nor any item of P/L account reflected any such expenditure like office rent which could substantiate the said expenditure.

2.04. An amount of interest of TDS for Rs. 11,866/- and interest on service tax for Rs. 1,428/- was debited in the P/L account by the assessee. As per IT Act, 1961 the same were not debitable items.

2.05. It was seen from the schedule of fixed assets for the AY 2014-15 that the assessee owned a number of dumpers, trucks and payloaders. However the same were not taken into account of fixed assets in the AY 2015-16 (separate sheet) in the P/L account there was neither any loss nor any gain from those vehicles. This matter requires explanation from the assessee.”

The said show cause notice was replied by letter dated 23.03.2020 by submitting that the issues raised in this show cause notice were factually wrong and there was no error in the order of assessment which render the same as erroneous as well as prejudicial to the interest of revenue. However the reply of the assessee did not find favour with PCIT and the Ld. PCIT revised the order of AO by directing the AO to pass the fresh assessment as per law after examining these issues after allowing fair opportunity of hearing to the assessee. The Ld. A.R. submitted before the Bench that the issues raised in the order framed u/s 263 of the Act were duly explained during the course of assessment proceedings and also during the revisionary proceedings u/s 263 of the Act and none of the issues has caused any loss of the revenue to the Department. In respect of first item as proposed by the Id PCIT, the counsel pointed out that there were two unsecured loans in the name of Coalfield Transporter and Mukti Pada Paul respectively. The Ld. Counsel drew the attention to the Bench to the balance sheets as on 31.03.2014 and 31.03.2015 and submitted that t this variation on account of repayment of loans to these parties and therefore the order is not erroneous as well as

prejudicial to the interest of the revenue on this count. As regards the second item as proposed by the Ld. PCIT, the Ld. Counsel for the assessee submitted that the assessee is in the business of operation of trucks during the year. He incurred Rs. 5,28,99,035/- on which TDS of Rs. 89,820/- was deducted. The Ld. Counsel submitted that TDS was separately shown in the profit and loss account and hire charges were shown at net of TDS in profit and loss account and on this count also the revisionary jurisdiction by the Ld. PCIT is not maintainable. The Ld. A.R. also drew the attention to the Bench to the fact that this issue was raised in the assessment proceedings and the AO has added certain amount which were finally partly allowed by the Ld. CIT(A) a copy of which is placed at page 12 to 15 of PB. As regards the 3rd item is PCIT's order revised the order on account of electricity expenditure of Rs. 1,10,641/- debited by the assessee. The Ld. Counsel submitted that there is no such items appearing in the profit and loss account and therefore on this count also the jurisdiction cannot be sustained. Similarly the PCIT in respect of 4th item of TDS of Rs. 11,866/- and interest on service tax of Rs. 1,428/- proposed the addition which were not allowable as expense. The Ld. Counsel submitted that this being a very minor and jurisdiction of PCIT cannot be sustained on this basis. The Ld. D.R on the other hand relied heavily on the order of PCIT.

4. After hearing rival parties and perusing the material on record, we find that the Ld. PCIT has invoked the revisionary jurisdiction in a very perfunctory manner without appreciating the facts correctly. We find merit in the contentions of the Ld. A.R that the issue raised by the PCIT in the revisionary order are either wrong or not coming out of the assessment record or so small which does not warrant the exercise of jurisdiction u/s 263 of the Act keeping in view the wastage of resources of the department and at out end. We also noted that some of these issues were examined by the AO during the original assessment proceedings by raising specific queries in the questionnaire issued to the assessee which were duly replied before the AO as is apparent from the copies of order sheet produced before us by the Ld. Counsel. We note from the facts before us that the order of AO is not erroneous and hence the revisionary jurisdiction cannot be sustained. In some cases the amounts are so small that the exercise of jurisdiction of PCIT appears to be ludicrous which can not be

allowed. Accordingly we set aside the order of Id PCIT by allowing the appeal of the assessee.

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

Order is pronounced in the open court on 21st April, 2022

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Rajesh Kumar)
Accountant Member

Dated: 21st April, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Rita Transport, Bahula, Durgapur-713322, Dist-Paschim Burdwan.
2. Respondent – ITO, Ward-1(1), Durgapur
3. The CIT(A)-
4. Pr. CIT- Burdwan
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata