

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

(Before Sri Rajpal Yadav, Vice President & Sri Manish Borad, Accountant Member)

**I.T.A. No.: 993/Kol/2018
Assessment Year: 2012-13**

Sri Debdas Ghoshal.....Appellant
[PAN: AFLPG 0471 P]

Vs.

ITO, Ward-51(1), Kolkata.....Respondent

Appearances by:

None appeared on behalf of the Assessee.

Sh. D.K. Sonowal, CIT(D/R), appeared on behalf of the Revenue.

Date of concluding the hearing : April 6th, 2022

Date of pronouncing the order : May 24th, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2012-13 is directed against the order u/s 263 of the Income Tax Act, 1961 (in short the "Act") of Id. Pr. Commissioner of Income-tax-17, Kolkata [in short Id. "PCIT"] dated 26.02.2018 which is arising out of the assessment order framed u/s 147 of the Act dated 03.02.2016.

2. When the case was called, none appeared on behalf of the assessee. On perusal of the file records, it is observed that the case has been regularly listed for hearing on more than 20 occasions since 18.11.2019. Neither the assessee has appeared nor any authorized person on behalf of the assessee represented before this Tribunal. We, therefore, dispose off this appeal with the assistance of Id. D/R and the available records.

3. The assessee is in appeal before the Tribunal raising the following grounds:

"1. For that in the facts and circumstances of the case, the learned Principal Commissioner of Income Tax Department has erred in passing the order u/s 263

for making fresh assessment in as much as the order passed by Assessing Officer u/s 143(3) after making proper and adequate investigation is not erroneous.

2. For that in the facts and circumstances of the case the learned Principal Commissioner of Income Tax Department has passed the order u/s 263 for making fresh assessment without considering the submission made by the appellant in the course of hearing because all the issues raised by the learned Principal Commissioner of Income Tax Department were duly verified by the Assessing Officer in course of assessment, hence order u/s 263 is bad in law and against the principal of "Res Judicata" and Natural Justice.

3. Your appellant craves leave to argue further grounds, if any, at the time of hearing."

4. Brief facts of the case are that the assessee is an individual engaged in business. As per records, revised return of income declaring total income of Rs. 5,93,510/- was filed on 30.09.2012. A survey u/s 133A of the Act was conducted on 28.11.2014. Thereafter, notice u/s 148 of the Act was issued and served upon the assessee. The assessment was completed after making addition for unsecured loan at Rs. 17,00,000/- and income assessed at Rs. 22,93,510/-. Subsequently Id. PCIT-17, Kolkata called for assessment records and after examining the same, issued the following show cause notice u/s 263 of the Act dated 13.09.2017:

"2. On examination of the assessment record, it is found that the assessment order passed u/s.147 on 03.02.2016 is erroneous in so far as prejudicial to the interest of the revenue under the following circumstances: -

3. It is observed from the Trading, P & L Account of the prop. Concern (Dibya Trading Co) for the year ended 31.03.2012 that Gross profit shown to the tune of Rs. 3,50,752/-. The survey operation u/s. 133A was conducted on 28.11.2014 and at the time of survey the gross profit was taken at Rs. 12,98,189/-. The assessment proceeding was completed without verifying the same.

4. It is found from the Balance sheet of Dibya Trading Co. that a sum of Rs. 16,00,000/was capitalized but the source thereof was not verified by the AO.

5. The A.O. has not made proper verification about the addition in fixed assets of Rs. 24,760/-, unsecured loan of Rs. 65,36,000/and sundry creditors of Rs. 25,92,074/-.

6. In view of the above finding, the assessment order is erroneous in so far as prejudicial to interest of revenue and the assessment order dated 03.02.2016 is required to be revised U/s. 263.

7. But before revising the order, you have been given an opportunity of being heard. Accordingly, your case has been fixed for hearing on 19.09.2017 at 10.45 a.m. You are requested to attend either personally or through your Authorized Representative along with all relevant documents related to the case before the td. Pr. CAT. Ko-17,

Kol at Uttarapan Complex, Manicktala Civic Centre, DS-4, Ultadanga, Kolkata-700 054.”

5. After issuing the show cause notice, revisionary proceedings were carried out and after considering the submissions of the assessee, ld. PCIT came to a conclusion that relevant issues relating to computation of gross profit, capitalization of the amount of Rs. 16,00,000/-, genuineness of unsecured loans and sundry creditors remained to be examined by the ld. Assessing Officer (in short ld. “AO”) and, therefore, the assessment order dated 03.02.2016 is erroneous insofar as prejudicial to the interests of the Revenue. Ld. AO was directed to re-compute the total income and the order was set aside for the limited purpose of examination of issues relating to gross profit at the time of survey u/s 133A of the Act i.e. to capital account introduction, the investment in fixed assets, to call for details from the assessee, to explain unsecured loan and sundry creditors.

6. Aggrieved, the assessee preferred appeal before this Tribunal. None appeared on behalf of the assessee. However, a paper book dated 27.12.2019 containing 48 pages is placed on record contained written submissions, details of records and the submissions filed by the assessee before the ld. AO as well as ld. PCIT.

7. Per contra, ld. D/R vehemently argued supporting the order of ld. PCIT.

8. We have heard rival contentions and perused the records placed before us. The assessee has challenged the assumption of jurisdiction by ld. PCIT u/s 263 of the Act and finding of ld. PCIT setting aside the assessment order passed u/s 143(3) of the Act. In the grounds the assessee has also submitted that all the issues raised by ld. PCIT were duly verified by the ld. AO in the course of the assessment and, therefore, the order u/s 263 of the Act is bad in law and against the principle of *res judicata* and natural justice.

9. On perusal of the records and the submissions filed by the assessee before the ld. AO, we find that the assessee made submissions with regard to difference in gross profit, source of capital interest, reconciliation of gross profit with impounded book, a note on unsecured loan with inability to

provide details of loan of Rs. 17,00,000/-. We also find that along with letter given to the ld. AO on 25.01.2016 the assessee filed the details of sundry creditors, security deposit of Oriplast, bank account statement of proprietorship business, personal account and capital introduction in the proprietorship firm.

9.1. Further, on perusal of the assessment order, we notice that ld. AO has discussed only the issue regarding unsecured loan that too giving reference to the balance sheet of unsecured loan as on 31.03.2013 and as on 31.03.2012. Addition was made only on the basis of the admission of the assessee that he was unable to provide the details of other unsecured loan of Rs. 17,00,000/-.

9.2. We note that during the year under appeal i.e. AY 2012-13, the AO was required to examine the unsecured loan taken during the year i.e. FY 2011-12. However, ld. AO has only given reference to the balances of unsecured loan appearing on 31.03.2013 and comparing the same with the balances of unsecured loan as on 31.03.2012 and has completely overlooked the fact that various unsecured loans were taken during FY 2011-12 which is part of the details filed by the assessee itself. In these details it is appearing that during the FY 2011-12 unsecured loan of Rs. 6,13,000/- from Crossroads Systems Pvt. Ltd., Rs. 1,96,000/- from Gokul Projects Pvt. Ltd., Rs. 11,08,000/- from Krishna Apartment Pvt. Ltd., Rs. 5,00,000/- from Reliable Construction and Rs. 1,30,000/- from Vishnu Construction is taken during the year. But ld. AO has only confirmed the addition of unsecured loan of Rs. 17,00,000/- which the assessee himself admitted to be unable to explain. Therefore, so far as the issue of unsecured loans are concerned, ld. AO has not examined all the unsecured loans taken during the year and the same has been rightly directed by ld. PCIT to be examined in the set aside proceedings.

9.3. Regarding the issue of addition to the capital account, the assessee claimed to have received an advance against the agreement for construction of a building at Rs. 21,50,000/-. Out of this sum, Rs. 16,00,000/- was claimed to have been transferred to proprietorship concern. The source of this

addition was the advance received against some construction project. A perusal of the bank account of the assessee placed at page 38 of the paper book shows that Rs. 21,50,000/- was received in lieu of agreement for construction and out of this sum Rs. 15,00,000/- was transferred in March 2012 and Rs. 1,00,000/- was transferred from other sources of the assessee on 04.11.2011. In our view, the assessee has duly explained the source of capital addition in the account of the proprietorship concern which ld. AO has examined properly and the source of addition to capital account stands duly explained and no further examination needs to be carried out by the ld. AO on this issue and, thus, the finding of the ld. PCIT on this issue is reversed.

9.4. As regards the addition of fixed assets there is no information provided by the assessee before the ld. AO and nor proper explanation was given before the ld. PCIT also and therefore, this issue has been rightly set aside by ld. PCIT to the ld. AO for doing the needful.

9.5. As regards the issue of sundry creditors at Rs. 25,92,074/-, we find that the assessee provided complete details of the sundry creditors with the ledger accounts and on going through the same, we find that with all the sundry creditors the assessee is carrying out regular business activity, they are running accounts and there is no reason to doubt the genuineness of the sundry creditors appearing in the balance sheet as on 31.03.2012 which includes the sundry creditors Ori-Plast Limited of which detailed vouchers, bills and ledger accounts were filed. We, therefore, are of the considered view that since the ld. AO examined this issue, the same need not be set aside for fresh adjudication and to this extent, the finding of the ld. PCIT on this issue is reversed.

9.6. The last issue mentioned by ld. PCIT is regarding the calculation of gross profit. In the course of survey dated 28.11.2014, the gross profit was shown at Rs. 12,98,189/- whereas in the FY 2011-12 the gross profit was shown at Rs. 3,50,752/-. We note that survey was conducted during the FY 2014-15 and the appeal before us is for AY 2012-13. During the survey it was noticed that the assessee was maintaining two sets of books of account. A

perusal of the assessment order reveals that ld. AO has made no efforts to examine this issue as to whether the assessee was keeping two sets of books of account for the year under appeal and whether any such evidence was gathered by the survey team pertaining to FY 2011-12. Assessment order is completely silent on this issue and the reconciliation statement filed by the assessee before ld. AO do not contain any specific details and it refers to gross profit as per the impounded books at Rs. 14,04,012/- and the same has been compared to gross profit as per the audited books of account at Rs. 3,50,752/- . There is complete mismatch of figures. Thus, in our view this issue of reconciliation of gross profit has rightly been set aside to the ld. AO for afresh examination and to this extent the finding of the ld. PCIT is confirmed.

10. In the result, the action of ld. PCIT invoking jurisdiction u/s 263 of the Act and holding the assessment order dated 03.02.2016 as erroneous insofar as prejudicial to the interests of the Revenue is partly sustained in view of the observations made herein above.

11. In the result, the appeal of the assessee is partly allowed as per the terms indicated above.

Kolkata, the 24th May, 2022.

Sd/-
[Rajpal Yadav]
Vice President

Sd/-
[Manish Borad]
Accountant Member

Dated: 24.05.2022

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Sri Debdas Ghoshal, Baisalipara, Kanthadhar, Ichapur, North 24 Parganas, Kolkata-734 144.**
2. **ITO, Ward-51(1), Kolkata.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata