

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA
श्री राजपाल यादव, उपाध्यक्ष(कोलकाता क्षेत्र) एवं श्री राजेश कुमार लेखा सदस्य के समक्ष
[Before Shri Rajpal Yadav, Vice-President (KZ) & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 193/Kol/2022
Assessment Year : 2017-18

Rabi Pal (PAN: DMHPP 4781 H)	Vs.	ITO, Ward-3(4), Bankura
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	12.07.2022
Date of Pronouncement / आदेश उद्घोषणा की तिथि	05.09.2022
For the Appellant / निर्धारिती की ओर से	Shri D.K. Sen, Advocate
For the Respondent / राजस्व की ओर से	Shri Sudipta Guha, CITDR

ORDER/ आदेश

Per Shri Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Principal Commissioner of Income Tax-Asansol [hereinafter referred to as 'Ld. PCIT'] passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) dated 12.03.2022 for the assessment year 2017-18.

2. The issue raised by the assessee in the second ground is a legal issue and is against the assumption of jurisdiction by the Ld. PCIT u/s 263 of the Act to set aside the assessment on the same issue which is also pending before the Ld. CIT(A) for

adjudication and thus is in violation of provisions of section 263(1) explanation 1(c) of the Act.

3. Facts in brief are that the assessment was framed u/s 143(3) of the Act vide order dated 4.12.2019 after the case was selected for limited scrutiny for reason of cash deposits during demonetization period. The notices were issued u/s 143(2) and 142(1) of the Act calling upon the assessee to explain the cash deposit during demonetization period which was replied by the assessee on 30.09.2019. The assessee is engaged in the agricultural activities. The assessee had also taken loans from banks of Rs. 5,68,963/- on 29.08.2015 and Rs. 6,15,368/- on 24.08.2016. The assessee has deposited Rs. 15 Lakhs into the bank account on 10.11.2016 and the very second day i.e. 11.11.2016 it was transferred to Sudhanshu Dhal. The said amount was stated to be transferred for purchase of land. The assessee gave a detailed chart wherein total income, total expenditure and cumulative savings from 2007-08 to 2016-17 were given. As per the said chart the savings of the assessee amounted to Rs. 20,09,054. The AO, after rejecting the contentions of the assessee, analyzed the gross agriculture income for F.Y. 2015-16 and 2016-17 and calculated the unexplained amount at Rs. 6,41,033/- and on that basis made an addition equal to 50% of the amount thereby making an addition of Rs. 3,20,516/- as an unexplained cash u/s 69A of the Act.

4. According to Ld. PCIT, upon perusal of assessment record, it is observed that the AO has added only 50% unexplained amount of Rs. 6,41,042/- and there is no provision to part addition at 50% u/s 69A of the Act and thus has referred the assessment order as erroneous and prejudicial to the interest of the revenue. Accordingly Ld. PCIT issued notice u/s 263 dated 24.01.2011 which was replied by the assessee by submitting that same details as were placed before the AO however the Ld. PCIT brushed aside the submissions of the assessee and revised the assessment so framed by the AO and directed the AO to frame fresh assessment after making the necessary enquiry into the matter.

5. After hearing the rival contentions and perusing the materials as placed before us , we note that the said assessment order as framed originally u/s 143(3) of the Act dated 04.12.2019 has been challenged by the assessee before the First Appellate Authority and appeal is pending for adjudication. In the light of these facts, we are unable to understand as to how the jurisdiction of the Ld. PCIT u/s 263 of the Act is maintainable on this issue. The provisions of clause (c) of Explanation (1) to Section 263 provides that when the appeal is pending before the Commissioner of Income Tax(Appeals) on some issue, the exercise of jurisdiction u/s 263 of the Act on the said issue is not available to the Id PCIT. In the present case also the Id. Commissioner of Income Tax (appeals) is seized of the issue and therefore jurisdiction u/s 263 of the Act has been invalidly exercised by the Ld. PCIT. The case of the assessee finds support from the several decisions of various High Courts namely Smt. Renuka Philip vs. ITO reported in [2018] 409 ITR 567 (Mad), decision of Hon'ble Allahabad High Court in the case of CIT vs. Vam Resorts and Hotels Pvt. Ltd. [2019] 418 ITR 723 (All). In both the above decisions of the Hon'ble High Courts has held that when the appeal is pending before the Commissioner(appeals), the exercise of jurisdiction u/s 263 of the Act is not available to the Ld. PCIT. Accordingly, we are inclined to quash the order passed u/s 263 of the Act.

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

Order is pronounced in the open court on 5th September, 2022

Sd/-

(Rajpal Yadav / राजपाल यादव)

Vice-President/ उपाध्यक्ष

Sd/-

(Rajesh Kumar / राजेश कुमार)

Accountant Member/ लेखा सदस्य

Dated: 5th September, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Rabi Pal, Thakurabadha Dumurtore, Khatra Raipur, Dist-Bankura-722134
2. Respondent – ITO, Ward-3(4), Bankura (Now Ward-1)
3. Pr. CIT- Kolkata
4. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata