

। आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता ।

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER

&

SHRI MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 247/Kol/2022

Assessment Year: 2017-18

<b>Rajesh Falor</b> <b>Armstrong Avenue</b> <b>Flat - 4, Armstrong Apartment</b> <b>Bidhannagar</b> <b>Durgapur - 713212</b> <b>PAN : AACPF9864D</b>	Vs	<b>PCIT, Asansol</b>
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :	Shri Swapnil Megotia, C.A.	
Revenue by :	Shri Vijay Kumar, Addl. CIT	

सुनवाई की तारीख/Date of Hearing : 29/09/2022

घोषणा की तारीख/Date of Pronouncement : 31/10/2022

**आदेश/ORDER**

**PER SHRI MANISH BORAD, ACCOUNTANT MEMBER:**

The present appeal is directed at the instance of the assessee against the order of the learned Principal Commissioner of Income Tax - Asansol (hereinafter the "ld. Pr. CIT") dt. 12/03/2022, passed u/s 263 of the Income Tax Act, 1961 ("the Act"), for Assessment Year 2017-18.

2. There is a delay of 41 days in filing of this appeal by the assessee. The assessee has filed a condonation petition. We have heard both the sides and find that there is reasonable cause for delay in filing of the appeal on time. Hence we condone the delay and admit the appeal for hearing.

3. Through the grounds, the assessee has challenged the assumption of jurisdiction u/s 263 of the Act by the ld. Pr. CIT.

4. Brief facts of the case are that the assessee is an individual and e-filed its return of income on 30/10/2019 declaring total income of Rs.51,46,010/- for Assessment Year 2017-18. This return was revised on 10/11/2019 declaring income at Rs.19,54,740/-. Subsequently the case was selected for scrutiny and assessment was completed on 30/12/2019 assessing total income at Rs.64,17,117/-

. Thereafter the Id. Pr. CIT called for examining the assessment records and then invoked his powers u/s 263 of the Act, noticing the following discrepancies:-

*“On scrutiny of the assessment records, it is found that the assessee had received a total of Rs.16,69,740.56/- from HDFC Mutual Fund (Total for period from April 2016 to April 2017 Rs.19,10,438.93/- minus amount for the month of April 2017 Rs.2,40,698.37/-) while the assessee had taken the amount of Rs.14,32,947/- only in the statement of Gross Commission from Mutual Fund. Hence, the assessee had understated the income of Rs.2,36,794/- (Rs.16,69,741/- minus 14,32,947/-).*

*In view of the above, the amount of Rs.2,36,794/- should have been charged to income tax as per the IT Act, 1961. But omission to do so resulted in under assessment of income of Rs.2,36,794/-. Considering the above the assessment order is erroneous so far as it is prejudicial to the interest of Revenue. Accordingly, the assessment order is required to be revised.”*

4.1. Before the Id. Pr. CIT during the revisionary proceedings, the assessee failed to appear on various occasions and accordingly, the Id. Pr. CIT held the order of the Assessing Officer dt. 30/12/2019 as erroneous and prejudicial to the interest of the revenue and set aside the same directing the Assessing Officer to frame it afresh considering the observation made in the impugned order.

5. Aggrieved the assessee is before the Tribunal.

6. The Id. Counsel for the assessee submitted that only allegation was under statement of income of Rs.2,36,794/- but actually there is no such under statement and there was only a clerical mistake by the accountant by wrongly mentioning some part of the commission income from HDFC Mutual Funds as commission from Motilal Oswal Mutual Fund and there is no change in the gross receipt. Reference was made to the details of income and income statement from HDFC Mutual Funds and bank statement.

7. Per contra the Id. D/R supported the order of the Id. Pr. CIT.

8. We have heard the rival contentions and perused the material available on record. The only issue for which revisionary proceedings u/s 263 of the Act has been carried out is with regard to the under statement of commission income of

Rs.2,36,794/-. The Id. Pr. CIT has observed in the impugned order that the assessee had received commission from HDFC Mutual Fund at Rs.16,69,740.56/- but it has disclosed only Rs.14,32,947/- and therefore under statement of income has occurred. We have perused the details filed by the assessee and found that as per the summary of indirect income for Assessment Year 2016-17, the amount so received was Rs.1,79,35,581.31/- which included income from HDFC Mutual Fund at Rs.14,32,946.64/- and commission income from Motilal Oswal at Rs.3,65,878.98/-. Further on perusal of the broker account statement of HDFC mutual fund, net commission received from HDFC Mutual funds is Rs.16,69,740.56/-. The assessee has thereafter made necessary corrections in the indirect income head and the gross income remains the same but the income from HDFC Mutual funds is now reflecting at Rs.16,69,740.62/-. This mistake in the accounting is claimed to be a clerical mistake. Complete breakup of details were provided during the proceedings u/s 143(3) of the Act and confirmation letters from both the Mutual Fund houses are also attached. On perusal of these details, we find force in the contentions of the Id. Counsel for the assessee that on this principle issue, the order of the Assessing Officer is neither erroneous nor prejudicial to the interest of the revenue and our view is further supported by the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Ashish Rajpal [2009] 320 ITR 674 (Delhi)(HC)* wherein the Hon'ble Court has held "*Where the assessing officer during the scrutiny assessment proceeding raised a query which was answered by the assessee to the satisfaction of the assessing officer but the same was not reflected in the assessment order by him, a conclusion cannot be drawn by the Commissioner that no proper enquiry with respect to the issue was made by the assessing officer, and enable him to assume jurisdiction under section 263 of the Act.*"

9. We, therefore, respectfully following the ratio laid down in the case of *Ashish Rajpal (supra)* and considering the facts and circumstances of the case, are of the considered view that since the issue raised by the Id. Pr. CIT in the impugned order has duly been examined by the Assessing Officer and even before us

necessary documents have been filed to prove that there is no under-statement of income of Rs.2,36,794/-, quash the impugned order passed u/s 263 of the Act and restore the assessment order passed u/s 143(3) dt. 30/12/2019. Accordingly, grounds raised by the assessee are allowed.

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

**Order pronounced in the Court on 31<sup>st</sup> October, 2022 at Kolkata.**

*Sd/-*

**(SANJAY GARG)  
JUDICIAL MEMBER**

*Sd/-*

**(MANISH BORAD)  
ACCOUNTANT MEMBER**

Kolkata, Dated 31/10/2022

*SC S.P.*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

**Assistant Registrar**  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata