

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.385/Kol/2020
Assessment Year: 2015-16

Smt. Shila Dutta.....Appellant
Vill- Kajora Gram,
Dist-West Burdwan,
Pin-713338.
PAN:ADNPD7277J]

vs.

ACIT, Circle-I, Durgapur.....Respondent

Appearances by:

Shri Sunil Surana, CA, appeared on behalf of the appellant.

Shri Tushar Dhawal Singh, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : September 21, 2022

Date of pronouncing the order : November 09, 2022

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

This appeal by the assessee is against the order passed by the Principal Commissioner of Income Tax, Burdwan, Durgapur (in short, herein after referred to as the 'Ld. PCIT') vide order dated 03.03.2020 for the A.Y. 2015-16 u/s. 263 of the Income-tax Act, 1961 (hereinafter, referred to as the 'Act'). There is a delay of 54 days in filing the instant appeal for which an application for condonation of the said delay has been preferred by the assessee. We note that the period during which the appeal was supposed to be filed fell during the lockdown imposed due to pandemic of COVID-19 which prevented the assessee in filing the appeal within the permitted limitation. There exists a reasonable and justifiable cause for the delay which is condoned and the appeal is taken up for hearing and its disposal.

2. The assessee has raised the following grounds of appeal challenging the jurisdiction assumed by the Ld. PCIT invoking the provisions of section 263 of the Act and passing a revision order therein:-

“1. For that the Ld. Pr. Commissioner of Income Tax erred in invoking provision of Section 263 of the LT. Act, 1961, when the Ld. A.O. having verified the transactions narratives corroborated by 26AS detail, Bank Statement and ledger account of the supplier passed the Order of assessment and the Ld. Pr. Commissioner of Income Tax has lot pointed out any non-application of mind or error on the issue involved.

2. For that Ld. Pr. Commissioner of Income Tax, on the facts and circumstances of the case, erred in doubting transactions on grounds extraneous to the books of accounts of the appellant and without confronting the appellant on the issue raised afresh by him. .

3. For that Ld. Pr. Commissioner of Income Tax erred in revising the order of assessment on the issue which is not part of the show cause notice.

4. For that the appellant reserves her right to add to, to alter and to amend the ground/s and to adduce paper/s and document/s at the time of hearing.”

3. Brief facts as culled out from records are that the assessee is engaged in proprietorship business of liquor shop under the name of M/s. Kajora C.S. Shop. Assessee filed her return of income for the A.Y. 2015-16 on 29.09.2015 declaring total income of Rs. 20,87,070/-. The return was processed u/s 143(1) on 26.04.2016 and income was assessed at Rs.22,97,320/-. The case was selected through CASS for scrutiny. Statutory notices U/S 143(2) and 142(1) of the Act were issued and served on the assessee. In response, submissions were made which were verified and placed on record. Ld. AO issued notice U/S 142(1) dated 24.08.2017, inter alia, seeking details of purchases made with complete address of parties placed at page 123 of the Paper Book (PB). Assessee submitted the details vide submission dated 05.09.2017. Assessment U/S 143(3) of the Act was completed by ACIT, Circle - 1, Durgapur (Ld. AO) vide order dated 14.12.2017 at total income of Rs. 23,07,270/-.

4. Subsequent to the said assessment, Ld. PCIT invoked the provisions of section 263 of the Act observing that the Ld. AO has accepted the claim without verification and proper examination. Ld. PCIT issued a show cause notice (SCN) under the provisions of section 263 of the Act on 04.02.2022 for the following reasons:-

"The assessment order u/s 143(3) in your case, PAN-ADNPD7277J for the A.Y 2015-16 was passed on 14.12.2017. During the year under question, you were engaged in proprietorship business of trading of liquor under the name of M/s Kajora cs. Shop. In the instant case, you made major purchase from K.D. Liquor and Fertiliser Private Ltd., 4, Fairlie Place, Mezzanine Floor, Kolkata-70000 1 (hereinafter referred as KDL) to the tune of Rs.2,21,54,295/- during relevant F Y 2014-15. Further, you had claimed refund of Rs.22,74,060/- on account of empty bottles from KDL. For verification of transaction, notice u/s 133(6) sent to KDL, but returned unserved by the postal authority. During the assessment proceedings copy of ledger account of KDL was furnished by you and the same was accepted by the A.O, without any verification.

The said ledger account of KDL, amount of Rs. 1,97,09,700/- has been shown as debited and there was no mention of transaction on account of empty bottles. Also, in reconciliation statement, has shown refund of empty bottle to only one party (KDL). Further, in the ledger ale pertaining to empty bottle furnished by you, name of the party was also not mentioned, hence proper examination of the issue as not done by the A.O.

In view of the above, the entire claim of Rs.22,74,060/- was required to be enquired/verified and examined before the finalization of the statement which was not one in this instant case."

5. The assessee furnished its reply dated 14.02.2020 before the Ld. PCIT as reproduced in Para 4 of the impugned order. The assessee explained that the total purchase of liquor was of Rs.2.21 crores made from KDL and the TCS was duly reflected in Form 26AS. Further that against the total purchases of Rs.2.21 crores, total payment made by the assessee to the KDL was at Rs.1.97 crores and a fund of Rs.22 lakhs was adjusted on account of return of empty bottles. The copy of the ledger account of KDL was also produced before the Assessing Officer. The assessee

submitted that the entire details of sale and purchase were duly reconciled. However, after considering the aforesaid reply of the assessee, the ld. PCIT observed as under:-

“6. The submission of the assessee is perused and a few of the invoices K.D. Liquor and Fertiliser Private Ltd produced by the assessee were test checked from the website VAHAN which is maintained by Ministry of Road Transport & Highways. The findings are as follows:

<i>Sl. No.</i>	<i>Invoice No.</i>	<i>Invoice Date</i>	<i>Dispatch through (Vehicle registration no.)</i>	<i>Remarks</i>
<i>1</i>	<i>KDLF/4848</i>	<i>09.10.2014</i>	<i>WB6500096</i>	<i>As per VAHAN the registration no. belong to a bus</i>
<i>2</i>	<i>KDLF/1477</i>	<i>05.06.2014</i>	<i>WB550099</i>	<i>This vehicle is not found in VAHAN</i>
<i>3</i>	<i>Inv/5831/14-15</i>	<i>17.11.2014</i>	<i>No truck no. given in invoice</i>	

7. From the above data it is evident that submissions of the assessee are not all correct. When the vehicle used for transportation is not correct, and then how all other information given in the said invoice can be accepted as true? Furthermore without any truck number how the material is delivered from Kolkata/Nadia to Kajora, which are more than 200 km apart. Perusal of records available in assessment folder shows that the Assessing Officer simply accepted the claim of the assessee without any verification/enquiry as is required to be made during the course of scrutiny. In the present case the Assessment Order dated 14.12.2017 has been passed without making enquiries or verification which should have been made by the Assessing Officer at the time of assessment and accordingly the Order is erroneous in so far as it is prejudicial to the interest of the revenue and this attracts the provisions of Sec 263 of the IT Act, 1961.

He accordingly set aside the assessment order for de novo assessment.

6. At the outset, the ld. Counsel for the assessee has submitted that the ld. PCIT had exercised his revision jurisdiction on the issue of claim of refund of Rs.22 lakhs on account of empty bottles. However, when the figure was reconciled by the assessee, the ld. PCIT proceeded to set aside

the assessment order on the other issue relating to mismatch in the vehicle number used for transportation of liquor without confronting the assessee in this respect. The ld. Counsel inviting our attention to the aforesaid chart reproduced by the ld. PCIT submitted that the discrepancy has been found by the ld. PCIT in respect of three invoices only. The ld. Counsel has further invited our attention to the copy of invoices which has been placed at page no.1 to 77 of the paper-book. The ld. Counsel has submitted that a perusal of the invoices shows that only 3-4 trucks were used for transportation of liquor/bottles. That most of the times, the truck no.WB55-0096 has used for the transportation. The ld. Counsel inviting our attention to the above chart has submitted that in one of the invoice dated 09.10.2014, the truck number inadvertently, due to clerical error, has been mentioned as WB650096 instead of WB550096. He has further submitted that similarly in the invoice dated 05.06.2014, the truck number has been inadvertently mentioned as WB550099 instead of WB550096. He has submitted that there is just a mistake of one digit which is visibly a clerical mistake. The ld. Counsel has submitted in respect of invoice dated 17.11.2014, inadvertently, the registration number of the truck could not be mentioned. The ld. Counsel has submitted that except the aforesaid clerical mistake in three invoices, there is no material on the file to doubt the purchases or the transportation done by the assessee. The ld. Counsel has further submitted that, even otherwise, the assessee has duly explained and reconciled the difference on account of refund on empty bottles on the basis of which the ld. PCIT has initiated proceedings u/s 263 of the Act. The ld. PCIT thereafter was supposed to confront the assessee in respect of mismatch of truck number but the ld. PCIT proceeded to set aside the assessment order on wrong assumption of facts.

The Id. DR could not rebut the above submissions of the Id. AR. All the purchases and refunds on account of empty bottles were duly reconciled.

The Id. Counsel for the assessee has also demonstrated that the Ld. PCIT wrongly proceeded to set aside the assessment order due to mismatch of truck number in two invoices, which was visibly a clerical mistake.

7. We, therefore, do not find justification on the part of the Id. PCIT to invoke his jurisdiction u/s 263 of Act in this case to set aside the assessment order. In view of this, the impugned order of the Id. PCIT is hereby quashed.

8. In the result, the appeal of the assessee stands allowed.

Kolkata, the 9th November, 2022.

Sd/-
[गिरीश अग्रवाल /Girish Agrawal]
लेखा सदस्य/Accountant Member

Sd/-
[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 09.11.2022.

RS

Copy of the order forwarded to:

1. Smt. Shila Dutta
2. ACIT, Circle-I, Durgapur
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches