

आयकर अपीलीय अधिकरण, PATNA पीठ, कोलकाता
**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH**

आभासी माध्यम से सुनवाई
Hearing Through Virtual Medium
At ITAT, Kolkata

समक्ष : श्री राजपाल यादव, उपाध्यक्ष एवं
श्री मनीष बोरड, लेखा

**Before: Shri Rajpal Yadav, Vice President and
Shri Manish Borad, Accountant Member**

आयकर अपील सं.य/ ITA No. 102/Pat/2017 Assessment Year: 2012-13	
Shambhu Sharan Singh Amtha Khem, P.O Line Bazar, irganj, Gopalganj-841428. PAN AAYFS8234L (APPELLANT)	बनाम V/s. DCIT, C-2(1), Muzaffarpur (RESPONDENT)
अपीलार्थी की ओर से/By Appellant	None appeared
प्रत्यर्थी की ओर से/By Respondent	Shri Saumyajit Das Gupta, CIT, Ld. DR
सुनवाई की तारीख/Date of Hearing	30-08-2022
घोषणा की तारीख/ Date of Pronouncement	12-12 -2022

आदेश / O R D E R

PER MANISH BORAD, AM.

This appeal of the assessee is directed against the order dt. 30-03-2017 passed u/s. 263 of the Income-tax Act, 1961 [hereinafter,

referred to as 'the Act'] by the Id. Pr. Commissioner of Income-tax [in short, hereafter referred to as 'the 'Id. PCIT, Muzaffarpur.

2. The assessee has raised the following grounds of appeal for the AY 2012-13:-

1. For that order passed u/s. 263 is bad both in law and in facts.
2. For that Pr CIT was not correct in observing that the AO passed the order u/s. 143(3) without making proper verification and considered it to be erroneous and therefore erred in cancelling the assessment u/s. 263.
3. For that any other ground at the time of hearing of the appeal.

3. When the case was called, none appeared on behalf of the assessee. Perusal of note sheet shows that in the past when the case was fixed for hearing none appeared. We, therefore, deem it proper to adjudicate the appeal on merits *ex parte qua the assessee* with the assistance of the Id. Departmental Representative and material available on record.

4. The sole grievance of the assessee is that the Id.PCIT erred in invoking the provisions of section 263 of the Act and holding the assessment order passed u/s. 143(3) of the Act dated 19-03-2015 as erroneous and prejudicial to the interest of the revenue.

5. Brief facts of the case are that the assessee is an individual, engaged in the business of civil contractor. Income at Rs. 65,87,030/- declaring in the return filed for the assessment year 2012-13 on 08-09-2013. After the case being selected for scrutiny, the Id. AO framed the assessment u/s. 143(3) of the Act rejecting the books of account u/s. 145(3) of the Act and estimating the profits thereby assessing income at Rs.72,31,910/-.

6. Subsequently, the Id. PCIT called for assessment records invoking the jurisdiction u/s. 263 of the Act and show cause notice dt. 22-02-2017 issued raising the following two issues:-

1) *It has been observed that in the assessment the assessing officer had not properly examined the issue of Rs. 1,61,03,705/- credited in your bank account of SBI, Gopalganj and that a sum of Rs. 5,81,189/- was left to be included in the gross contractual receipt during the year.*

2) *An amount of Rs. 72,08,670/- withheld by the deductor under the head "Time Extension" was wrongly debited in the Profit & Loss account which was required to be entered in the balance sheet. This issue has also not been examined properly by the assessing officer.*

7. After receiving the said show cause notice issued u/s. 263 of the Act the assessee made written submissions on 20-03-2017, which is incorporated in the impugned order at page-2. Relevant portion of which is reproduced herein below:-

a) *Out of Rs. 1,61,03,705/- the amount of Rs. 23,67,023/- deposited on 04/04/2011 is amount of security deposit returned back.*

b) *Out of Rs. 1,61,03,705 the amount of Rs. 2,00,000/- deposited on 13/07/2011 is deposit of earnest money returned back which was given for the purpose to obtain contract work.*

c) *Out of Rs. 1,61,03,705 the amount of Rs. 9,00,000/- was sent through RTGS which was not materialised therefore, the reverse entry was passed crediting assessee's a/c with the amount of Rs. 9,00,000/-.*

d) *Out of Rs. 1,61,03,705 the amount of Rs. 1,55,050/- was return of security deposit.*

e) *Out of Rs. 1,61,03,705 the amount of Rs. 86,84,736/- is contract receipt from RWD, Gopalganj. Payment certificate issued from RWD was furnished to assessing officer.*

8. However, the submissions filed by the assessee were not found to be satisfactory and the Id. PCIT held that the Id. AO failed to conduct any enquiry nor made application of mind on the issues raised/referred in the show cause notice, thus, set aside the assessment order dt. 19-03-2015 and directed the Id.AO to frame the assessment afresh after considering the observations made in the impugned order.

9. Aggrieved, the assessee is now in appeal before this Tribunal.

10. The Ld. Departmental Representative (in short, the Ld. DR) vehemently argued supporting the impugned order of the Id. PCIT.

11. We have heard the Ld. DR and perused the material placed on record before us. The Id. PCIT issued show cause notice u/s. 263 regarding the issues firstly, a sum of Rs. 1,61,03,705/- credited in the bank account of SBI, Gopalganj, that a sum of Rs. 5,81,189/- was left to be included in the gross contractual receipt and lastly sum of Rs.72,08,670/- withheld by the deductor under the head "Time Extension" was wrongly debited in the Profit & Loss account.

12. Now before us only assessment order is available and no other details have been filed by the assessee, which could indicate that whether any enquiry has been conducted by the Id. AO regarding the issues raised/referred in the show cause notice issued u/s. 263 of the Act. Perusal of the assessment order shows that the Id. AO rejected the book results and estimated the profits. Estimation of profit is an exercise, which is confined to the P & L account, but if there are any other credits in the bank account or any expenditure debited to the P & L account, which are not in the nature of expenditure then

necessary enquiry has to be done about such unexplained credits/investment.

13. Under these given facts and circumstances of the case, we find that since the Id. AO failed to make any such enquiry in this regard, therefore, we do not find any infirmity in the finding of the Id. PCIT setting aside the assessment order dt. 19-03-2015 u/s. 143(3) to be framed afresh considering the finding given in the impugned order. Thus, all the grounds raised by the assessee are dismissed.

14. Apart from the above, it is observed that as per Rule 34 of ITAT Rules, 1963 an order is required to be pronounced preferably within 90 days from the date of hearing. We are conscious of this fact, but it is pertinent to observe that after the hearing one of us (i.e. Hon'ble Vice President (KZ)) remained on tour to ITAT Mumbai Benches as well as Hyderabad Benches, thereafter, on medical leave. Therefore, he was out of Kolkata for more than 1 month. Therefore, due to these reasons the order could not be pronounced within 90 days. Thus, order is pronounced today.

परिणामतः निर्धारिती की अपील खारिज की जाती है।

15. In the result, the appeal of the assessee is dismissed.

आदेश खुले न्यायपीठ में दिनांक ...12-12-2022 को उद्घोषित।

The order pronounced in the open Court on 12-12-2022

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Dated :12-12-2022

****PP/SPS**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

- 1.अपीलार्थी/Appellant/: **Shambhu Sharan Singh**
Amtha Khem, P.O Line Bazar, irganj,Gopalganj-841428.
2. प्रत्यर्थी/Respondent/: **DCIT, C-2(1), Muzaffarpur**
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Patna
- 6.गार्डफाइल/Guardfile.

By order/आदेश से, /True Copy/

Assistant Registrar
ITAT, Kolkata