

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, KOLKATA

BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 139/Kol/2022
Assessment Year: 2011-12

Aayush Commerce Private Limited Maurya Patna South Gandhi Maidan Patna - 800001 [PAN : AACCA0933B]	Vs	PCIT, Kolkata - 2
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Siddharth Agarwal, A/R
Revenue by :	Shri Subhrajyoti Bhattacharjee, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 21/03/2023
घोषणा की तारीख /Date of Pronouncement: 24/05/2023

आदेश/ORDER

PER RAJESH KUMAR, ACCOUNTANT MEMBER :

This is the appeal preferred by the assessee against the order of the Learned Principal Commissioner of Income Tax - 2, Kolkata (hereinafter referred to as the Id. Pr. CIT"), passed u/s 263 of the Income-tax Act, 1961 (hereinafter the 'Act'), dated 09/03/2021 for the Assessment Year 2011-12.

2. We note that there is a delay of 311 (three hundred and eleven days) days in filing the present appeal before the Tribunal. The impugned order is dated 09/03/2021, which falls within the period of pandemic of Covid-19. Petition for condonation of delay is placed on record by assessee explaining the reasons for delay, owing to Pandemic of Covid-19 during that time. It is noted that the period of delay falls during the time of Pandemic of Covid-19 which has been excluded by the Hon'ble Supreme Court in the case of *suo moto Writ Petition (C) No. 3 of 2020 dated 10.01.2022* by which the period from 15.03.2020 to 28.02.2022 has been directed to be excluded for the purpose of limitation. Vide this order a

further period of 90 days has been granted for providing the limitation from 01.03.2022. Accordingly, we condone the delay and admit the appeal for hearing.

3. The assessee has assailed the order of the Id. Pr. CIT on the ground that the revisionary proceedings as well as revisionary order passed u/s 263 of the Act is barred by limitation as prescribed u/s 263(2) of the Act and, therefore, required to be quashed.

4. The facts in brief are that the assessment was framed u/s 144 r.w.s. 147 of the Act vide order dt. 05/12/2018 assessing total income at Rs.13,06,140/- as against the declared income of Rs.3,06,136/- vide return filed u/s 139(1) of the Act on 27/09/2011. The Id. Pr. CIT observed that there was an increase in share capital of the assessee company during the financial year 2010-11 to the tune of Rs.2,75,00,000/-. Besides, the Id. Pr. CIT observed that as per 26AS statement, assessee company had received total payments of Rs.43,14,618/- by way of interest income and Rs.35,84,646/- as commission income whereas assessee has credited interest income of Rs.3,64,946/- and commission income of Rs.16,24,953/- thereby short showing the interest income to the tune of Rs.3,65,026/- and commission income by Rs.19,59,693/-. The Id. Pr. CIT also observed that assessee has earned exempt income of Rs.4,293/- during the financial year 2010-11 and debited the total expenses of Rs.16,84,022/- in the profit and loss A/c. The Id. Pr. CIT noted that the Assessing Officer has not made any disallowance u/s 14A of the Act read with Rule 8D of Income Tax Rules, 1962 (hereinafter 'the Rules') with respect to the exempt income. Consequently, a showcause notice was issued u/s 263 of the Act dt. 17/02/2021, which was replied by the assessee vide written submission dt. 03/03/2021. Finally, the Id. Pr. CIT revised the assessment by setting aside the assessment order framed u/s 144/147 of the Act and directing the Assessing Officer to pass a fresh assessment order after considering the points raised in the revisionary order passed.

4.1. It is pertinent to state that in this case there was no assessment framed u/s 143(3) of the Act and only the return of income has been processed u/s 143(1) of the Act and thereafter, assessment order u/s 144/147 of the Act was framed vide order dt. 05/12/2018. The ld. Pr. CIT revised the order dt. 05/12/2018. The case of the assessee was reopened u/s 147 of the Act only on the ground that assessee has received Rs.10,00,000/- from A/c. No. 397001010229657 maintained by Shubh Labh Prints Pvt. Ltd. and the Assessing Officer added the said amount u/s 68 of the Act in the assessment framed u/s 144/147 of the Act.

5. After hearing rival contentions and perusing the material on record we observe that ld. Pr. CIT has cancelled and set aside the assessment as framed u/s 144/147 of the Act dt. 05/12/2018. We note that the assessment of the assessee was reopened u/s 147 of the Act on the ground that the assessee has received Rs.10,00,000/- from Shubh Labh Prints Pvt. Ltd., and the ld. AO while framing the assessment u/s 144/147 of the Act has added the said amount as unexplained cash credit to the income of the assessee.

6. Now the moot question before us is whether the ld. Pr. CIT has rightly invoked the revisionary powers u/s 263 of the Act to correct the anomaly by directing the ld. AO to reframe the assessment afresh on the issues contemplated in the order passed u/s 263 of the Act. In our opinion since the issues raised by the ld. Pr. CIT in the revisionary proceedings were not the subject matter of the reassessment proceedings neither in the reasons recorded nor the issues coming to the notice of the ld. AO in the reassessment proceedings, therefore, in our opinion, the exercise of the revisionary powers to cancel the assessment order dt. 05/12/2018 passed u/s 144/147 of the Act is bad in law and cannot be sustained. In other words, the ld. Pr. CIT cannot be allowed to do what the AO has no power to do. In our opinion, the ld. Pr. CIT could have revised the original assessment but that is not possible under the Act as the same is barred by limitation in terms of provisions of Section 263(2) of the Act.

7. The Id. Counsel for the assessee has rightly placed reliance on the decision of the Hon'ble Supreme Court in the case of *CIT vs. Alagendran Finance Ltd.* Reported in 162 *taxman* 465 (SC), wherein it was held as under:-

"15. We, therefore, are clearly of the opinion that keeping in view the facts and circumstances of this case and, in particular, having regard to the fact that the Commissioner of Income-tax exercising its revisional jurisdiction reopened the order of assessment only in relation to lease equalization fund which being not the subject of the reassessment proceedings, the period of limitation provided for under sub-section (2) of section 263 of the Act would begin to run from the date of the order of assessment and not from the order of reassessment. The revisional jurisdiction having, thus, been invoked by the Commissioner of Income-tax beyond the period of limitation, it was wholly without jurisdiction rendering the entire proceeding a nullity."

{emphasis ours}

8. Further reliance was placed on the decision of the Hon'ble Madras High Court in the case of *CIT vs. Laxmi Vilas Bank Ltd.* reported in 146 *taxmann.com* 227 (Madras) wherein it was held as under:-

"Section 263, read with section 143(3) and section 147, of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interest of revenue (Limitation) - Assessment years 1999-2000, 2001-02 and 2002-03 - Assessee, banking company, filed its return for relevant assessment years 1999-2000, 2001-02 and 2002-03 and its case was selected for scrutiny and assessment was completed under section 143(3) read with section 147 on 28-3-2002, 30-3-2004 and 27-8-2004 respectively - Subsequently, Assessing Officer reopened assessment for relevant years and further passed orders under section 143(3), read with section 147 on 26-12-2006, 31-12-2007 and 31-12-2007 respectively for three relevant years - Thereafter, Commissioner issued revision notices under section 263 and further passed revision orders by setting aside 2nd assessment orders on 27-3-2009 for all three years - Assessee contended that order passed under section 263 was barred by limitation with reference to original assessment order passed by Assessing Officer - Tribunal held that limitation to invoke revision jurisdiction under section 263 in respect of issues that stood resolved in original assessment ought to be reckoned from date of original assessment and not from date of revised assessment and, further, principle of merger of original assessment with reassessment order would not apply - Thus, it held that impugned revision was barred by limitation in respect of issues that stood resolved during original assessment and were not considered during reassessment - Whether order of Tribunal holding that exercise of power under section 263 by Commissioner was barred by limitation did not warrant any interference and same was to be uphold - Held, yes [Paras 4 and 5] [In favour of assessee]"

9. Since the facts of the case on hand are identical to the ones decided by various judicial forums as discussed above, therefore, we are inclined to quash the revisionary order passed u/s 263 of the Act. Consequently appeal of the assessee is allowed.

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

Order pronounced in the Court on 24th May, 2023 at Kolkata.

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Sd/-

**(RAJESH KUMAR)
ACCOUNTANT MEMBER**

Kolkata, Dated 24/05/2023

SC Sp/2

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 , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata