

**IN THE INCOME TAX APPELLATE TRIBUNAL “DB” BENCH: RANCHI  
VIRTUAL HEARING AT KOLKATA**

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No.34/Ran/2022  
Assessment Year: 2012-13**

Kross Limited (PAN: AABCK 5855 D)	Vs.	Pr. CIT, Ranchi
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	22.03.2023
Date of Pronouncement / आदेश उद्घोषणा की तिथि	31.05.2023
For the Appellant / निर्धारिती की ओर से	Shri Miraj D Shah, A.R
For the Respondent / राजस्व की ओर से	Smt. Rinku Singh, CITDR

**ORDER/ आदेश**

**Per Rajesh Kumar, AM:**

The present appeal is directed at the instance of the assessee against the order of the learned Principal Commissioner of Income Tax (Appeals) - Ranchi (hereinafter 'Id. Pr. CIT'), dated 29/03/2022, passed under Section 263 of the Income Tax Act, 1961 (in short "the Act"), for Assessment Year 2012-13.

2. The sole issue raised in the various grounds of appeal is against the invalid exercise of jurisdiction u/s 263 of the Act by the Id. Pr. CIT as the revisionary proceedings are hopelessly barred by limitation.

3. The facts in brief are that the assessment u/s 143(3) of the Act was framed vide order dt. 30/09/2014 assessing the income at Rs. 1,94,84,010/-. Thereafter, the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 22.06.2019. Again re-assessment was framed vide order dt. 25/10/2019 passed u/s 143(3) r.w.s. 147 of the Act assessing the income at Rs. 2,04,11,530/-. Pertinent to state that the assessment was reopened on the ground that the employees contribution to PF and ESI was deposited after the due date in several months and therefore Rs. 46,00,057/- has escaped assessment. The AO added Rs. 9,27,523/- to the income of the assessee in the assessment framed u/s 143(3) r.w.s. 147 of the Act on the account of ESI & EPF.

4. The Id. Pr. CIT, on examination of the assessment records, observed that the assessee has issued 10000 equity shares of face value of Rs.100/- each at a premium of Rs.900 per share on 31/03/2012 and the total proceeds from issuing of the shares were Rs.1,00,00,000/-. According to the Id. Pr. CIT, the Assessing Officer has failed to verify the identity, creditworthiness and genuineness of the shareholders who invested money in the assessee company . The Id PR CIT further observed that these shares need to be valued in terms of Rule 11UA of the Income Tax Rules, 1962 (hereinafter 'the Rules') to check the applicability of Section 56(2)(vii) of the Act. The Id. Pr. CIT observed that to this extent, the order passed by the Assessing Officer u/s 143(3) r.w.s. 147 of the Act, dt. 25/10/2019, was erroneous and prejudicial to the interest of the revenue. Accordingly, a show cause notice u/s 263 of the Act was issued to the assessee on 20/01/2022 which was duly served and complied with by the assessee by making written submissions from time to time. Finally, the Id. Pr. CIT cancelled the assessment framed by the Assessing Officer u/s 143(3)/147 of the Act dt. 25/10/2019 by directing the Assessing Officer to examine issuance of shares at premium and frame the assessment accordingly after affording reasonable opportunity to the assessee.

5. The Id. Counsel for the assessee vehemently contended before us that the revisionary jurisdiction exercised by the Id. Pr. CIT is invalid and hopelessly barred by limitation. The Id. Counsel for the assessee drew out attention to the provisions of Section 263(2) of the Act which provides for limitation passing of order u/s 263 of the Act by the Id PCIT. The Id AR argued that section 263(2) of the Act mandates that no order shall be passed u/s 263 of the Act after expiry of two years from the end of financial year in which the order sought to be revised was passed. The Id. Counsel for the assessee submitted that in the present case, the assessment was originally framed by the Assessing Officer u/s 143(3) of the Act vide order dt. 30/09/2014 and, therefore, the limitation starts from 31/03/2015 which has already expired on 31/03/2017. The Id. Counsel for the assessee, further submitted that the issue which was raised by the Id. Pr. CIT in the revisionary proceedings is in respect of the issue of 10,000 equity shares which was not the subject matter of reopening of assessment nor the Assessing Officer during the course of reassessment proceedings came across any such escapement of income resulting from the issue of shares by the assessee to two parties. The Id. Counsel for the assessee submitted that the issue of issue of 10000 shares at Rs. 1000/- (including premium of Rs. 900/-) was examined by the AO in the original assessment proceedings by issuing notices u/s 133(6) of the Act to the share subscribers and the said notices were replied and thereafter the AO accepted these transactions of issue of shares at premium whereas in the re-assessment proceedings this was not subject matter of the reasons recorded by the AO nor any such issue came to the notice of the AO during the proceedings itself. The Id AR submitted that that Pr. CIT has revised the reassessment order passed u/s 143(3) r.w.s. 147 of the Act which is wrong as there was no mistake in the said order which has caused prejudice to the revenue. He further reiterated that this issue had been examined by the AO in the original assessment proceedings. At the most, the Id. Pr. CIT could have cancelled the original assessment passed u/s 143(3) of the Act but it is barred by limitation and the assessment as farmed u/s 143(3) r.w.s 147 of the Act which is against the ratio laid down by the Hon'ble Supreme Court in the case of *CIT vs Alagendran Finance Ltd (293 ITR 1) (SC)* and *CIT vs. ICICI Bank Limited (2012) 343 ITR 74 (Bom.)*. The Id. A.R. submitted that in both these decisions, the Hon'ble Courts have held that the two

years period of limitation shall run from the end of financial year in which the original assessment was framed and not from the end of financial year in which the reassessment was framed when the issue on which the assessment was revised was not subject matter of reassessment proceedings. The Id. A.R. also submitted that in view of this settled position of law, the revisionary proceeding as exercised by Id. PCIT under section 263 of the Act and the consequent order may quashed as being barred by limitation.

6. Per contra, the Id. D.R. relied heavily on the order of Id. PCIT by submitting that no prejudice is going to be caused to the assessee if the assessment order is revised by the Assessing Officer as the assessee would be given reasonable and sufficient opportunity during the set aside assessment proceeding also and the assessee is free to present its case on merit before the Assessing Officer. The Id. D.R. also submitted that the Id. PCIT has only directed the Assessing Officer to verify the issue proposed in the impugned order and frame the order in accordance with law after making the fresh enquiry and affording reasonable opportunity of being heard to the assessee. So far as provisions of Section 263(2) are concerned it was submitted that had AO applied his mind in the proceedings u/s 147 of the Act he would have noticed the said escapement by resulting from issuance of shares at premium. The ground as to limitation has no force and may be dismissed.

7. Having heard the rival contentions and perusing the material available on record, we note that the assessment under section 143(3) was framed vide order dated 30.09.2014. Thereafter the assessment was reopened by the Assessing Officer under section 147 read with section 148 of the Act on 26.02.2019 after recording the reasons to believe under section 148(2) of the Act that income has escaped assessment as the employees contribution to EPF and ESI were paid after due date and thus income has escaped assessment to that extent. The assessee had issued 10000 equity shares to two parties namely M/S Metrocity Iron and Steel Trading Company Ltd and M/S Capable Traders Pvt Ltd. Thereafter, assessment was framed vide order dt. 25.10.2019 passed u/s 143(3) r.w.s. 147 of the Act. Now the issue before us for adjudication is whether the revisionary jurisdiction exercised by the Id. PCIT under section 263 of the Act is

barred by limitation or not. In our considered opinion, the scope of powers of the AO in original assessment proceedings and reassessment proceedings are not same. Therefore, in order to decide the issue at hand we would like to dwell upon the powers of the AO in the original assessment proceedings as well as the reassessment proceedings. In the original assessment proceedings the AO has vast powers whereas in the reassessment proceedings the powers are limited though the AO has the power to assess any other item of income which is not subject matter of the reasons u/s 148(2) of the Act but which comes to his notice during the course of proceedings itself but subject to the condition that the addition is made in respect of escaped income as recorded in the reasons u/s 148(2) of the Act also. We note that in assessment proceedings which culminated under section 143(3) of the Act vide order dated 30.09.2014 in which the AO had examined this issue of equity shares to two subscribers by issuing notices u/s 133(6) of the Act to the share subscribers and the said notices were replied and thereafter only the AO accepted the transactions of issue of shares at premium. In the reopened assessment under section 147 read with section 148 of the Act as finalized vide order dated 25.10.2019 this issue did not come to the notice of the AO during the proceedings at all.

8. Considering the facts of the case vis a vis the and the provisions of section 263(2) of the Act and also the citations made by the Id. Sr. Counsel before us, we are of the considered view that it is the original assessment order passed under section 143(3) of the Act which could be considered as erroneous and prejudicial to the interest of the Revenue as the issue of 10000 shares of Rs.100/- each at a premium of Rs.900/- was examined by the AO thoroughly after issuing notices u/s 133(6) of the Act. We note that this issue was not subject matter in the re-assessment proceedings nor it came to the notice of the AO during re-assessment proceedings which again culminated under section 143(3) read with section 147 of the Act vide order dated 25.10.2019. In our opinion, the limitation runs from the end of the financial year in which the original assessment under section 143(3) of the Act was framed, i.e. 31.03.2015 and the limitation period has expired on 31.03.2017, whereas the Id. PCIT has set aside and revised the reassessment order under section 143(3) read with

section 147 dated 25.10.2019 which is incorrect and consequently the revisionary jurisdiction of the Id. PCIT cannot be sustained as being barred by limitation. The case of the assessee finds support from the decision in the case of CIT –vs.- Alagendran Finance Limited (supra), wherein the Hon’ble Apex Court has held that the period of limitation has to run from the date of order of assessment and not from the date of order of reassessment, where the item/issue in respect of which order is revised under section 263 of the Act by the Id. PCIT is not the subject matter of reassessment proceedings. The facts before the Hon’ble Apex Court were that, the Id. PCIT had sought to revise the part of the order of assessment, which related the lease equalisation fund. The reassessment proceeding was initiated and culminated under section 143(3) read with section 147 of the Act in which the issue of lease equalisation fund was not the subject matter and the Hon’ble Court has, therefore, held that doctrine of merger did not apply in the case of this nature and the period of limitation commences from the date of original assessment and not from the date of reassessment since the latter had not anything to do to lease equalisation fund and this was not a case where subject matter of assessment and subject matter of re-assessment were same. The Hon’ble Apex Court while passing the order has relied on the decision of Coordinate Bench in the case of CIT –vs.- Arbuda Mills (1998) 231 ITR 50 (SC). Similar ratio as laid down by the Hon’ble Bombay High Court in the case of CIT –vs.- ICICI Bank Limited(Supra) wherein the Hon’ble Bombay High Court has held that where the jurisdiction under section 263(1) of the Act is sought to be exercised with reference to an issue which is covered by the original order of assessment under section 143(3) of the Act and which does not form the subject matter of the reassessment, the limitation must necessarily begin to run from the date of order passed under section 143(3) by observing and holding as under:-

*“Held, dismissing the appeal, that neither in the first reassessment nor in the second reassessment was any issue raised or decided in respect of the deductions under section 36(1)(vii), (viii) and the foreign exchange rate difference. The order of the Commissioner under section 263(2) had not been passed with reference to any issue which had been decided either in the order of the first reassessment or in the order of second reassessment but sought to revise issues decided in the first order of assessment passed under section 143(3) on March*

10, 1999, which continued to hold the field as regards the three issues in question. The order dated March 10, 1999, did not merge with the orders of reassessment in respect of issues which did not form the subject matter of the reassessment. Consequently, Explanation 3 to section 147 would not alter that position. Explanation 3 only enables the Assessing Officer, once an assessment is reopened, to assess or reassess the income in respect of any issue, even an issue in respect of which no reasons were indicated in the notice under section 148(2). This, however, will not obviate the bar of limitation under section 263(2). The invocation of the jurisdiction under section 263(2) was barred by limitation”.

9. In the instant case before us also the issue on which the Id. PCIT proposed the revision of reassessment order dated 25.10.2019 passed u/s 143(3) r.w.s 147 of the Act in which the issue of equity shares at premium was not the subject matter of reassessment proceedings. Therefore, the period of limitation has to run from the end of the financial year in which the assessment is framed under section 143(3) of the Act dated 30.09.2014. In view of this, we are inclined to hold that the revisionary jurisdiction exercised by the Id. PCIT is hopelessly barred by limitation in view of the ratio laid down by the Hon'ble Courts as discussed herein above. The appeal of the assessee is allowed.

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

Order is pronounced in the open court on 31<sup>st</sup> May, 2023

Sd/-

(Sonjoy Sarma / संजय शर्मा)  
Judicial Member / न्यायिक सदस्य

Sd/-

(Rajesh Kumar / राजेश कुमार)  
Accountant Member / लेखा सदस्य

Dated: 31<sup>st</sup> May, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Kross Limited, M-4, Phase-VI, Adityapur Industrial Area, Ghamharia-832108.
2. Respondent – Pr. CIT, Ranchi
3. Ld. PCIT- , Ranchi
4. DR, Ranchi Bench, Ranchi

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata