

**IN THE INCOME TAX APPELLATE TRIBUNAL GAUHATI BENCH  
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.11 /GTY/2022  
Assessment Year: 2011-12**

Kaushik Industries Pvt. Ltd. Lane-5, Sector-2, Bordoloi Nagar, Tinsukia, Assam- 786125 (PAN:AAACK9552E)	Vs.	Income-tax Officer, Ward-1, Tinsukia
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri Sanjay Mody, FCA  
Respondent by : Shri N. T. Sherpa, JCIT

Date of Hearing : 05.06.2023  
Date of Pronouncement : 09.06.2023

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the revision order of Ld. Pr. CIT, Shillong vide Order No. ITBA/REV/F/REV5/2020-21/1032110367(1) dated 31.03.2021 against the assessment order of Income-tax Officer, Ward-1, Tinsukia u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 03.12.2018 for AY 2011-12.

2. Assessee has raised as many as 14 grounds of appeal all of which are in respect of assumption of jurisdiction by the Ld. Pr. CIT, Shillong for invoking the revisional proceedings u/s. 263 of the Act and passing the impugned order thereon. Grounds taken by the assessee are not reproduced for the sake of brevity.

3. Brief facts as culled out from records are that notice u/s. 148 of the Act was issued on 22.03.2018 by recording the reasons to believe that assessee deposited cash of Rs.9,66,400/- in its bank account with Axis Bank, Tinsukia Branch in A/c. No. 382010200004770, during the year under consideration, the source of which remained unexplained and that assessee had not submitted its return for AY 2011-12. In the reasons to believe recorded by the Ld. AO, it is noted about his verification of bank statement which revealed that total cash deposit in the account during the year is Rs.9,66,400/- out of the total deposit made in the account at Rs.1,89,32,826/-. Ld. AO thus have reasons to believe that income chargeable to tax to the tune of Rs.9,66,400/- has escaped assessment within the meaning of section 147 of the Act.

3.1. In the course of assessment proceedings, Ld. AO called for details and explanation from the assessee in respect of deposit of cash of Rs.9,66,400/- in the bank account. In this respect, assessee submitted that cash deposits were mainly due to sale proceeds of fixed assets of the company during the year. Assessee had disposed off its assets as scrap and received the consideration in cash which were deposited in the Bank account. Ld. AO examined the particulars furnished by the assessee and accepted the explanation furnished by the assessee. Thereby, Ld. AO determined the total income of the assessee as returned by the assessee i.e. net loss from business of Rs.65,713/-. No addition was made in respect of deposit of cash of Rs.9,66,400/- alleged as income escaping assessment in the reasons to believe recorded for the purpose of initiating the proceedings u/s. 147(1) of the Act. Also, no other addition or disallowance was made in the assessment completed u/s. 147 r.w.s. 143(3) of the Act.

3.2. The contents of the impugned assessment order, narrating the facts and findings is reproduced as under:

As per NMS information, the assessee has made unexplained cash bank deposits therefore, the case is selected for scrutiny under section 148 of the Income-tax Act, 1961 (the Act hereinafter). Notices under section 148 of the Act were issued on 22/03/2018 and was duly served directing the assessee to file Income – tax return for the said assessment year. Notices under section 143(2) was issued on 8/08/2018 and notice u/s 142(1) were also issued on 04/09/2018.

2.0 In response, the assessee furnished copy of bank statement, Computation of Income, P & L a/c, Balance Sheet and other documents as requisitioned vide notice u/s 142(1) of the Act. These are examined.

3.0 The assessee company was engaged in business of running a tea garden and was engaged in tea plantation and manufacturing during the relevant assessment year. The assessee had deposited cash of Rs. 10,75,700/- in Axis Bank, Tinsukia bearing A/c no. 382010200004770. The assessee submitted that the cash deposits were mainly due to sale proceeds of fixed assets of the company during the Financial Year. The company had disposed off its assets as scrap during that time and received the consideration in cash. The same had been examined with the particulars furnished by the assessee during the course of assessment proceedings.

4.0 On the basis of discussion made in foregone paras and taking note of facts and circumstances of the case, the total income of the assessee is determined as hereunder:

<u>Net loss from Business or profession (as shown)</u>	<u>Rs.</u> 65713
Gross Total Income	NIL
Total Income (rounded off)	<u>NIL</u>

4. Subsequently, Ld. Pr. CIT on examination of the assessment records for AY 2011-12 arrived at a consideration that Ld. AO had failed to examine the bank deposits and unsecured loans due to delayed compliance by the assessee. He also observed that Ld. AO failed to disallow the expenses claimed by the assessee not related to business income. A show cause notice u/s. 263 was issued on 11.02.2020 proposing to revise the assessment order passed u/s. 147/143(3) dated 03.12.2018. Assessee furnished its reply to the show cause notice stating,

inter alia, that case of the assessee was reopened u/s. 147 only to examine the cash deposit made by the assessee in its bank account which were duly explained to the satisfaction of the Ld. AO and no additions were made in this respect.

4.1. Ld. Pr. CIT negating the submissions made by the assessee, arrived at the consideration that AO without making proper verification of bank deposits of Rs.1,89,32,827/- and unsecured loan, has completed the assessment. He further noted that the assessee had shown no sales in P&L Account for the FY 2010-11 but has gross bank receipts and has also claimed expenses not related to business income. He thus, concluded that this erroneous action of the Ld. AO has rendered the assessment order as erroneous and prejudicial to the interest of revenue. Accordingly, Ld. AO was directed to make the assessment afresh after examining all the aspects involved in the issues discussed and after making detailed enquiry as well as affording reasonable opportunity of being heard to the assessee. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, Ld. Counsel referred to the primary fact of assessment made u/s. 147 in reference to the reasons to believe recorded for depositing of cash of Rs.9,66,400/- alleged as income escaping assessment. Ld. Counsel categorically pointed out to the fact noted by Ld. AO in the reasons to believe recorded whereby Ld. AO had verified the bank statement and found that out of the total deposit in the account for Rs.1,89,32,826/-, there is a cash deposit of Rs.9,66,400/-, the source of it remained unexplained and thus,

alleged it as income escaping assessment. In this respect, no addition has been made in the assessment completed by the Ld. AO. Income reported by the assessee in its return which is a loss of Rs.65,713/- has been accepted by the Ld. AO. Ld. Counsel thus, in view of these facts which are undisputed and uncontroverted, strongly submitted that in absence of any addition having been made in the order passed u/s. 147 on the basis of recorded reasons, the impugned order of assessment cannot be treated as a valid order and, therefore, the said invalid order cannot be a subject matter of revisionary proceeding u/s. 263 of the Act. According to him, the impugned order passed u/s. 263 of the Act has no legs to stand. For this submission, Ld. Counsel placed reliance on several judicial precedents, including –

- (i) Aishwarya Rai Bachchan Vs. PCIT (2022) 194 ITD 272 (Mum);
- (ii) Yashoda Shivappa Nagangoudar Vs. ITO (2022) 138 taxmann.com 296 (Bom.);
- (iii) CIT Vs. Jet Airways (I) Ltd. (2011) 331 ITR 236 (Bom.);
- (iv) CIT Vs. Shri Ram Singh (2008) 306 ITR 343 (Raj.);
- (v) CIT (Exemp.) Vs. B. P. Poddar Foundation for Education (2022) 448 ITR 695 (Cal).

6. Per contra, Ld. Sr. DR placed reliance on the order of Ld. Pr. CIT and submitted that Explanation 3 to section 147 provides that Ld. AO may assess or re-assess the income in respect of any issue which has escaped assessment and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the

reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.

7. We have heard the rival contentions and perused the material available on record. We find that assessment u/s. 147 read with 143(3) has been completed at the loss reported by the assessee, after calling for the explanation and details in respect of deposit of cash of Rs.9,66,400/- in the bank account and after having been satisfied on its examination by the Ld. AO. We also note from the reasons to believe recorded by the Ld. AO that the income escaping assessment is alleged for deposit of cash out of the total deposit in the bank account. On the very basis of reasons recorded, Ld. AO has ultimately not made any addition in the reassessment proceedings and, therefore, primary reason to believe that income of the assessee has escaped assessment, fails. Thus, if the very foundation of the reassessment is knocked out, any further proceedings in respect of such assessment, naturally would not survive.

7.1. Ld. Sr. DR referred to Explanation 3 of section 147. In our understanding, this Explanation 3 to section 147 clearly expunges that if notice for reopening of assessment was issued on one aspect and in course of reassessment proceedings another aspect was discovered, reassessment order would be valid, only if, aspect which led to reopening of assessment continues to form part of the reassessed income. If after issuing a notice u/s. 148, Ld. AO accepts the contention of the assessee and holds that income for which he has initially formed a reason to believe having escaped assessment, as a matter of fact has not escaped assessment, it is not open for

him to independently assess some other income. If the Ld. AO intends to do so, a fresh notice u/s. 148 would be necessary in such an event.

7.2. In the present case before us, even if for a moment we assume that impugned order u/s. 263 is upheld then, Ld. AO by following the direction of Ld. Pr. CIT would make addition/disallowances in respect of the issue raised by Ld. Pr. CIT for bank deposit of Rs. 1,89,32,827/- and unsecured loans as also expenses claimed not related to business income. Ld. AO on completing this assessment as per the direction of Ld. Pr. CIT would still be an assessment order wherein there will not be any addition in respect of deposit of cash of Rs.9,66,400/- which has been alleged as income escaping assessment as recorded in the reason to believe for initiating the reassessment proceedings u/s. 148. The assessment order giving effect to the order of Ld. Pr. CIT will still be an order passed u/s. 147 read with sec. 143(3) read with section 263 of the Act. This exercise at the end of Ld. AO will be a futile exercise only. Thus, considering this scenario, the contentions of the Ld. Counsel finds force which is fortified by the judicial precedents relied upon by him and are discussed as under:-

7.3. Hon'ble High Court of Bombay in the case of Jet Airways (India) Ltd. (supra) has held as under:

*"If upon the issuance of a notice under section 148(2), the Assessing Officer accepts the objections of the assessee and does not assess or reassess the income which was the basis of the notice, it would not be open to him to assess income under some other issue independently. Parliament when it enacted the provisions of section 147 with effect from 1-4-1989 clearly stipulated that the Assessing Officer has to assess or reassess the income which he had reason to believe had escaped assessment and also any other income*

*chargeable to tax which came to his notice during the proceedings. In the absence of the assessment or reassessment of the former, he cannot independently assess the latter."*

7.4. While dealing with Explanation 3 to section 147, Hon'ble High Court of Bombay in the case of Yashoda Shivappa Nagangoudar (supra) held as under:

*"Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee."*

7.5. From the above, we thus, are of considered view that it is a settled legal position as to when the very foundation of reopening is knocked-out, further proceedings undertaken would not survive.

7.6. We also take into account the findings given by the Coordinate Bench of ITAT, Mumbai in the case of Aishwarya Rai Bachchan (Supra), wherein similar issue was dealt with as in the present case and it was held as under:

*"4.1. One more excruciating fact that needs to be addressed in the instant case is that the Ld. PCIT herein is only seeking to revise the order passed by the Ld. AO u/s.143(3) r.w.s. 147 of the Act dated 12/12/2018. In the said reassessment proceedings, the Ld. AO had not even made any addition despite the fact that he had reason to believe that income of Rs.11,55,330/- had escaped assessment in the hands of the assessee which was sought to be taxed u/s.56 of the*

*Act as per the reasons recorded. Hence, when the very basis of reasons recorded by the Ld. AO was ultimately not added by the Ld. AO in the reassessment proceedings, then the primary reason to believe that income of the assessee had escaped assessment fails and such reassessment cannot be treated as a valid order in the eyes of law. The same is to be declared as void ab initio. Reliance in this regard was rightly placed on the decision of the Hon'ble Jurisdictional High Court in the case of CIT v. Jet Airways(I) Ltd. [2011] 331 ITR 236 (Bom.). When an assessment framed by the Ld. AO is unsustainable in the eyes of law, the said invalid and illegal order cannot be subject matter of section 263 proceedings. On this count also, the revision order passed by the Ld. PCIT u/s.263 of the Act deserves to be quashed."*

8. Considering the facts and circumstances of the present case, the discussion made above and the judicial precedents referred, we unhesitatingly quash the revision order passed by Ld. Pr CIT u/s. 263 of the Act. Accordingly, grounds raised by the assessee are allowed.

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

Order pronounced in the open Court on 9th June, 2023.

**Sd/-**  
**(Sanjay Garg)**  
**Judicial Member**

**Sd/-**  
**(Girish Agrawal)**  
**Accountant Member**

**Dated: 9th June, 2023**

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent
  3. Pr. CIT(A), Shillong
  4. DR, ITAT, Guwahati Bench, Guwahati
  5. Guard file
- //True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata