

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

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.138/Kol/2022
Assessment year: 2011-12

Evergreen Agency Pvt. Ltd.....Appellant
Maurya Patna,
South Gandhi Maidan,
Patna-800001.
[PAN: AAACE5390A]

vs.

PCIT, Kolkata-2.....Respondent

Appearances by:

Shri Siddharth Agarwal, Advocate, appeared on behalf of the appellant.
Shri Abhijit Kundu, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 04, 2023

Date of pronouncing the order : June 27, 2023

आदेश / ORDER

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

The present appeal has been preferred by the assessee against the order dated 17.03.2021 of the Principal Commissioner of Income Tax (hereinafter referred to as the 'PCIT') agitating the exercise of his revision jurisdiction u/s 263 of the Income Tax Act (hereinafter referred to as the 'Act').

2. There is note by the Registry of delay of 302 days in filing of the appeal. A separate application for condonation of delay has been filed, wherein, it has been pointed out that the delay period was pertaining to Covid-2019 Pandemic period. In view of the directions of the Hon'ble

Supreme Court in suo moto Writ Petition (C) No. 3 of 2020 dated 10.01.2022, the appeal is treated as filed within the limitation period.

3. The brief facts of the case are that the assessee company filed its return of income u/s 139(1) of the Act on 27.09.2011 showing a total income nil. The return was duly processed and accepted u/s 143(1) of the Act. Subsequently, an information was received that a search and seizure operation u/s 132 of the Act was conducted on Singhal group of companies at Raipur, Chhattisgarh and statement of one Shri Vinod Kumar Jajoo was recorded by the investigation wing on 05.10.2017, wherein, he admitted of providing accommodation entries to various beneficiaries. As per the information, the assessee had received Rs.10,00,000/- during the F.Y 2010-11 from M/s Manokamna Merchants Pvt. Ltd., one of the company controlled by the said Mr. Jajoo. Consequent to the said information, the assessment in the case of the assessee was reopened u/s 147 of the Act on the belief that the the aforesaid receipt to the extent of Rs.10,00,000/- was unexplained income of the assessee which has escaped assessment. Since, during the assessment proceedings carried out u/s 147 of the Act, the assessee could not substantiate the genuineness of the transaction, therefore, the Assessing Officer made the impugned addition of Rs.10,00,000/- received from the said Manokamna Merchants Pvt. Ltd. as unexplained cash credits u/s 68 of the Act vide assessment order dated 05.12.2018.

3. Being aggrieved by the said addition, the assessee preferred appeal before the Commissioner of Income Tax (Appeals) [in short the CIT(A)]. During the pendency of the appeal before the CIT(A), the assessee availed Vivad Se Viswas Scheme and paid due taxes as per the said scheme and the matter was settled. Thereafter, the Id. PCIT exercising his revision jurisdiction u/s 263 of the Act observed from the assessment records

that the assessee company had a balance of investments in unquoted shares of Rs.5,23,15,565/- as on 31.03.2011, which had earned the assessee company a dividend income of Rs.46,138/-, which the assessee company had claimed as “exempt income” in the return filed in response to the notice u/s 148, but the Assessing Officer had not made any disallowance u/s 14A of the Act r.w.r. 8D of the I.T. Rules 1962. The ld. PCIT further observed from the assessment records that there have been certain increases in shares capital and sundry creditors in the balance sheet of the assessee, a part of which was apparently invested by the assessee company in unquoted shares during the F.Y 2010-11. The ld. PCIT observed that the assessment was completed by the Assessing Officer without making additions on the aforesaid issues. He, therefore, held the assessment order passed u/s 147 of the Act as erroneous and prejudicial to the interest of the revenue and directed the Assessing Officer to pass a fresh assessment order after considering his above observations. Being aggrieved by the said order of the PCIT, the assessee has come in appeal before us.

4. We have heard the rival contentions and gone through the record. The ld. counsel for the assessee has submitted that, in this case, the original assessment/intimation u/s 143(1) of the Act was passed on 07.01.2012. A copy of the said order has been placed at page 34 of the paper-book. The reassessment order u/s 147 of the Act was passed on 05.12.2018 and thereafter the assessee had availed Vivad Se Viswas Scheme by filing application/Form I on 23.12.2020, which was accepted in the month of March 2021 and the matter was settled by that time. That the disallowance u/s 14A and other investments made by the assessee were not the subject matter of reassessment proceedings u/s 147 of the Act. He, therefore, has submitted that ld. PCIT could not have

exercised his revision jurisdiction in respect of order passed u/s 147 of the Act and therefore, the revision order passed by the PCIT u/s 263 of the Act was time-barred. He in this respect has placed reliance on the decision of the Hon'ble Supreme Court in the case of 'CIT vs. Alagendran Finance Ltd. [2007] 293 ITR 1(SC)', wherein, the Hon'ble Supreme Court has categorically held that where the Commissioner has sought to revise only that part of the assessment order, the subject-matter of which had nothing to do with that item of income, in such a case, doctrine of merger did not apply and that the period of limitation would commence from the date of original assessment and not from the reassessment since the latter had not anything to do with the said item of income. In the case in hand also the assessment was reopened on a particular issue of having received of Rs.10,00,000/- as accommodation entry from entry provider, whose statement was recorded in a search action exercised in the case of some third party. The Assessing Officer examined that particular issue and made addition in respect of the said entry received by the assessee. The issue relating to any other transaction was not the subject matter of the reassessment proceedings. The assessment in this case was reopened to examine a particular issue and that issue was examined by the Assessing Officer and the addition was made and ultimately the matter was settled by the assessee by availing Vivad Se Viswas Scheme. The items/issue on which the Id. PCIT has sought to revise the order were not the subject matter of the reassessment order, therefore, in the light of the decision of the Hon'ble Supreme Court in the case of 'CIT vs. Alagendran Finance Ltd. (supra), it cannot be said that the reassessment order passed by the Assessing Officer was erroneous, therefore, the revision jurisdiction exercised by the Id. PCIT, in this case, cannot be held to be justified. In view of the discussion, the impugned revision order passed by the PCIT is hereby quashed.

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

Kolkata, the 27th June, 2023.

Sd/-

[डॉक्टर मनीष बोरड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

Sd/-

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

Dated: 27.06.2023.

RS

Copy of the order forwarded to:

1. Evergreen Agency Pvt. Ltd
2. PCIT, Kolkata-2
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches