

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'B' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 36/KOL/2023
Assessment Year: 2017-2018**

**Sahebganj No. 1 Anchalik Samabay
Krishi Unnayan Samity Limited,.....Appellant
Vill. Sonchalida, P.O. Sahebganj,
P.S. Bhatar, Purba Bardhaman-713121,
West Bengal
[PAN: AAJAS7536H]**

-Vs.-

**Income Tax Officer,.....Respondent
Ward-2(3), Burdwan,
Aayakar Bhawan, Kachari Road,
Court Compound, Burdwan-713101,
West Bengal**

Appearances by:

*Shri Shuvo Chakraborty, Advocate, appeared on behalf of
the assessee*

*Sri Abhijit Kundu, CIT, D.R., appeared on behalf of the
Revenue*

Date of concluding the hearing : July 19, 2023

Date of pronouncing the order : July 21, 2023

O R D E R

Per Shri Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of Id. Principal Commissioner of Income Tax, Asansol dated 1st March, 2022 passed under section 263 of the Income Tax Act for A.Y. 2017-18.

2. The Registry has pointed out that appeal is time barred because impugned order was passed on 01.03.2022 and appeal is being filed before the Tribunal on 16.01.2023, whereas the time limit to file an appeal before the Tribunal is 60 days from the date of communication of the impugned order. After the scheme of Document Identification Number (DIN) launched in the Income Tax Department, then, it is to be presumed that documents would be communicated to the assessee electronically on the day when DIN was generated. It means this order must have been communicated to the assessee on 01.03.2022 itself. In response to the objection of the Registry, the assessee has filed an application for condonation of delay. It has pleaded that though order was shown as passed on 01.03.2022, but it was not available in the Portal and assessee only came to know about the availability of the order on 26.12.2022. Though it is a debatable exercise to find out whether, order was uploaded on the Portal or not. It will

take much time and energy and, therefore, in order to achieve the objective of justice, we deem it appropriate to condone the delay and decide this appeal on merit.

3. The assessee has taken six grounds of appeal, which contains pleadings on general points also, namely that assessee may be given liberty to modify the grounds etc. In brief the sole grievance of the assessee is that the ld. Pr. CIT has erred in exercising the powers under section 263 and thereby setting aside the impugned assessment order dated 14.11.2019 and directing the ld. Assessing Officer to reframe the assessment order.

4. Brief facts of the case are that the assessee is a Cooperative Society engaged in providing credit facilities to its members and marketing of paddy, fertilizer etc. It has filed its return of income electronically on 28.10.2017 declaring total income of Rs.29,680/-. The case was selected for scrutiny assessment under CASS and notice under section 143(2) was issued and served upon the assessee. After hearing the assessee, ld. Assessing Officer has passed the assessment order under section 143(3) on 14.11.2019. The ld. Assessing Officer has determined the taxable income of the assessee at Rs.15,65,590/- as against the returned income. The ld. Assessing Officer has disallowed deduction under section 80P(2) on this amount.

5. The ld. Pr. Commissioner has perused the assessment order as well as the record and formed an opinion that during demonetisation period, assessee has deposited a sum of Rs.65,08,500/- in cash in two Bank accounts, namely Burdwan Central Cooperative Bank Ltd. Rs.14,62,000/- and Axis Bank Limited Rs.50,46,500/-. The ld. Pr. Commissioner has observed that these amounts were deposited between 09.11.2016 and 30.12.2016. He further observed that the case was selected for scrutiny to find out the cash deposited by the assessee and ld. Assessing Officer did not conduct any inquiry on this aspect. Ld. Pr. Commissioner after hearing the assessee set aside the assessment order by observing that the assessee was prohibited to receive the currency note of Rs.1000/- and 500/- during 09.11.2016 to 30.12.2016. Therefore, it ought to have been scrutinized by the ld. Assessing Officer the source of the cash came to the possession of assessee for making deposit. The ld. Pr. CIT further observed that this angle was not examined by the ld. Assessing Officer and, therefore, his order is erroneous and prejudicial to the interest of Revenue. Accordingly, ld. Pr. CIT set aside the issue to the file of ld. Assessing Officer for fresh examination.

6. While impugning the order of Id. Pr. CIT, Id. Counsel for the assessee filed a paper book running into 127 pages. On the strength of this paper book, he contended that the cash available with the assessee has been tabulated on pages no. 74 to 115 of this paper book, wherein the cash from different sources possessed by the assessee has been narrated. He submitted that assessee's accounts were audited and audit report was also placed on record, though it is in Bengali. According to him, the Id. Pr. Commissioner ought to have verified the availability of the cash by himself instead of relegating it to the Id. Assessing Officer. Therefore, in the opinion of the Id. Counsel for the assessee, the order of the Id. Pr. CIT is not sustainable.

7. During the course of hearing, we confronted the Id. Counsel for the assessee to show which questionnaire was issued to the assessee by the Id. Assessing Officer for verifying this cash, because no questionnaire has been placed on record. Similarly we put to him how this availability of the cash placed before the Tribunal in a paper book could be verified. The verification can be made at the end of the Id. Assessing Officer. Only on these questions, Id. Counsel for the assessee agreed that if matter is relegated to the Id. Assessing Officer for verification of the cash available with the assessee, then, he has no objection.

8. The ld. CIT(DR), on the other hand, contended that once assessee is ready to get its accounts verified at the level of the ld. Assessing Officer demonstrating the availability of the cash, out of which cash deposits were made, then, Revenue has no grievance.

9. We have duly considered the rival contentions and gone through the record carefully. Before we embark upon an enquiry on the facts and issues agitated before us to find out whether the action u/s 263 of the Act, deserves to be taken against the assessee or not, it is pertinent to take note of this section. It reads as under:-

“263(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

[Explanation.- For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,-

(a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include-

(i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income Tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;

(ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorized by the Board in this behalf under section 120;

(b) "record shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Commissioner;

(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed

at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.

Explanation.- In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.”

10. A bare perusal of the sub section-1 would reveal that powers of revision granted by section 263 to the learned Commissioner have four compartments. In the first place, the learned Commissioner may call for and examine the records of any proceedings under this Act. For calling of the record and examination, the learned Commissioner was not required to show any reason. It is a part of his administrative control to call for the records and examine them. The second feature would come when he will judge an order passed by an Assessing Officer on culmination of any proceedings or during the pendency of those proceedings. On an analysis of the record and of the order passed by the Assessing Officer, he formed an opinion that such an order is erroneous in so far as it is prejudicial to the interests of the Revenue. By this stage the learned Commissioner was not required the

assistance of the assessee. Thereafter the third stage would come. The learned Commissioner would issue a show-cause notice pointing out the reasons for the formation of his belief that action u/s 263 is required on a particular order of the Assessing Officer. At this stage the opportunity to the assessee would be given. The learned Commissioner has to conduct an inquiry as he may deem fit. After hearing the assessee, he will pass the order. This is the 4th compartment of this section. The learned Commissioner may annul the order of the Assessing Officer. He may enhance the assessed income by modifying the order. He may set aside the order and direct the Assessing Officer to pass a fresh order. At this stage, before considering the multi-fold contentions of the ld. Representatives, we deem it pertinent to take note of the fundamental tests propounded in various judgments relevant for judging the action of the CIT taken u/s 263. The ITAT in the case of Mrs. Khatiza S. Oomerbhoy Vs. ITO, Mumbai, 101 TTJ 1095, analyzed in detail various authoritative pronouncements including the decision of Hon'ble Supreme Court in the case of Malabar Industries 243 ITR 83 and has propounded the following broader principle to judge the action of CIT taken under section 263.

- (i) The CIT must record satisfaction that the order of the AO is erroneous and prejudicial to

the interest of the Revenue. Both the conditions must be fulfilled.

(ii) Sec. 263 cannot be invoked to correct each and every type of mistake or error committed by the AO and it was only when an order is erroneous that the section will be attracted.

(iii) An incorrect assumption of facts or an incorrect application of law will suffice the requirement of order being erroneous.

(iv) If the order is passed without application of mind, such order will fall under the category of erroneous order.

(v) Every loss of revenue cannot be treated as prejudicial to the interests of the Revenue and if the AO has adopted one of the courses permissible under law or where two views are possible and the AO has taken one view with which the CIT does not agree. It cannot be treated as an erroneous order, unless the view taken by the AO is unsustainable under law.

(vi) If while making the assessment, the AO examines the accounts, makes enquiries, applies

his mind to the facts and circumstances of the case and determine the income, the CIT, while exercising his power under s 263 is not permitted to substitute his estimate of income in place of the income estimated by the AO.

(vii) The AO exercises quasi-judicial power vested in him and if he exercises such power in accordance with law and arrive at a conclusion, such conclusion cannot be termed to be erroneous simply because the CIT does not feel stratified with the conclusion.

(viii) The CIT, before exercising his jurisdiction under s. 263 must have material on record to arrive at a satisfaction.

(ix) If the AO has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the AO allows the claim on being satisfied with the explanation of the assessee, the decision of the AO cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard.

11. In the light of above, we have perused the record carefully. Before us, copy of the questionnaire issued under section 142 has not been placed. It is not discernable whether ld. Assessing Officer has verified this aspect i.e. source of cash available with the assessee for making deposits in two Bank accounts as narrated by the ld. Pr. Commissioner. Though assessee has placed on record details in tabulated form, wherein Bank Pass Book of the Burdwan Central Cooperative Bank Limited, Bank statement of Axis Bank Limited, the cash available with the assessee and host of details running into more than 50 pages, but no authority has recorded any finding of fact, namely neither the ld. Assessing Officer has examined this aspect during the assessment proceeding nor ld. Pr. CIT. Thus in any case, it is to be relegated before one of the authority to record a specific finding. Faced with this situation, we deem it appropriate to uphold the finding of the ld. Pr. CIT to a limited extent that ld. Assessing Officer shall verify the source of cash available with the assessee for making deposits in two Bank accounts, namely Burdwan Central Cooperative Bank Ltd. and Axis Bank Limited. In case, ld. Assessing Officer is satisfied with the explanation of assessee, no addition will be made. However, if he was not satisfied, then, he will treat the alleged deposits of cash in accordance with law.

12. In view of the above discussion, the appeal of the assessee is dismissed.

Order pronounced in the open Court on July 21, 2023.

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

**Sd/-
(Rajpal Yadav)
Vice-President(KZ)**

Kolkata, the 21st day of July, 2023

*Copies to : (1) Sahebganj No. 1 Anchalik Samabay
Krishi Unnayan Samity Limited,
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*(2) Income Tax Officer,
Ward-2(3), Burdwan,
Aayakar Bhawan, Kachari Road,
Court Compound, Burdwan-713101,
West Bengal*

(3) Pr. Commissioner of Income Tax, Asansol

(4) The Departmental Representative

(5) Guard File

TRUE COPY

By order

*Assistant Registrar
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.