

IN THE INCOME TAX APPELLATE TRIBUNAL
“RANCHI BENCH, RANCHI
VIRTUAL HEARING AT 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.17/Ran/2021
Assessment year: 2013-14

Sri Yogesh Kumar Sahu.....Appellant
101, Krishna Apartment,
Ratu Road, Ranchi-834001.
[PAN: AKXPS7553F]

vs.

PCIT(Central), Patna.....Respondent

Appearances by:

Shri Devesh Poddar, AR, appeared on behalf of the appellant.

Shri Rinku Singh, CIT- DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 25, 2023

Date of pronouncing the order : July 11, 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 21.05.2020 of the Principal Commissioner of Income Tax , Patna (hereinafter referred to as the ‘CIT(A)’) exercising his revision jurisdiction passed u/s 263 of the Income Tax Act (hereinafter referred to as the ‘Act’).

2. In this case, a search and seizure action u/s 132 of the Act was carried out at the business premises of Sahu Group of cases including the assessee on 22.07.2015. Thereafter, the assessment order u/s 153A r.w.s. 143(3) was passed by the Assessing Officer on 22.12.2017 assessing the total income of Rs.89,34,560/-. Thereafter, the ld. PCIT invoked his revision jurisdiction u/s 263 of the Act and observed that a

search and seizure operation was carried out by the department against some third party namely Banka Group of cases 21.05.2018 and during the said search Shri Mukesh banka, one of the key persons of Bank Group, has given a statement, wherein, he had admitted of providing accommodation entries in the form of bogus unsecured loans to various parties. That the said Mr. Banka has furnished a list of such paper/shell companies including the company namely M/s Royalpet Traders Pvt. Ltd. It was further noted by the PCIT that from the assessment records it revealed that the assessee had taken a sum of Rs.22,50,000/- as unsecured loan from M/s Royalpet Traders Pvt. Ltd, which was a shell company. He accordingly held that the Assessing Officer had failed to make necessary enquiries in respect of aforesaid unsecured loans. He, therefore, exercising his revision jurisdiction u/s 263 of the Act set aside the assessment order holding the same as erroneous and prejudicial to the interest of the revenue for assessment afresh in respect of the aforesaid issue.

3. Being aggrieved by the above order of the PCIT, the assessee has come in appeal before us. At the outset, the ld. Counsel for the assessee has invited our attention to the impugned assessment order to submit that the assessment year involved in this case is pertaining to A.Y 2012-13. That the search action u/s 132 in this case was carried on 22.07.2015. He has further submitted that on the date of search, the limitation to issue notice u/s 143(2) of the Act for carrying out scrutiny assessment proceedings u/s 143(3) of the Act has already passed, therefore the original assessment in this case stood completed on the date of search and did not abate. He relying upon the decision of the Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwells (P) Ltd. reported in (2023) 150 taxman.com 257(SC) dated 12.05.2023 has

contended that it has been settled by the Supreme Court that in case of unabated/completed assessment on the date of search action, in post search assessment carried out u/s 153A of the Act, the additions can be made only on the basis of incriminating material found during the search action or in other words, if no incriminating material is found during the search action, no addition can be made in the assessment carried u/s 153A of the Act in case of unabated/completed assessments on the date of search. The ld. Counsel for the assessee has submitted that since, in this case, on the date of search, the original assessment stood completed/unabated, therefore, the Assessing Officer was not authorized to make any addition on any other issue in the absence of any incriminating material found during the search action. He has further invited our attention to the impugned assessment order to submit that there is no mention of any incriminating material found during the search action in this case. He, therefore, has submitted that the order of the Assessing Officer was not erroneous in this case. He has further submitted that even otherwise, the PCIT did not find any error in the assessment order, rather, he has invoked his revision jurisdiction u/s 263 of the Act on the basis of some information gathered in the case of some third party. The ld. counsel, in this respect, has contended that if any information of any escapement of income was received in the case of the assessee from a search action carried out on 21.05.2018 in case of some third party, the proper course was either to send that incriminating material to the Assessing Officer of the assessee and it was at the option of the Assessing Officer of the assessee to carry out assessment proceeding in the case of the assessee u/s 153C of the Act, and that otherwise, the assessment could have been reopened u/s 147/148 of the Act by recording reasons of escapement of any income and giving

opportunity to the assessee to rebut the same. The ld. PCIT did not have any jurisdiction to exercise revision jurisdiction u/s 263 of the Act on the basis of some alleged information gathered from the case of some third party.

That even otherwise, in this case, since no incriminating material was found during the search action, the Assessing Officer was not authorised to examine any other issue or make any addition in the absence of any incriminating material found during the search action. Under the circumstances, the said order of the Assessing Officer cannot be held to be erroneous.

5. The ld. DR could not rebut the aforesaid submissions of the ld. counsel.

6. We find force in the contention raised by the ld. counsel for the assessee. Since no incriminating material was found during the search action carried out in the case of the assessee and the assessment stood completed/unabated on the date of search, therefore, the Assessing Officer was not authorized to make any addition on any other issue in the absence of any incriminating material found during the search action. Hence, the order of the Assessing Officer could not be said to be erroneous. Therefore, the ld. PCIT wrongly exercised his revision jurisdiction in this case to hold the assessment order as erroneous. Therefore, the order of the ld. PCIT is not sustainable in the eyes of law. Even otherwise, the PCIT has not pointed out any error in the assessment order, rather, the revision jurisdiction has been exercised on the basis of some information received in the case of some third party for which the ld. PCIT did not have any jurisdiction to set aside the assessment order in the case of the assessee u/s 263 of the Act. In view

of the above discussion, the order passed by the ld. PCIT u/s 263 is not sustainable being bad in law and the same is accordingly quashed.

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

Kolkata, the 11th July, 2023.

Sd/-

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

Sd/-

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

Dated: 11.07.2023.

RS

Copy of the order forwarded to:

1. Sri Yogesh Kumar Sahu
2. PCIT(Central), Patna
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches