

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, KOLKATA**

**Before**

**Shri Sanjay Garg, Judicial Member**

**&**

**Dr. Manish Borad, Accountant Member**

**I.T.A. No.216/KOL/2022**

**Assessment Year: 2016-17**

Govardhan Overseas Pvt. Ltd. C/o, P.K. Himmatsinghka & Co., 41, B. B. Ganguly Street, Central Plaza, 2 <sup>nd</sup> Floor, Kolkata-700012. (PAN: AAACG9580G)	<b>Vs.</b>	Principal Commissioner of Income-tax, Kolkata-2, Kolkata
<b>(Appellant)</b>		<b>(Respondent)</b>

**Appearances by:**

*Shri P. K. Himmatsinghka, AR appeared for Appellant.*

*Shri Sunil Kr. Agarwala, CIT, DR appeared for Respondent.*

Date of concluding the hearing : 08.08.2023

Date of pronouncing the order : 09.08.2023

**ORDER**

**Per Manish Borad, Accountant Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short “AY”) 2016-17 is directed against the revisionary order passed u/s 263 of the Income Tax Act, 1961 in short the “Act”) by Id. Pr. Commissioner of Income-tax, Kolkata-2 [in short Id. “PCIT”] dated 16.03.2021 arising out of the assessment order framed u/s 143(3) of the Act by DCIT, Circle-11(1), Kolkata dated 11.12.2018.

2. Appeal of the assessee is time barred by 349 days and assessee has filed a condonation petition dated 27.04.2022 which is placed on file. The impugned order of Ld. Pr.CIT is dated 16.03.2021 which was received on 19.03.2021. The appeal was filed on 02.05.2022. Thus,

the period from March 2021 upto the date of filing of appeal is covered by the decision of Hon'ble Supreme Court. This period has been excluded by the Hon'ble Supreme Court in the case of *suo moto* Writ Petition (C) No. 3 of 2020 dated 10.01.2022 by which the period from 15.03.2020 to 28.02.2022 has been directed to be excluded for the purpose of limitation. Vide this order a further period of 90 days has been granted for providing the limitation from 01.03.2022. Accordingly, we condone the delay and proceed to admit the appeal for hearing.

3. The assessee has raised following grounds of appeal :

*"1. That on facts and in the circumstances of the case and in law, Ld. PCIT grossly erred in initiating the revision proceeding u/ s 263 even though the Assessment Order u/s 143(3) dated 11-12-2018 passed by the AO was neither erroneous non prejudicial to the interest of the revenue.*

*2. That the order dated 16-03-2021 u/s. 263 of the Act by the Ld. PCIT, Kolkata-2 has been made without satisfying preconditions contained in the Act and is therefore without jurisdiction and thus deserves to be quashed as such.*

*3. That the order dated 16-03-2021 u/s 263 framed by the Ld. PCIT, Kolkata-2 in a very casual manner without due diligence and without considering the explanation and is based on fundamental misconception of the facts and provision of law and thus not in accordance with law and therefore untenable.*

*4. That on facts in the circumstances of the case and in law, the order passed by the PCIT u/s. 263 of the Act, setting aside the assessment framed u/s 143(3) of the Act as erroneous and prejudicial to the interest of revenue is without jurisdiction, bad in law and void ab-initio.*

*5. That the finding of Ld. PCIT that order of AO is erroneous and prejudicial to the interest of revenue on the following basis is factually incorrect, legally misconceived, contrary to evidence on record and in any way initiation of revision proceedings is vague, arbitrary and based on surmiseful consideration and therefore unsustainable.*

*(a) Donation of Rs 8,50,000 already debited in Profit & Loss a/c, being claimed Rs. 4,25,000 u/s 35AC and assessee's further claim of deduction of Rs 2,12,500 u/s 80G is erroneous, the whole amount of Rs. 4,25,000 is required to be added back despite assessee itself already added back of Rs 4,25,000 to the total income and eligible to get deduction Rs. 2,25,000 u/s 80G.*

*(b) Rs. 30,91,683 is required to be added u/s.40(a)(ia) being 30% of Rs 1,03,51,809 job work charges paid to M/s. Mandhana Industries Ltd. on*

*which TDS Rs. 924 u/ s 194C was only deducted instead of Rs 2,06,863, despite correct amount of TDS Rs. 2,06,863 were deducted and paid to Govt. of India within stipulated time and uploaded the TDS return 26Q.*

*(c) The assessee has claimed the repayment of loan Rs.85,00,061 to the 3 creditors companies but no measure as per PCIT was made for alleged repayment, the said repaid amount of Rs.85,00,000 was required to be added u/s 69C as an unexplained expenditure, despite the fact that the assessee neither claimed as expenditure nor claimed as deduction during the Financial Year.*

*(d) The Audited Balance Sheet as at 31.03.2015 reflects the TDS liabilities of Rs. 29,03,643/- being TDS deducted by the assessee under various provisions of the Act and said TDS were not paid. The disallowance of expenditure ought to have been made pertaining to the unpaid TDS amount, despite TDS so deducted were paid to the treasury of Govt. of India within the stipulated time.*

*(e) The assessee earned Rs. 31,973 interest on security deposit as appearing in 26AS, not accounted for in computing the total income, although the assessee vide letter dated 05-11-2018 offered the said amount for taxation to AO during the assessment proceeding conducted u/s 143(3).”*

4. At the time of hearing Ld. Counsel for the assessee submitted that the reply filed by the assessee against the show cause notice issued by Ld. PCIT has not been considered before framing the order u/s. 263 of the Act. Ld. Counsel for the assessee took us through the written submission filed before the Ld. PCIT on 08.02.2021 placed at page 86 to 90 of the paper book but this fact remained uncontroverted that Ld. PCIT has not considered the said reply of the assessee failing which the finding of Ld. PCIT cannot be held to be justified. Thus, prayer was made to afford one more opportunity so that the reply given by the assessee can be considered and opportunity may be granted to explain the issues raised in the show cause notice. It is further submitted that assessee has replied to each of the issues raised in the show cause notice and the order of the Ld. AO is neither erroneous nor prejudicial to the interest of the revenue and all the details as called for by Ld. PCIT has already been considered by the Ld. AO and reply to the same has been given.

5. Per contra, Ld. DR vehemently supported the order of Ld. PCIT.

6. We have heard rival submissions and gone through the material available on record and placed before us. We notice that the assessee is a Private Limited Company and income of Rs.2,41,46,940/- declared in the e-return filed on 17.10.2016 for AY 2016-17. The case was selected for scrutiny and assessment u/s. 143(3) of the Act was completed on 11.12.2018. Ld. AO made various additions/disallowances to Rs.33,10,635/- and assessed the income at Rs.2,74,57,575/-. Subsequently, Ld. PCIT called for the assessment records and observed that certain issues have not been considered by the Ld. AO and a show cause notice dated 28.01.2021 was issued and the relevant contents of the same are as follows:

*"In the instant case following observations have been made. (i) it is seen that the assessee had debited an amount of Rs. 8,50,000/- in the P&L a/c as donation and the net profit has since been arrived at taking into account this amount of Rs. 8,50,000/- (donation). However, the assessee has produced papers worth Rs. 4,25,000/- only in respect of the donation claimed u/s 35AC. Further, the assessee has also claimed donation of Rs. 4,25,000/- and deducted an amount of Rs. 2,12,500/- u/s. 80G in the computation. As the donation amount of Rs. 8,50,000/- has already been debited in the P&L a/c the assessee's further claim of deduction of Rs. 2,12,500/- is erroneous as there is no documents in support of the claim, therefore, the whole amount of Rs. 4,25,000/- is required to be added back to the total income of the assessee. (ii) The assessee has claimed an amount of Rs.3,28,11,335/- as expenses under the head "job work charges" out of which an amount of Rs. 1,03,43,081/- has been claimed to be paid to Mandhana Industries Ltd. with TDS of Rs. 2,06,863/-. However, from the confirmation sent by the contractor in response to notice u/s 133(6) it has provided process charges worth Rs.1,03,51,809/- with TDS of Rs. 924/- only. Thus the claim of the assessee is incorrect both in terms of amount claimed to be paid and TDS made thereon. Thus, the payment made by the assessee to the tune of Rs.1,03,05,609/- [10351809-46200 (924 being the TDS made @2% and therefore 100% = 462500, being the amount corresponding to the payment made with TDS)] without deduction of tax is liable to attract the provisions of sec. 40(a)(ia) and an amount of Rs. 30,91,683/- (being 30% of Rs. 1,03,51,809/-) is required to be added to the total income. (iii) From the 26AS it is noted that the assessee has earned Rs. 31,973/- on account of interest on security deposit [TDS of which has been duly claimed during the year] which has not been accounted for during the year for the purpose of computation of total income. (iv) On perusal of the assessment records it was noted that the assessee company was routing money through shell companies and an amount of Rs.30,96,735/- has also been disallowed during the year as*

*unexplained interest expenditure for the claim of the assessee towards loan paid to the three shell companies during the year. The assessee also claimed to have repaid an amount of Rs. 85,00,061/- during the year to those three shell companies. However, no measure on the matter of the alleged repayment has been made. (v) On perusal of the Balance Sheet it is noted that there is a liability of Rs.29,03,643/ (as TDS payable) as at 31.03.2016. However, there is nothing on record to suggest that action on the matter of disallowance of the expenditure pertaining to this unpaid TDS has been made. Therefore, the assessment completed appears to' be erroneous in so far as it is prejudicial to the interest of revenue."*

7. In reply to the above stated show cause notice dated 28.01.2021, the assessee filed a reply on 08.02.2021 quoting DIN No. mentioned in the show cause notice and the reply is appearing at pages 86 to 90 of the paper book and the issue is regarding donation, transaction with Mandhana Industries Ltd., interest on security deposit, disallowance of interest expenditure and details of outstanding TDS liability have been addressed too. However, perusal of the impugned order indicates that in para 4, Ld. PCIT has observed that even though the show cause notice was served on the assessee and another reminder was also issued, but assessee did not comply to the said show cause notices and the proceedings being time barring, based on the relevant materials impugned order has been framed.

8. We observe that at the time of issuing show cause notice on 28.01.2021 the country was passing through Covid pandemic and most of the business organisations and the Govt. organisations were closed at certain point of time and were not working in the normal manner. The reply of the assessee was filed on 08.02.2021 i.e. during the Covid Pandemic period. Before us, Ld. Counsel for the assessee has stated that it gave the said reply in the office but is not sure, whether the said reply has reached to the office of Ld. PCIT. Considering the situation, which the country was passing through during the Covid period from April, 2020 to March, 2022 one cannot

ignore the possibility that the reply filed by the assessee did not reach to the file of Ld. PCIT due to which the facts of the case remained unattended. Thus, in the interest of justice and fair play, we direct Ld. PCIT to carry out the revisionary proceeding afresh considering the reply filed by the assessee against the show cause notice issued u/s. 263 of the Act and after giving reasonable opportunity of being heard and to decide in accordance with law. The assessee is also directed to file the details called for and should not take adjournment without showing any reasonable cause. Appeal of the assessee is allowed for statistical purposes.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 09.08. 2023.

Sd/- [Sanjay Garg]  
Judicial Member

Sd/-[Manish Borad]  
Accountant Member

Dated: 09.08.2023  
*J.D. Sr. PS.*

*Copy of the order forwarded to:*

1. **Appellant –**
2. **Respondent**
3. Pr. CIT, Kolkata-2.
4. DCIT, Circle-11(1), Kolkata.
5. Departmental Representative
6. Guard File.

*True copy*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata