

आयकर अपीलीय अधिकरण
रंची पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
RANCHI BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री राजेश कुमार, लेखा सदस्य
एवं
श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष
Before

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No.: 12/RAN/2022
Assessment Year: 2012-13**

***Dinesh Kumar Agarwalla.....Appellant
[PAN: ACDPA 0919 P]***

Vs.

PCIT, Dhanbad.....Respondent

Appearances by:

Sh. Aditya Shah, CA, appeared on behalf of the Assessee.

Smt. Rinku Singh, CIT D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : July 7th, 2023

Date of pronouncing the order : August 21st, 2023

ORDER

Per Rajesh Kumar, Accountant Member:

This is an appeal preferred by the assessee against the order of Learned Pr. Commissioner of Income-tax, Dhanbad [hereinafter

referred to Ld. 'Pr. CIT'] dated 01.02.2022 for the Assessment Year (in short 'AY') 2012-13.

2. The only issue raised in the various grounds of appeal is against the invalid jurisdiction u/s 263 of the Act and the consequent order passed by Ld. Pr. CIT thereby setting aside the assessment order framed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short the 'Act') dated 10.04.2019.

3. Brief facts of the case are that the assessee had originally filed return of income on 30.09.2021 declaring total income at Rs. 3,72,350/- which was processed u/s 143(1) of the Act. Subsequently, the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 27.11.2018 after recording the reasons that the assessee has taken loan of Rs. 50 lakh from three parties namely M/s. Burlington Barter Pvt. Ltd., Rs. 10 lakh from Sakuntala Devi and Rs. 10 lakh from Tarachandra Agarwal. The assessment was framed accordingly after examining the issue accepting the contentions of the assessee and the returned income was accepted.

4. Ld. Pr. CIT upon perusal of the assessment records observed that the assessee has taken Rs. 50 lakh from a Kolkata based company M/s. Burlington Barter Pvt. Ltd. in respect of which proper enquiry was done by Ld. AO in the assessment proceedings and accordingly identity and creditworthiness of the assessee and genuineness of the transaction remained unverified and therefore the order passed by Ld. AO is erroneous insofar as prejudicial to the interests of the Revenue. Ld. Pr. CIT accordingly issued notice u/s 263 of the Act on 03.12.2021 which was replied by the

assessee on 17.12.2021 submitting therein that the case of the assessee was reopened in order to verify three limbs raised out of which one is of Rs. 50 lakh taken from M/s. Burlington Barter Pvt. Ltd. and the assessee has filed all the information, explanation, details, confirmation etc. before Ld. AO and Ld. AO after examining those evidences filed by the assessee taken a plausible view and made no addition. However, the plea of the assessee did not find favour with Ld. Pr. CIT and he set aside the order passed u/s 143(3)/147 of the Act dated 10.04.2019 with the direction to examine the genuineness of the loan and frame the assessment afresh. Ld. A/R vehemently submitted before us that the order passed by Ld. Pr. CIT u/s 263 of the Act is perverse and against the provisions of the Act. Ld. A/R submitted that Ld. Pr. CIT has wrongly exercised the jurisdiction u/s 263 of the Act without satisfying the conditions as envisaged in Section 263 of the Act. Ld. A/R submitted that the issue was examined by Ld. AO in the re-assessment proceedings as this was one of the reasons for re-opening the assessment u/s 147 of the Act and the loan from M/s. Burlington Barter Pvt. Ltd. of Rs. 50 lakh was subject matter of the reasons recorded u/s 148(2) of the Act. Ld. A/R further, submitted that Ld. AO has taken a possible view after due examination and verification of the documents submitted by the assessee. Ld. A/R submitted that even the notice u/s 133(6) of the Act issued to the loan creditors which was duly replied on 18.03.2019 and only thereafter, the contentions of the assessee was accepted. Ld. A/R submitted that in view of these facts, the exercise of jurisdiction u/s 263 of the Act is invalid, wrong and against the provisions of the Act and may kindly be quashed.

5. Ld. D/R, on the other hand, relied heavily on the order of Ld. Pr. CIT by submitting that no prejudice is caused to the assessee by exercise of revisionary jurisdiction by Ld. Pr. CIT as in the set aside proceeding also the assessee would be given sufficient opportunity. The ld. DR therefore prayed that the appeal of the assessee may kindly be dismissed.

6. After hearing rival contentions and perusing the material on record, we find that undisputedly, the case of the assessee was re-opened u/s 147 of the Act for the reason that the assessee has borrowed Rs. 50 lakh during the year from M/s. Burlington Barter Pvt. Ltd. which is a Kolkata based company and Ld. AO after calling for all the details from the assessee which included name ,address, PAN, confirmations of loan, balance sheet, bank statements of the assessee as well as of the lender and also taking into account the replies received in response to the notice u/s 133(6) of the Act, came to the conclusion that the loan raised by the assessee is genuine and accepted the plea of the assessee. Under these facts and circumstances when Ld. AO carried out a detailed investigation and enquiring into the issue, accepted the plea of the assessee, the exercise of jurisdiction by Ld. Pr. CIT cannot be sustained. In our opinion, the jurisdiction u/s 263 of the Act is not available to Ld. Pr. CIT on the plea that Ld. AO should have taken a particular view which he has not taken and according to Ld. Pr. CIT the said view is not correct and some different view is required to be taken in the matter. Under these circumstances, the case of the assessee is squarely covered by the decisions of various forums namely Commissioner of Income-Tax vs Gabriel India Ltd. in [1993] 203 ITR 108 (Bom), Commissioner of Income-

tax vs. Sunbeam Auto Ltd. in [2011] 332 ITR 167 (Del) wherein it has been held that Ld. AO has examined the issue and taken a plausible view that jurisdiction is not available with Ld. Pr. CIT on the issue u/s 263 of the Act. Accordingly, we quash the order passed u/s 263 of the Act and allow the appeal of the assessee.

7. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 21st August, 2023

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Rajesh Kumar]
Accountant Member

Dated: 21.08.2023

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Dinesh Kumar Agarwalla, Amlapara, Jharia, Dhanbad-828 111.**
2. **PCIT, Dhanbad.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Ranchi Bench, Ranchi.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata