

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 523/Kol/2023
Assessment Year : 2018-19

Devout Dealers Private Limited	Vs.	Pr. CIT-2, Kolkata
PAN: AAECG 1457 G		
Appellant		Respondent

Date of Hearing	21.08.2023
Date of Pronouncement	23.08.2023
For the Assessee	Shri Sanjay Mody, AR
For the Revenue	Shri Sunil Kr. Agarwala, CIT(DR)

ORDER

Per Sonjoy Sarma, JM:

This appeal filed by the assessee is directed against the order of ld. Pr. CIT-2, Kolkata vide order dated 28.03.2023 u/s 263 of the Act pertaining to A.Y. 2018-19. The assessee has raised following grounds of appeal:

1. *That on the facts and in the circumstances of the case, the order passed by the learned Pr. Commissioner of Income Tax, Kolkata - 2, is bad in law and is not based on correct appreciation of facts of the case of the assessee.*

2. *That on the facts and in the circumstances of the case, the Principal C.I.T. has not assumed a valid jurisdiction under section 263 of the Income Tax Act, in respect of the assessment completed u/s 143(3) of the Income Tax Act, 1961.*

3. *That on the facts and in the circumstances of the case, the Pr. C.I.T. has erred in setting aside the order u/s 143(3) passed by the National e-Assessment Centre, Delhi*

4. *That on the facts and in the circumstances of the case, the learned Pr. CIT has erred in holding that the impugned assessment order is erroneous in so far as it is prejudicial to the interests of the revenue.*

5. *That on the facts and circumstances of the case, the learned Pr. CIT has erred in passing revision order u/s 263 on the ground not forming part of the show cause notice. That the said principle of law was*

affirmed by the Bombay High Court in the case of PCIT Vs. Universal Music India Pvt. Ltd. (Income Tax Appeal No. 238 of 2018).

6. That on the facts and circumstances of the case the Ld. PCIT has erred in not appreciating the fact that no fresh credit is received by the appellant in issue of bonus shares by capitalizing share premium A/c.

7. That on the facts and circumstances of the case, the share premium which was capitalized by the appellant during the A.Y. 2018-19 was received by the appellant during the F.Y. 2010-11 relevant to A.Y. 2011-12.

8. That on the facts and in circumstances, the learned Pr. CIT has erred in passing order u/s 263 on issue which had already been examined in the assessment.

9. That the appellant craves right to add, alter or modify any of the ground of appeal before or at any time during the course of hearing of the appeal.”

2. Succinctly the factual panorama of the case is that assessee before us is a company and filed its return of income for the A.Y. 2018-19 on 28.10.2018 by declaring total income of Rs. 78,69,170/-. The case of the assessee was selected for scrutiny assessment and assessment u/s 143(3) of the Act was finalized on 08.03.2021 by accepting the return of income shown by the assessee company.

3. Later on, the ld. PCIT in exercise of his jurisdiction u/s 263 of the Act and on perusal of the scrutiny record, he observed that from the details of Note-14 of profit and loss account for the F.Y. 2017-18. The assessee had debited an amount of Rs. 1,15,050/- on account of interest paid on Income Tax Act which was required to be disallowed by the ld. AO being penal in nature. However, while framing the assessment, the ld. AO completely ignored the fact that such expense being penal in nature which was not

allowable as expenses. Due to omission on the part of AO resulted in under assessed income to the extent of Rs. 1,15,050/- in the hands of assessee. Therefore, the assessment order framed on 08.03.2021 prima facie appears to be erroneous in so far as prejudicial to the interest of revenue. Accordingly, a notice dated 13.03.2023 was issued to the assessee by stating that why the assessment order dated 08.03.2021 passed u/s 143(3) of the Act shall not be set aside to the file of AO for fresh adjudication on the issue as stated in the notice dated 13.03.2023. However, no compliance was made on the part of the assessee against such show cause notice issued by ld. PCIT. The ld. PCIT while passing the revisionary order, he also observed that assessee received share capital to the tune of Rs. 21,94,72,000/- on account of bogus share issued and the assessing officer while framing the assessment has completely failed to carry out the requisite enquiry on the genuineness of the share capital addition made by the assessee. Accordingly, ld. PCIT hold that the impugned order dated 08.03.2021 passed by NeAC, Delhi u/s 143(3) of the Act is erroneous in so far as it is prejudicial to the interest of revenue and set aside the assessment order dated 08.03.2021 passed u/s 143(3) to the file of assessing officer and direct the assessing officer to consider the submission of the assessee if any and verify the same from its books of account and to re-frame the assessment afresh after providing the assessee of being heard.

4. Aggrieved by the above order, assessee is in appeal before us. The ld. counsel for the assessee argued that the issue raised by the ld. PCIT had been adequately enquired and dealt upon and then assessing officer passed an assessment order u/s 143(3) of

the Act by accepting the return of income. Therefore, order passed by the assessing officer is neither erroneous nor prejudicial to the interest of revenue. He further contended that the revisionary order u/s 263 of the Act was passed in haste and hurry manner. Therefore, assessee did not get an opportunity to submit material evidence before the ld. PCIT. The ld. counsel states that another opportunity should be given to the assessee to submit material fact and evidence before ld. PCIT. Moreover, the issue in relation with increase in share capital did not form part of show cause notice issued u/s 263 by the PCIT and appellant was not made aware of this issue before passing of the revisionary order. Therefore, the order is bad in law.

5. On the other hand, ld. DR for the revenue submitted that assessing officer has passed a cryptic order and there is no mention in the assessment order about the examination of the issue raised by the ld. PCIT, therefore, revisionary order should be upheld. Moreover, if necessary, it was opened for the ld. AO to go beyond the issue forming part of limited scrutiny assessment after taking necessary approval from the authority as prescribed in the law. Therefore, the order passed by the ld. PCIT should be upheld.

6. We have heard rival submission of the parties and have gone through the material placed on record. We note that para 3 of the revisionary order u/s 263 of the Act states as follows:

“Accordingly, a notice dated 13.03.2023 was issued to the assessee vide DIN & Notice No. ITBA/REV/F/REV1/2022-23/1 050692622(1) requiring the assessee to show cause why the order dated 08.03.2021 passed u/s. 143(3) of the Act for A.Y. 2018-19 shall not be set aside to

the file of the Assessing Officer for fresh adjudication on the issues discussed above. The assessee made no compliance to the said show cause notice. This office has neither received any response till date through e-proceedings portal nor through any written submission. In the absence of any response from the assessee to this office notice as mentioned above and considering the fact that the proceeding will get barred by limitation of time on 31.03.2023, I hereby proceed to examine the issue on the basis of material available on record.”

7. From the above findings of ld. PCIT, it is abundantly clear that assessee did not appear before the ld. PCIT nor submit any written submission during the revisionary proceedings pending before ld. PCIT.

8. We also note that ld. PCIT has given general direction to the assessing officer to frame another assessment order afresh. The relevant findings of the ld. PCIT is reproduced below for ready reference:

“13. In view of the observation made in above Para, having regard to the facts and circumstances of the case and in accordance with the amendment made in Section 263 of the Act with effect from 01.06.2015. I hold that the impugned assessment order dated: 08.03.2021 passed by NeAC, Delhi, us 143(3) of the Act is erroneous insofar as it is prejudicial to the interests of the revenue. I, therefore, set aside the said assessment order for A.Y. 2018-19 dated 08.03.2021 passed u/s 143(3) of the Act to the file of the Assessing Officer. The Assessing Officer is to consider the submission of the assessee, if any, and verify the same from its books of account and to reframe the assessment afresh after providing the assessee opportunity of being heard.”

9. From the above findings, the ld. PCIT in his revisionary order, it is vivid that ld. PCIT has given general direction to the assessing officer to frame entire assessment order again whereas, ld. PCIT in his revisionary order raised a specific issue to examine

the interest payment on income tax which was required to be disallowed being penal in nature and another issue regarding assessee received share capital to the tune of Rs. 21,94,72,000/- on account of bogus share issued hence direction given to the assessing officer is not in accordance with specific issue identified by the ld. PCIT. Therefore, we note that ld. PCIT has not provided adequate opportunity to the assessee to file relevant material evidences and documents before him during the revisionary proceedings hence the revisionary order u/s 263 of the Act was passed by the ld. PCIT is in hurry. Besides that the ld. PCIT has directed to assessing officer to frame the entire assessment afresh which is not acceptable as the issue identified by ld. PCIT were only in respect of two issues as identified by him (i) on account of interest paid on income tax which is needed to be disallowed being penal in nature and (ii) share capital to the tune of Rs. 21,94,72,000/- on account of bogus share issued. We note that the Hon'ble Supreme Court in *M.S.Gill vs The Chief Election Commission* 1978 AIR SC 851 held "The dichotomy between administrative and quasi-judicial function vis-à-vis the doctrine of natural justice is presumably obsolescent after *Kraipak (A.K. Kraipak vs UOI AIR 1970 SC 150)* which makes the water-shed in the application of natural justice to administrative proceedings. The rules of natural justice are rooted in all legal systems and are not any new theology. They are manifested in the twin principles of *nemo judex in parte sua* (no person shall be a judge in his own case) and *audi alterem partem* (the right to be heard). It has been pointed out that the aim of natural justice is to secure justice. Considering the above facts, we note that assessee has not given sufficient opportunity of being heard and could not plead his case

successfully before the ld. PCIT, hence it is a violation of principle of natural justice. We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, we deem it fit and proper to set aside the order of the ld. PCIT and remit the matter back to the file of the ld. PCIT to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

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

Order pronounced in the open court on 23.08.2023.

Sd/-

(Manish Borad)
Accountant Member

Sd/-

(Sonjoy Sarma)
Judicial Member

Dated: 23.08.2023

Biswajit

Copy of the order forwarded to:

1. Appellant- Devout Dealers Private Limited, Block-A/1, Room No. 205, VIP Enclave, VIP Road, Raghunathpur, Kolkata-700059.
2. Respondent – Pr. CIT-2, Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata