

**IN THE INCOME TAX APPELLATE TRIBUNAL “GAUHATI” BENCH,  
VIRTUAL HEARING AT KOLKATA**  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 42/Gau/2021**  
Assessment Year: 2013-14

Vinay Bawri 3A, Eco Space, 7 <sup>th</sup> floor, Plot No. 2F/II, Rajarhat, New Town, Kolkata- 700156. (PAN: ACLPB0479K)	Vs.	ACIT, Circle-2, Guwahati.
Appellant		Respondent

Date of Hearing	09.08.2023
Date of Pronouncement	22.09.2023
For the Appellant	Shri Akkal Dudhwewala, Advocate
For the Respondent	Shri Soumendu Sekhar Das, DR

**ORDER**

**Per Shri Rajesh Kumar, AM**

This is an appeal preferred by the assessee against the order of Ld. Pr. CIT, Guwahati -1, dated 31.03.2021 for AY 2013-14.

2. The only issue raised by the assessee is against the invalid exercise of jurisdiction by Ld. Pr. CIT u/s. 263 of the Act for the reason that the same is hopelessly barred by limitation u/s. 263(1) of the Act.

3. The facts in brief are that the assessee filed the return of income on 18.02.2014 declaring total income of Rs.11,24,112/-. The case of the assessee was selected for scrutiny and assessment was framed u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) vide order dated 15.12.2015. In the said assessment framed, AO denied the benefit of carry forward of loss on sale of shares of Rs.12.09 Cr. which represented the long term capital loss on sale of investments. Thereafter, the assessee moved an application u/s. 154 of the Act and the AO allowed the carry forward loss of Rs.12.09 Cr. in the order passed u/s. 154 of the Act dated 12.07.2016. A search action was conducted on the assessee on 11.03.2016 and notice u/s. 153A was issued on 18.09.2017. The assessee complied with the said notice by filing the return of income and also the details as called for by the AO.

Finally, the assessment u/s. 143(3) read with section 153A of the Act was framed on 31.12.2018 determining the total income at Rs.4,60,49,312/-. It is pertinent to note that the issue of carry forward of long term capital loss on sale of shares/investment was not subject matter of the searched assessment as framed u/s. 143(3) r.w.s. 153A of the Act whereas the same was subject matter of the assessment framed originally u/s. 143(3) dated 15.12.2015. Besides, the additions made in the assessment u/s. 153A are sub-judice before Ld. CIT(A). In the meantime, Ld. Pr. CIT, after perusal of assessment records, exercised his revisionary jurisdiction u/s. 263 of the Act by issuing notice u/s 263 of the Act dated 24.03.2021 calling from the assessee as to why the assessment framed u/s. 153(3)/153A should not be cancelled as the same is erroneous in so far as prejudicial to the interest of the revenue as the AO has wrongly allowed the carry forward of long term capital loss. Finally, the assessment was revised u/s. 263 of the Act by directing the AO to examine the issue afresh and to frame the assessment de novo.

4. The ld. AR submitted that in this case, the Ld. Pr. CIT has revised the assessment as framed u/s. 143(3) read with sec. 153A of the Act dated 31.12.2018 vide the above revisionary order. However, in the said assessment, the issue of carry forward of long term capital loss was not the subject matter whereas the same was the subject matter in the assessment framed originally u/s. 143(3) of the Act dated 15.12.2015. The Ld. AR of the assessee submitted that the Ld. Pr. CIT could not have set aside or revised the assessment as framed u/s. 143(3) r.w.s. 153A dated 31.12.2018 as the said order is not erroneous in so far as prejudicial to the interest of the revenue. The Ld. AR, therefore, submitted that the said order has wrongly been revised by the Ld. Pr. CIT. In defense of his argument, he relied on the decision of [Malabar Industries Ltd. vs. CIT](#) [2000] 243 ITR 83(SC) in which it has been held that the twin conditions have to be satisfied simultaneously to invoke the section 263 of the Act by the ld. PR CIT. The Ld. Counsel further submitted that Ld. Pr. CIT could have revised the original assessment as framed vide order dated 15.12.2015, however, the same

is hopelessly barred by limitation and, therefore, the order passed by Ld. Pr. CIT u/s. 263 of the Act is invalid and liable to be quashed. In defense of his argument, Ld. Counsel relied on the decision passed by the Hon'ble Supreme Court in the case of *CIT vs Alagendran Finance Ltd (293 ITR 1) (SC)* and by Hon'ble Bombay High Court in the case of *CIT vs. ICICI Bank Limited (2012) 343 ITR 74 (Bom.)*. The ld. A.R. submitted that in both these decisions, the Hon'ble Courts have held that the two years period of limitation shall run from the end of financial year in which the original assessment was framed and not from the end of financial year in which the reassessment was framed when the issue on which the assessment was revised was not subject matter of reassessment proceedings. The ld. A.R. also submitted that in view of this settled position of law, the revisionary proceeding as exercised by ld. Pr.CIT under section 263 of the Act and the consequent order may quashed as being barred by limitation.

5. Per contra, the ld. D.R. relied heavily on the order of ld. Pr.CIT by submitting that no prejudice is going to be caused to the assessee if the assessment order is revised by the Assessing Officer as the assessee would be given reasonable and sufficient opportunity during the set aside assessment proceeding also and the assessee is free to present its case on merit before the Assessing Officer. The ld. D.R. also submitted that the ld. Pr.CIT has only directed the Assessing Officer to verify the issue proposed in the impugned order and frame the order in accordance with law after making the fresh enquiry and affording reasonable opportunity of being heard to the assessee. So far as provisions of Section 263(2) are concerned it was submitted that had AO applied his mind in the proceedings u/s 154 of the Act, he would have not allowed the carry forward of long term capital loss. Therefore, the ground as to limitation has no force and may be dismissed.

6. Having heard the rival contentions and perusing the material available on record, we note that the assessment under section 143(3) was framed vide order dated 15.12.2015 in which the carry forward of long term capital loss was rejected by the AO. Thereafter the assessee moved a rectification application and the AO allowed the carry forward of long term capital loss in the order passed u/s 154 of the Act dated 12.07.2016. Thereafter it was subjected to search action u/s 132 of the Act on 11.03.2016. Notice u/s 153A was issued on 18.09.2017 which was duly served. Finally the, assessment was framed vide order dt.

31.12.2018 passed u/s 143(3) r.w.s. 153A of the Act in which the issue of carry forward of loss was not there. Now the issue before us for adjudication is whether the revisionary jurisdiction exercised by the Id. PCIT under section 263 of the Act is barred by limitation or not. We note that in assessment proceedings which culminated under section 143(3) of the Act vide order dated 15.12.2015 in which the AO had examined this issue of carry forward of long term capital loss and rejected the same while in an order passed u/s 154 of the Act dated 17.12.2016, the carry forward was allowed. Now in the assessment under section 143(3) r.w.s 153A of the Act dated 31.12.2018, this issue was not subject matter of the proceedings at all.

7. Considering the facts of the case vis a vis the ratio laid down in the above decisions and the provisions of section 263(2) of the Act and also the citations made by the Id. Counsel before us, we are of the considered view that it is the original assessment order passed under section 143(3) of the Act dated 15.12.2015 which could be considered as erroneous and prejudicial to the interest of the Revenue as the issue of carry forward of long term capital loss was there. We note that this issue was not subject matter in the assessment proceedings under section 143(3) read with section 153A of the Act vide order dated 31.12.2018. In our opinion, the limitation runs from the end of the financial year in which the original assessment under section 143(3) of the Act was framed, i.e. 31.03.2015 and the limitation period has expired on 31.03.2017, whereas the Id. PCIT has set aside and revised the assessment order under section 143(3) read with section 153A dated 31.12.2018 which is incorrect and consequently the revisionary jurisdiction of the Id. PCIT cannot be sustained as being barred by limitation. The case of the assessee finds support from the decision in the case of CIT –vs.- Alagendran Finance Limited (supra), wherein the Hon'ble Apex Court has held that the period of limitation has to run from the date of order of assessment and not from the date of order of reassessment, where the item/issue in respect of which order is revised under section 263 of the Act by the Id. PCIT is not the subject matter of reassessment proceedings. The facts before the Hon'ble Apex Court were that, the Id. PCIT had sought to revise the part of the order of assessment, which related the lease equalisation fund. The reassessment proceeding was initiated and culminated under section 143(3) read with section 147 of the Act in which the issue of lease equalisation fund was

not the subject matter and the Hon'ble Court has, therefore, held that doctrine of merger did not apply in the case of this nature and the period of limitation commences from the date of original assessment and not from the date of reassessment since the latter had not anything to do to lease equalisation fund and this was not a case where subject matter of assessment and subject matter of re-assessment was same. The Hon'ble Apex Court while passing the order has relied on the decision of Coordinate Bench in the case of CIT –vs.- Arbuda Mills (1998) 231 ITR 50 (SC). Similar ratio as laid down by the Hon'ble Bombay High Court in the case of CIT –vs.- ICICI Bank Limited(Supra) wherein the Hon'ble Bombay High Court has held that where the jurisdiction under section 263(1) of the Act is sought to be exercised with reference to an issue which is covered by the original order of assessment under section 143(3) of the Act and which does not form the subject matter of the reassessment, the limitation must necessarily begin to run from the date of order passed under section 143(3) by observing and holding as under:-

*“Held, dismissing the appeal, that neither in the first reassessment nor in the second reassessment was any issue raised or decided in respect of the deductions under section 36(1)(vii), (viii) and the foreign exchange rate difference. The order of the Commissioner under section 263(2) had not been passed with reference to any issue which had been decided either in the order of the first reassessment or in the order of second reassessment but sought to revise issues decided in the first order of assessment passed under section 143(3) on March 10, 1999, which continued to hold the field as regards the three issues in question. The order dated March 10, 1999, did not merge with the orders of reassessment in respect of issues which did not form the subject matter of the reassessment. Consequently, Explanation 3 to section 147 would not alter that position. Explanation 3 only enables the Assessing Officer, once an assessment is reopened, to assess or reassess the income in respect of any issue, even an issue in respect of which no reasons were indicated in the notice under section 148(2). This, however, will not obviate the bar of limitation under section 263(2). The invocation of the jurisdiction under section 263(2) was barred by limitation”.*

8. In the instant case before us also the issue on which the ld. PCIT proposed the revision of assessment order dated 31.12.2018 passed u/s 143(3) r.w.s 153A of the Act in which the issue of carry forward of long term capital loss was not the subject matter of assessment proceedings. Therefore, the period of limitation has to run from the end of the financial year in which the assessment is framed under section 143(3) of the Act dated 15.12.2015 because by passing the rectification order u/s 154 of the Act original order was rectified. In view of this, we are inclined to hold that the revisionary jurisdiction exercised

by the ld. PCIT is hopelessly barred by limitation in view of the ratio laid down by the Hon'ble Courts as discussed herein above. The appeal of the assessee is allowed.

9. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 22nd September, 2023

Sd/-  
(Sonjoy Sarma)  
Judicial Member

Sd/-  
(Rajesh Kumar)  
Accountant Member

Dated: 22nd September, 2023

*JD, Sr. PS*

Copy of the order forwarded to:

1. Appellant–
2. Respondent .
3. Pr. CIT, Guwahati-1, Guwahati .
4. CIT, ,
5. DR, ITAT, Guwahati,.

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Bench, Kolkata