

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-GUWAHATI 'e-COURT', KOLKATA
[Virtual Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 46/GAU/2021
Assessment Year: 2015-2016**

***Diganta Deka,.....Appellant
Ground Floor, P.P. Road, Milanpur,
Rehabari, Guwahati-781008, Assam
[PAN:AEHPD9445F]***

-Vs.-

***Principal Commissioner of Income Tax,...Respondent
Guwahati-1, Guwahati,
Aayakar Bhawan, G.S. Road,
Christian Basti, Guwahati-781005, Assam***

Appearances by:

*Shri Anil Kumar Agarwala, FCA, appeared on behalf of the
assessee*

*Shri Banjul Barthakur, D.R., appeared on behalf of the
Revenue*

Date of concluding the hearing : August 31, 2023

Date of pronouncing the order : October 09, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of ld. Principal Commissioner of Income Tax Guwahati-1 dated 31st March, 2021 passed for A.Y. 2015-16 under section 263 of the Income Tax Act.

2. The assessee has taken three grounds of appeal, but the sole grievance of the assessee is that ld. CIT has erred in assuming power under section 263 and thereby setting aside the assessment order dated 18.12.2017 passed under section 143(3) of the Income Tax Act.

3. Brief facts of the case are that the assessee has filed his return of income electronically on 09.10.2015 declaring total income of Rs.1,04,68,750/-. The case of the assessee was selected for limited scrutiny as discernable from the copy of notice dated 21.09.2016 issued under section 143(2). The issues, which have been contemplated in this notice for scrutinisation, are :-

- (i) Income from heads of income other than business/profession mismatch;*
- (ii) Contract receipts/Fees mismatch;*
- (iii) Sales Turnover mismatch;*
- (iv) Tax Credit mismatch.*

The ld. Assessing Officer thereafter passed the scrutiny assessment under section 143(3) of the Income Tax Act on 18.12.2017.

4. The ld. Principal Commissioner perused the record and formed an opinion that assessment order is erroneous as well as prejudicial to the interest of revenue. He issued a show-cause

notice and the reasons for issuance of such show-cause notice are reproduced by him on pages no. 2 & 3 of the impugned order. Apart from the various aspects, the major reason assigned by the Id. Commissioner is confined to two items, which are relevant for the purpose of this appeal:-

“And whereas a sum of Rs.1,46,628/- was debited in your P& L A/c as ‘Loss on shares’ under ‘Other Expenses’ and allowed at the time of assessment in contravention to provisions of section 71(3) of the Income Tax Act, 1961.

And whereas an amount of Rs.51,750/- has been claimed as ‘Expenses on let out property’ and an amount of Rs.79,936/- has been claimed as ‘Expenses against Rental Income’ and allowed at the time of assessment, even though such expenses were not covered under Chapter IV of the Income Tax Act, 1961.

5. The assessee did not respond to the notice of Id. CIT. In the absence of any explanation at the end of the assessee, the Id. Commissioner set aside the assessment order being erroneous and prejudicial to the interest of revenue and remitted them back to the Id. Assessing Officer. He set aside for fresh enquiry and passing of the fresh assessment order on these two issues.

6. The Id. Counsel for the assessee while impugning the order of Id. Pr. CIT contended that the case of the assessee was selected for limited scrutiny and it cannot be converted to a complete scrutiny. These items could have not been examined by

the ld. CIT. he made a reference to the CBDT Circular No. 20 of 2015 dated 29.12.2015 and also put reliance upon the ITAT, Indore order dated 7th February, 2022 in the case of M/s. Sahita Construction Company –vs.- PCIT in ITA No. 119/Ind./2021. He has placed on record copies of all these documents in the paper book, which contain 12 pages.

7. With the assistance of ld. Representatives, we have gone through the record carefully. The emphasis of ld. Counsel for the assessee is misplaced that these two items cannot be looked into by the ld. Commissioner because it is a case for limited scrutiny. It is pertinent to observe that we have take note of all the issues on which limited scrutiny was to be carried out. The first item in these issues is ‘income from heads of income other than business/profession mismatch’. The other head of income of the assessee, is ‘house property income’ and apart from the expenditure provided under Chapter (iv) of the Income Tax Act, no other expenditure could be claimed. It is patently erroneous claim at the end of the assessee, which has been accepted by the ld. Assessing Officer, therefore, this CBDT Circular is not attracted in the present case. The scrutiny of the income of the assessee is not being converted from limited scrutiny to complete scrutiny. These items duly fall within the first issue provided in the limited scrutiny itself, therefore, neither the decision of the ITAT Indore Bench applicable nor CBDT Circular. The assessee has not appeared before the ld. Commissioner or filed any explanation *qua* the proposed errors. Therefore, considering the

stand of both the sides as well as perusal of the impugned order of the Id. Pr. Commissioner, we do not find any error in it. The appeal of the assessee is devoid of any merit and accordingly dismissed.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 09.10.2023.

Sd/-
(Rajesh Kumar)
Accountant Member

Sd/-
(Rajpal Yadav)
Vice-President

Kolkata, the 9th day of October, 2023

*Copies to :(1) Diganta Deka,
Ground Floor, P.P. Road, Milanpur,
Rehabari, Guwahati-781008, Assam*

*(2) Principal Commissioner of Income Tax,
Guwahati-1, Guwahati,
Aayakar Bhawan, G.S. Road,
Christian Basti, Guwahati-781005, Assam*

*(3) Commissioner of Income Tax- ,
(4) The Departmental Representative
(5) Guard File
TRUE COPY*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.