

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
श्री संजय गर्ग, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
[Before Shri Sanjay Garg , Judicial Member & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 71/Kol/2021
Assessment Year: 2010-11

Satbir Mahato (PAN: AWKPM 4651 K)	Vs.	PCIT-5, Kolkata
Appellant / (अपीलार्थी)		Respondent (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	09.11.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	19.02.2024
For the Appellant/ निर्धारिती की ओर से	Shri Somnath Ghosh, Advocate
For the Respondent/ राजस्व की ओर से	Shri S.Datta, CITDR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Principal Commissioner of Income Tax -5 Kolkata (hereinafter referred to as the Ld. CIT(A)) passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) dated 03.02.2021 for the AY 2010-11.

2. The only issue raised by the assessee in the various grounds of appeal is against the invalid exercise of jurisdiction by PCIT u/s 263 of the Act without satisfying the conditions precedent for assumption of jurisdiction u/s 263 of the Act.

3. Facts in brief are that the return of income was filed by the assessee on 20.07.2016 in compliance to the notice issued by the AO u/s 148 of the Act declaring total income of Rs. 28,800/-. The said re-opening was made on the basis of information from DDIT(Inv.), Unit-3(1), Kolkata in respect of high value of cash deposits into the bank of the assessee. Accordingly the case was reopened u/s 147 of the Act by issuing notice u/s 148 and the re-assessment order has been passed accordingly. During the course of re-assessment proceedings, it was revealed that high value of cash deposited to the tune of Rs. 10,17,43,800/- had been credited in the bank account of the assessee bearing a/c No. 000605018744 and 000605019297 with ICICI Bank of 20, R.N. Mukherjee Road, Kolkata-700001 maintained in the name of M/s Galaxy Trading Co. proprietorship concern of the assessee. The assessment was completed u/s 143(3)/147 of the Act vide order dated 22.12.2017 by assessing total income of Rs. 81,68,304/-.

4. The PCIT observed from the perusal of the assessment records that the AO had received information from DDIT(Investigation) Unit 3(1) Kolkata that huge cash of Rs. 9,50,00,000/- was deposited into two bank accounts of the assessee and immediately after cash deposits, these were transferred through cheques/ RTGS to other entities. The PCIT noted that in response to the show cause notice, the assessee has stated that he has no business activity and the question of the deposit of cash does not arise as the assessee did not maintain any books of account. The PCIT observed that while framing the assessment, the AO applied 8% on cash deposits to determine the total business income of assessee and on the same lines, the AO in AY 2010-11 adopted the same percentage on the total deposits to determine the income instead of treating the same as unexplained investment/cash. According to PCIT, in terms of Section 69 of the Act where in the financial year immediately preceding

assessment year, the assessee has made investments which are not recorded in the books of accounts, if any, maintained by him for any source of income and the assessee offers no explanation about the nature or source of investments or explanation offered by him is not satisfactory, then the value of investments may be deemed to be the income of the assessee in the impugned financial year. The PCIT observed that for this reason, the assessment framed u/s 143(3) read with Section 147 of the Act dated 22.12.2017 declaring total income at Rs. 81,68,304/- is erroneous insofar as it is prejudicial to the interest of the revenue. Accordingly a show cause notice was issued u/s 263 of the Act on 16.03.2020 which was replied by the assessee. The Id PCIT after taking into account the contentions of the assessee, passed the revisionary order u/s 263 of the Act on 03.02.2021 setting aside the assessment order dated 22.12.2017 by directing the AO to frame the assessment afresh after affording a reasonable opportunity to the assessee.

4. The Ld. A.R submitted before the PCIT that the order of AO is neither erroneous nor prejudicial to the interest of the revenue as a plausible view has been taken the AO by applying 8% of the total cash deposits. The Ld. A.R submitted that it was unequivocally stated before the AO that the assessee did not own bank accounts as referred by the AO nor did the proprietary concern M/s Galaxy Trading Company belonged to the assessee. It was pleaded that Shri Devesh Upadhyaya got his signature by fraud to open the bank accounts and operated the same in the name of the assessee. The Ld. A.R also stated that the assessee has produced Shri Devesh Upadhyaya before the AO for examination u/s 131 of the Act and in his testimony, Shri Devesh Upadhyaya had categorically stated before the AO that deposits in the bank accounts belonged to him and these deposits have no nexus with the assessee. The PCIT rejected the contentions of the assessee and came to the conclusion that the arguments made by the assessee were not acceptable and issue required to be investigated to find the money trail and catch the beneficiaries. Accordingly the assessment framed was set aside and the AO was directed to frame the assessment de novo after affording reasonable opportunity of hearing to the assessee.

5. The Ld. A.R vehemently submitted before the Bench that Shri Devesh Upadhyaya has stated in the statement recorded u/s 131 of the Act on 21.12.2016 and in reply to the question no. 14 and 15 , he stated that he operated the bank accounts in the name of assessee and the money belonged to him. The Ld. A.R also referred to page 22 and 23 which contained the details of disclosure made by Shri Devesh Upadhyaya on behalf of dummy concerns/individuals from the year 2007-08 to 2012-13 and stated that Shri Satbir Mahato name appeared on the page no. 22 wherein the deposits in the name of assessee Shri Satbit Mahato appeared in 3 years namely AY 2008-09, 2009-10, 2010-11 Rs. 3359.97 Lacs, Rs. 4825.19 Lacs and Rs. 2.25 Lacs respectively. The Ld. A.R submitted that the income from the said deposits were assessed in the assessment of Shri Devesh Upadhyaya @ 0.10% of the total deposits in the assessment framed u/s 143(3)/147 of the Act dated 16.03.2016 by the AO ITO, Ward-49(2), Kolkata after recording a findings that the person Shri Devesh Upadhyaya has earned commission for providing accommodation entries through Jamakharchi companies. The Ld. A.R therefore submitted that the assessment framed in the case of assessee is neither erroneous nor prejudicial to the interest of the revenue as the AO has reached a plausible conclusion and accordingly applied 8% on the total deposits. The Ld. A.R in defense of arguments relied on the decision of Hon'ble Supreme Court in Malabar Industrial Co. Ltd. vs. CIT reported in [2000] 243 ITR 83 (SC) to buttress his arguments that in order to invoke u/s 263 of the Act the twin conditions have to be satisfied but in the present case since the conditions as envisaged under section 263 of the Act were not satisfied, therefore the assumption of jurisdiction is invalid and so is the revisionary order passed u/s 263 of the Act. The Ld. A.R stated that PCIT cannot set aside the assessment order by invoking section 263 of the Act on the ground that he does not agree with view taken by the AO. In defense of arguments he relied on the decision of the Hon'ble Bombay High Court in the case of CIT vs. Gabriel India Ltd. in [1983]203 ITR 108 (Bom-HC).

6. The Ld. D.R on the other hand relied on the order of PCIT heavily by submitting that there were huge deposits in the name of assessee proprietary concern

into two bank accounts which were duly opened after taking assessee's signature and by filing KYC documents of the assessee and therefore the plea taken on the part of Shri Devesh Upadhyaya that the deposits of cash were not belonging to him did not have any force and therefore the jurisdiction was rightly invoked by the PCIT. The Ld. D.R also submitted that by exercising the jurisdiction u/s 263 of the Act ,the assessee is not put to any prejudice as the assessee would be given a fair opportunity to explain his position during the set aside proceedings. Accordingly the Ld. D.R prayed that the appeal of the assessee may be dismissed.

7. After hearing the rival contentions and perusing the material on record, we find that the case of the assessee was reopened after DDIT(Inv), Unit-3(1), Kolkata informed the AO that there was huge deposits into the bank accounts of the assessee and the case of the assessee was reopened u/s 147 of the Act after issuing notice u/s 148 of the Act. The assessment was framed by AO vide order dated 22.12.2017 passed u/s 143(3)/147 of the Act assessing total income of Rs. 81,68,304/- as against the returned income of Rs. 28,800/- in the return of income filed in response to notice issued u/s 148 of the Act dated 20.07.2016. The AO applied @8% of the total deposits while framing the above assessment. According to PCIT, the deposits in the bank accounts of the assessee were not recorded in the books of accounts and therefore were liable to be added as unexplained investments u/s 69A of the Act thereby rendering the assessment so framed by the AO as erroneous and prejudicial to the interest of the revenue whereas the AO has followed the assessment order in the preceding assessment year wherein also under the similar circumstances @8% was applied. Having considered the facts of the case we observe that in the present case the AO after carrying out investigation and after recording a statement of Shri Devesh Upadhyaya in which Mr. Devesh Upadhyaya has owned up the money deposited in the assessee's bank accounts though the bank accounts were opened under his signature by obtaining KYC documents from the assessee fraudulently. We also note that the income from the deposits has also been assessed in the assessment framed in the case of Shri Devesh Upadhyaya u/s 143(3)/147 of the Act dated 16.03.2016 by

adding only 0.10% of total cash deposit on the ground that the assessee is providing accommodation entries on commission basis through jamakharchi companies/concerns. Considering these facts and circumstances, we are of the view that it can be said to be plausible and possible view on the basis of evidences before the AO and the PCIT cannot invoke the jurisdiction u/s 263 of the Act on the ground that he does not agree with the view taken by the AO and direct the AO to add the entire cash deposits in the hands of the assessee. In our opinion, the jurisdiction u/s 263 of the Act can be invoked if twin conditions are satisfied i.e. order is erroneous and is prejudicial to the interest of the revenue as has been decided in the case of Malabar Industrial Co. Ltd. (supra). Besides in our opinion, the PCIT cannot invoke the jurisdiction u/s 263 of the Act to substitute his own view in place of AO on the ground that he does not agree with the view taken by the AO. The case of the assessee is supported by the decision of Hon'ble Bombay High Court in the case of Gabreal India Ltd. (supra). Accordingly we quash the revisionary order of PCIT. The appeal of the assessee is allowed.

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

Order is pronounced in the open court on 19th February, 2024

Sd/-
(Sanjay Garg /संजय गर्ग)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 19th February, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Satbir Mahato, C/O, S.N. Ghosh & Associates, Advocates, 'Seben Brothers' Lodge, P.O.-Buroshibtala, P.S. Chinsurah, Dist. Hooghly , west Bengal-712105.
2. Respondent – PCIT, Kolkata-5, Kolkata
3. Pr. CIT- , Kolkata
4. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata