

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.2365/Kol/2019
Assessment Year : 2012-13

Chandrani Compliments & Export (P) Ltd.....Appellant
1, Tarpan Ghat Road,
Kolkata – 700053.
[PAN: AABCC3652J]

vs.

DCIT, Circle-10(1), Kolkata..... Respondent

Appearances by:

Shri C. Roy, AR, appeared on behalf of the appellant.

Shri Abhijit Kundu, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 05, 2024

Date of pronouncing the order : March 06, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the revision order dated 14.03.2019 of the Principal Commissioner of Income Tax-4, Kolkata [hereinafter referred to as 'PCIT'] passed u/s 263 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has contested the very validity of the revision order passed by the ld. PCIT.

3. At the outset, the ld. counsel for the assessee has stated the chronological events by stating that the return for the assessment year under consideration i.e. A.Y 2012-13 was filed by the assessee on 01.10.2012 showing an income of Rs.67,5,030/-. Thereafter, the scrutiny assessment was completed on 19.12.2014 by the ld. DCIT, Circle-10(1), Kolkata u/s 143(3) of the Act, wherein, the income of the

assessee was assessed at Rs.5,05,50,540/-. Thereafter, the ld. CIT-4 exercised his revision jurisdiction u/s 263 of the Act and passed revision order dated 13.06.2016 observing that the assessment order dated 19.12.2014 was erroneous and prejudicial to the interest of Revenue for want of proper enquiries on the part of the Assessing Officer while framing the assessment on various issues viz. share application money including the identity and creditworthiness of the share subscribers, charging of interest u/s 201(1A), rental income from the vehicles and depreciation thereupon.

4. Pursuant to the aforesaid order of the ld. CIT-4, Kolkata, an assessment was carried out u/s 143(3) r.w.s. 263 of the Act by DCIT, Circle-10(1), Kolkata. However, in the said assessment, the Assessing Officer after enquiries assessed the income of the assessee at Rs.71,41,040/- vide assessment order dated 17.01.2017.

5. Thereafter, a proposal was made by DCIT, Circle-10, Kolkata vide letter dated 08.02.2019, whereby, it was pointed that in this case, in the earlier assessment order, certain additions were made in respect of share premium, disallowance of depreciation, brokerage and commission, provision for gratuity, disallowance of expenses u/s 36(1)(va) of the Act. However, in pursuance of revision order u/s 263 of the Act, the total income was revised to the tune of Rs.71,41,040/- which was less than the earlier assessed income. Since, the assessed income, in pursuance to the revision order passed, was less than the income assessed earlier, therefore, the said assessment order dated 17.01.2017 was erroneous and prejudicial to the interest of Revenue.

6. After receiving the proposal from the from the concerned DCIT, the then ld. PCIT-4, Kolkata again exercised revision jurisdiction u/s 263 of the Act and held that the second assessment order dated

17.01.2017 passed u/s 143(3) r.w.s. 263 of the Act was erroneous and prejudicial to the interest of the Revenue as the Assessing Officer has failed to make proper and independent enquiries on various issued and again set aside the assessment order for de novo assessment. The ld. PCIT, inter alia, observed that *“any order passed subsequent to order u/s 263 must be in favour of revenue. Either earlier assessed income should be enhanced or should be same as earlier order but with enhanced enquiries so that addition should be strengthen to pass the test of appellate proceedings. But here the assessment order passed u/s 143(3) r.w.s. 263 was erroneous as addition made u/s 68 on account of unexplained share capital/premium was not added back”*. Being aggrieved by the said order of the ld. PCIT, the assessee has come in appeal before us.

7. We have heard the rival contentions and gone through the record. At the outset, the ld. counsel for the assessee has submitted that the assessment order dated 17.01.2017, pursuant to the directions given by the ld. CIT-4, Kolkata for de novo assessment, was in fact passed by the concerned Assessing Officer after taking approval from the concerned PCIT-4, Kolkata. He in this respect has referred to the letter dated 08.12.2016, the contents of the same, for the sake of ready reference, are reproduced as under:

*OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-10(1) : KOLKATA.
3 FLOOR, AAYAKAR BHAVAN, P-7, CHOWRINGHEE SQUARE, KOLKATA-700
069.*

No.DCIT, Cir-10(1) / Kol/Dir-263/2016./4089

Dated : 08-12-2016.

To,
Pr.CIT-4,
Kolkata.

(THROUGH PROPER CHANNEL)

Sir,

Subject : Seeking further directions in the case M/s Chandrani Compliments & Export (P) Ltd for the AY: 2012-13 - reg.

Kindly refer to the above.

I would like to draw your kind attention to the fact that return declaring total income of Rs. 67,95,026/- for the AY 2012-13 was filed by the assessee on 01.10.2012 and subsequently 143(3) Assessment was completed on 19.12.2014 by making the following additions:

- 1. Bogus credit in the garb of share capital of Rs.3,65,87,800/- added u/s 68.*
- 2. Disallowance of brokerage & commission of Rs. 51,85,93/- for failing to substantiate such debit for the purpose of business.*
- 3. Disallowance of Excess Depreciation of Rs. 16,61,489/- on the Cars not running on hire.*
- 4. Addition on account of delayed payment of PF & ESI before the due date of filing the return to the extent of Rs. 2,00,122/-.*

Subsequently the Ld. Pr. CIT-4 passed an order u/s 263 on 13.06.2016, wherein the original order passed u/s 143(3) was set aside de novo to facilitate the AO to carry out proper examination on each and every issue without waiting for the time barring date and to initiate the assessment proceedings immediately.

On receipt of order u/s 263, a detailed questionnaire containing all the issues served to the assessee on 24.10.2016. In reply, the AR of the assessee appeared & filed a detailed reply along with supporting evidences on 28.10.2016 and the same has been examined and found that no addition is called for as the assessee explained the issues satisfactorily except on the issue of delayed payment employees' contribution to PF & ESI.

In the meantime, the undersigned received a letter from the CCIT-4, Kol vide No.CCIT-4, Kol/263/2016-17/2545-51, dt. 28.10.2016 wherein the sec. 263 was clarified that "in any circumstances newly computed total income cannot be less than from the earlier assessed total income which was computed before order u/s 263 of the IT Act". Further Directions regarding Disposal of Scrutiny cases from the O/o CCIT-4, Vide No.Instruction/Scrutiny cases/201-17, dt. 16.11.2016 was received wherein "all the AOs under your charge instructed that no current scrutiny cases is disposed-off till 31/12/2016".

In view of aforesaid submissions, directions of the Ld. Pr. CIT-4 is solicited since the case warrants no addition and a case of non-time barring in nature.

Sd/-

*T. RAMALINGAM.
Dy. Commissioner of IT,
Cir-10(1), Kolkata.*

7.1 The ld. counsel has further submitted after considering the aforesaid letter dated 08.12.2016 of the DCIT, Circle-10(1), Kolkata seeking clarifications/directions in view of the fact that after making necessary enquiries and considering the reply and evidences of the assessee, it was found that no additions were called for on any issue other than the issue relating to late deposit of employees' contribution towards ESI/PF as the assessee has explained all the issues satisfactorily except on the issue of delay payment of employees' contribution to PF and ESI. Since, the income assessed in de novo assessment proceedings carried out was going to be less than the earlier income assessed vide earlier assessment order dated 19.12.2014, therefore, the necessary directions of the ld. PCIT-4 was sought for. The PCIT, after considering the contents of the said letter dated 15.12.2016 of the DCIT, observed that since the necessary enquiries/verification in the light of directions issued u/s 263 has been properly made in the assessment order has been finalised accordingly, therefore, he directed the Assessing Officer to pass assessment order accordingly. The ld. Assessing Officer after getting approval from the ld. PCIT-4, Kolkata vide letter dated 15.12.2016 passed the impugned assessment order. The contents of the letter dated 15.12.2016 conveying the directions of the ld. PCIT-4, Kolkata, for the sake of ready reference, are reproduced as under:

*GOVERNMENT OF INDIA
OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-10(1) : KOLKATA.
6th FLOOR, 'AAYAKAR BHAVAN', P-7, CHOWRINGHEE SQUARE, KOLKATA-
700 069.
Ph:033-22136434, Fax:033-22136450*

F. No-PCIT-4/Kol/263/Chandrani/8108

Date: 15-12-2016.

To,
DCIT, Circle-10(1), Kolkata.
Aayakar Bhawan, Kolkata.

Sir,

*Sub:- Seeking further directions in the case of M/s Chandrani Compliments & Export (P) Ltd for A.Y 2012-13-matter reg-
Ref:- Letter in F.No-DCIT, Cir-10(1)/Kol*dir-263/2016/4089 dated 08.12.2016*

Kindly refer to the discussion you had with Ld. PCIT-4, Kolkata on the above captioned subject. With reference to which, I have been directed to communicate the remarks of the PCIT, which is as under:-"

1. In this case earlier assessment order was cancelled de novo /s 263 directing a fresh assessment, as assessment made earlier was completed without making inquiries and also without carrying out verification, which should have been made, ignoring the order and direction of PCCIT, West Bengal & Sikkim and also ignoring the instruction of the CBDT. The letter dated 28.10.2016 of Ld. CCIT-4, Kolkata is to be followed on issue based or partially set aside cases, particularly in revenue audit objection cases. However, after carrying out verification and inquiries if no addition is called for on merits, in such cases approval of PCIT may be obtained.

2. The A.O has reported that the inquiry/verification in light of direction u/s 263 has properly been made and assessment order has been finalised accordingly. The A.O is directed to pass the assessment order accordingly, in the light of outcome of reported submitted.

The above remarks of PCIT-4, Kolkata is being forwarded for necessary action at your end.

*Yours faithfully,
Sd/-
Uday Shankar Dutta
ACIT, (Hqrs)-4, Kolkata*

7.2 Thereafter, vide letter dated 08.02.2019, the ld. DCIT, Circle-10(1), Kolkata moved a proposal to the ld. PCIT stating therein that since the assessed income in the subsequent assessment order dated 17.01.2017 passed u/s 143(3) r.w.s. 263 of the Act was less than the assessed income in the earlier assessment order u/s 143(3) dated 19.12.2014, therefore, the order was erroneous and prejudicial to the

interest of the revenue. The Id. PCIT-4, therefore reopened the assessment on the aforesaid proposal of the Assessing Officer, however, stating in the order that the order of the Assessing Officer was erroneous and prejudicial to the interest of the revenue for want of proper enquiries and further observing that any order passed subsequent to the order u/s 263 must be in favour of revenue and that the earlier assessed income should be enhanced or should be the same as in earlier order but should not be less than the earlier assessed income.

7.3 In this case, the earlier assessment order was set aside for de novo assessment which means that all the issues were open before the Assessing Officer. The assessee, under the circumstances, was entitled to furnish explanations and evidences on each of the issue that was open before the Assessing Officer and in relation to which the details were called upon by the Assessing Officer. There was neither any statutory power nor otherwise any other law requiring the Assessing Officer to only enhance or assess the same income which was earlier assessed. Such a proposition would be against the spirit of the law. When an assessment has been set aside or de novo assessment, all the issues in the assessment are open before the Assessing Officer, assessee as well also gets the right to plead, explain and furnish evidence on each of the issues. The outcome of the fresh assessment order is neither dependent nor can be based on the earlier assessment order which has been held to be erroneous and prejudicial to the interest of the revenue. If in the outcome of the fresh assessment order, the resultant assessed income is less than the earlier assessed income, the said order, by any fiction of law, cannot be termed as erroneous.

7.4 In the case in hand, the Assessing Officer, noting that in the fresh assessment proceedings, the assessed income of the assessee would be

less than the earlier assessment income, sought necessary directions from the ld. PCIT-4, Kolkata in this respect and the ld. PCIT-4, Kolkata after considering this aspect has categorically directed the Assessing Officer that if after making necessary enquiries/verifications, even if the assessed income was coming out to be less than the earlier assessed income, he should pass the order accordingly. The Assessing Officer, after getting the aforesaid directions, passed the impugned order. Thereafter, sending of the proposal by the successor-Assessing Officer on the ground that the income assessed vide subsequent assessment order 17.01.2017 was less than the income assessed vide earlier assessment order dated 19.12.2014, in itself, was a wrong and illegal proposal and the subsequent action of the ld. PCIT, in exercise of revision jurisdiction on the said proposal, cannot be held to be justified. Moreover, the assessee has already been subjected to two assessment proceedings, wherein, the assessee had already furnished necessary details and evidences and under the circumstances, the assessee cannot be burdened with further assessment proceedings on the same issue, by way of reopening of the assessment only on the ground that the certain more enquiries are required to be made by the Assessing Officer. Such an action cannot be held to be justified as under such circumstances, there will be no finality of the assessment and every time, the assessment order passed by Assessing Officer could be subjected to revision order by the ld. PCIT alleging that more enquiries are needed. The assessment cannot be kept open in perpetuity. There must be some finality to the proceedings. For exercising of revision jurisdiction for the second time or thereafter, there must be mention of specific and strong grounds warranting such revision of assessment order. The revision jurisdiction for want of mere enquiries cannot be exercised at the whims and wishes of the PCIT.

7.5 Moreover, in this case, the impugned order was passed by the Assessing Officer after getting approval from the Id. PCIT-4, Kolkata and under such circumstances, the Hon'ble Punjab and Haryana High Court in the case of "Hari Iron Trading Co. vs. CIT" reported in (2003) 263 ITR 437 has, in para 11 of the said order, held as under:

"2.These letters fully support the contention of the petitioner that the case was being monitored by the CIT, Rohtak, from time to time and the assessment order had been passed after a draft order along with the survey file had been forwarded to the CIT for his approval. Once the assessment order had been passed with the approval of the CIT, we are afraid that the successor CIT could not possibly say that the matter had been decided without application of mind by the A.O"

7.6 Since, in the case in hand also, the impugned assessment order was passed by the Assessing Officer after getting approval of the then PCIT-4, Kolkata, therefore, merely because of successor-PCIT-4, Kolkata did not agree with his predecessor, that does give him right to exercise his revision jurisdiction which would amount to questioning the wisdom of his predecessor, who has not found any fault with the assessment order in question. Such a course of action would, in our view, is impermissible in law. In view of this, the impugned order passed u/s 263 of the Act, in our view, is not sustainable in the eyes of law and the same is accordingly quashed.

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

Kolkata, the 6th March, 2024.

Sd/-

[गिरीश अग्रवाल /Girish Agrawal]
लेखा सदस्य/Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 06.03.2024.

RS

Copy of the order forwarded to:

1. Chandrani Compliments & Export (P) Ltd
2. DCIT, Circle-10(1), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches