

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

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोराड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A. No.1381/Kol/2023
Assessment Year: 2014-15

Anoop Nopany.....Appellant
P-39, 2nd Floor, Princep Street,
Kolkata- 700072.
[PAN: ABFPN3215L]

vs.

ITO, Ward-40(1), Kolkata..... Respondent

Appearances by:

Shri Narendra Kedia, AR, appeared on behalf of the appellant.

Shri Sanjay Paul, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 19, 2024

Date of pronouncing the order : April 23, 2024

आदेश / ORDER

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

The present appeal has been preferred by the assessee against the order dated 19.07.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. That on the facts and in the circumstances of the case, Ld. CIT(Appeal) NFAC, failed to notice that assessment order dated 31.12.2018 passed under section 143(3)/263 of the Act is bad in law, void ab-initio, lacks jurisdiction since original assessment order dated 30.12.2016 passes u/s 143(3) was bad in law, void ab initio. And consequentially any

proceedings subsequent to it are also bad in law, void ab initio, liable to be quashed.

2. That on the facts and in the circumstances, of the case, the Ld. CIT(A) erred by disregarding crucial facts wherein the appellant diligently provided vital information regarding cash deposit of Rs. 99,78,000/- received from clients for business purposes during the assessment proceedings despite the appellant's submission, the Ld. Assessing Officer failed to examine this information and erroneously included the entire sum in the appellant's total Income. The extreme oversight is not only unsustainable in law but also void, void - ab-initio and liable to be quashed due to its grave error in judgment.

3. The appellant craves to add, alter or amend ground or grounds of Appeal on or before the date of hearing as may be allowed by hon'ble appellate authority.”

3. The brief facts of the case are that the assessment of the assessee was selected for scrutiny and the assessment order dated 30.12.2016 was passed in the case of the assessee u/s 143(3) of the Act and returned income of the assessee was accepted. Thereafter, the ld. Principal Commissioner of Income Tax (in short 'PCIT') invoked his revision jurisdiction u/s 263 of the Act. The ld. PCIT in para 2 of the order observed that on examination of the records of assessment proceedings, it revealed that the Assessing Officer while completing the assessment proceedings u/s 143(3) of the Act failed to examine several issues despite the case being converted from limited scrutiny to complete scrutiny. He, therefore, observed that the assessment order passed by the Assessing Officer dated 30.12.2016 was erroneous and prejudicial to the interest of the revenue. The ld. PCIT further observed that on perusal of the assessment records, it revealed that the assessee had deposited cash amount to Rs.92,65,000/- in his current bank account with ICICI Bank and further Rs.37,85,000/- with HDFC Bank, which was not commensurate with the nature of the assessee's business. The assessee had shown himself as sundry debtor amounting to Rs.11,80370/- in his proprietorship concern and the said amount

needed to be disallowed. He further observed that the assessee had shown sundry creditors of Rs.1,67,79,246/- in its personal balance sheet and this fact also did not commensurate with the nature of business of the assessee. He observed that the Assessing Officer had not examined all these aspects of cash deposits and sundry creditors etc and accordingly held the order as erroneous and prejudicial to the interest of the revenue. He accordingly set aside the assessment order for de novo assessment. Thereafter, a fresh assessment order was framed by the Assessing Officer u/s 143(3) r.w.s 263 of the Act, wherein, the Assessing Officer made the addition of Rs.99,78,000/- on account of unexplained cash credits in the bank account of the assessee and also of Rs.47,70,140/- on account of unexplained sundry creditors vide order dated 31.12.2018. The ld. CIT(A) confirmed the addition so made by the Assessing Officer vide impugned order dated 19.07.2023. The assessee has come in appeal agitating the aforesaid additions.

4. The ld. counsel has invited our attention to the copy of the order of the PCIT dated 15.01.2018 to submit that the impugned additions have been made by the Assessing Officer and further confirmed by the CIT(A) pursuant to the directions of the ld. PCIT vide revision order u/s 263 of the Act dated 15.01.2018 for de novo assessment in relation to issues of cash deposits and sundry creditors. The main reason written by the ld. PCIT in his revision order was that though the case of the assessee was converted from limited scrutiny to full scrutiny, however, the Assessing Officer failed to examine these issues. The ld. counsel in this respect has invited our attention to the assessment records/order sheets pertaining to the original assessment order dated 30.12.2016. The first file/zemni order dated 28.08.2015 shows that the case of the

assessee was selected for scrutiny as per CASS for A.Y 2014-15. A reading of the next order dated 01.11.2016 reveals that the Assessing Officer had asked the assessee to submit details of share purchase and sale along with contract notes and bank details for the three scrips. A further perusal of the order-sheets would reveal that the case was selected for limited scrutiny relating to the investigation for purchase and sale of shares. However, the issue relating to cash deposits and sundry creditors was not part of the limited scrutiny. The perusal of the order-sheets further reveals that there is no mention in the order-sheet that the limited scrutiny was ever converted into full scrutiny. Neither any proposal was made by the Assessing Officer for converting limited scrutiny to full scrutiny nor there is any mention of any order of the higher authorities for converting limited scrutiny to full scrutiny. The Assessing Officer after asking the assessee to furnish the details relating to the transactions in purchase and sale of shares etc. and after examining the same had completed the assessment without making any addition and thereby accepting the returned income. There is no mention that the aforesaid limited scrutiny was converted into full scrutiny. The contention of the assessee is that since the limited scrutiny was never converted into full scrutiny, therefore, the aforesaid observation of the ld. PCIT was wrong and accordingly the revision order dated 15.1.2018 of the ld. PCIT was not sustainable and further that the consequential fresh assessment order framed by the Assessing Officer was also not valid order. That original assessment order dated 30.12.2016 was neither erroneous and not prejudicial to the interest of the revenue and therefore, the order of the PCIT dated 15.01.2018 was bad in law and therefore, consequential assessment proceedings were also bad in law. The ld. counsel has relied the CBDT Instruction

No.20/2015 dated 29.12.2015, the relevant part of which is reproduced as under:

“During the course of assessment proceedings in Limited Scrutiny cases, it comes to the notice of the Assessing Officer that there is potential escapement of income exceeding Rs. five lakhs (for metro charges, the monetary limit shall be Rs. ten lakhs) requiring substantial verification on any other issue(s), then, the case may be taken up for ‘Complete Scrutiny’ with the approval of the Pr. CIT/CIT concerned. However, such an approval shall be accorded by the by the Pr. CIT/CIT in writing after being satisfied about merits of the issue(s) necessitating ‘Complete Scrutiny’ in that particular case such case shall be monitored by the Range Head.”

The ld. counsel has pointed out that such procedure as mentioned in the above Circular was not followed and no approval was granted by the concerned PCIT/CIT for converting the limited scrutiny into complete scrutiny and therefore, there was no question of scrutinization on the issue of cash deposits and sundry creditors by the Assessing Officer. The assessee has categorically taken this plea before the CIT(A) also.

5. We note that neither the ld. PCIT has mentioned in the order dated 15.01.2018 about any document, whereby, the limited scrutiny was converted into full scrutiny, nor the ld. DR could produce on file any such document or approval for converting the limited scrutiny into full scrutiny in the case of the assessee. Therefore, under the circumstances, the impugned order passed by the ld. PCIT u/s 263 of the Act was bad in law and accordingly consequential proceedings were also bad in law.

6. However, now the question before us is that the assessee has not filed appeal against the section 263 order itself but has challenged the validity of the same in the consequential proceedings/order passed pursuant to the said order passed u/s 263 of the Act.

7. The Id. counsel for the assessee in this respect has relied upon the following case laws:

i. Keshab Narayan Banerjee vs. Commissioner of Income Tax 238 ITR 694 (1999) Calcutta High Court, wherein, the Hon'ble High Court has observed as under:

“The Hon'ble Court held that the Ld single judge, therefore, while agreeing with the points raised by the appellant partly, did agree with the contention mainly with regard to the observations of the mandatory requirement of service of notice upon the appellant resulting in the passing of the order under [Section 147](#) of the Act and held that if the order under [Section 147](#) of the Act, was not preceded by the service of a proper notice upon the appellant, such order was bad and accordingly proceedings under [Section 263](#) of the Act emanating and originating from such an order were also bad.”

ii. Kiran Singh vs. Ors. Vs. Chaman Paswan & Ors. (1955) 1 SCR 117 (SC), wherein, the Hon'ble Supreme Court observed as follows:

“It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.”

iii. M/s Westlife Development Ltd. vs. Principal CIT in ITA No.688/Mum/2016 (ITAT, Mumbai, 'G' Bench), wherein, the Tribunal has held as under:

“That the original assessment order passed u/s 143(3) dt. 24.10.2013 was null and void in the eyes of law as the same was passed upon a non-existing entity and, therefore, the CIT could not have assumed jurisdiction under the law to make revision of non-est order and, therefore, the impugned order passed u/s 263 of the Act by the CIT is also nullity in the eyes of law and therefore, the same is hereby quashed.”

8. We note that the issue is squarely covered by the decision of the Coordinate Mumbai Bench of the Tribunal in the case of Valiant Glass Works Pvt. Ltd. vs. ACIT in ITA No.1612/Mum/2013 dated 27.07.2016 (incidentally the author of the said order being the Judicial Member herein), wherein, the Coordinate Bench, after deliberating upon various case laws, has observed as under:

“12. A perusal of the above order reveals that various Courts of Law including the Hon'ble Supreme Court has held that a defect of jurisdiction whether its pecuniary or territorial or whether it is a subject- matter of the action, strikes at the very validity of the Court to pass any decree and such a defect cannot be cured even by consent of the parties. That a decree passed by a Court without jurisdiction is a nullity and that its invalidity can be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. That the issue of jurisdiction can be raised at any stage even in appellate or execution stage. Neither the Rule of Estoppels nor the Principle of res-judicata can confer the jurisdiction where none exists. The facts in the case of P. B. Doshi 113 ITR 22(Gujrat) are very much relevant wherein re-assessment proceedings were initiated against assessee and an addition was made to his income. Before AAC, contention about validity of notice for re- assessment was given up by the assessee and on merits appeal was dismissed. On further appeal, Tribunal remanded matter to file of ITO with direction to on re-examine witness and then complete assessment. ITO on remand completed assessment and again made addition. On appeal, assessee re-agitated point of validity of re- assessment proceedings on ground that there was mere change of opinion. AAC found that no reasons were recorded by ITO before issuing notice for re-assessment and, therefore, held that ITO had no jurisdiction to re-open assessment. Tribunal held that in restoring case to file of ITO by earlier order, only point left open was in respect of addition of on merits and that legal or jurisdictional aspect whether re-assessment proceedings were legally initiated was not kept open; It also held that even though this point went to root of jurisdiction and was pure question of law, merely because point was initially raised and not pressed when matter was taken up before AAC, it could be waived and it could not be reagitated ; The Hon'ble Gujarat High Court reversing the order of the Tribunal held that if the jurisdiction cannot be conferred by consent, there would be no question of waiver, acquiescence or estoppel or the bar of res judicata being attracted because the order in such cases would lack inherent jurisdiction unless the conditions precedent are fulfilled and it would be a void order or a nullity. The above decision of the Hon'ble Gujrat High Court has also been followed by the co-ordinate

bench of the Tribunal in the case of "Indian Farmers Fertilizers Co-operative Ltd vs KIT" 105 ITD 33 (Del) as discussed above.

Even, the Tribunal in the case or Dhiraj Suri 98 ITD 87 (Del) in an appeal against the penalty order has held that if the assessment order was without jurisdiction, there was no question of levy of penalty, therefore, it was open to the assessee to set up the question of validity of the assessment in the appeal against levy of penalty. The Hon'ble Bombay High Court in the case of investors Industrial Corporation 194 ITR 548 (Bombay) has held that the assessee was entitled to challenge the jurisdiction of the AO to initiate reopening of assessment proceedings before the CIT (A) in the second round of proceedings even though it has not raised the same before earlier proceedings before the AO or in the earlier appeal.

13. In the light of various case laws as cited above, the proposition that is coming out is that the jurisdiction or the legality of the proceedings can be agitated in a subsequent proceedings or even in a collateral proceedings or an execution proceedings also. If, the original order is illegal or without jurisdiction, the subsequent or collateral proceedings arisen out of such orders or proceedings, cannot be held to be valid."

9. In view of the above discussion, since the exercise of revision jurisdiction in this case by the Id. PCIT was wrong and illegal, therefore, the consequential order passed u/s 143(3) of the Act was also not sustainable in the eyes of law and the same is accordingly quashed.

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

Kolkata, the 23rd April, 2024.

Sd/-
[डॉक्टर मनीष बोरड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

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

Dated: 23.04.2024.

RS

Copy of the order forwarded to:

1. Anoop Nopany
2. ITO, Ward-40(1), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches