

आयकर अपीलीय अधिकरण, "पटना" न्यायपीठ पटना
IN THE INCOME TAX APPELLATE TRIBUNAL
"PATNA" BENCH, PATNA

(Heard from Kolkata Benches through web-based video conferencing platform)

SHRI DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

&

BEFORE SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 23/Pat/2022

Assessment Year: 2017-18

Lord Vishnu Constructions Private Limited 101, Lotus Apartment New Patliputra Colony Patna - 800013 [PAN: AABCC5141M]	Vs	Principal Commissioner of Income Tax-1, Patna
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Nishant Maitin, C.A.
Revenue by :	Shri Sushil Kumar Mishra, JCIT D/R

सुनवाई की तारीख/Date of Hearing : 07/03/2024

घोषणा की तारीख /Date of Pronouncement: 22/05/2024

आदेश/ORDER

PER, DR. MANISH BORAD, ACCOUNTANT MEMBER:

The present appeal is directed at the instance of the assessee against the order of the Learned Principal Commissioner of Income Tax, Patna -1 (hereinafter the "ld. Pr. CIT") dt. 18/10/2022, passed u/s 263 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2017-18.

2. Through various grounds of appeal, the assessee has assailed the order of the ld. Pr. CIT framed u/s 263 of the Act. Facts in brief are that the assessee is a private limited company engaged in construction business. The regular return of income furnished was selected for scrutiny through CASS on account of two reasons, namely, "Abnormal increase in cash deposit during

demonetization period as compared to pre-demonetisation period” and “High ratio of refund to TDS”. The Id. Assessing Officer issued questionnaire and examined the issues. During the course of hearing, the assessee filed various details including ledger of operations, purchase bills of scrap material, sales ledger along with tax audit report. Considering these details, the Id. Assessing Officer concluded the assessment after making addition u/s 69A of the Act at Rs.1,02,42,000/- and assessed income at Rs. 1,24,68,481/-. Thereafter, the Id. Pr. CIT called for the assessment records under the powers conferred to him u/s 263 of the Act and observed that the assessee had made cash payments in excess of Rs. 20,000/- each day for a total amount of Rs.27,28,439/- and the same is apparently in contravention to the provisions of Section 40A(3) of the Act. Based on this issue, the Id. Pr. CIT issued notice u/s 263 of the Act and asked the assessee to furnish the reply.

2.1. The assessee on the one hand, challenged the validity of the assessment order on account of wrong jurisdiction assumed by the Id. Assessing Officer. On merits it was submitted that construction activities are carried out at remote sites where suppliers do not supply material on credit and also do not wait for payments through banking channels and submitted that the entries in the books have been made after adding up various payments made on that day as a result of which, single entry is appearing in the cash book but actually any of the individual

payments is not exceeding the limit provided u/s 40A(3) of the Act. The Id. Pr. CIT was not satisfied with these submissions and came to the conclusion that since the Id. Assessing Officer has not examined the issue of Section 40A(3) of the Act, the order of the Id. Assessing Officer is erroneous and prejudicial to the interest of the revenue and accordingly, set aside the assessment order dt. 24/12/2019 for reframing it after considering the directions given in the impugned order.

3. Aggrieved the assessee is now in appeal before this Tribunal.

4. The Id. Counsel for the assessee firstly submitted that the case of the assessee was selected for limited scrutiny and the issues raised in the scrutiny notice were only regarding abnormal increase in cash and high refund of TDS. The Id. Assessing Officer was not within its jurisdiction to examine any new issue in case of the limited scrutiny case. Even on merits he has referred to the detailed paper book showing the cash expense vouchers for various dates and stated that payments at various sites were made at various dates and total payment of various laborers for 10 days period are aggregated and then a final voucher was prepared and entered in the books. He stated that books of accounts are duly audited and there is no adverse observation in the tax audit report on this issue.

4.1. Per contra, the ld. D/R firstly referred to the letter given by the ITO Hqrs. regarding PAN jurisdiction of the assessee and vide letter dt. 26/03/2023, it is stated that the assessee did not raise the jurisdictional issue within 30 days of the issue of notice and it is being questioned after more than an year and, therefore, in view of the judgment of the Hon'ble Delhi High Court in the case of *Abhishek Jain v. ITO [2018] 94 taxmann.com 355 (Delhi)*, the jurisdiction of the ld. Assessing Officer cannot be called in question by an assessee after an expiry of one month from the date on which he was served with the notice for reopening the assessment u/s 148 of the Act. Thus, it was stated that there is no merit in the legal grounds raised by the assessee challenging the jurisdiction of the ld. Assessing Officer. So far as the merits of the case is concerned, it was submitted that the assessee did not file relevant documents before the ld. Pr. CIT and apparently, from seeing the entries in the cash books, it is discernible that there is a violation of Section 40A(3) of the Act.

5. We have heard rival contentions and perused the material placed before us. So far as the legal issue raised by the assessee challenging the jurisdiction of the ld. Assessing Officer framing the assessment, we are in conformity with the submissions made by the ld. D/R and the facts go uncontroverted that the assessee has not challenged the jurisdiction of the ld. Assessing Officer within 30 days from the date of serving of the notice on it.

Therefore, the legal ground does not hold good and it is hereby dismissed.

5.1. As far as the merits of the case is concerned, the Id. Pr. CIT has carried out the revisionary proceedings on the single issue of violation of provisions of Section 40A(3) of the Act alleging that the assessee had made payments to a single party on each day not exceeding Rs.20,000/-, we note that the assessee's case was selected for limited scrutiny through CASS only for two reasons, namely, "*Abnormal increase in cash deposit during demonetization period as compared to pre-demonetisation period*" and "*High ratio of refund to TDS*". The jurisdiction of the Id. Assessing Officer was confined to examine these two issues only. The Id. Assessing Officer has carried out the proceedings effectively and examined this issue in detail and finally made the additions in the hands of the assessee. Since there was no jurisdiction with the Id. Assessing Officer to examine any other issue, under the given circumstances, where the case was selected for limited scrutiny, the order of the Id. Assessing Officer cannot be held to be erroneous or prejudicial to the interest of the revenue.

6. Even otherwise, so far as the issue of cash payment aggregating to Rs. 27,28,439/- is concerned, we notice that the assessee is into construction business and work goes on at various sites simultaneously. The details of cash vouchers have been placed in paper book page 10 to 83. We take the example for

the vouchers from dt. 02/04/2016 to 12/04/2016 and note that it is towards site charges expenses debited at Rs. 11,13,439/- paid in cash. Now, the Id. Pr. CIT has taken the basis of such entries for carrying out the impugned proceedings. Now, on examination of the vouchers placed at page 10 of the paper book, we find that in the particulars mentioned in the body of the voucher is "site purchases (material) from 02/04/2016 to 12/04/2016. It means that payment of Rs.11,13,439/- is for expenses incurred for 10 days. Further at page 11 there is a list which contains names of various laborers and suppliers which are 11 in number and payment made to them for 10 days are mentioned. Payments of each of these parties are in the range of Rs.98000/- to Rs. 1,10,000/-. Further from page 12 to 39, copies of cash memo are kept for individual payment made to each of the 11 suppliers. Perusal of these details clearly indicate that in none of the cases, there is a payment exceeding Rs.20,000/-. It is also an admitted fact that books of accounts are audited and there is no adverse remark by the tax auditor in Form 3CD filed in pursuance to audit u/s 44AB of the Act.

7. Thus, the fact emerges that there is no violation of Section 40A(3) of the Act in the instant case and, therefore, the directions given by the Id. Pr. CIT in the impugned order has no merits. Accordingly, the impugned proceedings u/s 263 of the Act are quashed and the assessment order dt. 24/12/2019, is restored.

The assessee succeeds on merits. Accordingly, grounds raised by the assessee are partly allowed.

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

Order pronounced in the Court on 22nd May, 2024 at Kolkata.

Sd/-

(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 22/05/2024

SC Sarma

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , पटना /DR,ITAT, Patna,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Patna