

आयकर अपीलीय अधिकरण
कोलकाता 'ए' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

श्री संजय अवरथी, लेखा सदस्य

के समक्ष

Before

SRI RAJPAL YADAV, VICE-PRESIDENT

&

SRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No.: 926/KOL/2024

Assessment Year: 2016-17

Bengal General Trading Co. Pvt. Ltd.....Appellant
[PAN: AABCB 0956 A]

Vs.

PCIT (Cen.), Kolkata-2, Kolkata.....Respondent

Appearances:

Assessee represented by: N.S. Saini, A/R & Priyanka Salarpuria, A/R.

Department represented by: Subhendu Datta, CIT D/R.

Date of concluding the hearing : June 3rd, 2024

Date of pronouncing the order : June 10th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

The present appeal arises from the order passed u/s 263 of the Income Tax Act, 1961 (in short the 'Act') dated 13.04.2021 by the Pr. Commissioner of Income Tax (Central), Kolkata-2 [in short ld. Pr. CIT], pertaining to AY 2016-17.

2. In this case, the facts in brief are that the assessee filed return of income for AY 2016-17 on 07.10.2017 disclosing a loss of Rs. 89,69,172/-. The said return was processed u/s 143(1) of the Act on 04.11.2016 at the returned loss. Thereafter in the instant case, a search and seizure operation took place

on 03.01.2019. Following the search action, the assessment order u/s 153A of the Act was passed on 13.04.2021 at the returned loss of Rs. 89,69,172/-, presumably on the ground that no incriminating material was found for this particular year, during the search.

2.1. It is seen from the records that subsequently a notice u/s 263 of the Act was issued by Id. Pr. CIT on 02.08.2023, proposing to reopen the assessment order passed u/s 153A of the Act dated 13.04.2021. Briefly, the Id. Pr. CIT proposed to tax loss on sales of equity shares held on long term basis on the ground that the amount of loss to the tune of Rs. 87,98,050/- was not added back while computing tax on the ground that gain from sale of equity shares is exempt from taxation u/s 10(38) of the Act.

2.2. It is seen that the appellant responded to this notice and filed detailed submissions, essentially canvassing the point that an assessment completed u/s 153A of the Act could not be reopened u/s 263 of the Act in the absence of any incriminating seized document for that particular year. The appellant is seen to have relied on a number of authorities to advance his argument in this regard.

2.3. A careful reading of the impugned order dated 30.03.2024 reveals that the Id. Pr. CIT actually agreed with the contention of the appellant and dropped the proceedings u/s 263 of the Act with the following observations:

“Loss on sales of Long-Term Equity Shares : On perusal of the Profit & Loss A/c for the period ended 31-03-2016 (FY 2015-16), it is observed that an amount of Rs. 87,98,050/- was shown as loss on Sales of Investment in its profit & loss A/c. It is revealed that the loss occurred due to sales of Long-Term Equity Shares. As 19,000 Equity Shares of M/s Amby Properties Pvt. Ltd. has been treated as long term equity shares, which has been sold now by the assessee company.

In terms and light of section 10(38) of the Income Tax Act, gain from sale of longterm equity shares is exempt from payment of income tax and losses incurred on account of those transactions are not allowable expenses at the time of calculation of taxable income of the assessee. Such amount of Rs. 87,98,050/- was claimed as expenditure in the profit & loss A/c but was not added back to the profits and gains of Business or Profession income in the computation of income. Therefore, claim of Rs. 87,98,050/- on account of

sales of Long-Term Equity Shares as allowable expenses in the profit and loss A/c is not allowed during the computation of taxable income. Thus, the claim of Rs. 87,98,050/- on loss on sales of investment should have been disallowed, as the same was not done in the assessment order, therefore, this has led to under assessment of income to the tune of Rs. 87,98,050/-.

In light of the above, it is evident that the AO had failed to disallow the claim of loss on sales on investment amounting to Rs. 87,98,050/- as described in the above paragraphs. The failure of the Assessing Officer to disallow the above claim of loss on sales on investment during the year under consideration, as it appears, rendered the assessment order u/s 153A/143(3) of the Act, dt. 13-04-2021 erroneous and prejudicial to the interest of revenue, within the meaning of section 263 of the Act.”

2.4. Aggrieved with this action of Id. Pr. CIT, the appellant is before us through the following grounds of appeal:

“1. That on the facts and in the circumstances of the case and law, the order passed by the Ld. Pr. CIT under section 263 of the Income-tax Act, 1961 (IT Act) is illegal, invalid and not sustainable in law

2. For that on the facts and in the circumstances of the case, the assessment for the AY 2016-17 had not abated and since there was no incriminating material found during the search, the assessment order was completed u/s 153A on 13.04.2021 as per the returned income. The action u/s 263 can only be taken if a valid assessment order existed. Once the foundation has extinguished, there cannot be any order on the basis of assessment proceedings. Therefore the order passed by the Pr. CIT u/s 263 against the order passed u/s 153A dated 13.04.2021 is unsustainable in law.

3. For that on the facts and in the circumstances of the case and law, even otherwise, no order u/s 263(1) of the Act can be made after the expiry of 2 years from the end of the Financial Year in which the order sought to be revised was passed. In the instant case, only intimation was issued u/s 143(1) of the Act on 04.11.2016 and the limitation period for revising the same u/s 263(1) of the Act expired on 31.03.2019. Hence the proceedings initiated u/s 263 of the Act by the issue of impugned notice on 02.08.2023 are bad in law and the consequential order passed u/s 263 of the Act dated 30.03.2024 is bad in law and the same is liable to be quashed.

4. The Appellant craves leave to add, alter, amend and/or withdraw any of the grounds or grounds of appeal either before or at the time of the appeal hearing.”

3. Even during arguments before us, the Id. A/R vehemently criticised the action of Id. Pr. CIT on the assumption that an adverse order had been passed against the assessee. The written submissions filed before us by the Id. A/R

also challenge the impugned order ostensibly on the ground that it is against the assessee.

3.1. The ld. D/R had no substantive comments to offer except to rely on the orders of the authorities below.

3.2. As mentioned earlier, it is clear that the impugned order is not an adverse order for the assessee, in as much as the proceedings u/s 263 of the Act have been dropped by the ld. Pr. CIT. It appears that due to an oversight the ld. A/R, as well as the assessee, have not only filed this appeal on the presumption of adverse order u/s 263 of the Act but have also argued on that assumption. Considering that the facts on record are entirely different from whatever has been presented before us, we deem it proper to dismiss the appeal of the assessee on the ground that it is non-maintainable.

4. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 10th June, 2024.

Sd/-

[Rajpal Yadav]
Vice President

Dated: 10.06.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Bengal General Trading Co. Pvt. Ltd., 8/1, Middleton Row, 3rd Floor, Kolkata, West Bengal, 700071.**
2. **PCIT (Cen.), Kolkata-2, Kolkata.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

Sd/-

[Sanjay Awasthi]
Accountant Member

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata