

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA

[Before Shri Rajesh Kumar, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 383/Kol/2023
Assessment Year : 2018-19

Syamali Security & Consultant Pvt. Ltd.	vs	PCIT-2, Kolkata
PAN: AAQCS 8537 B		
Appellant		Respondent

Date of Hearing	08.05.2024
Date of Pronouncement	02.08.2024
For the Assessee	None
For the Revenue	Shri Manish Kanojia, CIT, DR

ORDER

Per Sonjoy Sarma, JM:

The captioned appeal filed by the assessee is against the order dated 27.03.2023 passed u/s 263 of the I.T. Act by ld. PCIT, Kolkata-2 for A.Y. 2018-19. The assessee has raised the following grounds of appeal:

"1. That in the given facts order passed by Ld PCIT Kolkata 2 u/s 263 of the 1961 Act dated 27. 03.2023 is ultra vires to the provisions of the 1961 Act and is passed without authority of law in violation of mandatory jurisdictional conditions stipulated under section 263 of the Act:

2. That in the given facts Ld PCIT has wrongly exercised his powers under section 263 in going beyond scope of limited scrutiny under section 263 which Ld AO could not have travelled beyond the issues forming subject matter of limited scrutiny.;

3. That in the given facts revision order passed by Ld PCIT u/s 263 of 1961 Act is arbitrarily passed in violation of principles of natural justice and is thus void ab initio.

4. That in the given facts revision order passed by Ld PCIT u/s 263 of 1961 Act is patently unlawful as same is passed in great haste and

hurry without compliance to well acknowledged norms of fairness and transparency towards assessee; thus revision order passed u/s 263 is patently illegal.

5. That in the given facts revision order passed by Ld PCIT u/s 263 of 1961 Act is patently unlawful as same is passed in mechanical manner without any sort of independent/requisite inquiry at the end of Ld. PCIT. That in the given facts revision order passed by ld. PCIT u/s 263 of 1961 Act is patently unlawful.

6. That in the given facts revision order passed by ld. PCIT u/s 263 of 1961 Act is based on irrational and arbitrary findings which is based on incorrect and mis-reading of facts; thus revision order passed u/s 263 is patently illegal.

7. That the appellant craves leave to add / alter any/all grounds of appeal before or at the time of hearing of the appeal.”

2. From the perusal of the grounds raised by the assessee, we find that the solitary grievance of the assessee is that the ld. PCIT erred in invoking revisionary jurisdiction without satisfying the condition precedent laid down u/s 263 of the Act without holding that the ld. assessing officer (in short ‘the AO’) order is erroneous as well as prejudicial to the interest of revenue.

3. Brief facts of the case are that assessee filed his return of income for the A.Y. 2018-19 on 29.11.2018 declaring total income of Rs. 3,360/-. The assessment u/s 143(3) of the Act was completed by NFAC, Delhi on 08.03.2021 by accepting the return of income as assessed income. Soon after the assessment, the case records were examined by the ld. PCIT and on examination of the case records noticed that the assessment order passed u/s 143(3) of the Act was erroneous so far as prejudicial to the interest of revenue. The ld. PCIT noticed that

M/s. Spike Portfolio Consultants Ltd. and M/s. Aabis Knowledge Park were the major share holder/investor of the assessee company with 49.44% and 49.43% stake holding respectively for the year under consideration. However as per the investment details made available by one assessee named M/s. Luxury Shopping & Styling Services Pvt. Ltd. during assessment proceeding for the year 2017-18 differed to a great extent and did not seem to be in conformity with the share holding pattern of the present assessee which is detailed below:

<i>Sl No.</i>	<i>Name of the share holder/investor</i>	<i>% of share holding</i>	<i>Money value of % of share holding, stake holding in share capital valuing Rs. 98,98,25,000/- (paid up capital security premium)</i>
1	<i>Spike Portfolio Consultants Ltd.</i>	49.44	Rs. 48,93,69,480/-
2	<i>Aabis Knowledge Park</i>	49.43	Rs. 48,92,70,497.5
3	<i>Others</i>	1.13	Rs. 1,11,85,022.5
	<i>Total</i>	100	Rs. 98,98,25,000/-
4	<i>Luxury Shopping & Styling Services Pvt. Ltd. (PAN:AABCL9450F)</i>		Rs. 4,40,00,000/-

4. From the extract of the above table, it was evident that one assessee namely M/s. Luxury Shopping & Styling Services Pvt. Ltd. was to be categorized and listed as other investor having less than 5% share holding. However, Sl. No. 3 & 4 of the above table did not match with each other in terms of money value which was required to be same as the percentage of share holding could not be exceeded 100% according to accounting norms. Therefore, the difference of Rs. 3,28,14,978/- (Rs. 4,40,00,000/- - Rs. 1,11,85,022/-) was needed to be treated as unexplained cash credit and added back to the total income of

the assessee. Therefore, the assessment order dated 08.03.2021 prima facie appears to be erroneous in so far as it is prejudicial to the interest of revenue. The ld. PCIT accordingly issued noticed dated 17.03.2023 requiring the assessee to show cause why the order dated 08.03.2021 passed u/s 143(3) of the Act shall not be set aside to the file of assessing officer for fresh adjudication on the issue above. In compliance to the notice, assessee did not turn up. However, a request to grant an extension for hearing sought and the ld. PCIT in absence of any response from the assessee and considering the fact that the proceeding will get barred by limitation of time on 31.03.2023. He proceed to re-examine the issue on the basis of material available on record and after elaborate discussion of the case and relying on the various judgements passed by the Supreme Court as well as High Court set aside the impugned order dated 08.03.2021 for A.Y. 2018-19 to ld. AO with a direction to re-examine the issue afresh after affording opportunity of being heard to the assessee.

5. Aggrieved by the above order, assessee is in appeal before this Tribunal. However, at the time of hearing no one turned up. Although, notices were issued to the assessee time to time on perusal of the record, it is also reflected that on 07.02.2024 one assessee's representative namely Sandip Goel was represented the case. But on the date of haring 08.05.2024 no one represent on behalf of the assessee. Therefore, we have no other alternative but to decide the issue with the assistance of ld. DR an ex-parte against the assessee.

6. We after hearing the submission of the ld. DR and perused the record placed before us and examine the issues involved in the revisionary order passed by ld. PCIT. In the appeal, the assessee has challenged the assumption of jurisdiction u/s 263 of the Act initiated by ld. PCIT before us. Before we advert to the facts and law involved in the issue before us, let us revisit the law governing the issue before us. The assessee has challenged in the first place, the very usurpation of jurisdiction by ld. PCIT to invoke his revisionary power enjoyed u/s 263 of the Act. Therefore, first we have to see whether the requisite jurisdiction necessary to assume revisionary jurisdiction is existing in this case before the PCIT rightfully exercises his revisionary power. For that, we have to examine as to whether in the first place the order of the Assessing Officer found fault by the Principal CIT is erroneous as well as prejudicial to the interest of the Revenue. For that, let us take the guidance of judicial precedence laid down by the Hon'ble Apex Court in *Malabar Industries Ltd. vs. CIT [2000] 243 ITR 83(SC)* wherein their Lordship have held that twin conditions need to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the ld. PCIT. The twin conditions are that the order of the ld. AO must be erroneous insofar as prejudicial to the interests of the Revenue. In the following circumstances, the order of the ld. AO can be held to be erroneous order, that is (i) if the ld. AO's order was passed on incorrect assumption of fact; or (ii) incorrect application of law; or (iii) Ld. AO's order is in violation of the principle of natural justice; or (iv) if the order is passed by the ld. AO without

application of mind; (v) if the AO has not investigated the issue before him; [because AO has to discharge dual role of an investigator as well as that of an adjudicator] then in aforesaid any event the order passed by the ld. AO can be termed as erroneous order. Coming next to the second limb, which is required to be examined as to whether the actions of the ld. AO can be termed as prejudicial to the interests of Revenue. When this aspect is examined, one has to understand what is prejudicial to the interests of the Revenue. The Hon'ble Supreme Court in the case of *Malabar Industries* (supra) held that this phrase i.e. "prejudicial to the interests of the revenue" has to be read in conjunction with an erroneous order passed by the ld. AO. Their Lordship held that it has to be remembered that every loss of revenue as a consequence of an order of ld. AO cannot be treated as prejudicial to the interests of the Revenue. When the ld. AO adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the ld. AO has taken one view with which the ld. PCIT does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue "unless the view taken by the ld. AO is unsustainable in law".

7. Keeping in view the aforesaid judicial position of law in mind, ld. PCIT noticed that the assessment order passed u/s 143(3) of the Act was erroneous so far as prejudicial to the interest of revenue. The ld. PCIT observed that M/s. Spike Portfolio Consultants Ltd. and M/s. Aabis Knowledge Park were the major share holder/investor of the assessee company with

49.44% and 49.43% stake holding respectively for the year under consideration. However as per the investment details made available by one assessee named M/s. Luxury Shopping & Styling Services Pvt. Ltd. during assessment proceeding for the year 2017-18 differed to a great extent and did not seem to be in conformity with the share holding pattern of the present assessee which is detailed below:

Sl No.	Name of the share holder/investor	% of share holding	Money value of % of share holding, stake holding in share capital valuing Rs. 98,98,25,000/- (paid up capital security premium)
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	Total	100	Rs. 98,98,25,000/-
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8. From the extract of the above table, it was evident that one assessee namely M/s. Luxury Shopping & Styling Services Pvt. Ltd. was to be categorized and listed as other investor having less than 5% share holding. However, Sl. No. 3 & 4 of the above table did not match with each other in terms of money value which was required to be same as the percentage of share holding could not be exceeded 100% according to accounting norms. Therefore, the difference of Rs. 3,28,14,978/- (Rs. 4,40,00,000/- Rs. 1,11,85,022/-) was needed to be treated as unexplained cash credit and added back to the total income of the assessee. Therefore, the assessment order dated 08.03.2021 prima facie

appears to be erroneous in so far as it is prejudicial to the interest of revenue.

9. Under these given facts and circumstances of the case we noticed that where the issue raised in the show cause notice by ld. PCIT has not been properly examined by the ld. AO. Therefore, the ld. PCIT has still scope to exercise his jurisdiction u/s 263 of the Act as the ld. AO has completely failed to make necessary enquiry and applied his mind on the issue as well as on the facts which were available at the time of framing the assessment order. We therefore agree with the findings given by ld. PCIT by setting aside the assessment order passed by the ld. AO. Accordingly, we sustained the order of ld. PCIT by dismissing the appeal of the assessee. Thus, all the grounds raised by the assessee are dismissed.

10. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 02.08.2024.

Sd/-
(Rajesh Kumar)
Accountant Member

Sd/-
(Sonjoy Sarma)
Judicial Member

Dated: 02.08.2024
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Syamali Security & Consultant Pvt. Ltd., C/o. Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi-110085.
2. Respondent – PCIT-2, Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata