

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 328/Kol/2022
Assessment Year: 2016-17

M/s Bewell Labs Pvt. Ltd. (PAN: AABCB 4568 J)	Vs.	DCIT, Circle-11(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	11.07.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	14.08.2024
For the Appellant/ निर्धारिती की ओर से	Shri Sunil Surana, A.R
For the Respondent/ राजस्व की ओर से	Shri Subhendu Datta, CITDR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Principal Commissioner of Income Tax -Kolkata-2 (hereinafter referred to as the Ld. PCIT) passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) dated 30.03.2021 for the AY 2016-17.

2. The only issue raised in the various grounds of appeal is against the revisionary order passed u/s 263 of the Act by the Ld. PCIT by invoking the jurisdiction invalidly

without stating in the said order as to how the assessment order is erroneous and prejudicial to the interest of the revenue.

3. Facts in brief are that the assessee filed return of income on 30.09.2016 declaring total loss of Rs. 7,05,97,421/-. The case of the assessee was selected for scrutiny under CASS and statutory notices were duly issued and served on the assessee. During the assessment proceedings, the AO called for numerous evidences from the assessee which were duly furnished. Finally the assessment was framed vide order dated 19.12.2018 passed u/s 143(3) of the Act assessing the total income of Rs. 1,81,37,809/- by making various additions.

4. Thereafter the PCIT, upon perusal of the assessment records, observed that the AO has not examined the issue of prior period expenses debited in the profit and loss account amounting to Rs. 23,64,782/- under the head "other expenses" qua which the facts has also been stated in the annual account in the Note no. 23. Accordingly the same are not allowable. The PCIT has noted that these expenses were not added back by the assessee in the computation of total income. The same was not disallowed by the AO at the time of scrutiny resulting into resulting in excess allowance of loss to be carry forward to the tune of RS. 23,64,782/-. Accordingly the order passed u/s 143(3) of the Act has become erroneous insofar as prejudicial to the interest of the revenue. The PCIT accordingly issued notice u/s 263 of the Act dated 17.03.2021 to the assessee, however, there was no reply received from the assessee. Finally the PCIT set aside the assessment order passed by the AO by directing him to pass fresh assessment after taking into account the issue in para 2 by affording a reasonable opportunity of hearing to the assessee.

5. The Ld. A.R vehemently stated before us that the order passed by the PCIT u/s 263 is without jurisdiction as necessary pre-conditions for invoking the revisionary jurisdiction have not been fulfilled. The Ld. A.R stated that the PCIT has only stated in the order passed u/s 263 of the Act that the assessee has charged a sum of Rs. 23,64,782/- in the profit and loss account under the head other expenses (Note no. 23)

on account of prior period expenses which were apparently not allowable to the assessee and further stated that the assessee has not suo-moto disallowed these expenses the computation of income nor has the AO taken cognizance of the same in the assessment framed. The Ld. A.R submitted that mere observation of the PCIT that the prior period expenses are not allowable is incorrect and sans substance. While exercising the jurisdiction u/s 263 of the Act, the PCIT has to point out as to how the claim of expenses by the assessee in the profit and loss has rendered the order passed by the AO as erroneous and prejudicial to the interest of the revenue but in the present case the PCIT has simply stated prior period expenses are not allowable and revised the assessment which is incorrect and not permissible under the Act. The Ld. A.R relied on the decision of Hon'ble High Court of Delhi in the case of Income-tax Officer vs. D.G. Housing Projects Ltd. [2012] 20 taxmann.com 587 (Delhi) in defense of his arguments. The Ld. A.R therefore prayed that on this score the order passed by the Ld. CIT(A) is invalid and may be quashed. The Ld. A.R further submitted that the assessment framed by the AO in the present case is in violation of pecuniary jurisdiction as fixed by instruction no. 1/2011 [F. No. 187/12/2010-IT(A-I)] dated 31.01.2011 issued by CBDT u/s 119 of the Act. The Ld. A. R submitted that in the present case the return of income was filed declaring total loss of Rs. 7,05,97,421/- and therefore the jurisdiction to issue notice u/s 143(2) of the Act was vested with DCIT whereas as a matter of fact the notice has been issued on 20.12.2017 by ITO ward-1, Kolkata which is apparently in violation of instruction no. 1/2011 [F. No. 187/12/2010-IT(A-I)] dated 31.01.2011 . The ld. A.R therefore claimed that since the said order passed by the AO in violation of pecuniary jurisdiction is without jurisdiction and is invalid in the eyes of law, as a result all the consequent proceedings emanating from the said assessment order are also invalid and has to be quashed. In defense of argument the ld . A.R relied on the series of decisions namely Smita Biswas in ITA No. 464/Kol/2022 for AY 2016-17 dated 05.01.2024 and the decision of Hon'ble Calcutta High Court in the case of M/s Shree Shoppers Ltd. vs. PCIT in ITAT/39/2023 in IA No. GA/1/2023 dated 15.03.2023.

6. The Ld. D.R on the other hand relied on the order of PCIT passed u/s 263 of the Act by submitting that the apparently the prior period expenses are not allowable while computing the income of the assessee which were not either suo-moto disallowed by the assessee or examined by the AO in the assessment proceedings. The Ld. D.R submitted that the order passed by the AO u/s 143(3) is obviously erroneous and prejudicial to the interest of the revenue and therefore exercise of jurisdiction u/s 263 of the Act was validly exercised. The Ld. D.R therefore prayed that the appeal of the assessee may kindly be dismissed.

7. After hearing the rival contentions and perusing the material on record, we find that the PCIT has invoked the jurisdiction u/s 263 of the Act on account of allowance of prior period expenses of Rs. 23,64,782/- by the AO being charged in the profit and loss account which were ,according to PCIT, not allowable. According to Id Counsel no jurisdiction u/s 263 of the Act is available to the PCIT until and unless the PCIT has recorded a finding in clear words as to how the claim of prior period expenses is wrong and has resulted in under assessment of tax rendering thereby assessment so framed as erroneous and prejudicial to the interest of the revenue. In our opinion, every prior period expenses cannot be disallowed apparently on the basis of being prior period and the jurisdiction is not available to PCIT to revise the assessment just for the purpose of verification of the issue which is not permissible under the Act. The PCIT is duty bound to decide and record a finding in the revisionary order as to how the assessment framed by the AO is erroneous and prejudicial to the interest of the revenue. This is in consonance with ratio laid down by the Hon'ble Delhi High Court in the case of D G Housing Projects Ltd. (supra). On this score, the order passed by PCIT u/s 263 is wrong and invalid in the eyes of law and cannot be sustained. On the second plea that the revisionary proceedings as well as the order passed by PCIT u/s 263 of the Act have emanated from the assessment framed u/s 143(3) which is invalid as the same is in violation of pecuniary jurisdiction laid down by CBDT instruction vide No. 1/2011 dated 31.01.2011, we have examined the copy of notice issued u/s 143(2) of the Act dated 12.07.2017 and find that the same is issued by ITO,

Ward-1, Kolkata whereas the correct jurisdiction was with DCIT. Since the pecuniary jurisdiction has not been adhered to and followed in issuing notice by DCIT, therefore even on this score, we find that the revisionary order passed by PCIT is invalid as the assessee can raise the legal issue at any stage of the appellate proceedings. Accordingly the appeal of the assessee is allowed.

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

Order is pronounced in the open court on 14th August, 2024

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 14th August, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Bewell labs pvt. Ltd., Rabindranagar, Laskarpur-700153
2. Respondent – DCIT, Circle-11(1), Kolkata
3. Ld. Pr. CIT- Kolkata -2, Kolkata
4. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata