

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

**Shri Manish Borad, Accountant Member
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No. 844/Kol/2024
Assessment Year: 2017-18**

**Binita Halder,
BB-261, Salt Lake, Sector-1,
Kolkata - 700064
[PAN: AFWPH1160B]Appellant**

vs.

**PCIT, Central-2, Kolkata,
Aayakar Bhawan, (Poorva),
110, Shjantipalli,
Kolkata - 700107 Respondent**

Appearances by:

Assessee represented by : Rajeeva Kumar, Advocate
Department represented by : Subhendu Datta, CIT-DR

Date of concluding the hearing : 20.08.2024

Date of pronouncing the order : 22.08.2024

ORDER

Per Sonjoy Sarma, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2017-18 is directed against the order passed u/s 263 of the Income Tax Act, 1961 (in short the 'Act') by the Principal Commissioner of Income Tax (Central), Kolkata (for short 'the PCIT'), dated 18.03.2024 arising out of Assessment Order dated 25.03.2022, passed under Section 153A of the Act.

2. The Assessee has raised the following grounds of appeal:

- "1. *That on the facts and in the circumstances of the case, the order dated 18.03.2024 under section 263 of the Income Tax Act, 1961 passed by the Ld. PCIT is bad in law and is need to be quashed.*
2. *That the Ld. PCIT while passing the order dated 18.03.2024 under section 263 ignored the settled position that no addition can be made in the assessment made under section 153A of the Income Tax Act, 1961 without having any incriminating material.*
3. *The assessee craves leave to add, alter, amend or withdraw any ground or grounds of appeal before or at the time of hearing."*

3. At the outset, Ld. Counsel for the assessee submitted that the assessment order which is the subject matter of the revisionary proceeding itself deserves to be quashed since no incriminating material was found during the course of search carried out at the assessee on 23.11.2018 and that AY 2017-18 is a complete and unabated assessment year, no addition could be made without recourse to any seized material. Reliance placed on the judgment of Hon'ble Apex Court in the case of Pr. CIT Vs. Abhisar Buldwell (P) Ltd. [2023] 149 taxmann.com 399 (SC) Reliance also placed on the decision of the Tribunal in Garud Credit & Holding Pvt. Ltd. Vs. ITO, ITA No. 1270/Kol/2013 dated 01.05.2023 in support of the contention that validity of the assessment proceedings can be challenged in the course of appeal filed against the order u/s 263 of the Act.

4. On the other hand, the Ld. DR vehemently supporting the order of the Ld. PCIT.

5. We have heard the rival contentions and perused the mater placed before us. We observe that the assessee is an individual and was part of 'Hospitality Group Cases' and subjected to search and seizure operation carried out u/s. 132 of the Act on 13.01.2021. As stated by the Ld. Counsel for the assessee regular return of income for AY 2017-18 was filed by the assessee u/s. 139(1) of the Act and the limit within which notice under

section 143(2) could have been issued by AO expired (i.e. 03.09.2018) much before the search & seizure operation carried out on 13.01.2021. Also no assessment proceedings for AY 2017-18 was pending as on the date of search. It is thus not disputed at the end of both the parties that the impugned assessment year is falling under the category of complete and unabated assessment year. Further, perusal of the assessment order dated 25.03.2022 reveals that there is no reference to any incriminating material found during the course of search and no addition has been made in the assessment order framed u/s. 153A of the Act. We further observe that the said assessment order dated 25.03.2022 and the assessment records were examined by Ld. Pr. CIT under the revisionary powers u/s. 263 of the Act and he noticed that the assessee has purchased a flat at the consideration value of Rs. 34,19,684/- (including Rs. 3,62,690/- as Stamp Duty and Rs. 56,994/- as Registration Fee) whereas Stamp Duty Value of the same property was Rs. 51,81,000/-. This attracted the provisions of section 56(2)(vii) of the Act. Thus, the difference of stamp duty value and consideration value been added to the total income of the assessee under the head "Income from Other Sources" in terms of section 56(2)(vii) of the Act.

6. We further notice that since the assessment proceeding in question were subsequent to the search and the assessment year is a complete and non-abated assessment year, therefore, Ld. AO could only make addition for the issue which arose from the seized material found during the course of search for the relevant assessment years. Also in view of the recent judgment of the Hon'ble Apex Court in the case of *Abhisar Buildwell (P) Ltd.* (supra) the action of the AO in not dealing with any other issue for the relevant assessment year in absence of any incriminating material is found to be justified and within the four corners of law. Therefore, when the AO

was not within his jurisdiction to examine those transactions which stood already furnished as part of the audited financial statement and were also submitted with the regular return of income, then in such circumstances, how can Ld. PCIT exercise his jurisdiction on the said issue.

7. Further, as held by this Tribunal in the case of Garud Credit & Holding Pvt. Ltd. (supra) the validity of the assessment proceedings can be challenged during the course of appeal filed against the revisionary proceeding.

8. We, therefore, under the given facts and circumstances of the case are of the considered view that since the order of the AO is neither erroneous nor prejudicial to the interest of the revenue and since the issue which has been referred by the Ld. CIT could not have been examined by the AO in the assessment order framed u/s. 153A of the Act subsequent year on account of search carried out in the case of the assessee, Ld. PCIT erred in assuming jurisdiction u/s. 263 of the Act on the alleged issue of valuation of property on the basis of stamp duty. Certainly there were other recourse available with the revenue authorities to carry out the proceedings on the said issue but the same cannot be carried out u/s. 263 of the Act. We, accordingly, quash the impugned order and restore the assessment order framed u/s. 153A of the Act dated 25.03.2022. Appeal of the assessee is allowed.

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

Kolkata, the 22nd August, 2024.

Sd/-
[Manish Borad]
Accountant Member

Sd/-
[Sonjoy Sarma]
Judicial Member

Dated: 22.08.2024.

AK, PS

Copy of the order forwarded to:

- 1 Binita Halder
2. PCIT, Central-2, Kolkata
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches