

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
MISS. PADMAVATHY S, ACCOUNTANT MEMBER

I.T.A No.1197/Mum/2024
(Assessment Year: 2018-19)

M/s Jabeen Tradelink Pvt Ltd B-7, 5 th Floor, Block-A, Aidun Building, 1 st Dhobi Talao Lane, Mumbai-400 002 PAN: AACCJ2408A	vs	PCIT-4, Mumbai Room No. 629, 6th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
APPELLANT		RESPONDENT

Assessee by : Shri Neeraj Mangla
Respondent by : Shri VivekPerampurna CIT-DR

Date of hearing : 23/09/2024
Date of pronouncement : 24/ 09/2024

ORDER

PER ANIKESH BANERJEE, J.M:

The instant appeal of the assessee was filed against the order of the Learned Principal Commissioner of Income-tax, Mumbai-4, (in short, "Ld.PCIT") order passed under section 263 of the Income-tax Act, 1961 (in brevity the "Act") for Assessment Year 2018-19, date of order 16/02/2024. The impugned order was emanated from the order of the Id.National e-Assessment Centre, Delhi, (in brevity the "FAO") order passed under section 143(3) read with section 143(3A)& 143(3B) of the Act, date of order 09/04/2021.

2. The assessee has taken the following grounds of appeal:-

- “1. That the order u/s 263 of the Act passed by Ld.PCIT is bad and is passed in contravention of prevailing law as well as facts of the case, therefore, liable to be annulled.
2. That the Ld.PCIT grossly erred in law and in facts of the case in holding the assessment order passed by Ld.AO u/s 143(3) of the Act to be passed without necessary enquiries and verification and thus, to be erroneous and prejudicial to the interest of revenue.
3. That the Ld.PCIT did not appreciate that the books of account were duly produced before the AO and were duly examined by him and after satisfying himself the AO accepted the returned income, thus the AO has fully applied his mind and has passed the assessment order after having regard to the material on the record. As such the order of the Ld.PCIT is bad in law and the same is liable to be cancelled.
4. That the order passed by the Ld.PCIT u/s 263 of the Act is further illegal and not tenable under the law because of mechanically holding it to be prejudicial to the interest of revenue because the Ld.AO has accepted one of the two possible legal views.
5. That the assessee company seeks leave to add, alter, modify or delete any ground of appeal during the course of appellate proceedings.”

3. The brief fact of the case is that assessment was completed under section 143(3) r.w.s. 143(3A) & 143(3B) of the Act. Enquiry was made by the Id. FAO related fresh investment in impugned assessment year amount to Rs.29,33,28,777/-. The Id. FAO treated this investment as non genuine and bogus. However, no income was brought to tax related to bogus investment amount to Rs. 29,33,28,777/-.It is noted by the Id.PCIT that the investment shown during the impugned assessment year under consideration is more than the investment shown during the previous year to the tune of Rs.29,33,28,777/-and the entire

investment was made during the impugned assessment year. In assessment proceedings, the Id.FAO has treated the entire investment as bogus but directed it to add the same in the hands of the director, Mr. Shirish C Shah, who dealt with all the activities of the company. The Id.PCIT, by invoking provisions of section 263 treated the impugned assessment order as erroneous and prejudicial to the interest of the revenue as the entire investment was not brought under the tax net under section 69B of the Act. So, the Id.PCIT issued notice to assessee under section 263 of the Act. The assessee complied with the said notice. But finally, the Id.PCIT passed the order and set aside the impugned assessment order by invoking provisions of section 263 of the Act. Being aggrieved on the revisional order, the assessee filed an appeal before us.

4. The Id.AR vehemently argued and filed a written submission which is kept in the record. The Id.AR invited our attention in the impugned assessment order and the relevant paragraphs are extracted as below: -

“You were requested to provide reasons for low income of Rs. Nil earned by you on your investment of Rs.40,73,20,305/- (non-Current), as well as Short term loans & advances of Rs.5,75,55,726/-appearing in balance sheet. It is seen that you have not offered any income on this loans and investment. Your bank account shows receipts and payments to various entities. However, the nature and source of these entries have not been explained by you as to whether it is on account of investment, income/expenditure or loan. Your company has been known to be one of the conduit companies of Shri Shirish C Shah who was engaged in the activities of bogus accommodation entries. On scrutinizing these entries, it is very clear that these entries are in the nature of accommodation entries given or received by you from various parties. The main reason for this conclusion is that your profit and loss account shows that your company is not

engaged in any active business as there is a turnover of Rs. Nil in the nature of revenue from operations. However, no details have been submitted in this regard for such lower income. It is therefore proposed to hold that your company is not engaged in any active business but involved in the activity of providing accommodation entries and proceed to complete the assessment on this lines unless any evidence contrary to above conclusion is submitted by you to prove that you were involved in real business activities and that the entries reflected in balance sheet, profit and loss account are not accommodation entries.

If you do not agree with above conclusion, you may please file any evidence to prove otherwise on or before the given date. If you fail to file satisfactory explanation by the given date, the undersigned shall proceed to complete the assessment on the basis of material available on record.

In response, the assessee company filed its reply on 05/04/2021 stating that

“.....At the very outset it is clarified that during the year under consideration there are only 3 deposit transactions in Indian Bank account of the assessee company which are received from Karvy Stock Broking Limited. A copy of ledger account of Karvy Stock Braking Limited has already been furnished.

There are no other receipts in bank account of the assessee company for the year under consideration.

2. In respect of the observation and allegation that the assessee company was being operated and maintained as conduit company the following is submitted

a) It is clarified that during the year under consideration the assessee company has minimized its transactions with entities operated and maintained by Shirish C. Shah

and there are no bank deposits from any entity operated and maintained by Sh. Shirish C. Shah.....”

1. The submission of the assessee is not acceptable as the bank entries show transactions with conduit companies of Shri Shirish C Shah. Moreover, no reasons are given by the assessee for nonappreciation of capital. As such, it is clear that the assessee does not have any justification for not earning any income on the huge investments made of as mentioned in earlier Para.

2. Considering the fact that all the transactions were carried out at the instances of Shri Shirish C Shah and the fact that the Directors of the assessee company were merely tool in the hands of Shri Shirish C Shah who only knew all the affairs of company, the real income from these transactions is assessable in the hands of the Shri Shirish C Shah.

Subject to the above remarks, total income of the assessee is computed as under:”

(Emphasis supplied)

5. The Id.AR argued that the Id. FAO had completed the entire enquiry of issuance of notice under section 142(1) and all the activities are carried out by the director, Mr. Shirish C Shah. The verification was completed and the Id.FAO issued a draft assessment order and aske reply on same issue. The assessee has complied with the notice and addressed the issue in the draft assessment order. He further argued that the impugned assessment order is not erroneous as the issue was already dealt with by the Id. FAO during the assessment proceedings.

6. The Id.AR further stated that the assessment of the director, Mr. Shirish C Shah was already completed on dated 29/04/2021 and order was passed by the Id.ACIT, CC-2(1), Mumbai, order passed U/s 143(3) read with section 153C, date of

order 29/04/2021, where the director of the company was treated as accommodation entry provider and had executed the transaction by using the PAN of the assessee. Accordingly, the addition was made at 0.8% of the total traded value amount to Rs.22,78,20,238/- which works out to Rs.18,22,561/- was added back with the total income of the director. So the observation of the Id. FAO related to addition of the transactions is justified and the assessment order is not erroneous and prejudicial to the interest of the revenue.

7. The Id.DR vehemently argued and invited our attention in the relevant paragraph of the revisional order, which are reproduced as below: -

“5.6 The above stated decisions postulate that when the Officer is expected to make an inquiry of a particular item of income and if he does not make an inquiry as expected, that would be a ground for the Commissioner to interfere with the order passed by the Officer since such an order passed by the Officer is erroneous and prejudicial to the interests of the Revenue [KA. Ramaswamy Chettiar v. CIT. (1990) 220 ITR 657, 665 (Mad)]. The above referred judgments are now explicit in the section itself and therefore from the explanation it is clear that the present case of the assessee is clearly covered under Explanation 2(a) of Section 263 of the Act inserted w.e.f. 01-05-2015.

6 The failure of the Assessing Officer to make enquiries which were warranted under the facts and circumstances of the case and under the provisions of law have rendered the Assessment Order u/s 143(3) r.w.s 143(3A) & 143(3B) of the Act dated 09.04.2021 erroneous in so far as it is prejudicial to the interests of the revenue.

7. In view of the above, the Assessment Order passed 143(3) r.w.s. 143(3A) & 143(3B) of the Act dated 09.04.2021 for AY 2018-19 is set aside and restored to the file of the Assessing Officer. The AO is directed to make due enquiries and verification whether the transactions made in the new investments of Rs.29,33,28,777/- during the year as discussed above were sufficiently explained and pass a fresh assessment under as per the provisions of the Income Tax Act 1961.”

8. We heard the rival submissions and considered the documents available in the record. The Id.AR agitated the issue related to lack of enquiry and no enquiry which is covered by the order of the Hon'ble Apex Court in the case of **Malabar Industrial Company Ltd vs. CIT 243 ITR 83** but we note that the issue is not related to lack of enquiry and no enquiry related to these transactions. From perusal of the documents, we find that the enquiry and the verification were completed by the Id. FAO during the assessment proceedings. The issue was noted during the issuance of notice under section 142(1) and was reflected in draft assessment order dated 01/04/2021. The assessee replied online through the response sheet. The Id. AO noted his dissatisfaction about the investment but had not brought in tax net. The Id.AO in impugned assessment year has taken the view that all the transactions are accommodation entries and bogus, but the addition should be made in the hands of the director which causes the assessment order erroneous. The assessee-company and its director are different entities as per the Act. The addition of one assessee cannot be shifted to other assessee. The Id.PCIT rightly pointed out that the Id. FAO supposed to make the addition under section 69B of the Act and related to entire investments made during the impugned assessment year amount to Rs.29,33,28,777/-. The Id. FAO

has no jurisdiction to make a direction for addition in the hands of the director. The Id. FAO has acted beyond his jurisdiction. The Id.PCIT correctly invoking the provisions of section 263 of the Act treated the impugned assessment order as erroneous which is prejudicial to the interest of the revenue. In our considered view, the grounds taken by the assessee are dismissed. We uphold the revisional order passed under section 263 of the Act.

9. In the result, the appeal of the assessee bearing **ITA No.1197/Mum/2024** is dismissed.

Order pronounced in the open court on 24th day of September, 2024.

Sd/-

(MISS PADMAVATHY S.)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 24/09/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai