

**THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 977/KOL/2024
Assessment Year: 2013-2014**

***Panache Dealtrade Pvt. Limited,.....Appellant
1st Floor, Rup Chand Roy Street,
Kolkata-700007, West Bengal
[PAN:AAGCP0699B]***

-Vs.-

***Principal Commissioner of Income Tax (Central),
Kolkata-2,.....Respondent
Aayakar Bhawan Poorva,
110, Shantipally, E.M. Bypass,
Kolkata-700107***

Appearances by:

*Shri S.K. Tulsiyan, Advocate and Mita Rizvi, appeared on
behalf of the assessee*

*Shri Subhendu Datta, CIT(D.R.), appeared on behalf of
the Revenue*

**Date of concluding the hearing : October 24, 2024
Date of pronouncing the order : November 18, 2024**

O R D E R

Per Rajesh Kumar, Accountant Member:-

The present appeal is directed at the instance of assessee against the order of Id. Principal Commissioner of Income Tax

(Central), Kolkata-2 dated 20th May, 2024 passed for Assessment Year 2013-14.

2. During the course of hearing, the assessee has raised the following additional grounds of appeal:-

(1) The Ld. CIT(A) wrongly invoked jurisdiction u/s.263(1) of the Act by holding the impugned order passed by the Ld.AO on 27/09/2021 is erroneous and prejudicial to the interest of the revenue in as much as the impugned reasons for invoking sec. 263 of the Act did not arise in course of assessment to come within the ambit of Explanation 3 of section 147 of the Act.

(2) That the proceeding u/s. 133(6) of the Act having being initiated on 02/03/2020 in respect of the alleged transactions with the approval of the Ld. PCIT who was the approving authority u/s. 133(6) of the Act as the transaction was beyond three years and he also being an approving authority u/s.151 of the Act, the impugned transactions having been not included in the reasons recorded, his assumption of jurisdiction u/s. 263 of the Act is bad in law.

3. Ld. Counsel for the assessee submitted that the issues raised in the additional grounds of appeal are purely legal issues and facts qua the issues raised in the additional grounds are fully available on the assessment folder. The ld. A.R. further submitted that since these issues are emanated out of assessment by the ld. Assessing Officer, therefore, no further verification of facts is required to be done at the end of ld. PCIT or ld. Assessing Officer and prayed that the same may kindly be admitted for hearing in view of the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Limited -vs.- CIT reported in (1998) 229 ITR 383, wherein the Hon'ble Court has held that the Tribunal will have the discretion to allow or not allow a new ground to be

raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings, such a question should be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

4. The ld. D.R., on the other hand, submitted that the assessee has attended the proceedings before the ld. PCIT and submissions of the assessee were duly considered by the ld. PCIT and came to the conclusion that the assessment framed by the ld. Assessing Officer was erroneous as well as prejudicial to the interest of revenue on the ground that Rs.3,13,00,000/- received from M/s. Rudramukhi Builders, Shivpariwar Commercial Pvt. Limited, Leoline Commercial Pvt. Limited and M/s. Lemon Grass Project Pvt. Limited were not included by the ld. Assessing Officer in the income assessed and therefore escaped assessment. Thus, the plea raised by the assessee may kindly be dismissed.

5. After hearing the rival contentions and perusing the material available on record, we find that the issues raised before us in the additional grounds are purely legal and no further verification of facts are required to be done qua these issues. Therefore, by following the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Limited Vs CIT (supra), we are inclined to admit these additional grounds for adjudication.

6. The issue raised in Ground No. 1 is against the revisionary jurisdiction exercised by the ld. PCIT holding that the order passed

by the Id. Assessing Officer dated 27.09.2021 was erroneous and prejudicial to the interest of revenue on the ground that the assessment was framed under section 147 of the Act and impugned issues did not arise in the course of assessment proceedings within the ambit of Explanation 3 to section 147 of the Income Tax Act.

7. The facts in brief are that the assessee filed its return of income on 21.01.2014 declaring total income of Rs.8,02,980/-, which was processed under section 143(1) of the Act on 25.04.2014. Thereafter notice under section 133(6) of the Act was issued on 02.03.2020 with the prior approval of Id. PCIT-4, Kolkata calling for information regarding the transactions with three parties, namely (i) M/s. Rudramukhi Builders Pvt. Limited, (ii) M/s/ Shivpariwar Commercial Pvt. Limited and (iii) M/s. Leiline Commosales Pvt. Limited aggregating to Rs.1,45,00,000/-. Besides information were sought regarding the transactions aggregating to Rs.3,13,00,000/-with the following parties, namely M/s. Gajgamani Commotrade Pvt. Limited, M/s. Mangalrashi Vintrade Pvt. Limited, M/s. Flowtop Commodcal Pvt. Limited and M/s. Fastspeeds Sarees Pvt. Limited. Thereafter after examination of all the transactions, the reasons were recorded to the effect that income has escaped to the tune of Rs.1,45,00,000/- received from the above three parties, namely M/s. Rudramukhi Builders Pvt. Limited, M/s. Shivpariwar Commercial Pvt. Limited and M/s. Leiline Commosales Pvt. Limited and notice was issued under section 148 on 20.03.2020 after taking due approval from the Id. PCIT-4, Kolkata. This notice was not complied with due to COVID

19 pandemic. Finally, the assessment was framed under section 144 of the Act vide order dated 21.09.2021 by making an addition of Rs.1,55,00,000/- under section 68 of the Act thereby assessing the income at Rs.1,63,02,980/-. The said addition comprised of Rs.15,00,000/- received from M/s. Rudramukhi Builders Pvt. Limited, Rs.65,00,000/- received from M/s. Shivpariwar Commercial Pvt. Limited, Rs.65,00,000/- received from M/s. Leiline Commosales Pvt. Limited, which were the subject matter of reasons recorded while Rs.10,00,000/- received from M/s. Lemon Grass Project Pvt. Limited, came to the notice of the ld. Assessing Officer during the course of assessment proceedings. The ld. PCIT upon perusal of assessment records observed that ld. Assessing Officer was forwarded information by DDIT (Inv.), Unit-3(1), Kolkata to the effect that the assessee was beneficiary of Rs.3,13,00,000/- in A.Y. 2013-14, which was not examined by the ld. Assessing Officer resulting in the under-assessment of income to that extent. According to the ld. PCIT held that amount should have been added to the income of assessee. Thus, he came to the conclusion that the assessment framed by the ld. Assessing Officer under section 147 read with section 144 of the Act dated 27.09.2021 has been rendered erroneous and prejudicial to the interest of revenue within the meaning of section 263 of the Act and accordingly show-cause notice was issued, which was replied by the assessee vide written submission. Finally, the ld. PCIT cancelled the assessment framed under section 147 read with section 144 of the Act by directing the ld. Assessing Officer to frame the assessment afresh after doing necessary verification and

recompute the income after making proper inquiries and affording reasonable opportunity of hearing to the assessee.

8. The ld. A.R. vehemently submitted before us that the proceeding under section 263 of the Act has been initiated only for the reason that ld. Assessing Officer has not made the addition of Rs.3,13,00,000/- received from four parties, namely M/s. Gajgamani Commotrade Pvt. Limited, M/s. Mangalrashi Vintrade Pvt. Limited, M/s. Flowtop Commodeal Pvt. Limited and M/s. Fastspeeds Sarees Pvt. Limited in the assessment framed dated 27.09.2021 passed under section 147/144 of the Act, which has rendered the assessment so framed as erroneous and prejudicial to the interest of revenue. The ld. A.R. submitted that the notice under section 148 of the Act dated 20.03.2020 was issued by the ld. Assessing Officer after taking prior approval under section 151 of the Act from ld. PCIT-4, Kolkata for escapement of income of Rs.1,45,00,000/-, which was the amount received from three parties as stated hereinabove and accordingly notice was also issued under section 142(1) dated 10.09.2021, copy of which is available at pages 19 and 20 of the paper book. It was also contended that after taking prior approval from ld. PCIT-4, Kolkata even prior to initiation proceedings under section 147 of the Act, notices under section 133(6) of the Act were issued to the assessee on 20.02.2020 and 02.03.2020, wherein information regarding transactions with three parties of Rs.1,45,00,000/- were requisitioned. Besides the information in respect of four parties from whom the assessee had received Rs.3,13,00,000/- were also sought by issuing notices u/s 133(6) of the Act. Thus ld. A.R.

argued that the issue was duly and fully examined by the ld. Assessing Officer before issuing notice under section 148 of the Act. Ld. A.R. further submitted that before recording the reasons all the transactions were verified and therefore were not part of the reasons recorded under section 148(2), whereas the reasons were recorded in respect of transactions of Rs.1,45,00,000/- received from three parties as stated above. The ld. A.R. contended that the jurisdiction of ld. Assessing Officer extends under Explanation 3 only if any fresh issues/material come to his notice in course of the re-assessment proceedings and not the material which was already available at the time of formation of belief of escapement of income at the time of recording the reasons. The ld. A.R. submitted that when the items proposed by the ld. PCIT in the show-cause notice were not part of the reassessment proceedings nor any such item came to the notice of the ld. Assessing Officer during the assessment proceedings in terms of Explanation 3 to section 147 of the Act, then the revisionary jurisdiction by the ld. PCIT is bad in law and has to be quashed. Thus the ld. PCIT's exercise of revisionary jurisdiction to revise the assessment framed under section 147/144 of the Act dated 27.09.2021 is bad in law and may kindly be quashed.

9. The ld. D.R., on the other hand, relied heavily on the order of ld. PCIT passed under section 263 of the Act by submitting that nonetheless the ld. Assessing Officer had examined these transactions by calling for information under section 133(6) which was issued after obtaining prior approval of ld. PCIT-4, Kolkata and all the information were before the ld. Assessing Officer but

due to mistake the same could not be made part of the reasons recorded by the ld. Assessing Officer while reopening the assessment. It was also duly submitted by the ld. D.R. that these were not added by the ld. Assessing Officer during the course of assessment proceedings nor any discussion or enquiry was ever made in the assessment proceedings or assessment order. The ld. D.R. further submitted that the failure of the ld. Assessing Officer to make addition qua the addition gives a legitimate jurisdiction to the ld. PCIT to invoke jurisdiction under section 263 of the Act as no appeal lies against the order of ld. Assessing Officer before any authority and it is the jurisdiction under section 263 which is conferred on the PCIT to correct such anomalies/escapement of income.

10. After hearing the rival submissions and perusing the material placed on record, we find that in this case, ld. Assessing Officer has issued notice under section 133(6) to three parties as discussed above from whom a sum of Rs.1,45,00,000/- was raised after obtaining prior approval from ld. PCIT. Besides the information in respect of four parties from whom the assessee had received Rs.3,13,00,000/- were also sought by the AO issuing notices u/s 133(6) of the Act. Thus, the issue was duly and fully examined by the ld. Assessing Officer before issuing notice under section 148 of the Act. ld. Assessing Officer after conducting proper inquiries and after taking prior approval under section 151 of the Act of ld. PCIT-4, Kolkata recorded reasons thereby forming a belief of escapement of income of Rs.1,45,00,000/-. There is no denying the fact that ld. PCIT has exceeded his jurisdiction in the

present case in holding that there was a failure on the part of Id. Assessing Officer to examine another information forwarded by the DDIT (inv) Unit-2(1) alleging that the assessee to be a beneficiary of Rs.3,13,00,000/- on account of funds received from four parties as stated hereinabove. According to the AO the income has escaped assessment to the tune of Rs.1,45,00,000/- which represented loans taken from three parties as stated above. Thereafter notice under section 148 issued on 20.03.2020. Again, in the assessment completed under section 147/144 of the Act vide order dated 27.09.2021, the AO made addition in respect of was alleged the transaction of accommodation entry with the party M/s. lemon Grass Project Pvt. Limited of Rs.10,00,000/- was bogus and came to his notice only during the assessment proceedings. Thus, the addition of Rs.1,55,00,000/- was made in the assessment framed under section 147 read with section 148 dated 27.09.2021. Now the question before us, whether Id. PCIT can exercise jurisdiction under section 263 and set aside an assessment, which was made for limited issues of examining the loans taken from three parties aggregating to Rs.1,45,00,000/- as stated above especially when the Id. Assessing Officer did not come across any such issues qua bogus loans of Rs.3,13,00,000/- taken from four parties as stated above during assessment proceedings in terms of Explanation 3 to section 147 of the Act. In our opinion, the assessment framed by the Id. Assessing Officer cannot be said to be being erroneous nor prejudicial to the interest of revenue as these items of so-called bogus loans of Rs. 3,13,000.- from four parties did not come to the notice of the Id. Assessing Officer during the assessment proceedings warranting the addition

by the ld. Assessing Officer. Therefore, we are inclined to hold that the jurisdiction exercise by ld. PCIT is bad in law. In our opinion the assessment framed by the AO u/s 147/144 of the Act is neither erroneous nor prejudicial devoid of which the jurisdiction u/s 263 of the Act cannot be invoked. The case of the assessee is supported by the judgment of the Hon'ble Apex Court in the case of Malabar Industries Limited reported in 243 ITR 283, wherein it has been held that in order to invoke jurisdiction under section 263 of the Act, the assessment order passed has to be erroneous as well as prejudicial to the interest of revenue and even if one of the two conditions are satisfied, even then section 263 by ld. PCIT cannot be invoked.

11. Considering the above facts and circumstances, we are inclined to hold that the exercise of revisionary jurisdiction u/s 263 of the Act and consequent order are invalid and accordingly quashed.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 18/11/2024.

Sd/-

Sd/-

(Rajpal Yadav)
Vice-President

(Rajesh Kumar)
Accountant Member

Kolkata, the 18th day of November, 2024

*Copies to :(1) Panache Dealtrade Pvt. Limited,
1st Floor, Rup Chand Roy Street,
Kolkata-700007, West Bengal*

*(2) Principal Commissioner of Income Tax
(Central), Kolkata-2,*

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110, Shantipally, E.M. Bypass,
Kolkata-700107*

- (3) CIT - , Kolkata;
(4) The Departmental Representative;
(5) Guard File
TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.