

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

**SHRI RAJPAL YADAV, VICE PRESIDENT
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 1137/Kol/2024
Assessment Year: 2018-19**

KCO Aluminium LLP,
CA Anup Kumar Sanghai,
Sanghai & Co, 21,
Hemanta Basu Sarani, 2nd Floor,
Room No. 204, Kolkata - 700001
[PAN: AANFK5100A]

..... **Appellant**

vs.

**Principal Commissioner of Income Tax-2,
Kolkata,**

Aayakar Bhawan, P-7 Chowringhee Square,
City- Kolkata - 700069

..... **Respondent**

Appearances by:

Assessee represented by : Anup Sanghai, CA
Department represented by : Praveen Kishore, CIT (DR)

Date of concluding the hearing : 17.10.2024
Date of pronouncing the order : 18.11.2024

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against the order of the Ld. Pr. CIT dated 31.03.2024 passed u/s 263 of the Income Tax Act, 1961 (in short the 'Act') for AY 2018-19. The assessee has taken as many as 18 grounds of appeal but its grievance revolves around a single issue, in as much as allegedly that the ld. Pr. CIT has erred in taking cognizance u/s 263 of the Act and thereby setting aside the assessment order dated 17.06.2021 passed u/s 143(3) of the Act and also directing the Assessing Officer (hereinafter referred to as ld. 'AO') to frame a de novo assessment. However, the grievance emerges more clearly with the additional grounds

of appeal filed during the present proceedings. The same deserve to be extracted:

“1. On the facts and in the circumstances of the case as well as law on the subject, the Assessing Officer has taken a possible view at the time of the original scrutiny under section 143(3) of the Income Tax Act, 1961, and thus, it cannot be said that the view taken by him is erroneous nor the Assessment Order u/s 143(3)/1448 dated 17.06.2021 of the Assessing Officer can be set aside in revision. It has to be shown unmistakably that the order of the Assessing Officer is unsustainable.

2. That on the facts and circumstances of the case, the Scrutiny u/s 143(3) of the Act for the Assessment year 2018-19 was Limited Scrutiny which was NOT enhanced to Complete Scrutiny by the Ld.AO with the permission of the Principal Commissioner of Income Tax ((herein after referred as "Ld. PCIT").

3. That on the facts and in the circumstances of the case, the Assessment Order u/s 143(3)/144B of the Income Tax Act, 1961 dated 17.06.2021 passed by the Assessing Officer (herein after referred as "Ld.AO") was after the application of his mind as the record of the assessment shows that the appropriate enquiry was made by the Ld. AO through issuance of Notices under section 142(1) of the Act, 1961 from time to time.

4. That on the facts and circumstances, the Ld. AO in the Notice u/s 142(1) dated 22.02.2021 of the Income Tax Act, 1961, the Ld. AO had required the assessee to furnish the explanation and evidences regarding the NEW UNSECURED LOANS for the AY 2018-19 and various other information and documents. Therefore, it cannot be presumed that the Ld. AO has not applied his mind before formulation of such questions raised by him in the annexure to the Notice u/s 142(1) of the Act, 1961.

5. That on the facts and the circumstances of the case, mere view of the Ld. PCIT that the whole unsecured loan taken by the Appellant during the FY 2017-18 relevant to the AY 2018-19 is not being added by Ld. AO and more addition/disallowance would have been justified in this respect would not itself make the assessment u/s 143(3) of the Act to be erroneous and prejudicial to the interest of the Revenue.

6. That on the facts and circumstances of the case, the Ld. AO during the scrutiny u/s 143(3) of the Act has examined the accounts and other details and has determined the income after making proper enquiries and applying his mind to the facts and circumstances of the case, and therefore the Order passed u/s 143(3)/1448 dated 17.06.2021 cannot be held to be unsustainable

7. That on the facts and circumstances of the case, the Appellant had duly discharged its initial onus by submitting the details of ALL the NEW UNSECURED LOAN CREDITORS and the burden of proof thereafter shifts onto the Revenue to bring material on record that would rebut/demolish the evidences of the appellant and show that the transaction undertaken are in-genuine in nature.

8. That on the facts and circumstances of the case, the Ld. PCIT has not verified the fact that the Ld.AO has enquired and asked the Appellant to submit evidences for ALL the NEW UNSECURED LOANS taken and not for the Loan amount of Rs.13,32,70,420/-only.

9. For that the Appellant craves for further Grounds of Appeal to be submitted at the time of hearing, given an opportunity of being heard and leave to add, alter and modify any ground of appeal at or before the hearing of the appeal.”

1.1 During the course of proceedings before us, the Ld. AR filed three paper books cumulatively running into 701 pages and pointed out various relevant pages in an attempt to demonstrate that firstly, all manner of details pertaining to the impugned action were diligently filed before the Ld. AO/CIT(A)/Pr. CIT, during various stages of the proceedings before these authorities. Secondly, it was argued that parties with whom the impugned transactions were undertaken with were the very same ones from whom the loan transactions were treated adversely by the Ld. AO. It was explained that different amounts were picked by the Ld. AO and Ld. Pr. CIT for adverse treatment even though they belonged to the same 05 parties, as mentioned in para 4 of Ld. AO's order. It was further averred that since the loan creditors under adverse notice were the same in all the proceedings then the Ld. Pr. CIT could not have invoked the provisions of section 263 of the Act.

2. The Ld. DR relied on the contents of order u/s 263 of the Act.

2.1. We have carefully considered the arguments advanced before us and have perused the documents placed before us, including the orders of authorities below. The brief facts of the case are that assessee has filed its return of income on 30.09.2018 declaring total income of Rs. 5,22,30,950/-. The case of the assessee was selected for scrutiny assessment and a notice u/s 143(2) of the Act was issued and served upon the assessee. On scrutiny of the accounts, it was apparently revealed to the ld. AO that the assessee had accepted fresh unsecured loans during the year. Therefore, by questionnaire issued u/s 142(1) of the Act, he directed the assessee to explain the details of new unsecured loans. In response to that questionnaire the assessee has submitted certain details, which are submitted in a tabular form at page number 650 of the paper book. A perusal of the above details would indicate that the assessee has

received a total sum of Rs. 57,65,52,173/-. Out of this amount the assessee has repaid Rs. 44,33,93,219/- during the year itself. The balance Rs. 13,32,70,420/- has been added by the ld. AO as unexplained cash credit.

2.2. Dissatisfied with this addition, the assessee carried the matter in appeal. According to the ld. Counsel for the assessee, during the appellate proceedings, ld. CIT(A) called for all relevant documents relating to these unsecured loans and assessee had submitted those documents which were filed before the ld. AO as well as later before the Ld. Pr. CIT. He further apprised us that ld. CIT(A) had called for a remand report which was submitted by the ld. AO. However, the Ld. AR mentioned that the status of the decision of the ld. CIT(A) is unknown to the assessee.

2.3. In between, the ld. Pr. CIT took cognizance u/s 263 of the Act and formed an opinion that the said assessment order was erroneous and prejudicial to the interests of the Revenue. He was of the opinion that there are 05 new creditors (same as the ones dealt with by the Ld. AO) from whom total loan amount taken by the assessee stands at Rs. 35,40,80,869/-. The assessee has repaid substantial part of this amount, except Rs. 13,32,70,420/-. The ld. Pr. CIT was of the opinion that instead of making the addition of the balance outstanding, ld. AO ought to have explored the possibility of making addition of the total new unsecured loan taken from these 05 companies. Hence, he issued a show cause notice to the assessee on 01.11.2023, but that notice does not depict the reasons for taking cognizance u/s 263 of the Act. Ultimately a fresh show cause notice was issued on 08.01.2024 apprising the assessee reasons for taking cognizance u/s 263 of the Act. The assessee filed written submissions and ultimately ld. Pr. CIT passed the impugned order on 31.03.2024.

2.4. With the assistance of the ld. representatives, we have gone through the records carefully. During the course of hearing, it emerges that the ld. Pr. CIT has recorded a specific finding of fact in paragraph 9 of the

impugned order. The observation of the ld. Pr. CIT are that, “Assessee has not disputed the fact in his submissions about the fact that they were not able to submit the necessary documents to prove the identity, genuineness and credibility of any of the loan creditors during the assessment proceedings.”

2.5. Thus, on the one hand ld. Counsel for the assessee has filed a paper book and mentioned at the Bar that he has submitted all the requisite details partly during the course of assessment proceeding and partly during the remand proceeding before ld. CIT(A). On the other hand, the stand of the Revenue on the basis of the assessment order as well as of the Ld. Pr. CIT’s order is that such details were not filed. Faced with the above situation, we have requested the junior of Mr. Anup Sanghai, CA to open the Portal of the Revenue Department pertaining to the assessee and demonstrate as to when these papers were uploaded. Thereafter she has opened the computer on the Dias and apprised us about the exact situation when these documents were uploaded. It is evident that some of the documents were uploaded even before passing the assessment order and partly during remand proceedings initiated at first appellate stage, by the Ld. CIT (A). However, clearly such documents were filed before the ld. Pr. CIT took cognizance u/s 263 of the Act i.e. before 08.01.2024.

3. In light of these facts, it is clear that the entire conspectus of facts was all along before the authorities below and the Ld. AO in his wisdom chose to pick up a certain amount for adverse treatment, as unexplained cash credit, leaving out the rest of the amounts, which pertained to the same 05 entities. Clearly the Ld. Pr. CIT’s actions are not condonable since he is merely substituting his own opinion over that of the Ld. AO since the 05 entities are the same ones. At this juncture, sustenance is also drawn from the case of Pramod Kumar Tekriwal (ITAT/92/2021, ITA No. GA/2/2021), of the Hon’ble Calcutta High Court, in which the following has been held:

*“The short question involved in these appeals is whether the Principal Commissioner of Income Tax 10, Kolkata [PCIT] could have exercised his powers under section 263 of the Act. In our considered view, the tribunal has elaborately examined this issue, taken note of the decision of the Hon'ble Supreme Court in Malabar Industrial Co. Ltd. vs. CIT [2000] 243 ITR 83 [SC] and allowed the appeal. Further, the tribunal has noted that the assessing officer had made an addition of 2% to the gross profit over and above the rate of gross profit of 4.63% totalling to 7.63%. It appears that after completing the assessment the assessing officer addressed the PCIT stating that certain error has occurred in the assessment order and requested him to review the order under section 263 of the Act. Whether such a procedure adopted by the PCIT was legally sustainable was examined by the tribunal and in our considered view after taking note of the various decisions of the Hon'ble Supreme Court it was rightly pointed out **that section 263 of the Act does not permit substituting one opinion for another** (emphasis added). That apart, the tribunal has specifically recorded a factual finding that the assessee had produced all necessary details of the purchase, sales, audited books of accounts, quantity details, etc... Further, the tribunal found that the assessee's books of accounts were audited by the Chartered Accountant, the quantity details were given in respect of opening stock, purchase, sales, closing stock, etc. Furthermore, the tribunal pointed out that no discrepancy was found between the purchase shown by the assessee and the sales decline. Thus, on facts, the tribunal concluded that assumption of jurisdiction by the PCIT under section 263 of the Act was erroneous. In our considered view, there is no error in the order passed by the tribunal nor there is any perversity in its approach for us to interfere. We find that there is no question of law, much less substantial question of law arising in this appeal. Consequently, the appeals are dismissed.”*

3.1 The SLP against this case was dismissed on merits (and also on the grounds of limitation) by the Hon'ble Apex Court [295 Taxman 411 (SC)] vide order dated 18.08.2023.

3.2. Accordingly, in light of discussion and finding above, the impugned order is quashed.

3.3. In result the assessee's appeal is allowed.

Order pronounced in the open court on 18.11.2024

Sd/-
[Rajpal Yadav]
Vice President

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 18.11.2024.

AK, PS

Copy of the order forwarded to:

1. KCO Aluminium LLP
2. Principal Commissioner of Income Tax-2, Kolkata
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches