

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

I.T.A. Nos. 2044 & 2045/Kol/2024
Assessment Years: 2018-19 & 2019-20

Gopal Banik (PAN: AEGPB 1186 E)	Vs.	PCIT, Central-2, Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	25.11.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	17.12.2024
For the assessee/ निर्धारिती की ओर से	Shri K K Khemka, Advocate
For the Revenue/ राजस्व की ओर से	Shri Subhendu Dutta, CITDR

ORDER / आदेश

Per Rajesh Kumar, AM:

These are the appeals preferred by the assessee against the separate orders of the Ld. Principal Commissioner of Income Tax, Central, Kolkata-2 (hereinafter referred to as the “Ld. PCIT”) dated 18.03.2024 passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) for the AY 2018-19 & 2019-20 respectively.

2. At the outset, we note that there is a delay in filing the appeal by the assessee by 180 days. After hearing rival contentions and perusing the condonation application including the Affidavit filed before us, we note that the assessee is suffering from heart ailments and has undergone by-pass surgery which was duly substantiated by filing the medical reports and prescriptions of the doctor. We noted that the assessee's wife was also suffering from neurological problem since 2023 and ultimately operated upon in Appollo hospital, Chennai. We find that the assessee's life was full of turbulence and upheaval due to illness and thus he came to know about the appellate order having been passed ex-parte on 01.10.2024. Considering these facts and reasons cited before us, we are of the view that delay is for sufficient and genuine reason and accordingly, we are inclined to condone the delay and admit the appeal for hearing.

3. The only issue raised in the various ground of appeal is against the invalid exercise of jurisdiction by the PCIT u/s 263 of the Act thereby passing order u/s 263 of the Act which is invalid in the eyes of law.

4. Facts in brief are that a search action u/s 132 of the Act was conducted on the assessee on 23.04.2019. The assessee filed the return of income u/s 139(1) of the Act on 26.12.2018 declaring total income of Rs. 4,47,480/-. Accordingly proceedings u/s 153A were initiated by issuing a notice u/s 153A which was duly complied with by filing a return of income on 21.09.2021 declaring total income of Rs. 4,47,480/- . Thereafter statutory notices were duly issued and served on the assessee and finally the assessment was framed by accepting the returned income. The assessee is engaged in the business of construction. The PCIT upon perusal of the assessment record specially page 1 and 2 of the seized diary with identification no. AGH/02 observed that the assessee was incurring expenses in cash thereby making payments in cash on construction materials, plumbing charges, electrical charges, colouring material expenses, labour expenses etc which aggregated to Rs. 16,18,979/-. The details of the said cash payments were given by the PCIT in para 2 page 1 to 3 of the revisionary order. Similarly the PCIT noted that cash expenses at page 2 of AGH/02 were

29,950/- and thus total cash expenses were amounting to Rs. 16,48,929/- (Rs. 16,18,979/- + Rs. 29,950/-). According to PCIT, the order passed u/s 153A/143(3) of the Act dated 25.09.2021 appeared to be erroneous so far as prejudicial to the interest of the revenue within the meaning of Section 263 of the Act . Finally the assessment was revised and set aside vide order dated 18.03.2024 passed u/s 263 by asking the AO to make necessary verification and enquiry and frame the fresh assessment after making proper enquiries and after affording a reasonable opportunity of hearing to the assessee.

5. The Ld. A.R vehemently submitted before us that the PCIT has not decided the issue but directed the AO to enquire into these issues whereas the law mandates that the PCIT should have reached the definitive conclusion. The Ld. A.R vehemently submitted before us that in both these years, the assessments were framed u/s 153A of the Act. The Ld. A.R submitted that the AO framed the assessment in the impugned assessment year after after taking into account the seized material i.e. diary marked as AGH/02 and the additions were made in the assessment framed u/s 153A of the Act based on the said seized documents which were deleted by the Ld. CIT(A) in the appellate order and the revenue thereafter preferred an appeal before the Tribunal and the Tribunal vide order dated 02.09.2024 for AY 2019-20 and 2020-21 dismissed the appeals of the revenue. A copy of the said order passed by the tribunal is filed at page 182 to 190 and also that the copy of Ld. CIT(A) for AY 2019-20 is filed at page 199 to 349. The Ld. A.R submitted that the said seized documents were duly considered by the AO while passing the order u/s 153A/143(3) and only then the additions were made by the AO after taking into account all the cash payment and expenses incurred by the assessee. Therefore, the PCIT has no jurisdiction to revise the assessment u/s 263 of the Act. It is also a settled position of law that where the AO has taken a plausible view after appreciating the facts on records , the jurisdiction exercised by the PCIT order is bad in law. Besides, the PCIT has not recorded any conclusive findings on how the assessment framed by the AO is erroneous and prejudicial to the interest of the revenue and directed the AO to conduct enquiry/investigation which is against

the mandate of law. 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 wherein the Hon'ble Court has held that it is not open to PCIT to set aside the order for conducting enquiry. It was further held that the PCIT has to give a specific finding based on the enquiry conducted by him that the order passed by the AO is erroneous and prejudicial to the interest of the revenue.

6. The Ld. D.R relied heavily on the order of authorities below.

7. After hearing the rival contentions and perusing the material on record, we find that the issue of cash payment/cash expense as contained as AGH/02 which was the incriminating material found and seized during the course of search was already taken into account by the AO while framing the assessment and made additions based on the said material. We note that even the Ld. CIT(A) deleted the additions and the order of Ld. CIT(A) is available at page 191 to 349 of the paper book. The revenue went in appeal before the Tribunal against the order of Ld CIT (A) and The tribunal dismissed the appeal of the revenue a copy of the tribunal order is available at page 160 -170 of the paper book. Therefore this is apparently and abundantly clear from the above that the AO has applied his mind and taken a plausible view on the issue on the basis of the said seized document. Therefore, the jurisdiction of PCIT is not sustainable in our opinion. Moreover, the PCIT is merely restored the issue to the file of AO for conducting enquiry and investigation without giving any specific finding as to how the assessment is erroneous and prejudicial to the interest of the revenue. Considering all the facts and legal position, we are inclined to quash the proceedings u/s 263 of the Act and also consequent order passed by 263 of the Act. The appeal of the assessee is allowed.

ITA NO. 2045/Kol/2024 for AY 2019-20.

8. The only issue raised above various grounds of appeal is against the invoking the jurisdiction u/s 263 of the Act by Id PCIT invalidly without satisfying the conditions as envisaged under section 263 of the Act.

9. Facts in brief are that the assessment u/s 153A of the Act was framed vide order dated 28.09.2021 assessing the income at Rs. 2,27,86,310/-. The PCIT, upon perusal of the assessment records, observed that the assessee was engaged in the construction work and has made various payments in cash. According to PCIT a sum of Rs. 2,31,21,109/- which was on account of sale of eight flats by the assessee was received in cash as per seized diary being Identification mark AGH/02 and the assessee has only disclosed transactions through banking channel to the tune of Rs. 13,48,200/- and thus the remaining amount of Rs. 2,17,72,909/- has been received in cash which required to be added to the income of the assessee which has rendered the assessment framed as erroneous and prejudicial to the interest of the revenue. Similarly the PCIT on the basis of AGH/01 observed that there are certain transactions which were not recorded in the books of account which was given at page no. 3 of the revisionary order and aggregated to Rs. 61,42,084/- which also needed to be added to the income of the assessee. As the income of the assessee has been under assessed, therefore the assessment framed u/s 153A/ 143(3) of the Act dated 28.09.2021 for AY 2019-20 appeared to be erroneous and prejudicial to the interest of the revenue. The PCIT finally set aside the assessment with the direction to frame the assessment de novo after conducting proper enquiry vide order dated 18.03.2024 passed u/s 263 of the Act.

10. The Ld. A.R vehemently submitted before us that the observations of the PCIT are based upon the wrong appreciation of facts as contained in the diaries marked as AGH/01 and AGH/02. The Ld. A.R submitted that these documents were already taken into account by the AO at the time of assessment proceedings u/s 153A and the necessary additions were made to the income of the assessee which were deleted by the Ld. CIT(A) and the appeal filed by the revenue before the Tribunal has also been dismissed. The Ld. A.R stated by referring to the details of income disclosed by the

assessee in the return of income filed itself which included the amount of receipts from sale of 8 flats of Rs. 2,31,21,109/-. The Ld. A.R argued that income has offered to tax by the assessee in the return filed u/s 139(1) of the Act and therefore the order passed by the AO neither erroneous and nor prejudicial to the interest of the revenue and may kindly be quashed.

11. The Ld. D.R relied on the orders of authorities below.

12. After hearing the rival contentions and perusing the material on record, we find that the Ld. CIT(A) has totally misconstrued the facts as contained in assessment records. The PCIT upon perusal of the seized diaries marked as AGH/01 and AGH/02 noted that the assessee has received cash payments amounting to Rs. 2,31,21,109/- from sale of eight flats and the assessee has only disclosed Rs. 13,48,200/- which were received through banking channel and Rs. 2,17,72,909/- received through cash was not disclosed by the assessee in the return of income. Similarly the PCIT at page 3 of the revisionary order noted on the basis of AGH/1 that the assessee has not shown transactions amounting to Rs. 61,42,084/- in the books of accounts which are required to be added to the income of the assessee. We observe that the findings and observations of ld PCIT(A) were wrong and against the facts on record as the seized documents namely AGH/01 and AGH/02 were already considered by the AO while framing the assessment and made the additions based thereupon. Even on the issue of cash received by the assessee from sale of eight flats, we note that the no cash was received by the assessee. The amount stated to have been received in cash by the ld PCIT from sale of flats was in fact received by cheques and was offered to tax in the return filed u/s 139(1) of the Act . The copy of statement showing sales of flats, ITR, Balance Sheet and computation of income are extracted below:

GOPAL BANIK
Statement of Sales of Flats
A.Y. 2019 - 20

Particulars	Flat(sq.ft.)	Rate	AS PER PCIT	N.B.-The assessee offered tax in Return and accepted u/s 143(1) as well as 143(3)/153A read with 153D of the I.T.Act	
Ramanand Kushwaha & Other [Flat-1C]	1.000	2810/-	28,10,000.00		
Madhu Tiwari & Other [Flat-1C]	490	2653/-	13,50,000.00		
Subhadeep Saha [Flat-1B]	852	3239.44	27,60,000.00	Gross amount received (all by a/c payee cheques)	2,10,66,109.00
Subhadeep Saha [Flat-1A]	859	3300/-	28,34,700.00	(Page 42 to 57 of Written Submission)	
Biswanath Karmakar [Flat-2A]	859	3200/-	27,48,800.00	Less: Indexed Cost of Acquisition: [11,85,282/-X280/122]	(-)27,20,319.00
Bharati Ghosh [Flat-3A]	859	3251/-	27,92,609.00	Capital Gains Offered.	1,83,45,790.00
Soujmen Sasmal [Flat-3B]	852	3140/-	26,75,000.00		
Aniirban Bandhopadhyay [Flat-3C & 3D]	1425*	3057/-	51,50,000.00		
TOTAL			2,31,21,109.00		
(* should be Rs, 1423/- as per seized paper)					
Less: Received by cheque			13,48,200.00		
to be taxed - Amount received in Cash			2,17,72,909.00		
Less: Calculation mistake in last item =1423X3057=43,50,000/- but taken as Rs. 51,50,000/- [51,50,000/---43,50,000/-]=			8,00,000.00		
To be taxed as per PCIT			2,09,72,909.00		

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INDIAN INCOME TAX RETURN ACKNOWLEDGEMENT						Assessment Year 2019-20	
[Where the data of the Return of Income in Form ITR-1 (SAHAJ), ITR-2, ITR-3, ITR-4, ITR-5, ITR-6, ITR-7 filed and verified electronically]							
PERSONAL INFORMATION AND THE ACKNOWLEDGEMENT NUMBER	Name GOPAL BANIK				PAN AEGPB1186E		
	Flat/Door/Block No 256 NETAJI COLONY		Name Of Premises/Building/Village		Form Number. ITR-3		
	Road/Street/Post Office B T ROAD		Area/Locality NOAPARA, BARANAGAR				
	Town/City/District KOLKATA		State West Bengal		Pin/ZipCode 700090		Status Individual Filed u/s 139(1)-On or
	Assessing Officer Details (Ward/Circle) CENTRAL CIR 4(1), KOLKATA				e-filing Acknowledgement Number 216389751241019		
	1	Gross total income	2	Total Deductions under Chapter-VI-A	3	Total Income	19886263
	3a	Deemed Total Income under AMT/MAT	3	Current Year loss, if any	3a	Net tax payable	160000
	3b	Interest and Fee Payable	4	Total tax, interest and Fee payable	5	Taxes Paid	19726260
	4	Net tax payable	5	Total tax, interest and Fee payable	6	Taxes Paid	0
	5	Interest and Fee Payable	6	Total tax, interest and Fee payable	7e	Refund (7e-6)	4659376
6	Total tax, interest and Fee payable	7a	Advance Tax	7b	TDS	123556	
7a	Advance Tax	7b	TDS	7c	TCS	4782932	
7b	TDS	7c	TCS	7d	Self Assessment Tax	0	
7c	TCS	7d	Self Assessment Tax	7e	Total Taxes Paid (7a+7b+7c +7d)	0	
7d	Self Assessment Tax	7e	Total Taxes Paid (7a+7b+7c +7d)	8	Tax Payable (6-7e)	0	
7e	Total Taxes Paid (7a+7b+7c +7d)	8	Tax Payable (6-7e)	9	Refund (7e-6)	0	
8	Tax Payable (6-7e)	9	Refund (7e-6)	10	Exempt Income	0	
9	Refund (7e-6)	10	Exempt Income		Agriculture	0	
10	Exempt Income		Agriculture		Others	0	
	Agriculture		Others			0	
	Others					0	

Income Tax Return submitted electronically on 24-10-2019 14:22:59 from IP address 45.112.71.237 and verified by GOPAL BANIK having PAN AEGPB1186E on 24-10-2019 14:22:59 from IP address 45.112.71.237 using Digital Signature Certificate (DSC)

DSC details: 2627318682816675905CN=SafeScript sub-CA for RCAI Class 2 2014,OU=Sub-CA,O=Sify Technologies Limited,C=IN

DO NOT SEND THIS ACKNOWLEDGEMENT TO CPC, BENGALURU

Gopal Banik

M/S GOPAL BANIK
PROP : SRI GOPAL BANIK
256 Netaji Colony, Noapara
Baranagar, Kolkata-700090

BALANCE SHEET AS ON 31-03-2019

<u>CAPITAL & LIABILITIES</u>		<u>Amount(Rs)</u>	<u>PROPERTY & ASSETS</u>	<u>Amount(Rs)</u>
<u>Gopal Banik's Capital A/c</u>				
Balance As Per Last A/c		1,84,34,721.62	<u>Fixed Assets</u>	
Add: Director Remuneration		4,80,000.00	Land at Baguiati	11,85,282.00
Add: Profit from Fishery Business		9,78,615.00	Less: Sale	<u>11,85,282.00</u>
Add: Rent from Goldlites		60,000.00	Land & Building (48/1Q, B.T Road)	37,98,737.00
Add: Long term capital gain		1,98,80,827.00	Land & Building (Baranagar)	2,90,000.00
Add: SB Interest		<u>79,858.00</u>	Other Fixed Assets	1,05,000.00
		3,99,14,021.62	Land 50% share with Rohit Soni	59,64,754.00
Less: Drawings		<u>10,27,012.00</u>	<u>Investment</u>	
		3,88,87,009.62	M/s Abhinandan	17,28,037.31
			Abhinandan Garments (P) Ltd	10,00,000.00
			Daylight Deal Trade (P) Ltd	12,90,000.00
			Intent Dealers (P) Ltd	14,84,662.00
			ICICI Prudential	20,00,000.00
			Rajhans Properties	42,50,000.00
			Sree Durga Construction	3,63,87,725.00
			Sealdah Forex Private Limited	20,00,000.00
			LIC paid this year	5,60,212.00
			<u>Current Assets, Loans & Advance</u>	
			Debrup Banik	36,82,000.00
			KB Pharma	<u>32,00,000.00</u>
				68,82,000.00
			Director Remuneration Receivable	12,00,000.00
			Rent Receivable	4,500.00
			TDS	6,000.00
			Advance Tax	34,00,000.00
			<u>Cash & Bank Balance:</u>	
			Canara Bank (Joint A/c)	12,382.00
			Canara Bank	3,82,677.48
			SBI	<u>67,298.67</u>
				4,62,358.15
			Cash-in-hand	14,56,789.16
				<u>7,42,70,774.62</u>
				<u>7,42,70,774.62</u>
<u>Unsecured Loan</u>				
Better Choice Merchant	15,00,000.00			
Girdhar Tradecom Pvt Ltd	35,00,000.00			
Glossy Dealcom Pvt Ltd	20,00,000.00			
Vihaan Deal Trade Pvt Ltd	25,00,000.00			
Neelkamal Commodities Pvt Ltd	70,00,000.00			
Soumita Overseas Pvt Ltd	10,00,000.00			
Rita Banik	63,56,806.00			
Basudeb Dutta Banik	10,32,000.00			
Bulbul Banikmajumder	10,86,000.00			
Dilip Kr. Banik	11,94,000.00			
Gopal Banik HUF	11,28,000.00			
Jamuna Duttabanik	11,84,000.00			
Syama Sil	10,64,000.00			
Sipra Banik	11,91,000.00			
Trinath Banikmajumder	<u>11,07,000.00</u>	3,28,42,806.00		
<u>Current Liabilities</u>				
Advance against Land	18,21,000.00			
Sundry Creditors	6,87,959.00			
Audit Fees	3,000.00			
Professional Fees	12,000.00			
Salary	<u>17,000.00</u>	25,40,959.00		
		<u>7,42,70,774.62</u>		



Sign in terms of our report of even date
For, G C Sinha & Associates
Chartered Accountants

Gobinda Chandra Sinha
(Proprietor)

19/10/2019

SRI GOPAL BANIK
256 Netaji Colony, Noapara
Baranagar, Kolkata-700090

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STATEMENT OF TOTAL INCOME & COMPUTATION OF TAX FOR THE F.Y.2018-2019

<u>INCOME FROM SALARY</u>			
Director Remuneration from Abhinandan Guest House Pvt. Ltd.		480,000.00	
Less: Standard Deduction		<u>40,000.00</u>	440,000.00
<u>INCOME FROM HOUSE PROPERTY</u>			
Rent Received		60,000.00	
Less: Standard Deduction @ 30%		<u>18,000.00</u>	42,000.00
<u>INCOME FROM BUSINESS</u>			
Net Profit from Fishery Business			978,615.00
<u>INCOME FROM CAPITAL GAIN</u>			
Gross Received		21,066,109.00	
Less: Index Cost of Acquisition (11,85,282/- * 280/122) (F.Y. 2006-07 Rs. 122/- and F.Y. 2018-19 Rs. 280/-)		<u>2,720,319.00</u>	18,345,790.00
<u>INCOME FROM OTHER SOURCES</u>			
S. B. Interest			
Gross Total Income			<u>79,858.00</u>
<u>LESS: DEDUCTION CHAPTER-VIA</u>			<u>19,886,263.00</u>
U/s 80C			
SB Interest U/s 80 TTA		150,000.00	
Total Income		<u>10,000.00</u>	<u>160,000.00</u>
Rounded Off			19,726,263.00
			19,726,260.00
Tax on Special Rate @ 20% of Rs. 1,83,45,790/-			3,669,158.00
Tax on Normal Rate of Rs. 13,00,870/-			<u>226,641.00</u>
Add: Surcharge @ 15%			3,895,799.00
			<u>584,370.00</u>
Add: Health & Education Cess @ 4%			4,480,169.00
Total Tax Payable			<u>179,207.00</u>
Less: T.D.S.			4,659,376.00
			<u>6,000.00</u>
Less: Advance Tax on 29/11/2018			4,653,376.00
			<u>3,400,000.00</u>
			1,253,376.00
Add: Interest U/s 234A		4533	
Add: Interest U/s 234B		66,935.00	
Add: Interest U/s 234C		<u>52,088.00</u>	<u>123,556.00</u>
Total Tax Payable			1,376,932.00
Less: Tax Paid U/s 140A		180,000.00	
		<u>620,000.00</u>	<u>800,000.00</u>
Balance Tax Payable			<u>576,930.00</u>

(Annexed to & forming part of the I.T.R. for the A.Y. 2019-2020)

Gopal Banik

We note that the assessee has already offered this amount to tax in the return filed u/s 139(1) as apparent from the statement of sale of flats and computation of income and also the acknowledgment filed before us which are extracted above. Considering the facts and circumstances, we are inclined to quash the revisionary proceedings u/s 263 of the Act as well as the order passed u/s 263 of the Act.

13. In the result, both the appeals of the assessee are allowed.

Order is pronounced in the open court on 17th December, 2024

Sd/-

Sd/-

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
Judicial Member/न्यायिक सदस्य

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

Dated: 17th December, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Gopal Banik, 20, A.P.C. Road, Kolkata-700069
2. Respondent – PCIT, Central, Kolakta-2
3. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata