

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA

**SHRI SANJAY GARG, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 2048/Kol/2024
Assessment Year: 2013-14**

**I.T.A. No. 2049/Kol/2024
Assessment Year: 2014-15**

**I.T.A. No. 2050/Kol/2024
Assessment Year: 2015-16**

**I.T.A. No. 2051/Kol/2024
Assessment Year: 2016-17**

Income Tax Officer, Kolkata,
3, Govt. Place, (West) – 700001 **Appellant**

vs.

Rajesh Kumar Jalan,
161/1, M.G. Road, Burrabazar,
Kolkata - 700007 **Respondent**
[PAN: AMKPJ4084B]

Appearances by:

Assessee represented by : None
Department represented by : Loviesh Shelley, Addl. CIT, Sr. DR

Date of concluding the hearing : 17.12.2024
Date of pronouncing the order : 23.12.2024

ORDER

PER BENCH:

1. This is a batch of four appeals of the same assessee pertaining to AYs 201-14 to 2016-17. These appeals arise from four orders of the Ld. Commissioner of Income Tax (Appeals) (in short' the Ld. CIT(A)] u/s 250 of the Income Tax Act, 1961, (hereafter “the Act”), all dated 02.08.2024.

1.1 Right at the outset, it was noticed that the appeal for AY 2013-14 (ITA No. 2048/Kol/2024) was below the tax limit for filing of appeals by Revenue, vide CBDT's Circular No. 9/2024 dated 17.09.2024. However, since the four appeals have inter-connected facts and common findings by the authorities below, we deem it fit to take up adjudication on the core issues and only if required, then the issue of low tax effect would be considered in one case.

1.2 The assessee has approached the ITAT through the following grounds (for the sake of convenience grounds of appeal are taken from ITA No. 2048/Kol/2024):

"1. on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by AO to the tune of Rs.57,20,959/- as shortfall of Profit for the A.Y. 2013-14 ignoring the circumstantial evidence brought on record by the A.O. that the entire amount credited to the bank account of the assessee is actual turnover of the assessee for the A.Y. 2013-14.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by AO based on the submission of the assessee ignoring the report of the Commercial Tax Authorities and in absence of any enquiry report of Police Authority in support of the claim of the assessee.

3. Whether on the facts and circumstances of the case and in law the order of the Ld. CIT(A) suffers from perversity as it ignores the facts brought on record by the Assessing Officer establishing the fact that the assessee has not discharged the burden of proof lies on him with the aim to evade tax.

4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by AO by following the decision of Hon'ble ITAT in the assessee's case for the A.Y. 2015-16 & 2016-17 where the judgement was not rendered through analysis and adjudication of the factual issues involved in this case.

5. The appellant craves leave to add further grounds or alter the grounds at the time of hearing."

2. The common facts pertaining to these four cases can be best highlighted from an extract from the Ld. CIT(A)'s order for AY 2013-14 (ITA No. 2048/Kol/2024), which is being taken as the lead case for the present adjudication. The relevant extracts are as under:

2.1. The appellant is an individual filed the return of income for the A.Y. 2013-14 on 27.05.2013 admitting a total income of Rs.2,15,920/-. In this case, the AO received

information from the Commercial Taxes Investigation Unit, West Bengal that the appellant received huge amount into his current accounts maintained from some of the traders in the AY 2013-14 to 2016-17 into various proprietary concerns maintained by him.

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2.5. The appellant explained the background of the Investigation conducted by the Commercial Taxes Department and the advice given by the Commercial Taxes Department to file Police Complaint on misusing of his identity by some unknown persons. He claimed that he was the victim of some Cyber Criminals who used fake documents and obtained trading license in his name by opening various Bank Accounts. He has pleaded before the AO not to proceed with such information to pass assessment order. Further, he has requested for VC and that was conducted on 30.03.2021 for the AY 2013-14 and 2014-15. During the course of VC also the AR of the appellant requested not to proceed with exparte assessment by claiming that the KYC details of the appellant were stolen from Bank and the he has already lodged Police Complaint against those Fraudsters.

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2.1. Thereafter the Ld. CIT(A) is seen to have relied on ITAT's order in the assessee's own case for AYs 2015-17 and 2016-17 passed on orders u/s 263 of the Act, which had been set aside with the following recording of facts are as under:

10.2 In this connection another crucial fact needs to be brought on record. The reassessment proceedings for the AY 2015-16 & 2016-17 were also carried out in the case of the appellant. In those years the alleged sales turnover suppressed by the appellant was Rs.30,03,78,690/- and Rs.42,63,85,896/- respectively. The reassessment proceedings were completed by the AO by estimating the net profit in similar line that of AY 2013-14 and 2014-15. The appellant filed appeal against those orders passed by the AO. However, the estimation of profit by the AO on the turn-over was not accepted by PCIT, Kolkata-13 and he has passed order u/s 263 of the IT Act dated 14.12.2023 & 15.12.2023 by directing the AO to treat entire turn-over as the undisclosed income of the appellant. Accordingly, the AO passed consequential order on 28.03.2024 by revising the total income wherein the entire turn-over was added back."

"10.3. Meanwhile, the appellant preferred appeal against the order of PCIT before Hon'ble ITAT, Kolkata. Hon'ble ITAT set aside the order of PCIT with following observation:

'20. It is pertinent to observe that at the first instance, the assessee submitted that he has not opened any bank accounts, rather somebody has personated him. His case is based on the issue that his IDs have been misused and some unknown person has carried out these transactions in his name. He could only know about this when he received information from Sale Tax Authorities, Bureau of Investigation, Commercial Taxes. He pleaded this stand before those agencies also, but none of the agencies has culminated the inquiry into a positive finding. Nobody has recorded a specific finding that this plea of the assessee is false. We have taken note of the show-cause notice issued by the

Id. Commissioner in paragraph no. 4.2 reproduced (supra) and after the show-cause notice, the finding of the Id. Commissioner is that the assessee was asked to submit his audited balance-sheet, books of account for A.Ys. 2014-15 and 2015-16 along with proof of vouchers/invoices in original, purchases and sales. He further observed that the assessee was asked to appraise about the status of the complaint lodged by him in Konnagar Police Station. Thereafter he recorded the finding that the assessee failed to give anything. To our mind, this cannot be expected from a Senior Officer of the Income Tax Department to put somebody under the Tax liability without concluding the finding. He ought to have issued notice to the Police Authorities as well as to the Commercial Tax Investigating Authorities for submission of their report. He ought to have first determined whether these accounts belong to the assessee, only thereafter taxability of the amounts available in those accounts would have fallen upon the assessee.

21. A perusal of the impugned orders would reveal that neither the Id. CIT has applied his mind analytically while assuming jurisdiction for taking cognizance under section 263. We have specifically noticed that details in paragraph no. 17 of this order and we find that after narrating the facts, Id. CIT just observed on verification of the record, it is found that the amount of Rs. 42,14,37,039/- was to be added and taxed instead of 8%, hence underassessment occurred, which is adverse to the revenue. We failed to appreciate, which aspect was verified by him because he has just reproduced the proposal sent by the Additional CIT, Circle-43. There is no independent application of mind at his end for taking cognizance under section 263.

21.1. Apart from the above, while dealing with explanation of assessee in paragraph no. 4.3 of the impugned order, we find that id. CIT has not recorded any finding. He just put the blame on the assessee to prove a negative aspect. It is for the revenue to first determine that these accounts belong to the assessee. Once the assessee has been emphasizing that these accounts do not belong to him and he has lodged a FIR in such situation, there should be adjudication of this aspect but Id. CIT simply ignored this aspect under the garb that the assessee failed to substantiate this issue. It cannot be substantiated by the assessee, It is to be investigated by the Id Assessing Officer or by the Id. CIT The role of the Id. Assessing Officer is not only a prosecutor but he has to play a role of an adjudicator. That very role has to be played by the Id. Commissioner while exercising the powers under section 263.

22. We could have set aside to the issue to Id. CIT for recording a categorical finding on this fold of issue but for the reasons to be recorded by us in the subsequent paragraph, we do not deem it necessary to set aside this issue.

23. As observed earlier, we have construed the meaning of clause (c) of section 263(1). The Id. CIT in the present proceeding has treated the assessment orders as erroneous and prejudicial to the interest of the revenue, but failed to note that these assessment orders are challenged before the Id. CIT(Appels). The assessee has been disputing before the Id. 1st Appellate Authority that these accounts do not belong to him. It is yet to be decided whether these accounts belong to the assessee and additions made by the Id. Assessing Officer at 8% of the alleged gross turnover is sustainable or not. In other words, it is a subsequent stage whether the total amounts credited to the accounts deserve to be treated as cash credit of the assessee or not. This issue is pending before the Id. CIT(Appels). It is directly linked to the

issue taken up in 263 proceedings. The Id. 1st Appellate Authority has co-terminus powers of the Id. Assessing Officer if it is felt that the total amount deserves to be considered as an unexplained credit of the assessee, then, that aspect could be looked into by the Id. 1st Appellate Authority and no revisionary power ought to have been exercised on that aspect.'

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3. It is in this backdrops that the documents before this Bench were carefully perused and the Ld. DR was requested to assist the Bench in finalizing the adjudication.

3.1 Briefly, on a recapitulating the facts, it is clear that the assessee has denied his involvement in the transactions informed to the Ld. AO by the Sales Tax Authorities. The assessee has even filed necessary complaints before the police authorities. However, the Ld. AO is not seen to have acted on these leads for conducting further enquiries to arrive at the actual facts, which could have determined the culpability, or otherwise, of the assessee. It also needs to be mentioned that the findings recorded for AY 2015-16 and 2016-17 by the ITAT regarding the proceedings u/s 263 of the Act has considerable persuasive value in as much as the deficiencies in fact finding have been highlighted.

3.2 On a consideration of the entire gamut of facts and circumstances, these four matters are fit cases for remanding back to the Ld. AO for conducting fair investigations with the Sales Tax Authorities and Police Authorities to ascertain the present status of the allegations and thereafter pass a speaking assessment order.

4. In the result, these fours appeals filed by the Revenue are allowed for statistical purposes.

Order pronounced in the court on 23.12.2024

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 23.12.2024.
AK, PS

Copy of the order forwarded to:

1. Rajesh Kumar Jalan
2. The Income Tax Officer, Kolkata
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches