

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA**

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

**I.T.A. No. 905/Kol/2024  
Assessment Year: 2017-18**

**Hiranmoy Das,**  
Plot No. 258, Shibpur Road,  
Muchipara, Durgapur – 713212  
[PAN: ACRPD6934D] ..... **Appellant**

**vs.**

**Principal Commissioner of Income Tax,  
Asansol,**  
Aayakar Bhawan, 116, Videkananda Sarani,  
Asansol – 713341 ..... **Respondent**

**Appearances by:**

Assessee represented by : Manoj Tiwari, AR  
Department represented by : Subhendu Datta, CIT-DR

Date of concluding the hearing : 10.12.2024  
Date of pronouncing the order : 18.12.2024

**ORDER**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER:**

1. In this case, the ITAT Registry has pointed out a delay of over 700 days in the filing of this appeal. A request for condonation of delay has been received through an affidavit as under:

*"I Hiranmoy Das of Plot No. 258, Shibpur Road, Muchipara, Durgapur-713212, West Bengal, having PAN : ACRPD6934D, hereby affirm the under mentioned statements, which are true to the best of my knowledge and belief:*

- 1. That I received the Revision order u/s 263 of the Income Tax Act, 1961 for the Assessment Year 2017-18 on 24.02.2022.*
- 2. That appeal against the said Order should have been filed on or before 25.04.2022.*
- 3. That there is a delay of 728 (SEVEN HUNDRED AND TWENTY-EIGHT) days in filing the appeal.*

4. *That when Revision Order was received, the assessee appellant consultant and it was advised that the Revision Order is not appealable but Assessment Order passed in consequence thereof will be only appealable.*
5. *That when Appellate Proceedings commenced in second week of April, 2024, a senior consultant was hired for facilitation in disposal of appellate proceedings. The senior consultant advised us that we must appeal against the Revision Order u/s 263 as it is appealable and then immediately appeal was filed before the Hon'ble Tribunal.*
6. *That for an assessee like me the above benefit is immense and of enormous proportion if your Honour grants permission for decision on merit and hence I request your kind conscience for condonation of delay of 728 (SEVEN HUNDRED AND TWENTY- EIGHT) days.”*

In support of the affidavit, the assessee has also filed a detailed six page submission on legal issues in support of his claim for condoning the delay.

1.1 Considering the reasons advanced in the petition and also the written submissions filed, we admit this appeal for adjudication after condoning the said delay.

2. The present appeal preferred by the assessee emanates from the order of the Ld. Principal Commissioner of Income Tax, Asansol (in short 'the Ld. PCIT] dated 24.02.2022, passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") for Assessment Year 2017-18.

2.1 Aggrieved with this action, the assessee has approached the ITAT through following grounds of appeal:

*“1. For that, on the facts and in the circumstances of the case as well as in law, the order of the Ld. Principal Commissioner of Income-tax, Asansol is perverse, rather against evidence and material on record and without an iota of material or evidence to support and sustain the same.*

*2. For that, on the facts and in the circumstances of the case as well as in law, the order of the Ld. Principal Commissioner of Income-tax, Asansol is arbitrary, illegal, excessive, perverse and bad in law.*

*3. For that, on the facts and in the circumstances of the case as well as in law, the Ld. Principal Commissioner of Income-tax, Asansol erred in passing the order under section 263 of the Income-tax Act, 1961 without giving a fair and reasonable opportunity of hearing to the assessee and thereby violating the principles of natural justice.*

*4. For that, on the facts and in the circumstances of the case as well as in law, the Ld. Principal Commissioner of Income-tax, Asansol grossly erred in holding that the*

*order under section 143(3) passed by the Assessing Officer on 31.12.2019, is erroneous and prejudicial to the interests of the Revenue.*

*5. For that, on the facts and in the circumstances of the case as well as in law, the Ld. Principal Commissioner of Income-tax, Asansol grossly erred in holding that the Assessing Officer while passing the order under section 143(3) did not properly examine the issues with regard to: -*

*(1) Disallowance of VAT amounting to Rs. 1,10,69,770/- and charged to Income-tax as per the Income-Tax Act, 1961;*

*(ii) Bogus purchase amounting to Rs. 1,83,70,974/- being unexplained was required to be taxed at the special rate of 60 percent under section 115BBE of the Income-Tax Act, 1961;*

*6. For that, the assessee appellant craves leave to add, alter or amend any ground before or at the time of hearing.”*

3. In this case, the impugned order is basically on two issues as under:

- (i) The allegation that VAT of Rs. 1,10,69,770/- was not paid before the due date of furnishing the return of income even though the same was passed as an entry in the Profit & Loss Account.
- (ii) It has been alleged in the impugned order that bogus purchase amounting to Rs. 1,83,70,974/- were made to suffer normal tax rate instead of enhanced tax rate as mandated u/s 115BBE of the Act.

3.1 The Ld. PCIT after issuing a notice to the assessee directed that the so-called VAT liability, which was passed through the P & L Account and not paid “within the due date”, should have been disallowed, for which the Ld. AO was given suitable directions. Secondly, it was held that an amount of Rs. 1,83,70,974/- should have suffered enhanced tax rate u/s 115BBE of the Act at par with the addition on account of unexplained sundry creditors amounting to Rs. 1,00,42,334/-.

4. Before us, the Ld. AR has taken us through the P & L Account statement and pointed out that the fact of not booking the VAT liability in the P & L Account was duly brought to the notice of Ld. PCIT, but he chose

to ignore the same and erroneously went by a particular entry in the P & L Account. It has also been averred that later a corrigendum to Form 3CD was filed in which the CA conducting the audit has specifically mentioned that "CST and excise duty is passed through the P & L Account and VAT was not passed through P & L account". Regarding the charging of tax at enhanced rate on the amount of Rs. 1,83,70,974/-. The Ld. AR has assailed the very basis for the addition but has not specifically said anything about the applicability, or otherwise, of the higher tax rate.

4.1 The Ld. DR has supported the order of PCIT in this matter.

5. We have carefully considered the averments of Ld. AR/DR and also gone through the records and documents before us. It is seen that the corrigendum/clarification issued by auditor is factually dated 26.06.2024 and thus the same could certainly not have been before the Ld. PCIT. for the sake of reference, the said page is extracted as under:

"Corrigendum to Form 3CD

*"We declare that there is corrigendum to Form 3CD (See Rule 6G(1)(b)) audit report under section 44AB of the Income-tax Act, 1961 in the case of Sri Hiranmoy Das, PAN: ACRPD6934D of Plot No.-258, Shibpur Road, Muchipara, Durgapur, West Bengal, 713212 filed vide Acknowledgement No.258415331261017dated 26-Oct-2017 for the assessment year 2017- 2018 as follows:*

*"In point no.26 of the said Form 3CD it was said that "YES, VAT IS PASSED THROUGH THE PROFIT AND LOSS ACCOUNT" the Word VAT will be replaced with CST and Excise Duty and Value Added Tax (VAT) was not passed through Profit & Loss account."*

4. Since this document could not have been before the Ld. PCIT and has been filed for the first time before the ITAT, it would be in the fitness of things to remand the matter back to the file of Ld. PCIT for examining this document and thereafter re-considering the directions given regarding the taxability of an amount of Rs. 1,10,69,770/-. We direct accordingly.

5.1 Regarding the other amount of Rs. 1,83,70,974/-, it is seen that the Ld. AO has not specifically mentioned any section while making the said addition. In this regard, his finding in para 9 at page 4 is clear in as much

as there is no mention of any section of the Act. At this point when we consider the provision of section 115BBE of the Act it is clear that the said section specifically applies to sections 68, 69,69A,69B,69C and 69D of the Act. Since the Ld. AO has not used any of these sections and even the Ld. PCIT has not specifically mentioned any of these sections under which the said addition could have been made for triggering the provisions of section 115BBE of the Act. In light of this fact, the action of Ld. Pr. CIT in giving the impugned directions for taxing the amount at a higher rate, cannot be supported and is directed to be struck down.

6. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the court on 18.12.2024

Sd/-  
**[Sanjay Garg]**  
**Judicial Member**

Sd/-  
**[Sanjay Awasthi]**  
**Accountant Member**

Dated: 18.12.2024.  
AK, PS

*Copy of the order forwarded to:*

1. Hiranmoy Das
2. Principal Commissioner of Income Tax, Asansol,
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches