

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No.1058/KOL/2024
(Assessment Year:2019-20)**

Vibgyor Enterprises
Ground Floor, 380A, Prince
Anwar Shah Road,
Lake Gardens S.O.,
Kolkata-700045
West Bengal

(Appellant)

Vs.

PCIT (Central)-1, Kolkata
Aaykar Bhavan, P-7,
Chowringhee Square,
Kolkata-700069,
West Bengal

(Respondent)

PAN No. AACFV8713B

Assessee by : Shri Amit Agarwal, AR

Revenue by : Shri PN Barnwal, DR

Date of hearing: 23.01.2025

Date of pronouncement : 31.01.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Pr. Commissioner of Income Tax (Central), Kolkata-1 (hereinafter referred to as the "Ld. PCIT"] dated 13.03.2024 for the AY 2019-20.

02. The only issue raised by the assessee in the various grounds of appeal is against the invalid exercise of jurisdiction u/s 263 of the Act, thereby setting aside the assessment order framed by the Id. Assessing Officer.
03. The facts in brief are that the assessee filed the return of income on 31.10.2019, declaring total income of ₹41,86,940/-. The assessee is engaged in the business of supply of materials to hospitals and also



running fair price medicine shops inside the hospitals. A survey u/s 133A of the Act was conducted on office/ commercial premises of the assessee. During the course of survey a statement was recorded of Shri Bhartish Chandra Consul, Managing Partner of the assessee's firm, wherein in question no.23, assessee was asked qua the salary drawn by the three partners from F.Ys. 2014-15 to 2018-19, which were duly disclosed by the partner in their respective returns of income. The aggregate of said salary comes to ₹63.90 lacs during the above said period. During the course of surveyh, it was asked that as to why the said salary should not be treated towards personnel expenses of the partner. In question no.24, which was denied by the partner however, voluntarily offered to tax of ₹49 lacs while filing the return of income. The assessee deducted ₹27,16,000/- on account of salary on which the tax has been paid by the partners and balance was offered to tax which was accepted by the Id. AO in the assessment proceedings of ₹143(3) dated 09.09.2021, assessing the total income of ₹53,70,843/-.

04. The Id. PCIT on perusal of the said order noted that the assessee only offered 50% of the salary as voluntarily offered by the partners for taxation during the year, however, while offering the said income, the assessee's claim for set off for tax claimed by the partners and consequently reducing the income of ₹27,16,500/- from the income on which tax was already paid by the partner for which there was no provision in the Act and accordingly, revised the assessment framed by the Id. AO by directing the Id. AO to frame the assessment afresh after offering reasonable opportunity of hearing to the assessee.
05. After hearing the rival contentions and perusing the materials available on record, we find that the assessee has offered ₹49 lacs



during the course of survey on account of salary paid to the partners over the years. We note that from F.Ys. 2014-15 to 2018-19, an aggregate salary of ₹63.90 lacs was paid which was also disclosed by the partner in the return of income and taxes were paid accordingly. While filing the return of income the assessee deducted ₹27,60,500/- which was already declared by the partners in the return of income and taxes were paid and only offered the remaining amount of tax in the return of income which was accepted by the Id. AO in the assessment framed. We note that the Id. PCIT has revised the assessment holding the same as erroneous, prejudicial to the interest of the Revenue. We note that in this case, the assessee has only deducted salary income of the partner on which the taxes were already paid, which according to the Id. PCIT is not as per the provisions of the Act. In our opinion, the Id. AO has accepted the contention of the assessee that income was already subjected to tax and therefore, cannot be assessed again as income. In our opinion, the Id. AO has taken a correct and possible view by accepting the return of the assessee. In our view, the jurisdiction u/s 263 of the Act by the PCIT is without any valid reason and without satisfying the conditions as envisaged u/s 263 of the Act. In our opinion, the Id. PCIT wanted to substitute his opinion in place of opinion of the Id. AO merely on the ground that he was not agreeing with the view of the Id. Assessing Officer. The case of the assessee finds support from the decision of Hon'ble Bombay High Court in the case of CIT vs. Gabriel India Ltd. in [1993]203 ITR 108 (Bom), wherein the Hon'ble High Court has held as under:

"14. We, therefore, hold that in order to exercise power under sub-section (1) of section 263 of the Act there must be material before the Commissioner to consider that the order passed by the Income-tax Officer was erroneous in so far as it is prejudicial to the interests of the Revenue. We have already held



what is erroneous. It must be an order which is not in accordance with the law or which has been passed by the Income-tax Officer without making any enquiry in undue haste. We have also held as to what is prejudicial to the interests of the Revenue. An order can be said to be prejudicial to the interests of the Revenue if it is not in accordance with the law in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised. There must be material available on the record called for by the Commissioner to satisfy him prima facie that the aforesaid two requisites are present. If not, he has no authority to initiate proceedings for revision.....

In our opinion, any other view in the matter will amount to giving unbridled and arbitrary power to the revising authority to initiate proceedings for revision in every case and start re-examination and fresh enquiries in matters which have already been concluded under the law.”

06. Similarly, where the Id. PCIT exercises revisionary jurisdiction and revises the assessment order passed by the AO then it is incumbent upon the PCIT to record a categorical finding as to how the assessment order passed by the AO is erroneous. But in the present case the Id. PCIT has simply exercised jurisdiction by giving directions to the AO without pointing out as to how the view taken by the AO was wrong thereby rendering the assessment passed him his as erroneous and prejudicial to the interest of the revenue.
07. In view of the above facts and legal position, we are of the considered opinion that the revisionary jurisdiction has been invalidly invoked and consequently we are inclined to quash the revisionary jurisdiction exercised by the PCIT.
08. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 31.01.2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 31.01.2025

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata