

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

ITA No. 457/Ind/2024
Assessment Year:2015-16

Isha Agrawal, 1, Aurangpura, Khargone (Assessee/Appellant)	<u>बनाम/</u> Vs.	PCIT-1, Indore (Revenue/Respondent)
PAN: AGFPA1915P		
Assessee by	Shri Anil Garg & Shri Ayush Garg, ARs	
Revenue by	Shri Ram Kumar Yadav, CIT-DR	
Date of Hearing	04.02.2025	
Date of Pronouncement	24.02.2025	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by revision-order dated 18.03.2024 passed by learned Pr. Commissioner of Income-Tax, Indore-1 ["PCIT"] u/s 263 of Income-tax Act, 1961 ["the Act"] which in turn arises out of assessment-order dated 11.09.2021 passed by learned NFAC, Delhi ["AO"] u/s 147 of the act for Assessment-Year ["AY"] 2015-16, the assessee has filed this appeal on the grounds raised in Appeal-Memo (Form No. 36).

2. The background facts leading to present appeal are such that the assessee filed return of income of relevant AY 2015-16 declaring certain incomes which were duly assessed. Subsequently, the AO issued notice u/s 148 for re-opening assessee's case u/s 147 on the reasoning that the assessee has received accommodation entry from M/s Trimurthi Finvest Ltd. ["M/s Trimurthi"], a shell company of Shri Sharad Darak. Ultimately, the AO finalized re-opened assessment vide assessment-order dated 11.09.2021 after making an addition of Rs. 25,00,000/- on account of principal amount of bogus loan taken by assessee from M/s Trimurthi. Subsequently, Ld. PCIT examined the record of assessment-proceeding and viewed that the assessment-order passed by AO is erroneous in so far it is prejudicial to the interest of revenue which attracts revisionary-jurisdiction u/s 263. Accordingly, the PCIT issued show-cause notice dated 18.01.2024 and finally passed revision-order dated 18.03.2024 u/s 263. Aggrieved by such revision-order, the assessee has come in this appeal before us.

3. Ld. AR for assessee carried us to the impugned order and pointed out that there are two issues identified by Ld. PCIT for conducting revision, as under:

- (i) The assessee has paid interest of Rs. 1,44,247/- to M/s Trimurthi on the impugned loan taken but the AO has not disallowed the same.

(ii) The AO has not made addition of Rs. 75,000/- on account of commission @ 3% of Rs. 25,00,000/- paid for arranging impugned loan.

4. Then, Ld. Representatives of both sides made their submissions with respect of above issues. We present below their submissions alongwith our adjudication.

Issue No. (i) of interest payment:

5. In this regard, Ld. AR for assessee made following submissions:

(i) That, the assessee has already filed appeal before CIT(A) challenging the addition of Rs. 25,00,000/- made by AO on account of principal amount of loan. Since the interest of Rs. 1,44,247/- is paid on the very same loan, the issue of interest is also a subject-matter for consideration and decision by CIT(A). Therefore, the Ld. PCIT has no legal authority to invoke revisionary jurisdiction as per 'doctrine of merger'. In support of this proposition, Ld. AR relied upon three decisions, viz. *JMC Projects (India) Ltd. Vs. PCIT (2016) 136 DTR 0279 (Guj)*, *Smt. Renuka Philip Vs. ITO (2018) 12 TMI 129* and *M/s RNR Devcon Vs. PCIT (2019) 11 TMI (1000) (Trib-Indore)*.

(ii) That, in the reasons recorded by AO for re-opening assessee's case, there is no whisper about interest payment. Hence, the AO was not

wrong in not making any disallowance while passing assessment-order. While arguing this, Ld. AR though accepted in open court that whenever the loan is treated as bogus, the disallowance of interest paid thereon automatically follows and is always made by assessing authorities.

- (iii) That, the assessee has filed return of income declaring business income of Rs. 1,54,027/- on turnover of Rs. 11,85,275/- under presumptive scheme of section 44AD and therefore the assessee has not claimed any separate deduction of interest of Rs. 1,44,247/- paid to M/s Trimurthi. Further, the assessee is not required to maintain any books of account as per immunity granted by section 44AD. When there is no separate deduction claimed by assessee, there cannot be any disallowance as alleged by Ld. PCIT. Hence, in the situation, the assessment-order passed by AO is neither erroneous nor prejudicial to the interest of revenue.

6. Per contra, Ld. DR for revenue submitted that the interest disallowance is absolutely different from addition of principal loan made by AO. He submitted that the first-appeal of assessee before CIT(A) is qua the addition of principal loan and not on the issue of interest disallowance. Therefore, the assessee cannot have benefit of 'doctrine of merger', in fact the department gets benefit of Explanation 1(c) to section 263(1). Ld. DR further

submitted that the case laws relied by Ld. AR are having different facts and do not apply to case of assessee. He also submitted that the entire proceeding done by AO and the assessment-order passed therein nowhere demonstrates that the AO has made any enquiry or applied his mind to the issue of disallowance of interest. Lastly, he relied upon the revision-order passed by Ld. PCIT.

7. We have considered rival submissions of both sides and examined the case record. There are three contentions raised by Ld. AR for assessee/appellant. The *first contention* is such that the assessee's appeal against the addition of Rs. 25,00,000/- made by AO on account of principal amount of bogus loan is pending in first-appeal before CIT(A) and therefore the PCIT did not have jurisdiction to undertake revision u/s 263. In this regard, when we read the provision of Explanation 1(c) to section 263(1), we find that the PCIT's power u/s 263 extends to such matter as had not been considered and decided in first-appeal. Ld. DR is very correct in submitting that the disallowance of interest is different from addition of principal loan made by AO and the issue before CIT(A) is the addition of principal loan and not the disallowance of interest thereon. Therefore, the PCIT has power to invoke revisionary jurisdiction on the strength of Explanation 1(c) to section 263(1). At this stage, we are hastened to add one more angle which we pointed out during hearing as well. Whenever the assessing authorities make addition of principal loan without disallowing interest paid thereon, the

assessee raise a claim before appellate authorities contending that the addition made by AO on account of principal loan is also bad and such argument is at times considered by appellate authorities in favour of assessee and thereby the addition made by AO on account of principal loan is also deleted. Therefore, when the issue of addition of principal loan is pending before CIT(A), it would be wrong to project that the issue of disallowance of interest thereon is also pending before CIT(A). In view of this, we reject the first contention raised by Ld. AR. The *second contention* taken by Ld. AR is such that there is no whisper about interest payment in the reasons recorded, hence the AO was not wrong in not making any disallowance of interest while passing assessment-order. This argument is also not valid because the reasons recorded by AO very much talk of accommodation entry taken by assessee in the form of loan. Therefore, it was incumbent upon AO, whose function is not only of adjudicator but also of investigator, to consider all effects of the impugned transaction of accommodation at the time of framing assessment and make required additions/disallowances. In fact, Ld. AR for assessee accepts that that whenever the loan is treated as bogus, the disallowance of interest paid thereon automatically follows and is always made by assessing authorities. Therefore, the second contention is also rejected. The *third and last contention* of Ld. AR is such that the assessee has declared presumptive income u/s 44AD and in a way not claimed separate deduction of impugned

interest. Therefore, the assessment-order passed by AO cannot be termed as erroneous or even prejudicial to the interest of revenue. This contention was also raised by assessee before Ld. PCIT, vide Para 5.02 / Page 8 of reply dated 06.02.2024 (Page 11 of Paper-Book). But on perusal of impugned order, we find that the Ld. PCIT has nowhere discussed this claim of assessee in his order. Therefore, the impugned order passed by Ld. PCIT does not address this claim of assessee. Needless to mention that the AO has not made any enquiry qua the issue of interest and hence there was no submission by assessee of this kind before AO. But since the assessee, by this argument, is claiming that the assessment-order cannot be termed as erroneous or prejudicial to the interest of revenue, the Ld. PCIT was duty bound to consider this important claim of assessee. Since the Ld. PCIT has not addressed this claim of assessee, it is fit to remand this claim to the file of PCIT for adjudication afresh. The PCIT shall consider this claim of assessee and give a clear-cut finding in his order. Ordered accordingly.

Issue No. (ii) of commission payment:

8. For this issue, Ld. AR for assessee submitted that the assessee has taken a genuine loan which is manifest from the fact that the assessee is contesting the addition made by AO in CIT(A). When the loan was genuine, according to Ld. AR, there was no question of making any payment of commission.

9. Per contra, Ld. DR for revenue submitted that the AO has found the loan taken by assessee was an accommodation arranged through Shri Sharad Darak and that is why addition has been made. He also referred Para 4.2 of impugned revision-order passed by PCIT wherein it is categorically mentioned that Shri Sharad Darak had also admitted that he had received commission in cash for providing accommodation entries. Therefore, the assessee has in fact paid commission for which the AO ought to have made addition.

10. In rejoinder, Ld. AR submitted that there is no mention of commission payment in the reasons recorded by AO. The payment of commission is just an allegation on presumption made by PCIT. He submitted that the statement of Shri Sharad Darak, as mentioned by Ld. PCIT in Para 4.2 of revision-order and being relied by Ld. DR, was not available with AO. He submitted that there was no single material on the record of learned AO which could have given a slightest ground for the AO for making the addition on the alleged payment of commission.

11. We have considered rival submissions of both sides and perused the case record including the orders of lower-authorities. The issue here is the payment of commission to entry provider Shri Sharad Dark through whom the impugned loan from M/s Trimurthi was taken. The contention raised by Ld. AR that the loan taken by assessee was genuine and hence there would

be no occasion to pay commission is outrightly rejected for the reason that the AO has concluded that the loan was a mere accommodation and hence made addition in assessment-order. Mere filing of appeal by assessee before CIT(A) contesting the addition made by assessee cannot lead to a conclusion that the impugned loan was genuine unless a final finding is given by appellate authority reversing the order of AO. Another contention that there was no material before AO which could give even a slightest ground to the AO for making the addition of commission is also not a valid projection by Ld. AR for the reason that in the reasons recorded there is a mention of *modus operandi* of accommodation entries stated by Shri Sharad Dark according to which the cash was paid by beneficiaries (one such beneficiary is assessee) to provide accommodation and in turn he (means Sharad Darak) was profited by commission. The AO has mentioned this fact repeatedly on Page 2, 4 and 5 of assessment-order. Therefore, the AO was very much aware of the fact of commission payment. However, the AO has not made any enquiry into the payment of commission despite making a repeated mention in assessment-order itself and confined himself to make addition of principal loan taken by assessee. Thus, the order passed by AO is certainly erroneous-cum-prejudicial to the interest of revenue. The Ld. PCIT has though mentioned in Para 4.2 of revision-order that Shri Sharad Darak had admitted that he had received commission in cash but there is no concrete basis mentioned in revision-order to show as to how it was @ 3%. Neither

the statements of Shri Sharad Darak are available in the orders of lower-authorities nor the same have been provided to us by either side. At one place, the Ld. PCIT has mentioned about common practice of paying commission to entry provider. But the exact basis of 3% is not explained. In the situation, we are inclined to remand this issue also to the file of Ld. PCIT for a clear-cut adjudication about the basis of 3% rate adopted by him. Accordingly, this issue is also restored at the level of PCIT.

12. In the result, both of the issues are remanded to the file of PCIT for a adjudication in terms mentioned above.

13. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced by putting on notice board	
as per Rule 34 of ITAT Rules, 1963 on 24/02/2025	

Sd/-

Sd/-

(DINESH MOHAN SINHA)
JUDICIAL MEMBER

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 24/02/2025

Dev/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar

Isha Agrawal
ITA No. 457/Ind/2024 – AY 2015-16

Income Tax Appellate Tribunal
Indore Bench, Indore