

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

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

ITA No.396/KOL/2025

(Assessment Year: 2017-18)

USUF TRADING CO.,
Near Railway Station, Dhuliyān
Jangipur, Murshidābad,
West Bengal, 742202

Vs.

**Principal Commissioner of
Income Tax, Kolkata - 1,**
Office of the Income Tax Officer,
Ward - 42(1), Murshidābad, 39,
R.N. Tagore Road, Behrāmpur,
Murshidābad,
West Bengal, 742101

(Appellant)

(Respondent)

PAN No. AACFU4764B

Assessee by : Shri S.K. Tulsiyan, AR
Revenue by : Shri Sanat Raha, CIT (DR)

Date of hearing: 07.05.2025
Date of pronouncement : 13.05.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Pr. Commissioner of Income Tax, Kolkata-1 (hereinafter referred to as the "Ld. PCIT"] dated 27.12.2024 for the AY 2017-18.

02. The issue raised in ground no.1 is a legal issue and is against the invalid exercise of jurisdiction u/s 263 of the Income-tax Act, 1961 (the Act) by the Id. Pr. Commissioner of Income Tax (in short 'the Id. PCIT'), which is invalid and is barred by limitation in terms of Provisions of Section 263(2) of the Act also.
03. The facts in brief are that the return of income was filed on 24.10.2017, declaring a total income of ₹10,10,590/-, which was

selected for scrutiny under Computer Assisted Scrutiny Selection (CASS) on account cash deposited during the demonetization period. Accordingly, the statutory notices along with questionnaire were duly issued and served upon the assessee. The assessee is engaged in the business of trading of biri leaves and tobacco under the name of M/S Usuf Trading Co. During the assessment proceeding the assessee was required to file various evidences which were accordingly furnished before the Id. AO in the assessment proceedings and assessment was framed u/s 143(3) of the Act vide order dated 05.12.2019, accepting the returned income. Thereafter the Id. PCIT by invoking the revisionary jurisdiction u/s 263 of the Act revised the said assessment vide order dated 01.03.2022 with the direction to pass the fresh assessment. The Id. PCIT revised the assessment on the ground that the said order framed u/s 143(3) of the Act was erroneous and prejudicial to the interest of the Revenue as the assessee debited ₹1,23,45,237/- under the head carriage inward expenses, for which the assessee has not furnished the ledger account, copies of PANs and detail of the transporters. The Id. PCIT observed that TDS was required to be deducted on the said amount u/s 194C of the Act which was not deducted and consequently resulting in under assessment of income by ₹37,03,571/-. Thereafter, in the set aside proceedings the Id. AO after issuing notice u/s 142(1) of the Act and calling upon the assessee to furnish the information qua these expenses and the tax deducted at source observed that the payments were made to the transporters having PAN no. and none of the transporters was owner of more than 10 goods carriers and thus, found that Provisions of Section 194C(6) of the Act, were not applicable. Accordingly, the Id. AO vide order dated 06.03.2023, passed u/s 263/143(3) of the Act accepted the returned income.

04. Thereafter, again the Id. PCIT observed from the assessment record that an aggregate amount of ₹5,70,386/-, was paid to the transporters in cash in a single day where the amount exceeded ₹ 35,000/- per transporter which is in contravention with Section 40A(3) of the Act. The Id. PCIT therefore concluded that ₹5,70,386/- liable to be disallowed as expenses in the order passed u/s 263/ 143(3) of the Act which has rendered the said order as erroneous and prejudicial to the interest of the Revenue and accordingly, revised the same vide order dated 27.12.2024, directing the Id. AO to verify these expenses claimed and disallow the expenses which are in contravention of Provision of Section 40A(3) of the Act. The Id. AR vehemently submitted before us that the order passed by the Id. PCIT dated 27.12.2024, is hopelessly barred by limitation u/s 263(2) of the act as and therefore, the same is invalid and against the provisions of the Act and deserve to be quashed. The Id. AR submitted that the assessment in this case was framed u/s 143(3) of the Act vide order dated 05.12.2019, wherein the Id. AO has accepted the returned income of the assessee. Thereafter, the Id. PCIT revised the said order vide order dated 06.01.2022, directing the Id. AO to pass a fresh order after verifying the expenses debited under the head of carriage inward expenses amounting to ₹1,23,45,237/- on which no TDS was deducted at source. Thereafter, the assessment was framed u/s 143(3) read with section 263 of the Act vide order dated 06.03.2025 accepting the returned income by holding that the provisions of Section 194C of the Act were not applicable to the assessee as the transporters were having PAN number and none of the transporters was owning more than 10 goods carriers. The Id. AR submitted that thereafter, again the present revisionary jurisdiction was invoked by the Id. PCIT and the order passed u/s 143(3) / 263 of the Act dated

06.03.2023, was revised on the ground that the freight expenses incurred in cash in contravention of Section 40A(3)/3A of the Act amounting to ₹5,70,386/- were not disallowed by the Id. Assessing Officer. The Id. AR submitted that the orders passed by the Id. PCIT dated 27.02.2024, is hopelessly barred by limitation as the same is passed beyond the time framed provided u/s 263 of the Act which provides that no order u/s 263(1) of the Act shall be passed after expiry of 2 years from the end of the financial year in which the order sought to be revised was passed. The Id. AR submitted that the revision of order by the Id. PCIT passed u/s 143(3) of the Act dated 06.03.2023 was wrong and invalid as the issue of payment of freight expenses in violation of provision of Section 40A(3)/3A of the Act was not there and therefore, the same could be said to be erroneous and prejudicial to the interest of the Revenue. At the most, the PCIT could have revised the original assessment dated 05.12.2019, which was original assessment framed u/s 143(3) of the Act and should have been at best be stated to be erroneous and prejudicial to the interest of the Revenue for the reason that cash payments of freight expenses in violation of provisions of Section 40A(3)/ 3A were not disallowed. However, the same could not have been revised validly as it is barred by limitation as has been held in the decision of Hon'ble Apex Court in CIT -vs.- Alagendran Finance Limited (2007) 293 ITR 1 (SC) and Bombay High Court in CIT -vs.- ICICI Bank Limited (2012) 343 ITR 74 (Bom.). The Id. AR therefore prayed that the revisionary order passed by the Id. PCIT may kindly be quashed.

05. The Id. DR on the other hand relied on the order of PCIT by submitting that the Id. PCIT has revised the assessment framed on 06.03.2023 passed u/s 143 read with section 263 of the Act and therefore, is not barred by limitation.

06. After hearing the rival contentions and perusing the materials available on record, we find that the assessment was framed u/s 143(3) read with section 263 of the Act vide order dated 06.03.2023 in which it was not the issue raised by the PCIT in the first round. In fact the issue was with regard to non-deduction of TDS u/s 194C of the Act on freight expenses amounting to ₹1,23,45,237/-. Therefore, the said order is neither erroneous nor prejudicial to the interest of the Revenue. We note that the Id. AO after taking into consideration all the evidences and details furnished by the assessee recorded a finding that the provisions of Section 194C of the Act were not applicable. Therefore, the exercise of jurisdiction u/s 263 of the Act by the Id. PCIT vide order dated 27.12.2024 is bad in law. At the most, the Id. PCIT could have revised the assessment framed u/s 143(3) of the Act dated 05.12.2019, but the same is barred by limitation and therefore, no revision could have been made of the original assessment also. Considering these facts and circumstances, we are inclined to quash the revisionary order passed u/s 263 of the Act dated 27.12.2024.

07. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 13.05.2025.

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

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated:13.05.2025

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