

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'C' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member and  
Shri S.S. Vishwanethra Ravi, Judicial Member**

**I.T.A. No. 771 /KOL/ 2015  
Assessment Year: 2010-2011**

**Dr. Aftab Ashrafuddin Khan,.....Appellant**  
**1050/1, Survey Park, Bengal Ambuja Complex,**  
**EM Bye Pass,**  
**Kolkata-700 075**  
**[PAN: AIEPK 9946 M]**

**-Vs.-**

**Principal Commissioner of Income Tax,.....Respondent**  
**Kolkata-8,**  
**54/1, Rafi Ahmed Kidwai Road, 1<sup>st</sup> Floor,**  
**Kolkata-700 016**

**Appearances by:**

*Shri Manoj Kataruka, Advocate, for the assessee*  
*Shri G. Mallikarjuna, CIT, D.R., for the Department*

Date of concluding the hearing : June 16, 2016  
Date of pronouncing the order : August 10, 2016

**O R D E R**

**Per Shri P.M. Jagtap, A.M.:**

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax-8, Kolkata dated 27.03.2015 passed under section 263 of the Income Tax Act, 1961.

2. The assessee in the present case is an individual, who is Doctor by profession. The return of income for the year under consideration was filed by him on 29.09.2008 declaring total income of Rs.72,49,064/-. In the assessment completed under section 143(3) vide an order dated 05.03.2013, the total income of the assessee was determined by the Assessing Officer at Rs.76,16,490/-. The records of the said assessment subsequently came to be examined by the Id. CIT and on such examination, he was of the view that there are following errors in the

order of the Assessing Officer passed under section 143(3), which are prejudicial to the interest of the Revenue:-

*"In his P&L A/c. the assessee has debited Rs.83,300/- on account of rent and Rs.8,11,000/- under the head salary. The A.O. disallowed salary expenses amounting to Rs.50,000/- only and other expenditure i.e. Rs.7,61,000/- on account of salary and Rs.83,100/- on account of rent totalling to Rs.8,44,100/- were allowed. In view of an agreement with the Apollo Gleneagles Hospital, Kolkata with the assessee, the assessee was not supposed to practice outside in any form. Therefore, allowing Rs.8,44,000/- was also not in order.*

*(ii) The assessee has shown income from House Property at Rs.(-)1,50,000/- in his computation of income on account of Interest payable U/s.24(b) and the AO accepted it as loss of previous year at the time of assessment of his income. However in his balance sheet as on 31.03.2010 and Profit and Loss account for the period from 01.04.2009 to 31.03.2010 for the assessee has shown neither any house building loan nor any expenditure booked on interest payment on such loan. The House Property has been registered on 09.09.2011 in the period relating to Assessment Year AY-2012-IS and not A.Y-2010-11. Hence the loss on House Property claimed by the assessee was wrongly allowed by the AO.*

*(iii) the assessee debited Rs.37,299/- in his P&L a/c as loss on sale of car. As the loss arises out of sale of capital assets, it is not a part of business expenditure/income, hence should have been disallowed by AO".*

3. A notice under section 263, therefore, was issued by the Id. CIT requiring the assessee to show-cause as to why the order passed by the Assessing Officer under section 143(3) should not be revised on the above issues. In reply, written submissions were filed by the assessee, which were not found to be acceptable by the Id. CIT for the following reasons:-

*"(a) With regard to issue raised in Para No, 2(i): In his submission dated 25.03.2015 the A/R of the assessee has strongly denied that there was any such agreement between the assessee and Apollo Gleneagles Hospital, Kolkata, which restricts him from practising outside in*

*any form. However, from the assessment records, it is found that Apollo Gleneagles Hospital, Kolkata in its offer letter to assessee vide para 3 of Re. No. 2918/APPT/AGH/dt. 30.09.2002 categorically stated that "you will be fully dedicated to the Hospital and will not practice outside in any form independently". In view of this, the submissions of the assessee are prima facie untenable. The AO is required to make further enquiries from the assessee as well as from the above mentioned hospital to determine the allowability of these expenditures.*

*(b) With regard to issue raised in Para No.2(ii): The assessee has not pressed his contention with any evidence. The AO is directed to call for the requisite evidence in support thereof and make further enquiries from the settler/builder of the House property and the bank and take necessary cognizance as warranted by the facts unravelled.*

*(c) that the assessee debited Rs.37,299/- in his P&L a/c as loss on sale of car. As the loss arises out of sale of capitol assets, it is not a part of business expenditure/income hence should be disallowed. The A/R in his submission on this count stated that "loss on sale of car of Rs.37299/ is the difference between written down value and the sale proceeds of the car. Ledger copy of the car is enclosed herewith (Annexure-E). However, by mistake the same was not added back in the computation".*

For the reasons given above, the Id. CIT held that the order passed by the Assessing Officer under section 143(3) was erroneous as it was passed without proper examination or enquiry or verification or objective consideration of the claims made by the assessee. He, therefore, set aside the same by exercising the powers conferred upon him under section 263 with a direction to the Assessing Officer to make the assessment afresh on the issues pointed out by him. Aggrieved by the order of the Id. CIT passed under section 263, the assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. Although the Id. CIT by his

impugned order passed under section 263 has set aside the order passed by the Assessing Officer under section 143(3) on the basis of three errors pointed out by him, the ld. counsel for the assessee has submitted that the assessee wants to challenge the impugned order of the ld. CIT only in respect of one issue relating to the allowability of expenses claimed on rent and salary. In this regard, he has invited our attention to the relevant portion of the written submissions made before the ld. CIT during the course of proceedings under section 263 to show that it was specifically brought to the notice of the ld. CIT that there was no such agreement between the assessee and Apollo Gleneagles Hospital, Kolkata restricting the assessee from practicing outside. He has submitted that the offer letter dated 30.09.2002 putting such restriction was not relevant for the year under consideration, i.e. assessment year 2010-11 and the ld. CIT, therefore, was not correct in placing reliance on the same. However, as rightly submitted by the ld. D.R., the offer letter dated 30.09.2002 restricting the assessee from practicing outside in any firm independently was available on record and in the absence of anything to show that such restriction was removed, there was an error in the order of the Assessing Officer in allowing the claim of the assessee for rent and salary without making the required enquiry as called for in the facts and circumstances of the case. Moreover, the ld. CIT vide his impugned order passed under section 263 has not decided this issue relating to the assessee's claim for deduction on account of rent and salary expenses on merit and has merely directed the Assessing Officer to consider the same afresh after making the necessary enquiry. The assessee, therefore, is free to make out his case on this issue by establishing that there was no such restriction on him in the year under consideration and he was free to practise independently on his own. In our opinion, the enquiry as required in the facts and circumstances of the case thus was not made by the Assessing Officer before allowing the claim of the assessee for deduction on account of rent and salary expenses and the order passed by him under section 143(3) allowing the claim of the assessee without conducting the necessary enquiry was erroneous as well as prejudicial to

the interest of the revenue as rightly pointed out by the Id. CIT. In that view of the matter, we uphold the impugned order of the Id. CIT passed under section 263 and dismiss this appeal filed by the assessee.

**5. In the result, the appeal of the assessee is dismissed.**

Order pronounced in the open Court on August 10, 2016.

Sd/-

**(S.S. Vishwanethra Ravi)**  
Judicial Member

Sd/-

**(P.M. Jagtap)**  
Accountant Member

**Kolkata, the 10<sup>th</sup> day of August, 2016**

Copies to : (1) **Dr. Aftab Ashrafuddin Khan,**  
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**4, Chowringhee Lane,**  
**Kolkata-700 016**

(2) **Principal Commissioner of Income Tax,**  
**Kolkata-8,**  
**54/1, Rafi Ahmed Kidwai Road, 1<sup>st</sup> Floor,**  
**Kolkata-700 016**

(3) **Joint Commissioner of Income Tax, Range-22, Kolkata;**  
(4) **Commissioner of Income Tax- ,**  
(5) **The Departmental Representative**  
(6) **Guard File**

By order

**Assistant Registrar,**  
**Income Tax Appellate Tribunal,**  
**Kolkata Benches, Kolkata**

**Laha/Sr. P.S.**