

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

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

**ITA No.946/KOL/2023
(Assessment Year:2017-18)**

Arabinda Paul
C/o. S.N. Ghosh & Associates,
Advocates 2, Garstin Place, 2nd
Floor, Suite No.203, off Hare
Street, Kolkata-700001

(Appellant)

Vs.

PCIT, KOLKATA-5,
Aayakar Bhawan Poorva, 110,
Shanti pally, Eastern
Metropolitan By Pass,
Kolkata-700107
West Bengal

(Respondent)

PAN No. ADWPP7060B

Assessee by : Shri Somnath Ghosh, AR
Revenue by : Shri Subhendu Datta, DR

Date of hearing: 19.12.2024
Date of pronouncement : 15.01.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Pr. Commissioner of Income Tax, Kolkata-5 (hereinafter referred to as the "Ld. PCIT"] dated 28.02.2022 for the AY 2017-18.

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 Income-tax Act, 1961 (the Act) by the Id. PCIT, thereby rendering the order passed u/s 263 of the Act as ab initio void and ex-facie, nullity in the eyes of law.
03. The facts in brief are that the return of income was filed by the assessee on 06.11.2017, declaring total income of ₹4,87,850/-.

Thereafter the case of the assessee was selected for limited scrutiny for verification of cash deposits during the instant financial year. Accordingly, the assessment was framed by the Id. AO vide order dated 19.12.2019, passed u/s 143(3) of the Act accepting the returned income after calling for the reply/ evidences from the assessee. In other words, the Id. AO accepted the contention raised by the assessee during the course of assessment proceedings and accepted the return of income. Thereafter, the Id. PCIT upon perusal of the assessment records observed that the assessee has made investments by way of loans and advances during F.Y. 2016-17, relevant to A.Y. 2017-18 to four parties i.e. Mithu Paul of ₹25,00,000/-, Pradut Paul of ₹33,00,000/-, Dipak Paul of ₹10,00,000/- and Bidyut Paul of ₹10,00,000/- totaling to ₹ 78,00,000/-. According to the Id. PCIT, in support of the above investments, no documents were available to the assessment folder, i.e. Confirmations of loan, Sources of finance for such loans and investments, interest income realized on such investments, TDS deduction certificate u/s 194A of the Act and concluded that omission on the part of the AO to do so has resulted in under assessment of income of an unexplained investment/ money of ₹78 lacs which has rendered the assessment order as erroneous in so far as the prejudicial to the interest of the Revenue. Accordingly, the notice was issued u/s 263 of the Act on 20.01.2022, which was not replied by the assessee. Finally, the Id. PCIT revised the assessment by directing the Id. AO to frame the assessment afresh, after taking into account the aforesaid observations, decisions of the courts and the provisions of the Act.

04. The Id. AR vehemently submitted before us that the Id. PCIT has invalidly invoked the revisionary jurisdiction u/s 263 of the Act

thereby setting aside the assessment framed vide order dated 19.12.2019 u/s 143(3) of the Act. The Id. AR submitted that the scrutiny was selected as a limited scrutiny as is apparent from the notice issued dated 08.08.2018, u/s 143(2) of the Act for examination of cash deposits during the financial year. The Id. AR stated that the Id. AO accordingly called for the necessary information/details from the assessee which were duly furnished before the Id. AO and the Id. AO after taking into account the said evidences/ submissions of the assessee accepted the cash deposited into the bank thereby accepting the returned income. The Id. AR submitted that the scope of assessment in the limited scrutiny is confined to the issue for which it was selected and therefore, the revisionary jurisdiction invoked by the Id. PCIT for limited scrutiny assessment in which the issue as proposed by the Id. PCIT was not the subject matter of limited scrutiny. In other words, the order passed u/s 263 of the Act on those issues which were not subject matter of the limited scrutiny and therefore, revisionary jurisdiction has been invalidly invoked and is ex-facie, invalid and nullity in the eyes of law. Moreover, the Id. AR submitted that the pre-condition for invoking the jurisdiction is that there has to be satisfaction of twin conditions; (i) the order has to be erroneous and (ii) it has to be prejudicial to the interest of the Revenue. The Id. AR submitted that the simultaneous satisfaction of both the conditions is necessary and even the jurisdiction is not available even if one of the two conditions is satisfied. The Id. AR contended that in the present case, the assessment framed by the Id. AO is perfectly as per the provisions of the Act and cannot be said to be erroneous insofar as prejudicial to the interest of the Revenue as the AO selected the case of the assessee for limited scrutiny and examined the issue of cash deposited

during the year. Therefore, the jurisdiction of the Id. PCIT u/s 263 of the Act was invalid and against the ratio laid down by the Hon'ble Apex Court in the case of ***Malabar Industrial Co. Ltd. Vs. CIT (2000) 243 ITR 83 (SC)***, wherein the Hon'ble Supreme Court has held as under: -

"Every loss of revenue as a consequence of an order of the assessing officer, cannot be treated as prejudicial to the interest of the Revenue, for example when an Income Tax officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income Tax officer has taken on view with which the Commissioner does not agree, it not be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the Income Tax Officer is unsustainable in law."

The Id. AR therefore prayed that the order passed u/s 263 of the Act may kindly be quashed.

05. The Id. DR on the other hand relied on the order of Id. PCIT.
06. After hearing the rival contentions and perusing the materials available on record, we find that in this case the assessment was framed u/s 143(3) of the Act, after the case of the assessee was selected for limited scrutiny by examining that all cash deposits into the bank during the instant financial year. The copy of the notice issued u/s 143(2) of the Act is available at page no.61 of the Paper Book which states that the case was selected for a limited scrutiny. Therefore, once the case of the assessee is so selected for limited scrutiny and scope is not expanded by converting the same into complete scrutiny then the Id. AO has to confine himself to the scope of the scrutiny. The Id. AO has rightly framed the assessment by examining the cash deposits during the year after calling for the necessary details/ evidences from the assessee, which were duly furnished and after taking into account the said evidences accepted the stand of the assessee thereby accepting the returned income of

the assessee. Therefore, assessment order cannot be said to be erroneous and prejudicial warranting the exercise of jurisdiction u/s 263 of the Act by Id. PCIT. In our opinion the twin conditions as envisaged u/s 263 of the Act are not satisfied and therefore the revisionary jurisdiction u/s 263 of the Act is not available to Id. PCIT to revise the assessment for those issues which were not subject matter of the limited of scrutiny. In the present case, the Id. PCIT set aside the assessment for the reasons that the Id. AO has not examined the loans and advances given to four persons as stated hereinabove. Therefore, the jurisdiction u/s 263 of the Act has wrongly been invoked. The case of the assessee find force from the decision of **Malabar Industrial Co. Ltd. (supra)**, wherein the Hon'ble Apex Court held that before invoking the jurisdiction u/s 263 of the Act, the twin conditions have to be satisfied firstly, the order has to be erroneous and second it has to be prejudicial to the interest of the Revenue. It was further held that even if one of the two conditions is satisfied even then the jurisdiction is not available. The Hon'ble Apex Court has held that satisfaction of conditions is pre-requisite for invoking the jurisdiction u/s 263 of the Act. Accordingly, we are inclined to quash the revisionary order framed u/s 263 of the Act. The appeal of the assessee is allowed.

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

Order pronounced in the open court on 15.01.2025.

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

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 15.01.2025

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