

आयकर अपीलिय अधीकरण, न्यायपीठ –“C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
[Before Shri P. M .Jagtap, Vice-President (KZ) and Shri A. T. Varkey, JM]

I.T.A. No. 108/Kol/2021
Assessment Year: 2015-16

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| M/s Krishika Alloys Pvt. Ltd. (PAN: AADCK 1236 C) | Vs. | ITO, Ward-4(4), Kolkata |
| Appellant | | Respondent |

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|---------------------------|--------------------------------------|
| Date of Hearing (Virtual) | 12.08.2021 |
| Date of Pronouncement | 19.08.2021 |
| For the Appellant | Shri S. M. Surana, Advocate |
| For the Respondent | Shri Dinesh Aibor Jayal Sawkuie, CIT |

ORDER

Per Shri A. T. Varkey, JM:

This is an appeal filed by the Assessee company against the order of Ld. PCIT, Kolkata-2, Kolkata dated 29.05.2020 passed u/s 263 of Income Tax Act, 1961 (hereinafter referred to as the Act) for Assessment year 2015-16.

2. At the outset, the Ld. A.R. of the assessee Shri S. M. Surana contended that the Ld. PCIT had usurped the revisional jurisdiction u/s 263 of the Act without satisfying the condition precedent as stipulated u/s 263 of the Act i.e. without validly holding that AO’s order is erroneous as well as prejudicial to the interest of the revenue.

3. In order to appreciate this legal issues we may have to look at the relevant portion of show cause notice (SCN) issued by Ld. PCIT which reads as under:

In this regard the following discrepancies have been observed:

“One of the reasons for selection of scrutiny was ‘low income but high loans/investment/advances’. It is seen from the details on record that the assessee claimed a loss of Rs. 16,62,050/- on currency derivative, which was the major reason for low income.

However, the officer has not even enquired about the details of such loss leave aside any verification.

In the course of assessment proceedings, the AO had passed the order without proper verification/examination of the issues mentioned above and accordingly making disallowance/addition in this regard.”

4. From a perusal of the SCN , it is evident the sole/main fault pointed out by Ld. PCIT is that AO failed to enquire into the assessee’s action of loss of Rs. 16,62,050/- on currency derivatives. We note that pursuant to the show cause notice (SCN) the assessee replied that the AO has issued notice u/s 142(1) dated 13.06.2017 wherein the AO called *inter-alia* for “reason for loss in comparison high investment” and the assessee had filed the response to it as under:

Please find mentioned below details of the above mentioned case for the Asst yr.2015-16 as required by your goodself-

1. Explanation for low income and Interest exns against exempt Income : Company has earned Gross profit of Rs 45,93,466/- during the year. Out of this income , it has earnefti 12,24,980 as its share from LLP which is exempt in the hands of the partners u/s 10(2A) of the Income Tax Act. Secondly, it has earned Rs 33,12,446 as Interest Income against which it had paid Rs 11,63.494/ as interest expense to parties from whom it has taken a short term loan . The entire loan has been repaid to the parties during the year. The Loan were taken in earlier years and assessee was introduced as a partner in LLP during the current financial year. The total Investment done in the I.I.P was out of its own capital . The total net worth of the assessee is Rs 5.00 crores out of which Investment in LLP business is 4.40 crores. Hence there was no Interest expense done for earning Exempt Income. The entire Interest expense was done to earn interest Income only.

*Apart from the above, assessee had done transactions in **currency derivatives** in view to earn profits but unfortunately **it suffered loss amounting Rs 16.62.050/-** . Due to the above losses and financial cost of Rs 11.63,494/- Net profit of the company was low during the year.[Emphasis given by us]*

5. According to the Ld. A.R. of the assessee from the aforesaid reply of the assessee to the AO it is clear that the AO had enquired about the reasons for returning low income in comparison to high investment. And according to him, even the assessee brought to the notice of the AO in respect of loss suffered in currency derivative to the tune of Rs. 16,62,050/-. Therefore according to assessee, the issue of loss claimed of Rs. 16,62,050 on currency derivatives was specifically brought to the notice of the AO during the assessment proceedings and further in

order to substantiate the currency derivative loss the assessee had filed contract notes of M/s Kayan Securities Pvt. Ltd. placed from page 5 to 7 of PB and the statement of account of M/s Krishika Alloys Pvt. Ltd. [ledger from page 8 to 10 of PB as well as audit report accounts of FY 2014-15 of Krishika Alloys Pvt. Ltd. from page 11 to 26 of PB. The Ld. A.R. drew our attention to profit and loss account which is found placed at 17 of PB to show that the loss has been claimed by the assessee from currency derivatives transaction. Thus according to Ld. A.R. the assessee had filed all documents to substantiate that reason for return of low income and high investment made in LLP. According to Ld. A.R. being satisfied with the documents filed and explanations given, the AO had accepted the justification given by the assessee for returning low income and the reason for high investment made in the LLP. According to Ld. A.R. since the AO has enquired into the issue of currency derivative loss suffered by the assessee to the tune of Rs. 16,62,050/- and the assessee had replied along with supporting documents, the Ld. PCIT could not have held that the AO erred in accepting the claim without enquiry and according to Ld. AR, it is not a case of lack of enquiry. According to Ld. A.R, in case if the Ld. PCIT feels that this was a case of inadequate enquiry, then he himself has to enquire and hold that the documents submitted by the assessee are non-genuine etc which he has not done. The Ld. A.R pointed out that the case of the Ld. PCIT is not that the view of the AO in the light of reply and documents submitted is unsustainable in law. Therefore, according to him, since the AO has taken plausible view after conducting enquiry and after collecting all documents, the view of the AO to accept the claim of the assessee in respect of the loss of currency derivative could not have been ground for Ld. PCIT for invoking jurisdiction u/s 263 of the Act and therefore the impugned order of Ld. PCIT needs to be quashed. Per contra, the Ld. CITDR supported the action of Ld. PCIT & does not want us to interfere.

6. We have heard both the parties and perused the records. We note that the Ld. PCIT has found fault with the AO's order dated 01.08.2017 passed u/s 143(3) of the Act on one issue i.e. even though the case of the assessee was selected for scrutiny was in respect of 'low income but high loans/investment/advances', the AO has not

enquired into the assessee's claim of loss of Rs. 16,62,050/- on currency derivatives which according to Ld. PCIT was the major reason for the low income. According to Ld. PCIT even during the revisional proceedings the Ld. A.R of the assessee could not explain the nature as to how the loss of Rs. 16,62,050/- on currency derivatives has been incurred by the assessee. Therefore, he found it fit case to enquire for invoking his revisional jurisdiction by restoring the same back to the AO with a direction to verify the issues discussed in para 3 (SCN) and para 6 and to reassess the income of the assessee. So we note that the only issue which has been found fault by the Ld. PCIT is that "*AO has not enquired about the loss of Rs. 16,62,050/- on currency derivative claimed by the assessee which was the major reason for low income*". We note that the AO had issued notice u/s 143(2) of the Act wherein the assessee was put to notice about the limited scrutiny on two issues i.e. (i) in response to low income and high loans/advances/investments (refer page 1 of PB) and thereafter in the section 142(1) notice the AO had asked *inter alia* reasons for low income in comparison to high investment (out of ten (10) items) by letter dated 13.06.2017 placed at page 3 of PB. And pursuant to the said statutory notice issued by the AO, the assessee had filed the reply wherein the assessee had explained to the AO the reasons for suffering low income which has already been reproduced (*supra*). From a perusal of the reply we note that the assessee company had earned gross profit of Rs. 45,95,466/- during the year. It was pointed out to the AO that out of this income it has earned Rs. 12,24,980/- as its share from LLP which is exempt from the hand of the partners as per Section 10(2A) of the Act. It was also brought to the notice of the AO that the assessee has earned Rs. 33,12,446/- as interest income against which it incurred interest expenditure to the tune of Rs. 11,63,494/- which was an account of short term loan. It was also brought to the notice of the AO that during this year, the entire loan has been repaid to the borrowers. Further it was brought to the notice of the AO that even though the loans were taken in earlier years the assessee had repaid the loans during this year. And that the assessee was introduced as a partner in the LLP during the current assessment year and total investment done by the assessee in the LLP was out of its own capital. It was also brought to the notice of the AO that the total worth of assessee company was to the

tune of Rs. 5 crores out of which it made investment in LLP was to the tune of Rs. 4.40 crores. Therefore it was claimed by the assessee that during this assessment year, due to the peculiar facts as stated above, assessee had shown low income and brought to the notice of AO the fact of loan repayment taken in the earlier years and the interest expenditure and the new investment of Rs 4.40 crores in LLP being inducted as partner this year as discussed supra.

7. Further it was also brought to the notice of the AO that the assessee had carried out transaction in currency derivative with a view to make profits. However unfortunately it suffered loss amounting to Rs. 16,62,050/-. Therefore according to assessee due to aforesaid loss of Rs. 16,62,050/- and financial cost of Rs. 11,62,494/- (interest expenditure) the net profit of company was low during the year. We note that the assessee had filed evidences to substantiate its loss in currency derivative transaction by filing contract notes (page 5 to 7 of PB) in respect of purchase and sale of currency derivative, bank statement highlighting the transaction at page 8 and ledger account of the broker (M/s Kayan Securities Pvt. Ltd. pages 8 to 10). The assessee had also filed audited financial statements which are found placed at page 11 to 26 of PB. Thus we find that on a query by the AO as to furnish the reason for suffering low income, the assessee had brought to the notice of the AO the fact of assessee indulging in the purchase & sale of currency derivatives and from which it had suffered loss of Rs. 16,62,050/- along with supporting documents as discussed (supra). So it cannot be said that AO was not aware of the assessee suffering loss of currency derivative transaction and the Ld. PCIT's assertion that AO has not enquired about this issue of loss from currency derivatives is on wrong assumption of facts. Therefore, the foundation on which the Ld. PCIT has exercised his revisional jurisdiction is absent, therefore the very invocation of revisional jurisdiction is bad for erroneous assumption of jurisdictional fact and so the action of Ld. PCIT cannot be countenanced. In the light of the discussion supra, we hold that the Ld. PCIT has usurped the jurisdiction without satisfying the condition precedent as prescribed in section 263 of the Act. Therefore, we are inclined to quash the impugned order of the Ld. PCIT.

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

Order is pronounced in the open court on 19th August, 2021

Sd/-
(P. M. Jagtap)
Vice-President

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 19.08.2021

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Krishika Alloys Pvt. Ltd., Room No. 301, 4A, Swaika Centre, 3rd Floor, Kolkata-700001
2. Respondent – ITO, Ward-4(4), Kolkata
3. The PCIT- 2, Kolkata
4. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Senior Private Secretary/DDO
ITAT, Kolkata Benches, Kolkata
