

OD - 4

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/30/2025
IA NO: GA/1/2025, GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX 2 KOLKATA
VS
M/S HALMIRA ESTATE TEA PRIVATE LIMITED

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 16th April, 2025.

*Mr. Amit Sharma, Adv.
...for appellant.*

*Mr. J.P. Khaitan, Sr. Adv.
Mr. Akhilesh Gupta, Adv,
Ms. Swapna Das, Adv.
Mr. Siddharth Das, Adv.
...for respondent.*

The Court : There is a delay of 164 days in filing the appeal. We are satisfied with the explanation offered by the appellant for not preferring the appeal within the period of limitation. Hence, the delay in filing the appeal is condoned. The application, GA/1/2025 is allowed.

We have heard Mr. Amit Sharma, learned standing counsel appearing for the appellant/department and Mr. J. P. Khaitan, learned senior counsel for the respondent/assessee.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 [the Act] is directed against the order dated 27.2.2024 passed by the Income Tax Appellate Tribunal “B” Bench, Kolkata [Tribunal] in ITA NO.382/KOL/2021 for the assessment year 2015-16. The revenue has raised the following substantial questions of law for consideration.

“i) Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in law to quash the order under Section 263 of the Income Tax Act, 1961 when it is apparent from the records that the assessment order is erroneous and prejudicial to the interest of the Revenue inasmuch as the same has been passed by the assessing officer without making independent enquiry and verification of the issues raised by the PCIT-2, Kolkata?”

ii) Whether on the facts and in the circumstances of case, the Learned Tribunal was justified in law to quash the order passed under section 263 of the Income Tax Act, 1961 when the PCIT-2, Kolkata has arrived at a conclusion that the order of the Assessing Officer under Section 143(3) of the Income Tax Act, 1961 is found to be erroneous and prejudicial to the interest of the revenue directing inter alia Assessing Officer to pass fresh assessment order?”

iii) Whether on the facts and in the circumstances of case, the Learned Tribunal was justified in law to hold that the revisionary powers under Section 263 of the Income Tax Act, 1961 had been exercised arbitrarily and in excess of jurisdiction by the Principal Commissioner of Income Tax in the instant case, ignoring the Explanation -2 to Section 263 of the Income Tax Act, 1961?”

The assessee was on appeal before the learned Tribunal challenging the order passed by the Principal Commissioner of Income Tax -2 (Appeals),

Kolkata (Pr.CIT) dated 10.6.2020 under section 263 of the Act. For the Pr.CIT to exercise jurisdiction under section 263 of the Act he has to first examine the records of the proceedings under the Act and should consider the order passed by the Assessing Officer and form an opinion that such an order is erroneous in so far as it is prejudicial to the interest of revenue. After forming such an opinion, show cause notice has to be issued to the assessee and the assessee should be given an opportunity to explain. The Pr.CIT would be empowered to conduct an inquiry as he deems fit and proper. After receiving the explanation of the assessee, it will be well open to the Pr.CIT to set aside the assessment order passed by the Assessing Officer. He may also enhance the assessed income by modifying the order and he may also set aside the order of the Assessing Officer and direct to pass fresh orders. The Hon'ble Supreme Court in *Malabar Industrial Co. Ltd. vs. CIT*, [2000] 109 Taxman 243 ITR 83 (SC) held that the phrase 'prejudicial to revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer; every loss of revenue has a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of revenue. The learned tribunal took note of the legal position and examined whether the Pr.CIT could have invoked the power under section 263 of the Act. At the time when notice was issued to the assessee, the Pr.CIT stated that the primary reason for scrutiny was purchase of a property for Rs.11.41 crores which was not verified at all by the Assessing Officer. The issue is whether this prima facie finding was justified. The learned senior standing counsel appearing for the revenue would strenuously contend that

the assessment order is a non-speaking order bereft of any particulars which will clearly show that the Assessing Officer did not consider any of the aspects and the Pr.CIT was justified in invoking its power under section 263 of the Act.

We have perused the assessment order dated 10.11.2017 passed under section 143(3) of the Act. During the course of assessment proceeding, the assessee was asked to explain books of accounts and bills and vouchers and the assessee filed/produced relevant documents and details with written explanation which were examined by the Assessing Officer and verified with the books of accounts and income tax return and the audited accounts. Furthermore, during the course of examination there is no computation statement etc. which was also considered and thereafter the assessment was completed by an order dated 10.11.2017. In the last paragraph of the order there is a quote which is not for assessee which states 'CASS points have been checked'. This note which is not for the assessee will show that there has been due application of mind by the Assessing Officer. The learned senior counsel appearing for the respondent/assessee has produced a copy of the notice issued by the Assessing Officer under section 142(1) of the Act dated 30.8.2017. In the said notice as much as 14 queries have been raised and one among the query, the query no.12 'large investment in property [AIR]' as compared to total income. Thus, the issue relating to acquisition of property was subject matter of consideration before the Assessing Officer. The assessee submitted their explanation to the same contending that the assessee has entered into an agreement for purchase of a building at Worli, Mumbai from

Shreeniwas Cotton Mills Limited on 28.11.2014 and the total sale consideration is Rs.11,41,07,130/-. A copy of the ledger of capital WIP (Building) Account was enclosed showing the payment made at various dates. Furthermore, the assessee stated that the availed loan from ICICI bank for purchase of such property and the copy of the bank statement of various banks has been enclosed to show the payment made to Shreeniwas Cotton Mills Limited. Further, the assessee pleaded that the possession of the aforesaid property was not handed over by the seller to the assessee before 31.3.2015 and the amount paid by them is reflected in the balance-sheet as on 31.11.2015 under the head 'capital work in progress'. Further, the assessee stated that the agreement for purchase was duly registered with the Joint Registrar, Mumbai City-IV.

Considering all these aspects, the Assessing Officer completed the assessment. Though the aforementioned points were placed by the assessee in response to the show cause notice issued under Section 263 of the Act, the PCIT opined confirmation of the proposal in the show cause notice not on the ground which was proposed in the show cause notice that the Assessing Officer did not do any verification at all but on the ground that the Assessing Officer has not carried out proper verification/investigation. As pointed out above, the factual position clearly shows that there has been due verification done by the Assessing Officer and the Assessing Officer was also careful enough to note CASS point which was also verified by the Assessing Officer.

Learned standing counsel placed reliance on the decision in the case of *Commissioner of Income Tax vs. Anand Kumar Jain, (2015) 57 Taxmann.com 372(Allahabad)*, wherein the Hon'ble Court held that the Assessing Officer during scrutiny did not apply his mind to scrutinize the identity and capacity of the lenders who furnished loans and the matter was to be re-adjudicated. In the case at hand, the factual position has been set out in the preceding paragraph which will go to show that the Assessing Officer did cause the verification the aspect pointed out by the PCIT, that is, with regard to the alleged large investment in the property. Therefore, the decision in Anand Kumar Jain's case will not be of assistance to the case of the Revenue.

Reliance was also placed on the decision in the case of *PCIT vs. Ms. Sangeeta Jain, (2024) 168 taxmann.com 276 (Delhi)*. In the said case, the Assessing Officer accepted the assessee's claim that the land in question was sold by her was agricultural land without verifying the records and therefore, the PCIT rightly exercised his jurisdiction under Section 263 of the Act. The factual position in the case on hand is entirely different and we are satisfied that the Assessing Officer did cross-verification with regard to the said investment by specifically calling for details which is amply established by the notice issued under Section 142(1) of the Act dated 30.08.2017.

Thus, for all the above reasons, the order passed by the learned Tribunal does not call for any interference.

Accordingly, the appeal fails and is dismissed. The substantial questions of law are answered against the revenue.

Consequently, the stay petition (IA NO:GA/2/2025) is also dismissed.

(T. S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

Pkd./S.Das/sm/SN.
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