

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

**Before Shri P.M. Jagtap, Vice-President (KZ)  
and Shri A.T. Varkey, Judicial Member**

**I.T.A. No. 2172/KOL/2018  
Assessment Year: 2014-2015**

**Arjun Mahato,.....Appellant**  
**Malancha, Kanainatshal,**  
**DVC More, P.O. Sripalli,**  
**Burdwan-713101**  
**[PAN: AEZPM1499Q]**

**-Vs.-**

**Principal Commissioner of Income Tax, Burdwan,.....Respondent**  
**Aayakar Bhawan, Annexe Building,**  
**Court Compound,**  
**Burdwan-713101**

**Appearances by:**

*Shri Soumita Choudhury, Advocate, for the Appellant*  
*Shri Sanjay Rai, CIT, D.R., for the Respondent*

Date of concluding the hearing : March 17, 2021  
Date of pronouncing the order : April 21, 2021

**O R D E R**

**Per Shri P.M. Jagtap, Vice-President (KZ):-**

This appeal filed by the assessee is directed against the order Id. Principal Commissioner of Income Tax, Burdwan dated 24.08.2018 passed under section 263 of the Income Tax Act, 1961.

2. The assessee in the present case is an individual, who is engaged in the business of retail trading of Rice and Truck plying. The return of income for the year under consideration was filed by him on 25.11.2014 declaring a total income of Rs.2,68,588/-. The said return was selected for limited scrutiny through CASS for the reason that cash deposits found to be made in the Bank accounts of the assessee were more than the turnover declared by the assessee. During the course of assessment

proceedings, it was found by the Assessing Officer that the total deposits made in the Bank account of the assessee with Punjab National Bank, Burdwan Branch during the year under consideration were Rs.7,61,00,785/-, which included, inter alia, cash deposits amounting to Rs.4,26,73,906/-. He also found that total deposits made in another Bank account of the assessee maintained with Union Bank, Burdwan Branch during the year under consideration amounted to Rs.18,95,000/- out of which the assessee had disclosed only Rs.4,40,580/- in the return of income filed for the year under consideration. He accordingly treated the deposits of Rs.4,41,28,326/- (Rs.4,26,73,906/- plus Rs.14,54,420/-) as undisclosed turnover of the assessee's business and income from the same amounting to Rs.35,30,266/- as worked out by applying the profit rate of 8% was brought to tax by him in the hands of the assessee in the assessment completed under section 143(3) of the Act vide an order dated 25.08.2016.

3. The records of the assessment made by the Assessing Officer under section 143(3) subsequently came to be examined by the concerned Id. Principal CIT and on such examination, he was of the view that the Assessing Officer should have taken the entire deposits made in both the relevant Bank accounts of the assessee aggregating to Rs.7,82,95,785/- as the undisclosed business turnover of the assessee and should have computed the undisclosed income of the assessee from the same by applying the net profit rate of 8% on Rs.7,82,95,785/- instead of Rs.4,41,28,326/-. He accordingly issued a notice to the assessee under section 263 requiring him to show-cause as to why the order passed by the Assessing Officer under section 143(3) should not be revised by treating the same as erroneous as well as prejudicial to the interest of the revenue.

4. In reply to the notice under section 263, the first contention raised on behalf of the assessee before the Id. Principal CIT was as under:-

*"That the case was selected for "Limited" scrutiny based on information/report that cash deposit in Savings accounts exceeds turnover, under (ASS. The assessment thereof including 142(1) questionnaire therefore was carried under the parameter of CBDT Instruction 7/2014 dated 26.09.2014. The Assessing Officer completed the assessment within the parameter of CBDT Instruction No. 7/2014. The Assessment carried out under such manner and mode as laid down in Instruction of CBDT, cannot be construed as erroneous and prejudicial to the interest of Revenue attracting proposition for revision under Section 263 of the Act. This is more so because Instruction No. 7/2014 dated 26.09.2014 are equally applicable for all officers of the Department."*

5. The Id. Principal CIT did not find merit in this contention raised on behalf of the assessee and rejected the same by observing as under:-

*"In the instant case the Assessing Officer had sufficient information on record and in his custody that other than cash deposit, which is the issue for selection for scrutiny under CASS, there were substantial undisclosed deposits through other modes, i.e. through Cheque, RTGS & NEFT etc. to the bank accounts of the assessee which has escaped assessment. The Assessing Officer should have applied his mind that the source of these deposit required substantial verification. The Assessing Officer should have acted in accordance with para-4 of CBDT Instruction no. 7/2014 and should have taken up the case for comprehensive scrutiny with the Pr. CIT for approval. The Assessing Officer has failed abide by the instructions laid down at para-4 of CBDT Instruction no. 7/2014. Therefore, the order passed by the Assessing Officer u/s 143(3) of the Act on 25.08.2016 is deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, within the parameter laid down in Explanation 2(a) and 2(c) of Section 263 of the Income Tax Act, 1961".*

6. The second contention raised on behalf of the assessee in reply to the notice issued by the Id. Principal CIT under section 263 was that an appeal was preferred against the order passed by the Assessing Officer under section 143(3) before the Id. CIT(Appeals) on the issue of unaccounted deposits found to be made in the Bank accounts of the assessee and the same having been already considered and decided by the Id. CIT(Appeals) vide his appellate order dated 28.04.2017, it was not permissible for the Id. Principal CIT to exercise jurisdiction under section 263 on the issue which had already been considered and decided in

appeal by the Id. CIT(Appeals). This contention of the assessee also did not find favour with the Id. Principal CIT, who rejected the same for the following reasons:-

*"It is evident from the grounds of appeal that the assessee had no grievance on the issue of determination of undisclosed deposits in both the bank accounts of the assessee. Since, it is not an issue of the appeal, CIT(A) has not considered and determined the issue of determining of undisclosed deposits in both the bank accounts of the assessee. He has proceeded to decide on the issues raised in the grounds of appeal by the assessee, based on the undisclosed deposits in both the bank accounts of the assessee as determined by the Assessing Officer. Since the assessee had not disputed the total undisclosed deposits in both the bank accounts of the assessee as determined by the Assessing Officer, CIT(A) had not adjudicated the matter and proceeded. Mere reference of this issue in the appeal order cannot be considered that this issue has been considered and determined in the appeal. Therefore, it is amply evident that the issue of determining of total undisclosed deposits in both the bank accounts of the assessee has not been considered and determined in the appeal. Accordingly, the jurisdictional Pr. Commissioner of Income Tax has the authority to exercise power conferred upon him u/s 263 of the Act this issue".*

7. The Id. Principal CIT accordingly rejected both the contentions raised on behalf of the assessee in reply to the notice issued under section 263 and setting aside the order passed by the Assessing Officer under section 143(3) vide his impugned order passed under section 263, he directed the Assessing Officer to make the assessment afresh as under:-

*"(a) to verify, examine and determine the total undisclosed deposits made to both the bank accounts of the assessee in A/c No. 415402010004022 with Union Bank of India, Burdwan and A/c No. 3194000100070201 with Punjab National Bank, Burdwan during the F.Y. 2013-14.*

*(b) to re-compute the total income of the assessee in accordance with the direction of the Commissioner of Income Tax (Appeal) order dated 28.04.2017 in Appeal No. 59/CIT(A)/ITO/W-2(1)/BWN/2016-17 for A.Y. 2014-15 in assessee's own case".*

Aggrieved by the order of the Id. Principal CIT passed under section 263, the assessee has preferred this appeal before the Tribunal.

8. We have heard the arguments of both the sides and also perused the relevant material available on record. The Id. Counsel for the assessee has submitted that the case of Shri Binod Kumar Mahato, brother of the assessee, who is also engaged in the business of plying of Trucks and trading of Rice was selected by the same Assessing Officer for limited scrutiny through CASS to examine the similar issue of cash deposits found to be made in the Bank accounts of the assessee, which were more than the turnover declared by him. He has submitted that the assessment order in the said case was passed by the same Assessing Officer on the same date on the similar line by treating the cash deposits found to be made in the Bank accounts of the assessee as undisclosed turnover and estimating the income of the assessee from such undisclosed turnover by applying the profit rate of 8% on the cash deposits. He has submitted that the order passed by the Assessing Officer under section 143(3) in the said case of Binod Kumar Mahato was subsequently set aside by the same Id. Principal CIT vide an order under section 263 passed on the same date i.e. 24.08.2018 with the similar direction to the Assessing Officer to make the same afresh after rejecting both the contentions raised on behalf of the assessee in reply to the notice issued under section 263 as done in the present case. He has submitted that the order passed by the Id. Principal CIT in the case of Binod Kumar Mahato under section 263 on the similar line as in the present case was challenged by the said in the appeal filed before the ITAT by raising both the contentions as raised before the Id. Principal CIT during the course of proceedings under section 263 and the same were accepted by the Tribunal vide its order dated February 24, 2021 passed in ITA No. 2173/KOL/2018 thereby quashing the order passed by the Id. Principal CIT under section 263 for the reasons as summarized in paragraph nos. 9 & 10 of the order as under:-

*"9. The propositions of law laid down in these case-law is that, when the Assessing Officer completed assessment u/s 143(3) of the Act, after examining the issues for which the case has been selected for limited scrutiny, then it cannot be held that there is an error in the order of the Assessing*

*Officer, for the reason that he has not sought permissions to examine other reasons. If the Assessing Officer has not examined any other aspect, than the reasons for which the assessment was selected for scrutiny, in our view, no fault can be found with the Assessing Officer. Thus, in our view, non-seeking of permission for-conversion of limited scrutiny to complete scrutiny in terms of para 4 of the CBDT Instruction No. 7/2014, does not per se render the assessment order u/s 143(3) of the Act, erroneous.*

*10. Even otherwise, the entire issue of limited scrutiny, reasons for selection, the Bank accounts in questions were before the Id. Pr. CIT. On this issue of turnover, the order of the Assessing Officer has merged with the order of the Id. CIT(A) dt. 28/04/2017. What the Assessing Officer missed, is also missed by the Id. CIT(A). The Id. Pr. CIT cannot order the Assessing Officer to follow the order/directions of the Id. CIT(A) on issues which were not part of the appellate order of the Id. CIT(A). Under these circumstances, the Id. Pr. CIT cannot exercise his powers u/s 263 of the Act, to revise the order that has merged with the order of the Id. CIT(A). For these reasons, we uphold the technical contention of the assessee and quash the order passed by the Id. Pr. CIT u/s 263 of the Act and allow the appeal of the assessee”.*

9. As rightly submitted by the Id. Counsel for the assessee, the issues involved in the present case are thus squarely covered in favour of the assessee by the decision of the Coordinate Bench of this Tribunal rendered in the case of Binod Kumar Mahato (supra), wherein similar issues have been decided by the Tribunal in favour of the assessee in the identical facts and circumstances and even the Id. D.R. has not been able to rebut or controvert this position. We, therefore, respectfully follow the order of the Coordinate Bench of this Tribunal rendered in the case of Binod Kumar Mahato (supra) and quash the impugned order passed by the Id. Principal CIT under section 263.

**10. In the result, the appeal of the assessee is allowed.**

Order pronounced in the open Court on April 21, 2021.

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

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

**Kolkata, the 21<sup>st</sup> day of April, 2021**

- Copies to :
- (1) **Shri Arjun Mahato,  
Malancha, Kanainatshal,  
DVC More, P.O. Sripalli, Burdwan-713101**
  - (2) **Principal Commissioner of Income Tax, Burdwan,  
Aayakar Bhawan, Annexe Building,  
Court Compound, Burdwan-713101**
  - (3) *Commissioner of Income Tax (Appeals), Burdwan,*
  - (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.**