ORDER OD- 9

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/167/2025
IA NO:GA/1/2025, GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX-9, KOLKATA
VS.
MINTU DAS

BEFORE:
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
AND
THE HON'BLE JUSTICE UDAY KUMAR
Date : 14th January, 2026

<u>*Appearance:*</u>

Mr. Prithu Dudhoria, Adv.
…for Appellant

The Court: IA NO:GA/1/2025 is an application for condonation of delay of 57 days in filing the appeal.

Heard Mr. Dudhoria, learned Advocate appearing for the appellant. None appears on behalf of the respondent/assessee.

Perused the application. We find that sufficient grounds have been made out in the application for condonation of delay in not preferring the appeal within the period of limitation. Accordingly, the delay is condoned. IA NO:GA/1/2025 is allowed.

Learned Advocate appearing for the appellant has suggested the following substantial questions of law for consideration:

"a) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in

quashing the assessment order passed u/s 143(3) of the Income Tax Act, 1961 solely on the ground of lack of jurisdiction of the Assessing Officer despite the assessee having participated in the entire assessment proceedings without raising any objection under Section 124(3) of the Act?

b) *WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law by not appreciating that Instruction No. 1/2011 dated 31.01.2011 is an administrative guideline and cannot override statutory provisions regarding jurisdiction as per Section 124 of the Income Tax Act ?*

c) *WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in quashing the assessment order despite the specific provision of Section 292BB of the Income Tax Act ?*

d) *WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law by not adjudicating the fact that the additions made u/s 68 & u/s 69 r.w.s. 115BBE of the Income Tax Act involved transactions in "Penny Stock" (Kailash Auto; Scrip Code: 511357) and entire transactions were stage managed with object to facilitate the assessee to plough back its unaccounted income in the form of fictitious Long Term Capital Gains and claim of bogus exemption ?*

e) *WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in allowing the appeal of the assessee without considering the surrounding circumstances requiring applying the test of preponderance of human probabilities in such cases ?*

f) *WHETHER under the facts and circumstances of the case, it may be considered that the case is covered by the exception clause of Para 3.1(h) of the CBDT Circular 05/2024 dtd. 15.03.2024 ?"*

Heard learned Advocate appearing for the appellant/revenue.

Perused the documents annexed with the stay application and more specifically the order of the Tribunal dated 6th January, 2025. From the order it is seen that “dissatisfied with the assessment order, the assessee went in appeal before the Id. CIT(A), where, the Id. CIT(A) upheld the Assessing Officer's order without addressing the key contention regarding procedural irregularity in issuing of notice u/s 143(2) of the Act, which is in violation of CBDT Circular No.1/2011.

Aggrieved by the aforesaid order, the assessee filed appeal before the Tribunal raising multiple grounds. However, the main contention of the assessee is that the assessment order framed u/s 143(3) of the Act was invalid and bad in law as it was framed by ACIT, Circle-28, Kolkata while notice u/s 143(2) of the Act was issued by him, was not proper on account of pecuniary jurisdiction. The assessee contended that CBDT Circular No. 1/2011 clearly mandates that cases with below 20 lacs falls under the jurisdiction of the ITO and not ACIT. In the present case of the assessee, return of income was filed for Rs.16,50,920/-, which in fact lies with ITO, Ward-28(2), Kolkata, not with ACIT, Circle-28 who had issued notice u/s 143(2) and subsequently framed the assessment order. He submitted that this procedural lapse vitiated the assessment proceedings and made the assessment order unsustainable in law. It was further submitted that as per the settled proposition of law, the issuance of notice u/s 143(2) by the concerned Assessing Officer of competent jurisdiction was sine qua non to frame assessment u/s 143(3) of the Act. Even on merits, he stated that

LTCG arose from the genuine share transaction and related documents were fully submitted, however, the Assessing Officer did not appreciate the facts while passing the order. The Id. AR relied on the decision of the Coordinate Bench in the case of M/s Rupasi Bangla Agro Industries vs. ITO in ITA No.909/Kol/2023 order dated 14.12.2023.

On the other hand, the Id. DR supported the orders of the authorities below and stated that there were no procedural irregularities in issuing of the notice u/s 143(2) or framing of the assessment order as was alleged by the ld. AR before the Bench. The Id. DR also relied on the decision of the Hon'ble Supreme Court in the case of DCIT vs. Kalinga Institute of Industrial Technology [WP(C) No.898/2017], wherein it has been held that the assessee can object if the issue of validity of jurisdiction for issuance of notice u/s 143(2) of the Act, within one month of the issue of notice in the light of the provisions of section 124(3)(a) of the Act.

Since the assessee, through the legal ground raised, is challenging the jurisdiction of the concerned Assessing Officer to frame the impugned assessment order, therefore, it is appropriate to admit the aforesaid legal ground and proceed to adjudicate the legal ground first.

We, after hearing the rival submissions of the parties and perusing the materials available on record note that the return of income of the assessee was of Rs.16,50,920/ which falls under the jurisdiction of the ITO, Ward-28(2), Kolkata but notice u/s 143(2) of the Act was issued by ACIT, Circle-28, Kolkata and also the assessment order was duly framed by ACIT, Circle-28. Kolkata, which is clearly a violation of the jurisdictional mandate under CBDT Circular No. 1/2011 dated 31.01.2011. We note that this procedural irregularity rendered the assessment proceedings invalid and bad in law."

This Court observes that the jurisdictional issue has rightly been determined by the learned Tribunal and no substantial questions of law arises in this appeal.

In view of the above, we dismiss the appeal.

Accordingly, the stay petition (GA/2/2025) is also dismissed.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)

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