

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH : KOLKATA

[Before Hon’ble Shri A T Varkey, JM, & Shri M.Balaganesh, AM]

I.T.A No. 2409 /Kol/2017

Assessment Year : 2013-14

Shri Goutam Mukhopadhyay
[PAN: AFXPM 5821 P]
(Appellant)

-vs-

PCIT-8, Kolkata

(Respondent)

For the Appellant : Shri Soumitra Choudhury, Advocate

For the Respondent : Shri P.K. Srihari, CIT DR

Date of Hearing : 26.11.2018

Date of Pronouncement : 30.11.2018

ORDER

Per M.Balaganesh, AM

1. This appeal by the assessee arises out of the order of the Learned Principal Commissioner of Income Tax, Circle-8, Kolkata [in short the Id. CIT] in Memo no. PCIT-8, Kolkata/U/s.263/2017-18/5207-5210 dated 28.09.2017 passed u/s 263 of the Act against the order passed by the DCIT, Circle-22, Kolkata [in short the Id. AO] under section 143(3) of the Income Tax Act, 1961 [in short “the Act”] dated 16.12.2015 for the Assessment year 2013-14.

2. The only issue to be decided in this appeal is as to whether the Ld. CIT was justified in invoking revisionary jurisdiction u/s 263 of the Act in respect of payments made to

Mahua Basu Mallick in the sum of Rs. 96,000/-, in the facts and circumstances of the case.

3. Brief facts of this issue is that the assessee is an individual and is a famous Oncologist in the city of Kolkata. The return of income for the assessment year 2013-14 was filed by the assessee on 29.09.2013 declaring total income of Rs. 2,12,41,280/-. The assessment was completed accepting the returned income u/s 143(3) of the Act dated 16.12.2015 after examining the details of professional fees, books of accounts, bills and vouchers and bank statements which were produced by the assessee in the course of assessment proceedings. Later the Id. Administrative CIT sought to treat the said order of the Id. AO as erroneous in as much as it is prejudicial to the interests of the revenue and accordingly invoked revisionary jurisdiction u/s 263 of the Act stating that the assessee had paid an amount of Rs. 96,000/- to Mahua Basu Mallick for Cancel Awareness Programme without deduction of tax at source u/s 194J of the Act. Accordingly, in the opinion of the Ld. CIT, the same is to be disallowed u/s 40a(ia) of the Act. The assessee made a legal objection stating that all the details were furnished before the Id. AO at the time of assessment proceedings together with bills, vouchers, bank statements and books of accounts which were duly examined by the Id. AO before framing the assessment. The assessee also replied before the Ld. CIT that he had paid Rs. 96,000/- to Mahua Basu Mallick residing at F-4, G.H.E.C.N. Roy Road, Kolkata-700039 for displaying articles on cancel awareness as a writer. The assessee used to dictate the article in English and the same would be translated by Mahua Basu Mallick in Bengali. It was pleaded that this payment of translation charges does not fall under the ambit of professional fees within the meaning of section 194J of the Act and accordingly no disallowance u/s 40a(ia) of the Act is warranted thereon.

4. The Ld. CIT observed that these articles are for advancing of assessee's profession as evident from the copies of articles submitted by the assessee. Since the Id. AO failed to make any enquiry in this regard, the Id. CIT treated the order as erroneous u/s 263 of the Act to this limited extent of examination of charges of Rs. 96,000/- paid to Mahua Basu Mallick and set aside the assessment order. Aggrieved the assessee is in appeal before us.

5. We have heard the rival submissions. It is not in dispute that the assessee has made payment of Rs. 96,000/- to Mahua Basu Mallick for displaying articles towards Cancel Awareness Programme in Bengali language pursuant to dictations given by the assessee in English. In effect, this is nothing but a payment made for translation of articles from English to Bengali. This, in our considered opinion, does not require any professional skill, so as to fall within the ken of provisions of section 194J of the Act. Hence in our considered opinion, the provisions of 194J of the Act are not attracted in the facts of the instant case with regard to the subject mentioned payment of Rs. 96,000/-. We also find that the assessee had produced the entire bills, vouchers, bank statements, books of accounts, details of professional fees before the Id. AO which were duly examined by the Id. AO and which fact is also mentioned at page 2 of the assessment order. While this is so, it cannot be said that the Id. AO had not made any enquiry regarding this issue while framing the assessment. On the contrary, it can only be said that the Id. AO had taken a possible view on the matter and the Ld. CIT is only trying to substitute his own view against the view taken already by the Id. AO, by invoking the revisionary jurisdiction u/s 263 of the Act, which in our considered opinion, is not permissible as per law. This issue is now well settled by the various High Courts and does not leave any ambiguity. Accordingly, we have no hesitation in quashing the revision proceedings

initiated u/s 263 of the Act by the Ld. CIT. Accordingly, grounds raised by the assessee are allowed.

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

Order pronounced in the Court on 30.11.2018

Sd/-
[A T Varkey]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 30.11.2018

SB, Sr. PS

Copy of the order forwarded to:

1. Shri Gautam Mukhopadhyay, Flat No. 6A, Tower-I, South City, 375, Prince Anwar Shah Road, Kolkata-700068.
2. PCIT-8, Kolkata, 54/1, Rafi Ahmed Kidwai Road, Kolkata-700016
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches