**IN THE INCOME TAX APPELLATE TRIBUNAL "A"**
**(Virtual Court Hearing) BENCH KOLKATA**

**Before Shri P. M. Jagtap, Vice-President and**
**Shri Partha Sarathi Choudhury, Judicial Member**

**I.T.A. No.288/Kol/2021**
Assessment Year: 2016-17

**Trio Trend Exports Pvt. Ltd.....……Appellant**
P-37, CIT Road, Scheme 52,
Kolkata-700014.
**[PAN:AAKCS7593M]**

**vs.**

**PCIT-2, Kolkata.....…….....……...……..…..Respondent**

**Appearances by:**
Shri Akkal Dudhwewala, FCA, appeared on behalf of the appellant.
Shri Amol Sudhirkamat, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : November 08, 2021
Date of pronouncing the order : November , 2021

## ORDER

**Shri Partha Sarathi Choudhury, Judicial Member:**

This appeal preferred by the assessee emanates from the order of Ld. Pr. CIT(A)-2, Kolkata u/s 263 of the Act dated 30.03.2021 for the assessment year 2016-17 as per the following grounds of appeal:

*"1. For that on the facts and in the circumstances of the case and in law, the PCIT was unjustified in law and on facts in revising the assessment order u/s 143 (3) of the Act dated 09.05.2018 even though the said order was neither erroneous nor prejudicial to the interest of the Revenue for the reasons set out in the show cause notice.*

*For that on the facts and in the circumstances of the case and in law, the Ld. PCIT was grossly unjustified in considering the assessment order to be erroneous for lack of enquiry even though the documents on record proved that the AO had made proper enquiries into the taxed withheld on salaries and remuneration and thereafter passed the impugned order u/s 143(3) of the Act.*

*2. For that on the facts and in the circumstances of the case and in law, the appellant having adequately established that applicable TDS on the salary, wages and director's remuneration had been duly deducted and deposited with the Government, the Ld. Pr. CIT was unjustified in setting aside the assessment and directing the AO to again re-verify the deduction of TDS u/s 192 of the Act without himself dealing with the submissions of the appellant, which proved that the assessment order was neither erroneous nor prejudicial to the interest of the Revenue.*

*3. For that on the facts and in the circumstances of the case and in law, the order of the PCIT dated 30.03.2021 be set aside and order of the AO u/s 143(3) dated 09.05.2018 be restored.*

*4. For that the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before."*

2. At the very outset, the Ld. counsel for the assessee submitted that in this case there was a limited scrutiny assessment completed u/s 143(3) of the Act by the Assessing Officer. Demonstrating the same, the Ld. counsel brought to our notice at page 36 of the paper-book wherein notice u/s 143(2) dated 05.07.2017 issued by the Assessing Officer to the assessee and therein it is evident that it was for limited scrutiny. The issues for examination were (i) whether sales turnover/receipts have been correctly offered for tax, (ii) whether deduction claimed on account of loss from currency fluctuations is admissible, (iii) whether outward foreign remittance is from disclosed sources and appropriate withholding and reporting obligations have been complied with. That further the Assessing Officer had even issued notice u/s 142(1) of the Act wherein the Annexure serial no.8 , the Assessing Officer has asked the assessee to furnish reconciliation of TDS in a certain given format. Thereafter, the assessee had furnished reply to all these notices and queries vide letter dated 12.03.2018 to the Assessing Officer and submitted the reconciliation of TDS as per the given format. It is the contention of the assessee that first of all this was a case of limited scrutiny where the issues were specific for the purposes of scrutiny assessment and the Assessing Officer cannot travel beyond that given scope of limited scrutiny as per law. That however as per notice u/s 142(1) of the Act, the Assessing Officer had asked for details of TDS which the assessee nonetheless has complied with and furnished all the details that even before the Pr. CIT, the assessee has given the details of tax deduction at source as is evident from pages 55 to 67 of the paper-book. The Ld. counsel further submitted that the Pr. CIT has not dealt with these submissions filed by the assessee nor has given any findings regarding the details of TDS furnished before him which was already before the Assessing Officer as had been demonstrated before us. The ld. Pr. CIT observed at para 4 of his order which is extracted as follows:

*"4. I have considered the facts of the case and gone through submission of the assessee and details available on record. The assessee has failed to completely disclose*

> *its true and correct income by non-furnishing of details as required under provisions of 1.T. Act, 1961. The A.O. has passed the assessment order without making enquiries or verification which should have been made in the instant case. Clause (a) of Explanation 2 to Section 263(1) is attracted in this case. Accordingly, it is held that the assessment order is erroneous insofar as it is prejudicial to the interest of the revenue."*

This was the reason for assuming the revisional jurisdiction by the Pr. CIT u/s 263 of the Act.

3. The ld. DR fairly conceded that the TDS was duly deducted by the assessee and deposited in the Government account.

4. We have heard the rival contentions and perused the case records. We are of the considered view that as demonstrated from the facts this is case of limited scrutiny in which the Assessing Officer is bound by such scope. Thereafter also the Assessing Officer had asked for details of TDS and the assessee had complied with by providing all the details with written submission and evidences that the TDS were deducted and deposited also in the Government account. These details have been furnished before Pr. CIT. However, the Pr. CIT has nowhere in the order has dealt with the merits of these details furnished before him nor he could justify as to how the order of the Assessing Officer was erroneous so as to be prejudicial to the interest of the Revenue. It is the settled position of law that the Pr. CIT must point out in his order as to how the assessment order is erroneous and prejudicial to the interest of Revenue. This reasoning is absent in the order passed by the Pr. CIT. Furthermore, we find that in ITA No.353/Kol/2020 dated 09.04.2021 the Kolkata ITAT Bench had observed and held as follows:

> *"6. After hearing both parties and perusal of records, we are of the opinion that the Ld. PCIT could not have exercised his revisional jurisdiction on the issue on which he found fault with the action/omission on the part of AO because in the first place the AO could not have been faulted for not conducting any enquiry on the issue of Insurance Premium (Keyman Policy) of Rs.10,00,000/-, since the assessee's case was selected for scrutiny only for limited purpose under CASS and the issue of Insurance Premium (Keyman Policy) of Rs.10,00,000/- was not the reason for selection of the case for limited scrutiny. Therefore, as per the CBDT circular (supra) the AO could not have initiated enquiry on the issue of Insurance Premium (Keyman Policy) of Rs.10,00,000/- and it is settled law that CBDT circulars are binding on income tax authorities. Therefore in such a scenario, the Ld. PCIT could not have invoked jurisdiction u/s 263 of the Act because he could not have held the AO's order to be erroneous because the AO was justified in not enquiring in to the issue of Insurance Premium (Keyman Policy)*

*of Rs.10,00,000/-, since the AO has gone as per the dictum of CBDT circular on the subject. Therefore, the AO's action/ omission of not looking into the issue of Insurance Premium (Keyman Policy) of Rs.10,00,000/- cannot be termed as erroneous . And, therefore, the Ld. PCIT could not have invoked revisional jurisdiction since AO's omission not to look into the issue of keyman policy was in consonance with the CBDT dictum on the subject and so it cannot be termed as erroneous and prejudicial to Revenue; and the impugned action of Ld. PCIT is akin to do indirectly what the AO could not have done directly. Thus it is noted that Ld. PCIT has ventured to exercise his revisional jurisdiction by issuing SCN dated 13.01.2020 without satisfying the essential condition precedent to invoke the jurisdiction u/s 263 of the Act. Therefore the very initiation of jurisdiction by issuing SCN itself is bad in law and therefore it is quashed. Consequently all further actions/proceeding including the impugned order of Ld. PCIT is non-est in the eyes of law. For this we rely on the decision of this Tribunal in Sanjib Kumar Khemka in ITA No. 1361/ Kol/2016 for AY 2011-12 dated 02.06.2017 wherein it has been held that:*

> *"Now coming to the facts of the instant case, we find that the instant case was selected on the basis of AIR Information as evident from the order of AO under section 143(3) of the Act. There is also no whisper in the order of the AO for expanding the scope of limited scrutiny after obtaining the permission from the Administrative CIT. The ld. DR has also failed to bring anything contrary to the argument of the ld. AR. Therefore in our considered view the scrutiny should have been limited only to the information emanating from the AIR. Admittedly, the assessee has claimed to have filed an appeal before Ld. CIT(A) challenging the jurisdiction exceeded by the AO while framing the assessment order u/s 143(3) of the Act. We find that the impugned issue being legal in nature and goes to the root of the matter therefore we are inclined to proceed with this issue first by holding that, from the above submission and after examining of the records, we find that the Ld. CIT in his impugned order u/s 263 of the Act has exceeded his jurisdiction while holding the order of AO as erroneous in so far prejudicial to the interest of Revenue. In view of the above we hold that the ld. CIT has in his order u/s. 263 of the Act exceeded the jurisdiction by holding the order of AO as erroneous in so far as prejudicial to the interest of Revenue on those items which are not emanating from the AIR. Thus, we are inclined to adjudicate only those matters which are emanating from the AIR as discussed above."*

*7. And to the decision of this Tribunal in the case of M/s Chengmari Tea Co. Ltd. in ITA NO. 812/Kol/2019 for AY 2014-15 dated 31.01.2020 which is placed at page 62 to 70 wherein the Tribunal held as under:*

> *"8. Next comes the assessee's second substantive argument that since the Assessing Officer had framed his regular assessment involving limited scrutiny on the above stated issues not including sec. 33AB deduction to the purpose of the impugned withdrawals. We find that the same is duly covered in its favor as per this tribunal's co-ordinate bench's decision in ITA No.1361/Kol/2016 in Sanjeev K. Khemka vs. Pr. Commissioner of Income-Tax-15, Kolkata decided on 02.06.2017 as under:-*

> *"4. We have heard the rival contentions of the parties and perused the materials on record. The primary issue in the case on hand revolves whether it is a case selected under CASS for limited scrutiny or regular scrutiny. It can be seen from the grounds of appeal that the assessee wants to contend that the very initiation of proceedings u/s 143(3) of the Act on the basis of regular scrutiny under the Act was bad in law. The proceedings under section 143(3) of the Act should have been limited to the extent of the information gathered through AIR. Accordingly the proceedings u/s 263 of the Act cannot be expanded beyond the issue raised in AIR. Thus the order u/s 143(3) of the Act beyond the points of AIR is invalid in law and so the same is with the order passed u/s 263 of the Act. It is the further contention of the assessee that in the items which are not subject matter of AIR cannot subject matter of scrutiny. Such matters include salary of the assessee, loans & interest on loans, payment of LIC, Commission & brokerage income etc. It is the case of the assessee that in the assessment order passed u/s 143(3) of the Act, the AO has travelled beyond the points of the AIR on the basis of which the case of scrutiny was selected under CASS module. It is the plea of the assessee that when no addition/disallowance can be made beyond the points mentioned in AIR in the assessment proceedings then same is the case with proceedings initiated u/s 263 of the Act.*
>
> *9. This tribunal's yet another decision in ITA No.1011/Kol/2017 in Sri Hartaj Sewa Singh vs. DCIT,(IT),Circle1(1), Kolkata decided on 27.04.2018 also decides the instant issue in assessee's favour on identical reasoning. We conclude in these facts and circumstances that the PCIT has erred in law and on facts in holding the impugned assessment as erroneous causing prejudice to the interest of Revenue on the ground which nowhere formed subject-matter of the CASS scrutiny as it is evident from the case records. We reiterate the learned co-ordinate bench's detained reasoning hereinabove that the sec. 263 revision proceedings ought not to have been set into motion for expanding the jurisdiction of the Assessing Officer to examine the issues beyond the scope of limited scrutiny. We therefore reverse the PCIT's action assuming sec. 263 revision jurisdiction in these facts and circumstances."*
>
> *8. In the light of the discussion and case laws (supra), we are inclined to hold that the very initiation of revisional proceedings by issue of SCN dated 13.01.2020 by Ld PCIT itself is bad in law and therefore it deserves to be quashed and we order accordingly. Consequently all further actions/proceeding including the impugned order of Ld. PCIT is null in the eyes of law."*

5. The facts in the instant case are absolutely identical with the afore-stated judicial precedent. We further find as submitted by the Ld. DR that the TDS have been deducted and deposited by the assessee in the Government account, therefore, there is no loss caused to the Revenue. In this case of the limited scrutiny assessment the Assessing

Officer could not have travelled beyond such scope to enquire about TDS details which was not the subject-matter of such limited scrutiny. Nonetheless these TDS details were called for by the Assessing Officer and verified and they were duly submitted by the assessee. The Ld. DR could not refute these facts on record. In such scenario, the assessment order is neither erroneous nor prejudicial to the interest of the Revenue. Taking the totality of facts and circumstances of the case, we hold that the assumption of revisionary jurisdiction u/s 263 and consequent order passed by the Pr.CIT is bad in law and deserves to be quashed. We order accordingly.

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

Order is pronounced in the open court on 08.11.2021.

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| Sd/- | Sd/- |
| **[P. M. Jagtap]** | **[Partha Sarathi Chaudhury]** |
| **Vice-President** | **Judicial Member** |

Dated: 08.11.2021.
*RS*

*Copy of the order forwarded to:*
1. Trio Trend Exports Pvt. Ltd
2. PCIT-2, Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Sr.PS/D.D.O, Kolkata Benches