आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA No. 433/JP/16
निर्धारण वर्ष/Assessment Year : 20211-12

M/s Aakriti Landcon (P) Ltd. Srinath Residency, MBS Nagar, Kota	बनाम Vs.	The Pr. Commissioner of Income Tax, Kota
स्थायी लेखा सं./जीआईआर सं./PAN No. AAFCA 5925 J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Shrawan Kumar Gupta, Adv.
राजस्व की ओर से/ Revenue by : Shri Sayyat Nasir Ali (CIT)

सुनवाई की तारीख/ Date of Hearing : 22.12.2016
घोषणा की तारीख/ Date of Pronouncement : 12/01/2017.

आदेश/ ORDER

PER SHRI VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of ld. Pr. CIT, Kota dated 31.03.2016 passed u/s 263 of the Act. The ld. Pr. CIT in his order has held that the AO had passed an order u/s 143(3) without due and proper enquiries which he is expected to make as an investigator as he cannot remain passive in the face of a return which is apparently in order but calls for further enquiry. The ld. Pr. CIT set-aside the assessment with the directions to the AO to frame it denovo after making proper enquiry and verification of books of accounts and further record/documents and after giving proper opportunity of being heard to the assessee.

2. The ld. AR has raised two preliminary objections against the exercise of power by the Pr. CIT u/s 263 of the Act. It would therefore be relevant to examine those preliminary objections before the merit of the matter which has been put up for our consideration.

3. The first preliminary objection raised by the Ld. AR is that the action u/s 263 of the Act has not been taken by the Ld. CIT suo moto but based on the proposal of the AO which is invalid in law and liable to be quashed.

3.1 In this regard, the ld. AR submitted that the assessment order for the year under consideration has been passed u/s 143(3) on 24.03.2014 after detailed enquiry by the ACIT Circle-2 Kota. Thereafter the succeeding ACIT Circle -2 Kota himself send the Proposal u/s 263 dt. 02.11.2015 to the ld. Pr. CIT Kota on all the points as mentioned in notice u/s 263 of the Act. Thereafter the ld. AO has issued the notice u/s 133(6) to the assessee on 14.03.2016 calling the information on the various points. In response thereto, the assessee has filed the detailed reply with details on 18.03.2016. After that, the ld. AO has send its report to the Pr. CIT on 21.03.2016 on all the points and stated that "in my opinion no further action warranted in this case". Thereafter the office of ld. Pr.CIT has again sought report from the AO on 28.03.2016. Thereafter the ld. AO has again sent his report on 30.03.2016 on all the points and submitted that "para wise report is submitted for your goodself's kind perusal and necessary action at your end". And thereafter the ld. Pr. CIT Kota has faxed the notice u/s 263 at 1.19 PM on 31.03.2016 from Jodhpur to his Kota office and photocopy of that fax notice has been issued to the assessee at 2.00 PM on 31.03.2016 itself without signature and carrying only seal paste by alleging that the order passed by the AO is found to

be erroneous as it is prejudicial to the interest of the revenue on the various issues and the assessee was asked to appear and file its submissions at 4.00PM on 31.03.2016 itself before the ld Pr. CIT.

3.2 In the above factual matrix, it was submitted by the ld AR that action initiated u/s 263 by the ld. Pr. CIT is itself invalid as it is based on the proposal of the Assessing Officer on the same issues as stated in the proposal letter. The ld. Pr. CIT has not made any amendments on the issues. Thus, the action u/s 263 has not been taken by the ld. Pr. CIT suo Moto. The action u/s 263 can only be taken by the ld. Pr. CIT when he has found any error in the assessment order. The AO himself cannot propose to take any action u/s 263 for the assessment made by his predecessor. At the worst, he can take action u/s 147/148 only after recording satisfaction or reasons. And, in law, no where it has been provided that if the AO has found any error and which is prejudicial to Revenue in the assessment order, he may propose to the ld. Pr. CIT to take action u/s 263. Hence the Action taken by the ld. Pr. CIT on the proposal of AO itself is invalid and liable to be quashed. How an Assessing officer itself can says its own order erroneous and prejudicial to the interest of the revenue.

3.3 The ld AR further submitted that on these same facts and circumstances, the Honble ITAT Jaipur Bench has struck down/quashed the action u/s 263 taken by the CIT Kota in the case of Sh. Kishore Madnani V/s The CIT Kota in ITA No. 508/Jp/2013 dt. 31.01.2014 and also in the case of Sh. Giriraj Gupta v/s The CIT Kota in ITA No. 426/Jp/13 dt. 28.02.2014. Hence the above matter is directly covered by the above ITAT orders. Also, the ld AR drawn reference to and support from the

decisions in case of Jheendu Ram v/s CIT 130 TTJ 82(Luck.) and Rajeev Arora v/s CIT 135 TTJ 01(Jp).

4. The second preliminary objection raised by the ld. AR is that the order has been passed by the ld. Pr. CIT u/s 263 in undue haste on the very last day of limitation period and it was passed without providing the assessee an adequate opportunity of being heard which is against the principal of natural justice.

4.1 In this regard, the ld. AR took us through the sequence of events right from the issuance of notice u/s 263 which was issued on 31.03.2016, the last day of two years limitation period and the passing of the order u/s 263 of the Act on the same day. The Ld. AR submitted that in this case, first and last notice u/s 263 has been issued by the Pr. CIT Kota on 31.03.0216. The Pr. CIT Kota was also having additional charge of Pr. CIT Jodhpur on that day i.e 31.03.2016. On 31.03.2016, the Pr. CIT was not available at the Kota office, he was at Jodhpur on 31.03.2016. The Pr. CIT has faxed the notice u/s 263 from Jodhpur to Kota office on 1.19 PM. Thereafter the ITO (Technical) called the A/R of the assessee and served the fax notice on him at 2.00 PM on 31.03.2016 and asked to file the reply of show cause notice u/s 263 at 4.00 PM on 31.03.2016 itself. In response thereto, the A/R of the assessee has prepared its reply, explanation with enclosures trying to explain the facts and appeared at 5.00 PM on 31.03.2016 in the office of Pr. CIT Kota. However as he was not available in the office on that day, being present at Jodhpur, the A/R submitted the reply with its paper book in the Dak of Pr. CIT office, Kota. Thereafter the order was served on the A/R of the assessee at 5.30 - 6.00 PM on 31.03.2016 itself which is not even signed by the Pr. CIT. Looking to the above facts and circumstances, it

was submitted that its unlikely that the reply and detailed submitted by the assessee has been seen or considered at all by the ld Pr. CIT.

4.2 The ld. AR thereafter took us through the provisions of section 263 of the Act which reads as under:

> *"263. (1) The Pr. Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."*

4.3 The ld. AR submitted that looking at the above factual matrix and the legal position where right to be heard has been statutorily provided, it is clear that the ld. Pr. CIT has not considered the assessee's submissions and not heard the assessee at all and the order has been passed in undue haste. The ld. AR referred to the decision of the Hon'ble Supreme Court in case of Pr. CIT vs. Simon Carves Ltd. (1976) 105 ITR 212 (SC) wherein it was held that:

"The taxing authorities exercise quasi-judicial powers and in doing so they must act in a fair and not in a partisan manner. Although it is part of their duty to ensure that no tax which is legitimately due from an assessee should remain unrecovered, they must also at the same time not act in a manner as might indicate that scales are weighted against the assessee. we are wholly unable to subscribe to the view that unless those authorities exercise the power in a manner most beneficial to the Revenue and consequently most adverse to the assessee, they should be deemed not to have exercised it in a proper and judicious manner."

The ld AR finally submitted that the order passed u/s 263 in undue haste is bad in law and not providing an adequate opportunity to be heard is against the principal of natural justice and the same is liable to be quashed.

5. The ld. CIT DR is heard who has vehemently argued the matter and supported the order of the ld. Pr. CIT in initiating and taking action u/s 263 of the Act. Regarding contentions of the ld. AR that the action has been taken by the Ld. CIT on the proposal of the AO, it was submitted that the ld. Pr CIT has duly reviewed the assessment records and after taking into consideration the proposal and report of the AO has issued the show cause notice u/s 263 of the Act which is in due compliance with the provisions of law. Regarding the second contention of the assessee, the ld. CIT DR has drawn our reference to para 2 of Pr. CIT order and submitted that a show cause was issued to the assesesee and after taking into consideration the submission of the assessee and the explanation offered by the assessee, the order has been passed u/s 263 of the Act. Therefore, it cannot be said that the assessee has not been granted an opportunity of being heard before the order u/s 263 was passed.

6. We have heard the rival contentions and perused the material available on record. Regarding the first contention of the ld AR that the action has been taken by the ld. Pr. CIT on the proposal of the AO which is invalid and liable to be quashed, it would be relevant to refer to the provisions of Section 263 of the Act which reads as under:

> "263(1) The Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of revenue, he may after giving the assessee an opportunity of being heard

and after making or causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment."

6.1 A perusal of the above provisions makes it clear that the Principal CIT may call for and examine the record of any proceedings under this Act. It further provides that if the Pr. CIT considers that any order passed therein by the AO is erroneous in so far as it is prejudicial to the interest of Revenue, he may give the assessee an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justified. The requirement of law therefore is the ld. Pr. CIT has to firstly examine the records of the assessment proceedings and thereafter analyzing the records and applying his mind has to come to a position whereby he forms an opinion that the order passed by the AO is erroneous in so far as it is prejudicial to the interest of Revenue. The law further provides that the ld. Pr CIT can either make the necessary enquiries himself as he deems necessary or cause such enquiries to be made by others. In the instant case, what we have observed is that initially the AO has sent a proposal u/ 263 of the Act to the Pr. CIR vide its letter dated 02.11.2015 highlighting certain specific matters in terms of deficiencies and being erroneous in nature to the prejudicial to the interest of revenue to the Pr. CIT. Thereafter the Pr. CIT after going through the proposal as well as the assessment records have raised certain points on which report of the AO was called, the AO has submitted two reports dated 21.03.2016 and thereafter, another report dated 30.03.2016 and thereafter after considering the reports of the AO, a show cause issued to the assessee on 31.03.2016. In the order passed u/s 263 of the Act, in para 2 of its order the ld. CIT has stated that

while reviewing the case my predecessor reviewing authority for the cases assessed by the ACIT observed certain matters which were listed down and thereafter in para 3 of its order, the ld. Pr. CIT states that the undersigned also took note of the matter and found the above observations correct in view of the facts of the case, and thereafter a show cause notice u/s 263 vide its office letter dated 31.03.2016 was issued fixing the case for hearing on 31.03.2016 itself. The above factual matrix makes it clear that even though the proposal has been initially received by the Pr. CIT for initiating action u/s 263 of the Act, the Pr. CIT has himself gone through the assessment records and thereafter has called for the report of the AO on two occasions and thereafter has issued the show-cause and passed the order u/s 263 of the Act. It is therefore, not a case where the Pr. CIT has simpliciter initiated the action u/s 263 of the Act on the basis of the proposal received from the AO rather he has applied his own independent mind and after going through the assessment records has come to an opinion that the order passed by the AO is erroneous so far as it is prejudicial to the interest of the revenue.

6.2 The decisions cited by the ld. AR therefore, does not support the case of the assessee as in those cases the ld. CIT has simply show caused the assessee after receipt of the proposal from the concerned AO and in those cases he did not apply his mind to see whatever proposal has been received by him, he himself should have been satisfied that the proposed action really falls under 263 of the Act.

6.3 In this regard, useful reference can be drawn to the decision of Hon'ble Calcutta High Court in case of **Smt. Sumitra Devi Khirwal vs**

.Commissioner of Income-tax [1972] 84 ITR 26 (Cal)wherein it was held as under:

"The next contention of Mr. Saraf is that under section 33B it is the duty of the Commissioner to call for and examine the record of any proceeding and if he considers upon such examination that the Income-tax Officer's order is erroneous in so far as it is prejudicial to the interests of the revenue he may exercise his powers under that section. In the instant reference, according to learned counsel, the Commissioner did not himself call for any records but certain records were placed before him and he acted thereon. From this point of view, submits counsel for the assessee, the Commissioner's consolidated order cannot be sustained. In our opinion, there is no substance in this contention. At page 26 of the paper book we find the notice under section 33B. The opening words of this notice are: "On calling for and examining your case for the assessment years 1956-57, 1957-58, 1958-59, 1959-60, 1960-61 and 1961-62 and other connected records.....".

These statements in the notice were challenged before the authorities below. It is possible, as the departmental representative himself conceded before the Tribunal, that the records were put up before the Commissioner by his subordinates but that was no reason why he was debarred from exercising the powers under section 33B. All that the section requires is that before issuing a notice under section 33B he must call for all relevant papers and documents, examine them and then issue the notice if he is satisfied that the interests of the revenue have suffered. Going through the records of the tax authorities in this reference we have no doubt that the Commissioner had complied with these provisions and, as such, his order ought to be sustained."

6.4 Further, the Hon'ble Allahabad High Court in case of **Commissioner of Income-tax vs Bhagat Shyam & Co [1991] 188 ITR 608 (All)** has held as under:

"5. We agree with Mr. Katju to this extent that merely because the ITO placed certain information or material before the Commissioner and the Commissioner invoked the power under section 263, it cannot be said that the Commissioner has initiated the proceeding without applying his mind or that he has abdicated his function. After all someone has to place the relevant material or information before the Commissioner. There is no bar to the ITO bringing that material to the notice of the Commissioner. What cannot, however, be denied is that the Commissioner must apply his mind to the material placed before him and satisfy himself that it is a case where he ought to exercise his revisional power. Then he may issue a show-cause notice and after affording an opportunity to the affected parties pass final orders. "

6.5 In light of above, we are unable to accede to the first contention of the ld. AR that the action u/s 263 has been initiated solely on the proposal initiated by the AO. There is no bar on the AO bringing the relevant issues to the notice of the Pr. CIT. The ld Pr. CIT has applied his mind after going through the proposal and the assessment records and after being satisfied, has issued the show-cause under section 263 of the Act.

7. Now coming to the second contention of the ld. AR that the order has been passed in undue haste and the assessee has been denied an

opportunity of being heard and the principal of natural justice has been violated. In this regard, it would be relevant to note that a show cause notice has been issued to the assessee on 31.03.2016 fixing the case for hearing on 31.03.2016 itself and thereafter the order has been passed u/s 263 on the same date i.e 31.03.2016. These are the admitted facts as apparent from para 3 of the order u/s 263 passed by the Pr. CIT which is reproduced as under:

"The undersigned also took note of the matter and found that the above observations correct in view of the facts of the case. Therefore show cause notice u/s 263 vide this office letter no. Pr.CIT/ITO(Tech)'Kota/2015-16/3336 dated 31.3.2016 was issued fixing the case for hearing on 31.3.2016 itself. The assessee filed its reply through its AR vide letter dated 31.3.2016. The reply of the assessee has been duly considered but explanation offered by the assessee is not found to be satisfactory/tenable on facts and law. Examinations of the assessment records reveal that the AO completed the assessment in a routine manner. I find that it is not only the lack of verification but also mistaken view of law which has made the order erroneous and prejudicial to the interest of revenue."

7.1. In this regard, we refer to and draw guidance from a recent decision of Hon'ble Supreme Court in case of **Commissioner of Income-tax, Mumbai vs. Amitabh Bachchan [2016] 69 taxmann.com 170 (SC)** where the provisions of section 263 have been examined at great length in terms of issuance of show-cause notice and opportunity of being heard and legal preposition has been laid down by the Hon'ble Supreme Court in para 10 and 11 of its order as under:

"10. Reverting to the specific provisions of Section 263 of the Act what has to be seen is that a satisfaction that an order passed by the Authority under the Act is erroneous and prejudicial to the interest of the Revenue is the basic pre-condition for exercise of jurisdiction under Section 263 of the Act. Both are twin conditions that have to be conjointly present. Once such satisfaction is reached, jurisdiction to exercise the power would be available subject to observance of the principles of natural

justice which is implicit in the requirement cast by the Section to give the assessee an opportunity of being heard. It is in the context of the above position that this Court has repeatedly held that unlike the power of reopening an assessment under Section 147 of the Act, the power of revision under Section 263 is not contingent on the giving of a notice to show cause. In fact, Section 263 has been understood not to require any specific show cause notice to be served on the assessee. Rather, what is required under the said provision is an opportunity of hearing to the assessee. The two requirements are different; the first would comprehend a prior notice detailing the specific grounds on which revision of the assessment order is tentatively being proposed. Such a notice is not required. What is contemplated by Section 263, is an opportunity of hearing to be afforded to the assessee. Failure to give such an opportunity would render the revisional order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice. Reference in this regard may be illustratively made to the decisions of this Court in Gita Devi Aggarwal v. CIT [1970] 76 ITR 496 and in CIT v. Electro House [1971] 82 ITR 824 (SC). Paragraph 4 of the decision in Electro House (supra) being illumination of the issue indicated above may be usefully reproduced hereunder:

"This section unlike Section 34 does not prescribe any notice to be given. It only requires the Commissioner to give an opportunity to the assessee of being heard. The section does not speak of any notice. It is unfortunate that the High Court failed to notice the difference in language between Sections 33-B and 34. For the assumption of jurisdiction to proceed under Section 34, the notice as prescribed in that section is a condition precedent. But no such notice is contemplated by Section 33-B. The jurisdiction of the Commissioner to proceed under Section 33-B is not dependent on the fulfilment of any condition precedent. All that he is required to do before reaching his decision and not before commencing the enquiry, he must give the assessee an opportunity of being heard and make or cause to make such enquiry as he deems necessary. Those requirements have nothing to do with the jurisdiction of the Commissioner. They pertain to the region of natural justice. Breach of the principles of natural justice may affect the legality of the order made but that does not affect the jurisdiction of the Commissioner. At present we are not called upon to consider whether the order made by the Commissioner is vitiated because of the contravention of any of the principles of natural justice. The scope of these appeals is very narrow. All that we have to see is whether before assuming jurisdiction the Commissioner was required to issue a notice and if he was so required what that notice should have contained? Our

answer to that question has already been made clear. In our judgment no notice was required to be issued by the Commissioner before assuming jurisdiction to proceed under Section 33-B. Therefore the question what that notice should contain does not arise for consideration. It is not necessary nor proper for us in this case to consider as to the nature of the enquiry to be held under Section 33-B. Therefore, we refrain from spelling out what principles of natural justice should be observed in an enquiry under Section 33-B. This Court in Gita Devi Aggarwal v. CIT, West Bengal ruled that Section 33-B does not in express terms require a notice to be served on the assessee as in the case of Section 34. Section 33-B merely requires that an opportunity of being heard should be given to the assessee and the stringent requirement of service of notice under Section 34 cannot, therefore, be applied to a proceeding under Section 33-B." (Page 827-828).
[Note: Section 33-B and Section 34 of the Income Tax Act, 1922 corresponds to Section 263 and Section 147 of the Income Tax Act, 1961]

11. It may be that in a given case and in most cases it is so done a notice proposing the revisional exercise is given to the assessee indicating therein broadly or even specifically the grounds on which the exercise is felt necessary. But there is nothing in the section (Section 263) to raise the said notice to the status of a mandatory show cause notice affecting the initiation of the exercise in the absence thereof or to require the C.I.T. to confine himself to the terms of the notice and foreclosing consideration of any other issue or question of fact. This is not the purport of Section 263. Of course, there can be no dispute that while the C.I.T. is free to exercise his jurisdiction on consideration of all relevant facts, a full opportunity to controvert the same and to explain the circumstances surrounding such facts, as may be considered relevant by the assessee, must be afforded to him by the C.I.T. prior to the finalization of the decision."

7.2 Further, in case of **Commissioner of Income-tax Vs. G.K. Kabra, Cooperative Industrial Estate [1994] 75 TAXMAN 503 (AP)**, the Hon'ble Andhra Pradesh High Court has held as under:

"5. We are unable to accept this contention based on the observation of the Supreme Court pertaining to the peculiar facts of that case. What is required by section 263 is that the assessee must be afforded an opportunity of being heard by the Commissioner with regard to the error which he proposes to revise. Affording any further opportunity after

setting aside the order of the ITO would not amount to an opportunity of meeting the alleged error in the assessment proposed to be revised. The finding of the Tribunal in the present case that no such opportunity was given to the assessee by the ITO is a finding of fact and since the revenue has not established that that finding is in any way erroneous in law, we do not consider it necessary to call for the statement of the case for reference of such a question to this Court. The reference is dismissed."

7.3 In light of above, the settled legal position is that what has to be seen in the given case is that a satisfaction that an order passed by the Authority under the Act is erroneous as well as prejudicial to the interest of the Revenue has to be reached by the CIT. Both are twin conditions that have to be conjointly present. Once such satisfaction is reached, jurisdiction to exercise the power would be available subject to observance of the principles of natural justice which is implicit in the requirement cast by the Section 263 to give the assessee an opportunity of being heard. Section 263 has been understood not to require any specific show cause notice to be served on the assessee. Rather, what is required under the said provision is an opportunity of hearing to the assessee. Failure to give such an opportunity would render the revisional order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice. While the C.I.T. is free to exercise his jurisdiction on consideration of all relevant facts, a full and adequate opportunity to controvert the same and to explain the circumstances surrounding such facts, as may be considered relevant by the assessee, must be afforded to the assessee by the C.I.T. prior to the finalization of the decision. Affording any further opportunity after setting aside the order of the AO would not amount to an opportunity of meeting and satisfying the requirements as enshrined in section 263 of the Act.

7.4 In the context of above legal position, what has to be examined in the instant case is whether the assessee has been afforded a reasonable and fair opportunity of being heard before the ld Pr. CIT passed the order under section 263 of the Act. As we have noted above, the assessment order in this case was passed on 24.03.20143 and thereafter, a show cause notice has been issued to the assessee on 31.3.2016 and thereafter the order u/s 263 has been passed on the same date, being the last date of the two years limitation period. As per the ld. AR, the show cause notice was handed order to the assessee at 2 PM on 31.3.2016 and the assessee was asked to reply to the show cause by 4 PM. The assessee prepared and filed its submission at 5 PM and thereafter the order has been served on the AR of the assessee at 5.30 to 6 PM on 31.3.2016. Even the order passed by the ld Pr. CIT at para 3 is explicitly clear where he states that "*show cause notice u/s 263 vide this office letter no. Pr.CIT/ITO(Tech)'Kota/2015-16/3336 dated 31.3.2016 was issued fixing the case for hearing on 31.3.2016 itself. The assessee filed its reply through its AR vide letter dated 31.3.2016.*" These are facts which are clearly emerging from the records and the Revenue has not been able to controvert the same. These facts thus demonstrate that firstly no action was taken by the Pr. CIT for 2 years after passing of the assessment order, and thereafter at the fag-end of the limitation period which was expiring on 31.3.2016, the assessment records were pursued, the reports were called from the AO, a show cause notice was issued to the assessee on 31.3.2016 wherein the assessee was given a limited time window of mere two hours to respond to the show cause. Further, given the fact that the assessee managed to prepare and file its submissions by 5 PM and order u/s 263 was passed by the ld Pr. CIT and handed over to the assessee by 6 PM, we have our serious doubts as to whether the

submission of the assessee filed at Kota have been considered at all by the Pr. CIT sitting at Jodhpur while issuing the order u/s 263 of the Act.

7.5 In our view, it is a clear case where the assessee has been denied a rightful opportunity of fair and adequate hearing before the ld Pr. CIT. Allowing a time window of two hours to respond to the show-cause is as good as not allowing any opportunity at all to the assessee. The order has been passed in undue haste and there is nothing on record to suggest the urgency in the matter except the fact that the limitation period to exercise powers under section 263 was expiring on the said date. The same cannot be a reason to waive off or dispense with the statutory requirement to provide an adequate opportunity to the assessee. The interest of Revenue can well be taken care of by invoking the provisions of section 147 of the Act. On these grounds alone given the denial of rightful opportunity to the assessee of being heard which is very much enshrined under the law, the action taken by the ld. Pr. CIT by passing order u/s 263 of the Act is set-aside and the order of the AO is sustained.

7.6 Given the above, we don't deem it necessary to go through the arguments of either of the parties on the merits of exercise of power under section 263 of the Act as to whether twin conditions of order passed by the AO being erroneous as well as prejudicial to interest of revenue are satisfied in the instant case or not. Hence the respective contentions in this regard are not examined and dealt with.

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

Order pronounced in the open court on 12/01/2017.

Sd/-	Sd/-
(KUL BHARAT)	(VIKRAM SINGH YADAV)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

Jaipur
Dated:- 12/01/2017

Pillai

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- M/s Aakriti Landcon (P) Ltd. Kota
2. प्रत्यर्थी/ The Respondent- The Pr. CIT, Kota
3. आयकर आयुक्त/ CIT Kota
4. आयकर आयुक्त(अपील)/The CIT(A) Kota
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No.433 /JP/2016)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar.