

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE VICE  
PRESIDENT**

&

**SMT. BEENA PILLAI, JUDICIAL MEMBER**

**I.T.A .No.-3007/Del/2014  
(ASSESSMENT YEAR-2009-10)**

Modicare Limited 5, Community Center, New Friends Colony, New Delhi. AABCM9425F	vs	CIT Delhi-II, Room No. 309, 3 <sup>rd</sup> Floor, C.R. Bldg., I.P. Estate, New Delhi.
<b>Appellant by</b>	<b>Sh. Rohit Jain, Adv. Anshul Sachar, Adv.</b>	
<b>Respondent by</b>	<b>Sh. Piyush Jain, CIT DR</b>	

<b>Date of Hearing</b>	<b>29.03.2016</b>
<b>Date of Pronouncement</b>	<b>19.04.2016</b>

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER:**

The present appeal has been filed by the assessee against the order dated 19/03/2014 passed by Ld.CIT, under section 263 of the act, for assessment year 2000 910 on the following grounds of appeal:

1. *“That on the facts and circumstances of the case and in law, the impugned order dt. 19.03.2014 passed by the Commissioner of Income Tax (CIT), u/s 263 of the*

*Income Tax Act, 1961 is without jurisdiction, illegal, bad in law and void ab-initio.*

*1.1 That on the facts and circumstances of the case and in law, the impugned order dt. 19.03.2014 passed u/s 263 Act is illegal and bad in law inasmuch as:*

*a) Revisionary proceedings were initiated simply on the basis of certain proposal received (not known to the appellant), without any independent application of mind and merely to conduct further roving/fishing enquiries;*

*b) The CIT even failed to specify the issue on which the assessment order dated 31.10.2011 is treated as "erroneous" and "prejudicial to the interests of the Revenue";*

*c) The CIT directed the Assessing Officer to provide the necessary basis/reasons for initiation of revisionary proceedings u/s 263 of the Act;*

*1.2 That the CIT failed to appreciate that revisionary proceeding u/s 263 of the Act could not be initiated merely to: (a) conduct further vague/roving enquiries; or (b) authorize Assessing Officer to conduct roving/fishing enquiries by set aside the assessment.*

*2. That the CIT erred on facts and in law in failing to appreciate that the order passed u/s 143(3) of the Act was not erroneous, much less prejudicial to the interests of Revenue to warrant exercise of revisionary jurisdiction u/s 263 of the Act.*

*2.1 That the CIT erred on facts and in law in passing the impugned order u/s 263 of the Act without even considering/disposing off the objections to initiation of revisionary proceedings filed by the appellant.*

*2.2 That the CIT erred on facts and in law in exercising jurisdiction u/s 263 of the Act without appreciating that there is no material, whatsoever, available on record to cast any shred of doubt as to the correctness of the amount of assessed income; neither the same has been brought on*

*record/pointed out by CIT in the impugned order dated 19.03.2014.*

- 2.3 That on the facts and circumstances of the case and in law, the CIT erred in passing the impugned revisionary jurisdiction without even making available ex-parte material on the basis of which proceedings u/s 263 of the Act were initiated.*
- 3. Without prejudice, that the CIT failed to appreciate that the entire commission income had already been offered and brought to tax in the original assessment order dated 31.10.2011 passed u/s 143(3) of the Act and, therefore, the assessment order cannot be regarded "erroneous", much less prejudicial to the interests of the Revenue, even on the issue of taxability of commission income.*
- 4. The appellant craves leave to add, alter, amend or vary from the aforesaid grounds of appeal before or at the time of hearing."*

2. The brief facts of the case are as under:

2.1. The assessee filed its return of income for assessment year 2009-10 on 30 09.2009, declaring income at nil. The assessee is a listed company and engaged in the business of marketing of household products in the category of cosmetics, Auto CAD, personal care, kitchen care etc. During the year under consideration, the assessee had received dividend income of Rs.14,51,289/-which was claimed as exempt income. The assessee had not made any disallowance under section 14 A of the act. The case was selected under scrutiny and notices under section 143(2) and section 142(1) were issued. The Ld. AO completed the assessment by making an addition of Rs.3,23,475/-, being disallowance under section 14 A of the act.

2.2. Subsequently a proposal under section 263 of the act to review the order passed by the Ld.AO under section 143(3) of the

act was initiated on 31.10.2011 for the year under consideration. The Ld. CIT passed the order under section 263 on 19. 03. 2014 setting aside the order passed by the assessing officer dated 31. 10. 2011 passed under section 143 (3) of the act.

3. Aggrieved by the order passed by the Ld. CIT under section 263 of the act the assessee is in appeal before us.

3.1. The Ld.AR submitted that the order passed by the Ld. CIT under section 263 of the act, is without any jurisdiction, illegal, bad in law and is *void ab initio*. The Ld.AR submitted that the revisionary proceedings could be initiated only if the assessment order is found to be erroneous and pre-judicial to the interest of the revenue. The ld.AR submitted that the Ld.CIT in the impugned order has directed the assessing officer to provide the necessary basis/reasons for initiation of revisionary proceedings under section 263 of the act. He submitted that the Ld. CIT has even failed to specify the issues on which the assessment order dated 31.10. 2011 has been treated as erroneous and prejudicial to the interest of the revenue. The Ld.AR submitted that the Ld. CIT has also failed to dispose of the objections raised by the assessee on initiation of the revisionary proceedings.

4. The Ld. Senior DR, could not controvert the submissions of the Ld. AR.

5. We have perused the orders passed by the authorities below.

5.1. It is observed that the ld.AR is correct in submitting that the Ld. CIT has not recorded the issue, on which the assessment order dated 31.10.2011 could be treated as erroneous, and

prejudicial to the interest of the revenue. It is very surprising to observe that the Ld.CIT has directed the assessing officer to provide the details of facts on the basis of which the proceedings under section 263 of the act has been initiated. The Ld.CIT has initiated the revisionary proceedings in a very careless manner and without application of his mind.

5.2. The primary condition for invocation of the provisions of section 263 of the Act, is that the assessment order sought to be revised should be erroneous and also prejudicial to the interests of Revenue. Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. Vs. CIT [2000] 243 ITR 83*, held as under;

*“It was, inter alia, laid down in this case that the prerequisite for the exercise of jurisdiction by the CIT under section 263 is that the order of the ITO is erroneous in so far as it is prejudicial to the interests of Revenue. The CIT has to be satisfied of twin conditions, namely :*

*(a) The order of the AO sought to be revised is erroneous, and*

*(b) It is prejudicial to the interests of the Revenue.*

*If one of them is absent – if the order of the ITO is erroneous, but is not prejudicial to the Revenue or if it is not erroneous, but is prejudicial to the Revenue – recourse cannot be had to section 263(1) of the Act.”*

5.3. The provisions of section 263 cannot be invoked to correct each and every type of mistake or error committed by the AO. The ambit of interference under section 263 is not to set aside merely unfavourable orders and bring to tax some more money to the treasury. The section is not enacted to get a sheer escapement of revenue which is taken care of in other provisions of the Act. Prejudice that is contemplated under section 263 is the prejudice

to the income-tax administration as a whole. Section 263 is to be invoked not as a jurisdictional corrective or as a review of a subordinate's order in exercise of the supervisory power, but it is to be invoked and employed only for setting right distortions and prejudices to the revenue, which is a unique conception, which is to be understood in the context of and in the interests of the Revenue administration.

6. In view of the above discussions and findings, we set aside the order passed by the ld.CIT u/s.263 of the Act. Accordingly, the grounds raised in the assessee's appeal stand allowed.

7. In the result, the appeal stands allowed.

**The order is pronounced in the open court on 19.04.2016**

**Sd./-**  
**(G.D. AGRAWAL)**  
**ACCOUNTANT MEMBER**

**Sd./-**  
**(BEENA A PILLAI)**  
**JUDICIAL MEMBER**

Dated:

*\*Kavita Arora*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT  
REGISTRAR  
ITAT NEW DELHI