

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM**

**आयकर अपील सं. / ITA No.459/PUN/2016**  
**निर्धारण वर्ष / Assessment Year : 2011-12**

Shri Sai Infrastructure & Developers,  
Plot No. 4-B, B.B. Oil Mill,  
Station Road, Chalisgaon,  
Jalgaon – 424101

PAN : ABTFS1628Q

.... अपीलार्थी/Appellant

Vs.

The Pr. Commissioner of Income Tax-2,  
Nashik

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : N O N E

प्रत्यर्थी की ओर से / Respondent by : Shri Rajeev Kumar

सुनवाई की तारीख / <b>Date of Hearing : 15.05.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 23.05.2018</b>
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

The appeal filed by the assessee is against the order of Principal Commissioner of Income Tax-2, Nashik dated 19.01.2016 relating to assessment year 2011-12 passed under section 263 of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

1. *The learned CIT erred in law and on facts in invoking jurisdiction u/s 263 on the ground that no proper enquiries were made by learned AO in respect of partners capital contribution.*

2. *The learned CIT erred in law and on facts in not appreciating that the learned AO had examined the partners capital contribution and all the relevant and necessary details were submitted before him. The learned AO has properly applied his mind on the issue and has taken a course of action permissible under the Act. The order cannot be held to be erroneous and prejudicial to the interest of the revenue.*
3. *The appellant craves to add, alter, modify or substitute any ground of appeal at the time of hearing.*

3. Despite service of notice none appeared on behalf of the assessee nor any application was moved for adjournment. However, because of the issue involved in the present appeal, is disposed of after hearing the Id. DR for the Revenue.

4. The only issue raised in the present appeal is against the exercise of jurisdiction by the Commissioner u/s. 263 of the Act.

5. Briefly, in the facts of the case, the assessee had furnished the return of income declaring total income of Rs.10,02,350/-. The case of the assessee was picked up for scrutiny through CASS. During the course of assessment proceedings, the Assessing Officer noted various aspects of the assessment and computed the income in the hands of the assessee of Rs.12,44,913/- as per order passed u/s. 143(2) of the Act dated 27-03-2014. The Commissioner on perusal of the case records observed that the assessment in the case was completed without conducting enquiries which were prima facie warranted on the facts and circumstances of the case. As per the Commissioner where the total amount of capital introduced by the partners aggregated to Rs.2,24,41,680/-, proper enquiries were warranted, which were not conducted by the Assessing Officer. The Commissioner thus issued show cause notice to

the assessee in this regard u/s. 263 of the Act. The Commissioner was of the view that the Assessing Officer had not examined and verified the sources of capital brought in by 9 partners mentioned in the show cause notice. He further refers to the reply of the assessee in which the assessee had admitted the fact and submitted that the Assessing Officer had referred the names of those partners in whose case, the source of capital contribution had not been proved to the jurisdictional Assessing Officer i.e. Income Tax Officer, Ward 2(2), Jalgaon for investigation. The Commissioner was of the view that it was a case of lack of enquiry with regard to verification of source of capital introduced by partners. Since, the Assessing Officer had failed to make enquiries which were called for in the circumstances of the case, the Commissioner held the order passed by the Assessing Officer to be erroneous in so far as it was prejudicial to the interest of Revenue.

6. The assessee is in appeal against the order of Commissioner passed under section 263 of the Act.

7. On perusal of the record and after hearing the Id. DR for the Revenue it transpires that the Commissioner had exercised the jurisdiction under section 263 of the Act in respect of capital contributions made by the partners. During the year under consideration partners totaling number 9 had made capital introduction as enlisted at pages 1 and 2 of the order passed under section 263 of the Act. The total capital contributions by the partners was Rs.2,24,41,680/-. The assessee admitted that the partners had made the said capital contributions to the partnership firm and it was also pointed out by a reply dated 16.01.2016 before Commissioner that the Assessing Officer had referred the

names of those partners in whose case the source of capital contributions had not been proved to the jurisdictional Assessing Officer i.e. Income Tax Officer, Ward 2(2), Jalgaon. The assessment of the assessee was carried out by the DCIT, Circle-2, Jalgaon. The partners were being assessed by the Income Tax Officer, Ward 2(2), Jalgaon and for necessary investigation of source of capital contributions by the partners, reference was made to the concerned Assessing Officer. In the first instance it is not disputed that the partners had made the contributions and once the said partners were assessed to tax, then the source of the contribution stands explained i.e. introduction by the partners who are Income Tax assesseees. In order to find out what is the source of the capital contribution by individual partners, then source of source needs to be verified which cannot be done in the hands of the partnership firm i.e. the assessee before the Tribunal, but can be carried out by the Assessing Officer in charge of individual partners. For carrying out such investigation reference has been made by the Assessing Officer concerned of the assessee to the Assessing Officer of partners. In other words, Assessing Officer had taken a view on the issue and the Commissioner cannot sit in judgment over the order of Assessing Officer for not investigating into source of source. The order of the Assessing Officer cannot be said to be lack of enquiries.

8. Another aspect which is noted from the perusal of the assessment order that the case was selected for scrutiny through CASS for the reason to examine the source of capital introduced in return filed by the assessee. Once, the case is selected for a particular reason and an action has been taken by the Assessing Officer in this regard i.e. by making reference to the concerned Assessing Officer to carry out the requisite enquiry into source of source then

such an order passed by the Assessing Officer cannot be said to be erroneous and prejudicial to the interest of Revenue. Accordingly, there is no merit in the jurisdiction exercised by the Commissioner under section 263 of the Act and the same is set aside. The order passed by the Commissioner is held to be both invalid and bad in law.

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

Order pronounced on this 23<sup>rd</sup> day of May, 2018.

**Sd/-**  
**(ANIL CHATURVEDI)**  
लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**  
**(SUSHMA CHOWLA)**  
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 23<sup>rd</sup> May, 2018.  
RK

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The Pr. Commissioner of Income Tax-2, Nashik;
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune