

आयकर अपीलीय अधिकरण, मुंबई “डी” खंडपीठ में
Income-tax Appellate Tribunal -“D”Bench Mumbai
सर्वश्री राजेन्द्र,लेखा सदस्य एवं सी. एन. प्रसाद, न्यायिक सदस्य
Before S/Sh.Rajendra,Accountant Member and C. N. Prasad,Judicial Member
आयकर अपील सं./I.T.A./2818/Mum/2017,निर्धारण वर्ष /Assessment Year: 2012-13

M/s. Rockcastle Property Private Limited 3 rd Floor, Sunama House, Opp. Shalimar Hotel, Kemps Corner, Mumbai 400 036. PAN : AABCR 9466 M	Vs.	The Pr. CIT-5, Room No.515, 5 th Floor, Aayakar Bhavan Mumbai 400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

राजस्व की ओर से / **Revenue by:** Shri B. Srinivas-CIT-DR

अपीलार्थी की ओर से /**Assessee by:** None

सुनवाई की तारीख / **Date of Hearing:** 11/06/2018

घोषणा की तारीख / **Date of Pronouncement:** 27/06/2018

लेखा सदस्य, राजेन्द्र के अनुसार/ PER Rajendra A.M.-

Challenging the order, dated 29/03/2017 of Pr.CIT-5, Mumbai, passed under section 263 of the Act, the Assessee has filed the present appeal. Assessee - company derives income from house property. It filed return of income on 29/09/2012, declaring income at Rs.16.72 lakhs. The assessment was completed vide order dated 19/09/2014 determining the income of the assessee at (-) Rs.12.88 lakhs u/s. 143(3) of the Act.

2.The solitary ground raised by the assessee is with regard to the direction given by the PCIT in passing Order u/s.263.Vide his showcause notice dtd. 15/3/2017, the PCIT asked the assessee to explain as to why revisionary proceedings should not be initiated for the year under consideration. He was of the opinion that order passed by the AO was erroneous and prejudicial to the interest of the revenue. In his notice he observed that the assessee has been allowed deduction u/s. 24(b) on account of interest paid to M/s. Bajaj Finance Ltd. of Rs. 67. 11 lakhs.As per the PCIT the assessee filed explanation vide its letter dated 27/3/2017. After considering available material, the PCIT observed that during the course of assessment proceedings the AO did not consider the allowability of interest u/s. 24(b) of the Act in the proper prospective, that he had allowed the claim of the assessee without proper verification.Accordingly he set aside the order of the AO and restored back the issue of allowability of interest expenditure to the file of the AO.

3.None appeared before us, as stated earlier.In the written statement the assessee had claimed that the AO had made detailed enquiry about the disputed transaction,that the assessee had filed all necessary details about loan and interest payments, that AO had applied his

mind while allowing the claim made by the assessee, that the PCIT did not consider the submission made by the assessee, that the order of the AO was neither erroneous nor prejudicial to the interest of the revenue. The Departmental Representative (DR) supported the order of the PCIT.

4. We have heard the rival submissions and perused the material before us. We find that (page No.1, 9, 101, 377, 423, 429, 435 and 445 of the paper book) the AO had called for details about interest payment, that he had made specific enquiry about allowability of interest of Rs. 67.11 lakhs as per the provisions of section 24(b) of the Act, that the assessee had made detailed submission in that regard. Pages 377 to 405 of the paper book are about the loan availed by the assessee and the interest paid by it. Page No.377-381 give details of the transaction. Clearly the AO had made necessary enquiries before allowing the deduction u/s. 24(b) of the Act. Thus, it is a case where the AO had applied his mind before passing the order and had taken an informed decision.

We also find that in its letter, dated 27/3/2017 (Pg-469-474 of the PB), the assessee had explained as to how the Circular No.28 [F.NO.8/69-IT(A-I)], dated 20/8/1969 was not applicable in its case. One of the main reasons to initiate the revisionary proceedings was the said Circular. While passing the revisionary order, the PCIT has not dealt with the submissions made by the assessee in that regard. From the explanation filed by the assessee it is clear that the circular referred to by the PCIT was not against the assessee -rather it supported the stand taken by it.

We also find that the case law referred to by the assessee in the paper book i.e. Small Wonder Industries (ITA No.2464/Mum/2013-AY 09-10, dtd. 24/2/2017) also support the stand taken by it.

The PCIT himself has mentioned that proper verification was not made by the AO. His comments clearly show that it was not a case of no enquiry. The PCIT had some opinion about the allowability of interest expenditure. But his personal opinion solely cannot be the base of invoking the provisions of section 263 of the Act. Error in the order of AO has not been established. The AO has taken one of the possible views about allowing interest u/s. 24 (b) of the Act. Section 263 is not on the statute for disturbing such orders. In short, the basis for passing revisionary order are missing. So, deciding the effective ground of appeal in favour of the assessee, we hold that the order of the PCIT has to be reversed.

As a result, appeal filed by the assessee stands allowed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील मंजूर की जाती है.

Order pronounced in the open court on 27th June, 2018.
आदेश की घोषणा खुले न्यायालय में दिनांक 27 जून, 2018 को की गई।

Sd/-

(सी. एन. प्रसाद / C.N.Prasad)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक/Dated : 27.06.2018.

Jv.Sr.PS.

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

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "D " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.