

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 डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA Nos.596, 597 & 599/PUN/2015
निर्धारण वर्ष / Assessment Years :2009-10, 2010-11 & 2011-12

Vishwa Infraways Pvt. Ltd.,
A-2/3, Pramukh Vihar,
Naroli Road,
Silvasa – 396230

.... अपीलार्थी/Appellant

PAN: AACCV7999Q

Vs.

The Commissioner of Income Tax (Central),
Nagpur

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.598/PUN/2015
निर्धारण वर्ष / Assessment Year : 2011-12

Vishwa Infraways Pvt. Ltd.,
A-2/3, Pramukh Vihar,
Naroli Road,
Silvasa – 396230

.... अपीलार्थी/Appellant

PAN: AACCV7999Q

Vs.

The Asst. Commissioner of Income Tax,
Circle-1, Nashik

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Pramod Shingte
प्रत्यर्थी की ओर से / Respondent by : Shri S.B. Prasad, CIT

सुनवाई की तारीख /
Date of Hearing : 20.11.2018

घोषणा की तारीख /
Date of Pronouncement: 28.11.2018

आदेश / ORDER**PER SUSHMA CHOWLA, JM:**

Out of this bunch of appeals, three appeals filed by assessee are against consolidated order of CIT(Central), Nagpur, dated 27.03.2015 relating to assessment years 2009-10 to 2011-12 passed under section 263 of the Income-tax Act, 1961 (in short 'the Act'). The assessee also filed appeal against order of CIT(A)-12, Pune, dated 25.02.2015, relating to assessment year 2011-12 against order passed under section 143(3) r.w.s. 153B of the Act.

2. This bunch of appeals relating to the same assessee were heard together and are being disposed of by this consolidated order for the sake of convenience. However, in order to adjudicate the issues, reference is being made to the facts and issues in ITA No.596/PUN/2015, relating to assessment year 2009-10.

3. The assessee in ITA No.596/PUN/2015, relating to assessment year 2009-10 has raised the following grounds of appeal:-

1. *The learned CIT erred in passing order u/s 263 of the I.T. Act and setting aside the assessment order dt. 28.03.2013, passed u/s 143(3) r.w.s. 153C. Therefore, it is prayed to cancel the revision order passed u/s 263.*
2. *The learned CIT erred in holding that, no proper enquiries were carried out with respect to the seized/impounded material, inspite of the fact that the enquiries carried out by the A.O. in relation to the seized material were brought on record by the appellant, during the course of revision proceedings. Therefore, it is prayed to cancel the revision order passed u/s 263.*
3. *In any case the learned CIT erred in passing revision order u/s 263 with respect to the invalid assessment order passed in consequence of invalid Notice u/s 153C. Therefore, it is prayed to cancel the revision order passed u/s 263.*

4. The assessee has also filed additional grounds of appeal, which read as under:-

- A) *That order passed u/s 263 is bad in law because underlying order passed u/s 153C and/or 143(3), is also bad in law being based on invalid satisfaction note and whatever seized material was referred in satisfaction note has not spawned anything incriminating specially for period under consideration as evident from show cause notice u/s 263 vis a vis seized material referred in satisfaction note.*
- B) *That order passed u/s 263 is bad in law because same is based on invalid assessment orders passed in violation of mandatory jurisdictional conditions stipulated under the act and accordingly revision proceedings u/s 263 initiated on invalid underlying orders is nullity and void ab initio.*
- C) *That order passed u/s 263 is bad for want of independent application of mind by CIT concerned being solely based on proposal of AO as evident from the order sheet before CIT u/s 263.*
- D) *That order passed u/s 263 is bad because approval u/s 153D given to orders passed by AO has not been lawfully countered to proceed validly u/s 263.*

5. The assessee in ITA Nos.596, 597 & 599/PUN/2015 has challenged the exercise of jurisdiction by the Commissioner under section 263 of the Act against assessment order passed under section 143(3) r.w.s. 153C of the Act.

6. The learned Authorized Representative for the assessee pointed out that the jurisdictional issue of exercise of revisionary power by the Commissioner is against an order passed under section 143(3) r.w.s. 153C of the Act, is covered by various orders of the Tribunal on identical issue. He further pointed out that the issue was first decided by the Pune Bench of Tribunal in Rasiklal M. Dhariwal (HUF) Vs. CIT in ITA Nos.1102 to 1107/PUN/2014, relating to assessment years 2004-05, 2006-07 to 2010-11, order dated 28.12.2016, which has been followed in bunch of appeals with lead order in Suyojit Infrastructure Pvt. Ltd. Vs. CIT, relating to assessment years 2007-08 & 2011-12, order dated 28.03.2018 and recently in bunch of appeals with lead order in M/s. B.U. Bhandari Schemes Vs. Pr.CIT in ITA Nos.637 to 641/PUN/2018, relating to assessment years 2009-10 to 2013-14, order dated 14.11.2018.

7. The learned Departmental Representative for the Revenue on the other hand, placed reliance on the orders of authorities below.

8. We have heard the rival contentions and perused the record. Briefly, in the facts of the case, search and seizure operations were conducted in the Ashoka Group of cases on 20.04.2010 under section 132 of the Act. During the course of search, incriminating documents pertaining to the assessee company were impounded from the searched premises and the provisions of section 153C of the Act were invoked and thereafter, assessment in the case of assessee was taken up. The Assessing Officer re-worked the income in the hands of assessee. The assessment order was passed with the prior approval of JCIT, Central Range, Nashik, obtained vide his letter dated 28.03.2013. The Commissioner was of the view that the order passed by Assessing Officer is both erroneous and prejudicial to the interest of Revenue. Accordingly, show cause notice was issued to the assessee under section 263 of the Act and various issues have been looked into. The Commissioner vide para 7 observed that the Assessing Officer while making assessment for assessment years 2009-10 to 2011-12 had not carried out requisite enquiries and verification of various claims of assessee with regard to expenditure. Consequently, assessment orders passed were prejudicial in as much as erroneous to the interest of Revenue. Hence, the said assessment orders as per the Commissioner were required to be revised. Accordingly, the Commissioner set aside the same to the file of Assessing Officer for framing fresh assessments after making proper enquiries on the lines discussed in the order passed under section 263 of the Act.

9. We find that similar issue arose before the Tribunal in series of cases with lead order in Rasiklal M. Dhariwal (HUF) Vs. CIT (supra). The said proposition has been followed by the Tribunal in M/s. B.U. Bhandari Schemes Vs. Pr.CIT (supra) and it has been held as under:-

“7. We have heard the rival contentions and perused the record. Briefly, in the facts of the case, search and seizure operations were conducted under section 132 of the Act in the case of Porwal, Mutha, Karia, Agarwal and Bhandari group of cases on 26.02.2014. For the said search and seizure operation, warrant was combinely executed in the case of (i) M/s. B U Bhandari Landmarks, (ii) M/s. B U Bhandari Schemes, (iii) M/s. B U Bhandari Enterprises and (iv) M/s. B U Bhandari Real Estate and the office premises of assessee was covered. During the course of search operations, cash of ₹ 3,05,080/- was found and seized. The assessee had originally filed return of income on 19.08.2009 declaring income of ₹ 43,73,420/-. Thereafter, case of assessee was taken up for scrutiny. The Assessing Officer verified seized material and after examination, certain queries were raised, which were replied upon by the assessee and assessment of assessee was completed and returned income was accepted. Order was passed under section 143(3) r.w.s. 153A of the Act. The Assessing Officer while passing order clearly records that This order is passed with the prior approval of the Joint Commissioner of Income Tax, Central Range-2, Pune issued under section 153D of the Income Tax Act, 1961 vide his letter No.Pn/Jt CIT/CR2/Assessment/2015-16/1106 dated 17/03/2016. Thereafter, the Commissioner issued show cause notice to the assessee under section 263 of the Act. He noted that order was passed under section 153A r.w.s. 143(3) of the Act. He has raised various issues as to why the assessment order passed in the case was both erroneous and prejudicial to the interest of Revenue. However, we are not going into the said issue as first the jurisdictional issue has been raised in the present appeal as to whether in case where the assessment has been completed under section 143(3) r.w.s. 153A of the Act after obtaining approval of Additional CIT under section 153D of the Act, can the Commissioner invoke his revisionary powers under section 263 of the Act on the ground that the orders passed by Assessing Officer for all the years were erroneous and prejudicial to the interest of Revenue. The plea of assessee before us is that once the order has been passed by Assessing Officer after obtaining approval of Additional CIT under section 153D of the Act, then the Commissioner has no power to exercise his jurisdiction under section 263 of the Act.

8. We find that similar issue of exercise of revisionary jurisdiction by the Commissioner under section 263 of the Act in a case where assessment was completed under section 143(3) r.w.s. 153A of the Act after obtaining approval of Additional CIT under section 153D of the Act, arose before the Tribunal in bunch of appeals in the case of Dhariwal Industries Limited Vs. CIT (supra). The Tribunal vide order dated 23.12.2016 observed as under:-

“12. We have considered the rival arguments made by both the sides, perused the orders of the AO and the Ld.CIT and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case for all the six assessment years has passed the order u/s.153A r.w.s. 143(3) after obtaining approval of the Addl.CIT u/s.153D of the I.T. Act. We find the Ld.CIT invoked his revisional powers u/s.263 of the I.T. Act on the ground that the order passed by the Assessing Officer for all the years are erroneous and prejudicial to the interest of the revenue since he has failed to disallow the expenditure u/s.14A for A.Yrs. 2004-05 to 2006-07 and failed to disallow the claim of depreciation on assets of Hyderabad unit which is defunct for A.Y.2008-09 to 2010-11.

13. It is the submission of the Ld. Counsel for the assessee that since the order has been passed by the Assessing Officer after obtaining approval of the Addl.CIT u/s.153D of the I.T. Act, therefore, the Ld.CIT has no power to exercise his jurisdiction u/s.263 of the I.T. Act, 1961. It is also his submission that even on merit the Tribunal has decided both the issues in favour of the assessee.

14. We find merit in the above submission of the Ld. Counsel for the assessee. We find the Lucknow Bench of the Tribunal in the case of Mehtab Alam Vs. ACIT vide ITA Nos.288 to 294/Lkw/2014 order dated 18-11-2014 while deciding an identical issue has observed as under :

“31. Besides other judgments were also referred by the assessee in this regard and we have also carefully examined the same and we find that similar views were expressed by various judicial authorities.

32. We have also examined the judgment of the Hon'ble jurisdictional High Court in the case of CIT vs. Dr. Ashok Kumar (supra) on an issue whether the assessment order was passed with the approval of the Addl. CIT and their Lordships have held that the Assessing Officer was fully alive about the facts of the case and that is why he got necessary approval of the Addl. CIT before completing the assessment orders for all the assessment years and once that is not disputed by the Revenue, then the Id. Commissioner of Income-tax would not be justified in interfering in the approval according by the Addl. CIT for framing the assessment order and thus there was no case for setting aside the assessment order for the assessment years in question.”

14.1 We find the Hyderabad Bench of the Tribunal in the case of CH. Krishna Murthy Vs. ACIT vide ITA No.766/Hyd/2012 order dated 13-02-2015 following the decision of the Lucknow Bench of the Tribunal in the case of Mehtab Alam (Supra) held that CIT(A) is not justified in assuming jurisdiction u/s.263 when the order has been passed in terms of section 153D of the Act.

14.2 We find the Hyderabad Bench of the Tribunal in the case of M/s. Trinity Infra Ventures Ltd. (Supra) had an occasion to decide an identical issue and it held that the assessment order approved by the Addl.CIT u/s.153D cannot be subject to revision u/s.263 of the I.T. Act. The relevant observation of the Tribunal at Para 5.4 of the order reads as under :

“5.4. The Ld. Counsel for the assessee has further submitted that the assessment under section 143(3) read with section 153C was passed after getting approval of Addl. CIT under section 153D of the I.T. Act and therefore such an assessment cannot be revised without revising the directions of the Addl. CIT under section 153D of the I.T. Act. The Ld. Counsel for the assessee, has relied upon the decisions of this Tribunal in the case of Ch. Krishna Murthy vs. ACIT, C.C.3, Hyderabad in ITA.No.766/Hyd/2012 dated 13.02.2015 and also the decision of Lucknow Bench of ITAT in the case of Mehtab Alam 288/Luck/2014 dated 18.11.2014 in support of this contention. He has also placed reliance upon the decision of Hon'ble Allahabad High Court in the case of CIT vs. Dr. Ashok Kumar in I.T. Appeal No. 192 of 2000 wherein it has been held that the assessment order approved by the Addl. CIT under section 153D, cannot be subjected to revision under section 263 of the I.T. Act. In view of the above decision also, we hold that the revision order under section 263 of the I.T. Act is not sustainable. Accordingly, we allow the grounds of the assessee.”

15. Since in the instant case also the Assessing Officer has passed the order after obtaining necessary approval from Addl.CIT u/s.153D of the I.T. Act, therefore, respectfully following the above-mentioned decisions of the Coordinate Benches of the Tribunal we are of the considered opinion that the CIT has no power to revise the order u/s.263 of the I.T.

Act in the instant case since the same has been passed with the approval of the Addl.CIT u/s. 153D of the I.T. Act.”

9. *The issue arising before us is identical to the issue before the Tribunal and following the same parity of reasoning, we hold that where the Assessing Officer had passed the order after obtaining necessary approval from Additional CIT under section 153D of the Act, then the Commissioner is precluded from exercising his revisionary power under section 263 of the Act and consequently, order passed by the Commissioner is both invalid and bad in law and the same is cancelled. The grounds of appeal raised by assessee are thus, allowed.*

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11.....

12. *The perusal of assessment order reflects that the proceedings were initiated and completed by Assessing Officer after obtaining prior approval of JCIT, Central Range-2, Pune under section 153D of the Act vide letter dated 17.03.2016. We have already deliberated upon the same issue though in respect of assessment completed under section 143(3) r.w.s. 153A of the Act but similar proposition would apply in the present appeal also where the assessment order has been passed under section 143(3) r.w.s. 153C of the Act, since the assessment order had been passed by taking approval of JCIT and hence, the exercise of revisionary powers by the Commissioner is both incorrect and invalid in law. The grounds of appeal raised by assessee are thus, allowed.”*

10. The assessment in the present case has been completed by the Assessing Officer by passing order under section 143(3) r.w.s. 153C of the Act after taking the approval of JCIT, Central Range, Nashik and following the ratio laid down in Rasiklal M. Dhariwal (HUF) Vs. CIT (supra) and M/s. B.U. Bhandari Schemes Vs. Pr.CIT (supra), we hold that exercise of revisionary powers by the Commissioner is both incorrect and invalid in law. The grounds of appeal raised by assessee are thus, allowed.

11. The facts and issues in ITA Nos.597/PUN/2015 & 599/PUN/2015 are identical to the facts and issues in ITA No.596/PUN/2015 and our decision in ITA No.596/PUN/2015 shall apply *mutatis mutandis* to ITA Nos.597/PUN/2015 & 599/PUN/2015.

12. Now, coming to the appeal in ITA No.598/PUN/2015, the appeal has been filed by assessee against original assessment order passed under section

143(3) r.w.s. 153B of the Act, wherein the additions have been confirmed by CIT(A).

13. The learned Authorized Representative for the assessee pointed out that the assessee does not wish to press the grounds of appeal raised in the present appeal vide letter dated 20.11.2018. The learned Departmental Representative for the Revenue has no objection to the same. Hence the same is dismissed as not pressed.

14. In the result, appeals of assessee in ITA Nos.596, 597 & 599/PUN/2015 are allowed and appeal of assessee in ITA No.598/PUN/2015 is dismissed.

Order pronounced on this 28th day of November, 2018.

Sd/-
(D.KARUNAKARA RAO)
लेखा सदस्य / **ACCOUNTANT MEMBER**

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

पुणे / Pune; दिनांक Dated : 28th November, 2018.

GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-12, Pune;
4. The CIT(Central), Nagpur;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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