आयकर अपीलीय अधीकरण, न्यायपीठ – "C" कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA
(समक्ष) Before **श्री ऐ. टी. वर्की,** न्यायीक सदस्य **एवं/and** श्री एम .बालागणेश, लेखा सदस्य)
[Before Shri A. T. Varkey, JM & Shri M. Balaganesh, AM]

I.T.A. No. 1073/Kol/2012
Assessment Year: 2005-06

M/s. Rupayan Udyog (PAN: AAGFR0358E)	Vs.	Commissioner of Income-tax, Kol-XVII, Kolkata
Appellant		Respondent

Date of Hearing	20.11.2018
Date of Pronouncement	28.11.2018
For the Appellant	Shri Soumitra Choudhury, Advocate
For the Respondent	Shri P. K. Srihari, CIT, DR

ORDER

Per Shri A.T.Varkey, JM

This appeal preferred by the assessee is against the revision order of the CIT, Kol-XVII, Kolkata dated 05.06.2009 for AY 2005-06 passed u/s. 263 of the Income-tax Act, 1961 (hereinafter referred to as the "Act").

2. At the outset itself, we note that there is a delay of 1124 days in filing the assessee's appeal. The assessee has filed detailed affidavit explaining the reasons for the delay. From the perusal of the same, it is noted that the assessee was a partnership firm which was formed by Deed of Partnership dated 30.06.1999 and later got dissolved on 02.04.2007 by execution of Deed of Dissolution. Thereafter, the impugned order was passed on 05.06.2009 which was handed over to the ex-partner Shri Debasish Chakraborty on 19.06.2009 and since the partnership was dissolved and the partners were separated and could not be contacted and also because of advice of Shri Dilip Kumar Saha, FCA, the

partner of assessee firm Shri Debasish Chakraborty did not pursue filing an appeal before the Tribunal. When the demand was raised by the Department and the Department attached the bank account of all the partners Shri Dilip Kr. Saha contacted Shri Soumitra Choudhury, Advocate on 2nd week of July, 2012, who in turn advised the assessee to file an appeal immediately along with the condonation petition on 17.07.2012 and thus, there was a delay of 1124 days which was caused because of the wrong advice given by the said Shri Dilip Kumar Saha, FCA. We have perused the reasons given in the affidavit and we are of the opinion that because of the wrong advice given by an AR the assessee's right to appeal should not curtailed and assessee should not be penalized, so in the interest of justice and fair play, we condone the delay and admit this appeal for hearing.

3. At the outset itself, assailing the decision of the Ld. CIT exercising his revisional jurisdiction u/s. 263 of the Act the Ld. AR drew our attention the second paragraph of the impugned order which reads as under:

> *"2. Thereafter, the AO vide letter dated 15.04.2008 has sent proposal u/s. 263 of the I. T. Act stating therein that in respect of 10 parties from whom advance of Rs.42,75,375/- was received, no verification could be made about the source of receipt. The AO further stated that in respect of 4 out of aforesaid 10 parties notices were not served and the Inspector returned the notices unserved and therefore, as per opinion of the AO, the assessment order is erroneous and prejudicial to the interest of revenue and accordingly required to be set aside to frame de novo assessment on receiving direction from the CIT."*

4. From a perusal of the aforesaid paragraph of the impugned order it is discerned that AO vide letter dated 15.04.2008 has sent a proposal to the Ld. CIT to exercise his jurisdiction u/s. 263 of the Act terming the assessment order as erroneous and prejudicial to the interest of revenue for the reason that the AO could not receive the verification in respect of the source of receipt from 10 parties from whom the assessee has taken advances to the tune of Rs.42,75,375/-. In the light of the aforesaid proposal from the AO, the Ld. CIT has exercised his jurisdiction u/s. 263 of the Act. A perusal of sec. 263 of the Act reads as under:

> *"Revision of orders prejudicial to revenue.*
>
> *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 the revenue, he may, after giving the assessee an opportunity of being heard……."

So from a bare reading of sec. 263 of the Act reveals that the Commissioner may call for and examine the record of any proceeding under the Act and if he considers that any order passed therein by the AO is erroneous in so far as prejudicial to the interest of the revenue, he may after giving opportunity of being heard to the assessee pass orders as prescribed under the Act. So, the power vested in the CIT is that of revisional jurisdiction to interfere with the order of AO, if it is erroneous in so far as prejudicial to the revenue and, therefore, the power to exercise the revisional jurisdiction is vested only with the Pr. Commissioner/Commissioner if he considers the order of the AO to be erroneous in so far as prejudicial to the interest of the revenue. Therefore, this power is vested with the Pr. CIT/CIT to exercise revisional jurisdiction is only when he considers that the order passed by the AO is erroneous in so far as prejudicial to the interest of the revenue and that power cannot be usurped by the AO to trigger the revisional jurisdiction vested with the CIT as per the scheme of the Act which gives various power to various authorities to exercise and they have to exercise powers in their respective given sphere which is clearly ear-marked and spelled out by the statute. Here, we note that the AO who is empowered by the Act to assess a subject within a prescribed time period has first assessed the assessee and later after passage of time has taken up a proposal with the CIT to exercise his revisional jurisdiction cannot be countenanced for the simple reason that when in the first place the AO noticing that he failed to properly enquire before assessing the assessee within the time limit prescribed by the statute cannot be allowed to get fresh innings to reassess because it was his duty to enquire properly within the time limit prescribed by the statute. Therefore, the very invocation of revisional jurisdiction on the proposal of the AO itself is bad in law and for coming to such a decision we rely on the decision of the Tribunal in the case of Shantai Exim Ltd. Vs. CIT (2017) 88 taxmann.com 361 (Ahd. Trib.) and the decision of ITAT, Mumbai Bench in the case of Ashok Kumar Shivpuri Vs. CIT for AY 2008-09 dated 07.11.2014. Therefore, we find merit in the contention of the Ld. AR and we quash the very

usurpation of jurisdiction u/s. 263 of the Act by the CIT. Therefore, the appeal filed by the assessee is allowed.

5. In the result, the appeal by the assessee is allowed.

Order pronounced in the open court on 28th November, 2018.

Sd/- Sd/-

(M. Balaganesh) (A. T. Varkey)
Accountant Member Judicial Member

Dated: 28th November, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1 Appellant – M/s. Rupayan Udyog, C/o Sajal Das, CB-10/14, Deshbandhu Nagar, Kolkata-700 059.

2 Respondent – CIT, Kol-XVII, Kolkata

3 ITO, Ward-49(4), Kolkata.

4 DR, Kolkata Benches, Kolkata (sent through e-mail)

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/True Copy, By order,

Sr. Pvt. Secretary