

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

**BEFORE SHRI G. D. AGRAWAL, VICE PRESIDENT  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 2399/DEL/2014  
A.Y 2009-10**

Ghaziabad Development Authority C/o RRA Taxindia D 28, South Extension Part 1 New Delhi 110 049  PAN: AAALG0072C	Vs	CIT Aayakar Bhavan Ghaziabad
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**(Appellant)**

**(Respondent)**

<b>Appellant by</b>	Dr.Rakesh Gupta, Adv. & Sh. Somil Aggarwal, Adv.
<b>Respondent by</b>	Sh. R.L.Meena, CIT, D.R.

<b>Date of Hearing</b>	29.05.2019
<b>Date of Pronouncement</b>	10.06.2019

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by assessee against order passed u/s 263 of the Income Tax Act, 1961 on following grounds.

“1. That having regard to facts & circumstances of the case, Ld. CIT has erred in law and on facts in passing the impugned-order u/s 263 which is barred by limitation, illegal, without jurisdiction and contrary to law and facts and deserves to be quashed.

2. That having regard to facts & circumstances of the case, Ld. CIT has erred in law and on facts in assuming jurisdiction u/s 263 and has further erred in directing the assessing officer to re-compute the income of the assessee after considering the accrued interest on the loan advanced to HPDA and has further erred in directing the AO that assessee authority was ineligible for exemption u/s 11 of the Act in view of the amended provisions of section 2(15) and consider the issue of earn forward of loss.

3. That having regard to facts & circumstances of the case, Ld. CIT has erred in law and on facts in passing the impugned order u/s 263 which is bad in law in as mud. as no adequate opportunity of hearing was granted and framing the impugned order without considering the principles of natural justice and without considering the submission of the assessee and without appreciating the fact that the authority was an organ of the state government and was therefore not liable to tax even after the amendment and further erred in holding that assessment was erroneous and prejudicial to the interest of revenue.

4. That having regard to facts & circumstances of the case, Ld. CIT has erred in law and on facts in passing the impugned order u/s 263 which is not sustainable on various legal and factual grounds.

5 That the appellant craves the leave to add, amend, modify, delete any of the grounds of appeal before or at the time of hearing and all the above grounds are without prejudice to each other.”

**2.** The assessee is an Authority constituted under the U. P. Urban Planning & Development Act, 1973 to promote and secure the development of the area according to plan and for that purpose the authority has been empowered to acquire, hold, manage and dispose of land and other properties, to carry out building, engineering, mining and other operations, to execute works in connection with supply of water and electricity to dispose of sewage and to provide and maintain other services and amenities and generally to do anything necessary or expedient for the purpose of such development. In the assessment order the Assessing Officer observed that the income of the Authority was exempt u/s 10(20A) of the Act till 1.4.2003 but with effect from 1.4.2003, the said section has been omitted and the revenue authorities brought the assessee in the tax limit. The Assessing Officer mentioned that the assessee was registered u/s 12AA of the Act with effect from 31.3.2003 and had claimed exemption u/s 11 of the Act. The Assessing Officer further observed that during the assessment proceedings amended provisions of S.2(15) of the Act was brought to the notice of the assessee wherein the definition of ‘charitable purpose’ has been amended to provide with advancement of any other object of general public utility, shall not be a charitable purpose, if it

involves carrying on of an activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such an activity. After considering the amended provision of Sec. 2(15) of the Act, the Assessing Officer recognized the assessee as registered u/s 12A of the Act. The assessment order was passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') in this case on 30.12.2011. A show cause notice was issued to the assessee on 24.3.2014 by the Income Tax Officer (Technical) on behalf of the Commissioner of Income Tax. The Commissioner of Income Tax passed order dated 31.3.2014 u/s 263 of the Income Tax Act, 1961. The Commissioner of Income Tax directed the Assessing Officer to re-compute income of the assessee authority after considering the accrued interest during the year under consideration on the loan advanced by HPBA, and further held that the assessee was not eligible for exemption u/s 11 of the Act in view of the amended provisions of S.2(15) of the Act.

**3.** The Ld. AR submitted that show cause notice u/s 263 of the Act dated 24.3.2014 itself is defective and is not proper as the same is issued by Income Tax Officer (Technical) on behalf of the Commissioner of Income Tax. The Ld. AR relied upon the decision of the Hon'ble Allahabad High Court which is a jurisdictional High Court in case of CIT vs. Rajesh Kumar Pandey (2012) 25 Taxman.com 242 (Alla). The Ld. AR submitted that Sec. 12A determination has been upheld by the Tribunal in favour of the assessee, thus the Commissioner of Income Tax cannot hold that the assessee was ineligible for exemption u/s 11 of the Act.

**4.** The Ld. DR submitted that the show cause notice is just and proper and Sec. 263 order has been rightly passed by the Commissioner of Income Tax as the Assessing Officer has not verified all the facts of the assessee's case during the assessment proceedings u/s 143(3) of the Act.

5 We have heard both the parties and perused all the relevant material available on record. The Hon'ble Allahabad High Court in the case of Rajesh Kumar Pandey (supra) has held that the provisions of Sec. 299BB deals with the procedure for service of notice and in case there is a defective service of notice it provides that the assessee has cooperated, it will not be open for him to raise the plea, whereas in the instant case, it is not the case of service of notice, but the initial issuance of notice, which has not been signed by the competent authority as the finding has been recorded by Tribunal therein that notice was issued under the signature of Income Tax Officer (Technical) whereas in view of provisions of powers of s.263(1) it is only the Commissioner of Income Tax to issue notice. In the present assessee's case also show cause notice was issued by Income Tax Officer (Technical) and signed by the said Officer on behalf of the Commissioner of Income Tax. As per Sec. 263, the Commissioner of Income Tax cannot delegate his powers to the subordinate Officer or lower officer and, therefore, this defect is non-curable defect and the Show Cause Notice itself is bad in law. Besides this, after going through the assessment order, the Assessing Officer has also taken cognizance of the material available and has arrived at a proper conclusion. There order u/s 263 is merely a second opinion which is not permissible under the provisions of the Income Tax Act, 1961. Therefore, order u/s 263 of the Act does not survive. Hence appeal of the assessee is allowed.

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

**Order pronounced in the Open Court on 10<sup>th</sup> June, 2019.**

Sd/-  
**(G. D. AGRAWAL)**  
**VICE PRESIDENT**

Sd/-  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 10/06/2019

*\*Gmv*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

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