

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI AMARJIT SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 3550/MUM/2019
Assessment Year: 2011-12**

Devendra Hastimal Jain,
804, Vikas Centre, Junction of
S.L. Road and N.S. Road,
Mulund, Mumbai-400080.

Vs. Pr. Commissioner of Income Tax-
16, Room No. 442, 4th floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

**PAN No. AEKPJ1211L
Appellant**

Respondent

Assessee by : Mr. Devendra Jain, AR
Revenue by : Mr. Narendra Singh Jangpangi, CIT- DR

Date of Hearing : 18/12/2019
Date of pronouncement : 18/12/2019

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2011-12. The appeal is directed against the order u/s 263 of the Income Tax Act 1961, (the 'Act') passed by the Pr. Commissioner of Income Tax-16, Mumbai [in short 'Pr. CIT'].

2. The grounds of appeal filed by the assessee read as under:

1. In the facts and circumstances of the case and in law, the Ld. Pr. CIT has erred in passing the order u/s 263, beyond the time limit specified in section 263(2).

2. In the facts and circumstances of the case and in law, the Ld. Pr. CIT has erred in considering the assessment order passed on 31.08.2017 u/s 143(3) r.w.s. 147 as erroneous and prejudicial to the interest of revenue.

3. Briefly stated, the contentions of the Ld. counsel is that the order passed u/s 263 by the Pr. CIT is barred by limitation. In this regard, reliance is placed by him on the judgment of the Hon'ble Bombay High Court in *CIT v. ICICI Bank Ltd.* (2012) 19 taxmann.com (Bom), wherein it is held that "where jurisdiction u/s 263 is sought to be exercised with reference to an issue which is covered by order of assessment u/s 143(3) and which does not form subject matter of reassessment, limitation u/s 263(2) shall run from order u/s 143(3).

The Ld. Departmental Representative (DR) follows the ratio laid down in the above decision.

4. We have heard the rival submissions and perused the relevant materials on record. In the instant case, the Pr. CIT in order dated 11.03.2019 has raised issues with donation amounting to Rs.4,00,000/- paid by the assessee to Herbicare Healthcare Bio Herbal Research Foundation (HHBRF) and claim of deduction u/s 35(1)(ii) of the Act. We find that in the original assessment u/s 143(3) dated 04.02.2014, the AO has not made any addition on the above.

In the reassessment made u/s 143(3) r.w.s. 147 dated 31.08.2017, the issue before the AO was donation of Rs.4,80,000/- paid by the assessee to School on Human Genetics and Population Health (SHG&PH).

The Pr. CIT has passed the order u/s 263 in respect of transactions with HHBRF. As mentioned earlier, the original assessment passed by the AO u/s 143(3) is dated 04.02.2014. Thus the fact of the present case is squarely

covered by the judgment of the Hon'ble Bombay High Court in *ICICI Bank Ltd.* (supra). Following the ratio laid down in the above case that where jurisdiction u/s 263 is sought to be exercised with reference to an issue which is covered by order of assessment u/s 143(3) and which does not form subject-matter of reassessment, limitation u/s 263(2) shall run from order u/s 143(3), we hold the order u/s 263 dated 11.03.2019 passed by the Pr. CIT as bad in law.

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

Order pronounced in the open Court on 18/12/2019.

Sd/-

(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-

(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 18/12/2019

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai