

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.Nos.4551/Del./2019
Assessment Year 2014-2015

M/s. Magic Landcon LLP, C-109, Anand Niketan, New Delhi – 110 021. PAN AAVFM1240K	vs.,	Pr. Commissioner of Income Tax-11, Prtayaksh Kar Bhawan, Civic Centre, New Delhi – 110 002.
(Appellant)		(Respondent)

ITA.No.4552/Del./2019
Assessment Year 2014-2015

M/s. Graffiti Technologies LLP, C-109, Anand Niketan, New Delhi PIN 110 021. PAN AALFG0403G	vs.,	Pr. Commissioner of Income Tax-11, Prtayaksh Kar Bhawan, Civic Centre, Minto Road, New Delhi PIN 110 002.
(Appellant)		(Respondent)

For Assessee :	Shri Ashwini Kumar, C.A. Shri Rohit Jain, Advocate, & Shri Deepesh Jain, C.A.
For Revenue :	Ms. Pramita M. Biswas, CIT-DR

Date of Hearing :	20.02.2020
Date of Pronouncement :	26.02.2020

ORDER

PER BHAVNESH SAINI, J.M.

Both the appeals by different Assesseees are directed against the different Orders of Ld. Pr. CIT-11, under section 263 of the Income Tax Act, 1961, Dated 29th March, 2019, for the A.Y. 2014-2015.

2. We have heard the Learned Representatives of both the parties and perused the material available on record. Both the parties are mainly argued in ITA.No.4551/Del./2019 and have submitted that the issue is same in another appeal i.e., ITA.No.4552/Del./2019 and Order in this case may be followed in another appeal. Therefore, for the purpose of disposal of both the appeals, we proceed to decide ITA.No.4551/Del./2019 as under.

ITA.No.4551/Del./2019 – A.Y. 2014 2015

M/s. Magic Landcon LLP, New Delhi.

3. The facts of the case are that Assessee-Firm filed its return of income declaring NIL income on 18.07.2014.

The case was selected for limited scrutiny with reason “*Large Agricultural Income*”. Statutory notices and questionnaire were issued to the assessee. The assessee attended the assessment proceedings and submitted necessary details and documents on the above issue. The A.O. noted that assessee has shown agricultural income of Rs.1,99,76,064/- arising out of profit on sale of agricultural land amounting to Rs.1,95,48,622/- and agricultural income from sale of agricultural produce at Rs.4,27,442/-. The A.O. accepted the returned income vide Order Dated 25.11.2016 under section 143(3) of the I.T. Act, 1961.

3.1. The Ld. Pr. CIT on examination of the assessment records found that assessee has shown total agricultural income of Rs.1,99,76,064/- arising out of profit on sale of agricultural land of Rs.1,95,48,622/- and agricultural income from sale of agricultural produce of Rs.4,27,442/-. During the year assessee has claimed to have sold agricultural land including trees etc., for a sum of Rs.2.25 crores on 22.08.2013. On perusal of the Sale Deed Dated

22.08.2013, it was seen that Shri Satbir resident of Faridabad, sold the land measuring 12.15 hectares to Shri Dilip Arya through Attorney Shri Vinod Kumar Garg for Rs.2.25 crores. The registration expenses on the sale of the land was of Rs.18,65,870/- has been claimed to have been paid by the assessee. Shri Vinod Kumar Garg who had the Power of Attorney for sale of the abovementioned land is one of the partners of the Assessee-Firm. The land has not been sold by Shri Satbir on behalf of the Company or LLP Firm, but, by him in his individual capacity. In the sale deed it is clearly mentioned Shri Satbir is the owner of the land and was in possession of the same. The assessee has also shown agricultural income of Rs.5,79,720/- from the sale of agricultural produce from this land in *Mandi*. Summary of the same is noted in the impugned order. It is noted that bills furnished by the assessee are of Rs.5,44,620/- whereas as per Income and Expenditure A/c according to the receipts are shown at Rs.5,79,720/- . Further, from the bills it is seen that the alleged sale of agricultural produce has taken place mostly in the months of February and March,

2014, whereas land was sold on 22.08.2013 along with its growth such as hedges, trees etc. Therefore, there cannot be agricultural income by the assessee. The A.O. never verified these facts. It is, therefore, noted that since Assessee-Firm was neither the owner of the property nor owner of the agricultural produce, therefore, A.O. should have verified this fact. The assessment order was found to be erroneous insofar as it is prejudicial to the interests of Revenue. Show Cause Notice was issued to the assessee. The assessee filed reply and explained that Shri Satbir who sold the land was one of the Director of the Assessee-Company, which on 19.12.2011 get converted into M/s. Magic Landcon LLP [Present Assessee]. The land was purchased by the assessee-company M/s. Magic Landcon Private Limited through Shri Satbir, Director of the Company. Mr Satbir did not become partner in the firm after conversion. Therefore, Shri Vinod Kumar Garg had to act as his Attorney on behalf of the Firm to execute the sale deed. Since the Assessee-Firm has purchased the land and same have been shown in the balance-sheet of the Firm, therefore, all legal proceeds

are received by the Firm only. All the payments against sale were received by the Firm from Shri Dilip Kumar Arya, the buyer. The Ld. Pr. CIT examined the contention of assessee and did not accept the same. It was noted from the details of the land that property in *Khasra* 197/12.15 Hectare at Village Kaluhera, District Jaipur, Rajasthan was purchased through four sale/purchase deeds from four different persons by Mr Satbir for a consideration of Rs.30,83,200/- as against the higher value as per Stamp Valuation Authority. The land was purchased by Mr Satbir in his personal capacity, therefore, he was owner of the property. Shri Satbir sold the property through Shri Vinod Kumar Garg for a consideration of Rs.2.25 crores, therefore, neither the Company nor the Firm was owner of the property in question.

3.2. As regards stamp duty paid on sale of land at Rs.18,65,870/-, it was explained that it has withdrawn cash from Union Bank amounting to Rs.15 lacs on 05.08.2013 and Rs.32,500/- on 08.08.2013 and furnished a Slip of Rs.15,65,870/-. There was a difference found in the same

since in the sale deed it is mentioned that purchaser has paid the expenses. Therefore, there is no question of assessee paying any expenses. This fact is also not verified by the A.O. It was also found that the audited accounts of the Company and the Firm have shown land at Berhore valued at Rs.10,85,000/-, but, the land sold at Tehsil Kaluhera, District Jaipur, was purchased for a consideration of Rs.30,83,200/-. Therefore, both are two different properties. The Ld. Pr. CIT, therefore, noted that these issues have not been verified by the A.O. Explanation-2 to Section 263 of the Income-Tax Act, 1961 is clearly attracted in this case. The assessment order was set aside and A.O. was directed to reframe the assessment afresh in accordance with law, after making proper enquiries.

4. Learned Counsel for the Assessee reiterated the submissions made before the authorities below. He has referred to PB-55 which is show cause notice issued by the Ld. Pr. CIT highlighting the above points stating therein that A.O. seems to have not properly examined the documents filed and without even asking further queries, passed the

assessment order. Therefore, it seems that assessment order passed by the A.O. was erroneous and prejudicial to the interests of Revenue. He has submitted that show cause notice was vague and no definite conclusion have been shown. PB-60 is reply filed by assessee before Ld. Pr. CIT in which all the above facts were highlighted that Assessee-Firm was earlier Company which was converted to LLP and Mr Satbir was Director of the Company, but, later on did not join the Firm. The property in question was purchased by the Company in the name of Shri Satbir and was recorded in the audited accounts of the Assessee. The consideration is paid by assessee. The assessee filed copies of the income tax return for earlier years to show that Shri Satbir and Shri Vinod Kumar Garg are Managing Director and Director of the Company. The same facts are also mentioned in the Registrar of Companies. The assessee filed Government Land Record *Khatuani* Dated 06.10.2006 wherein name of the assessee-company appeared, copy of which is filed at page-71 of the paper book containing the same *Khasra* No.197/12.15 Hectare. The assessee also filed

balance-sheet of the earlier year to show that land appeared in the balance sheet of the Company and at the same value it was transferred to the Firm. Since land was owned by the assessee, therefore, it was logical to receive the sale proceeds through Power of Attorney Holder. There may be a typographical error in mentioning the name of the place or the amounts spent for purchase of stamp duty etc., but, assessee explained the source of the same. The amount of sale consideration is received in the books of the assessee. The assessee had been earning agricultural income from sale of Agricultural produce, the details of the same were filed along with receipts of '*Krishi Upaj Mandi Samiti*'. All these details along with evidences were submitted before the Ld. Pr. CIT, but, he did not examine any of the documents. PB-175 is another reply filed before Ld. Pr. CIT. PB-3 to 4 are the balance sheet of assessment year under appeal to show that after sale of the land, it has removed from the fixed assets and value have been shown at NIL and in income, net agricultural income have been shown from sale of agricultural land as well as produce and claimed

exemption. PB-5 onwards is statutory notice issued by the A.O. at assessment stage asking the copy of the land record of the land from which agricultural income has been earned, gross receipts from agriculture, total expenditure along with bills and vouchers, details of agricultural produce along with the sale bills etc. PB-7 is reply filed by the assessee at assessment stage submitting complete details of ownership of the land and the sale details along with audited accounts etc., to prove the above facts. PB-10 to 30D are the copy of the sale deed dated 22.08.2013 which clearly mentioned *Khasra* 197/12.15 Hectare and name of the Company M/s. Magic Landcon LLP which is mentioned in the sale deed who have received the sale consideration. PB-31 to 41 are the replies filed before A.O. to explain that profit on sale of agricultural land is exempt from tax. Details of agricultural income along with invoices of sale, details of agricultural income earned on account of sale of agricultural land and receipts of '*Krishi Upaj Mandi Samiti*' have been produced before A.O. Learned Counsel for the Assessee, therefore submitted that A.O. has examined this issue which was the

basis for selection of the case for limited scrutiny and A.O. examined all the issues based on material on record. Therefore, it is not a case of inadequate enquiry or no enquiry. The Ld. Pr. CIT(A) merely issued notice under section 263 of the Income Tax Act, 1961, for the sake of finalisation of the audited objection which is bad in law and relied upon Judgment of the Hon'ble Punjab and Haryana High Court in the case of Sohana Woollen Mills 296 ITR 238 [P&H]. Learned Counsel for the Assessee submitted that assessee made investment in agricultural land which is shown in the books of account. Since there may be a typographical error in mentioning the place of land in the audit report, therefore, it would not be relevant. PB-127 is purchase deed of the property. Learned Counsel for the Assessee submitted that the two conditions of Section 263 shall have to be satisfied before passing the order under section 263 of the I.T. Act, 1961, that assessment order is erroneous as well as prejudicial to the interests of revenue. Since A.O. has taken one of the possible view as per Law and Ld. Pr. CIT did not agree with the view of the A.O,

initiation of reassessment proceedings is bad in law. He has relied upon the Judgments of the Hon'ble Supreme Court in the cases of Malabar Industrial Co. Ltd., [2000] 243 ITR 83 (SC) and CIT vs., Kwalitiy Steel Suppliers Complex [2017] 395 ITR 1 (SC). He has submitted that revision under section 263 of the I.T. Act, 1961, is not permissible on the ground of inadequate enquiry. He has relied upon Judgments of the Hon'ble Delhi High Court in the cases of CIT vs., Sunbeam Auto Ltd., [2011] 332 ITR 167 (Del.), CIT vs., Anil Kumar Sharma [2011] 335 ITR 83 (Del.) and CIT vs. International Travel House [2012] 344 ITR 554 (Del.). He has submitted that since there was no error in the Order of the A.O, therefore, Order passed under section 263 of the I.T. Act, 1961, is not permissible and relied upon Judgment of the Hon'ble Delhi High Court in the case of CIT, Delhi-IV vs., DLF Ltd., [2013] 350 ITR 555 (Del.). The Ld. Pr. CIT even after insertion of Explanation-2 to Section 263 of the Income Tax Act need to point-out the failure on the part of the A.O. in not conducting relevant enquiries which were critical for decision of the issue. He has relied upon

Judgment of the Hon'ble Delhi High Court in the case of Pr. CIT-11 vs., Indian Farmers & Fertilizers Cooperative Ltd., ITA.No.597/2017, Dated 02.08.2017. Since, A.O. examined all the issues at assessment stage and accepted the contention of assessee, therefore, the assessment order is not erroneous insofar as prejudicial to the interest of revenue. Therefore, order need to be set aside.

5. On the other hand, Ld. D.R. relied upon the impugned order of the Ld. Pr. CIT and submitted that A.O. has not enquired into all the issues at assessment stage. Therefore, Ld. Pr. CIT has rightly set aside the impugned order.

6. We have considered the rival submissions and perused the material on record. It is not in dispute that case of the assessee was selected for limited scrutiny for the reason "*large agricultural income*". The A.O. issued statutory notices to the assessee calling for explanation on the above issue. The assessee submitted necessary details and documents and after satisfying with the documentary

evidences on record, the A.O. accepted the contention of assessee i.e., sale consideration received on sale of agricultural land and sale of agricultural produce are exempt from tax. The Pr.CIT, however, noted that A.O. has not examined these issues because assessee was not owner of the land in question and that no agricultural income was earned because receipts are after the date of the sale. The assessee explained before the authorities below that the land in question was purchased several years back and was shown in the books of account of the Company. The Assessee-Firm was earlier Limited Company which was converted into the LLP-Firm. Shri Satbir and Shri Vinod Kumar Garg, Managing Director and Director of the erstwhile Company. In the audited accounts of the Company, the agricultural land have been shown. Copy of the Government record of *Khatauni* Dated 6.10.2006 is filed at page-71 of the paper book along with translation. The land in question have been shown in *Khasra* No.197 having area of 12.15 Hectares. The name of Shri Satbir, Director of M/s. Magic Landcon Pvt. Ltd., have been mentioned.

Since the sale consideration is shown in the balance sheet of the assessee-company in earlier years prior to the conversion of the Company into the Firm, therefore, it is clear that sale consideration was paid by the Company though the sale deed was recorded in the name of the Director Shri Satbir. Therefore, for all practical purposes the agricultural land was owned by the Company, in which Shri Satbir was a Director. Copy of the sale deed is filed on record Dated 22.08.2013 which is executed by Shri Satbir through Attorney Shri Vinod Kumar Garg, for a consideration of Rs.2.25 crores. The land in this sale deed have been mentioned in *Khasra* 197/12.15 Hectors. The same details are mentioned in the *Khatauni* of the land. In this sale deed, it is specifically mentioned that entire sale consideration have been received through cheque by the First Party - Seller from Second Party – Buyer, M/s. Magic Landcon LLP. This will strengthen the explanation of assessee that the land sold was in *Khasra* 197 and area was same as have been mentioned in the *Khatauni*. Therefore, it is difficult to believe that there were two different properties

which have been sold by Shri Satbir through the General Power of Attorney Holder. The explanation of assessee is thus acceptable that there may be a typographical error in mentioning the property at Berhore in the audited accounts of the assessee-company. Learned Counsel for the Assessee, during the course of arguments have also submitted that the Berhore is a big area and as such it might have been mentioned though the property falls in the same area. These facts also supports the explanation of assessee that assessee owned the agricultural land and sold it for a consideration which have been duly disclosed to the Revenue Department in earlier year as well as in assessment year under appeal. The assessee also filed complete details of the same before A.O. through various replies. The assessee also explained that agricultural income was earned out of the same agricultural land which is supported by bills of '*Krishi Upaj Mandi Samiti*', Kotputli. Thus, the assessee produced all the documentary evidences and explanation before A.O. at assessment stage and explanation of assessee has been accepted that assessee

earned exempt income on account of sale of agricultural land and sale of agricultural produce. It is well settled that when A.O. called for the details and assessee responded, the A.O, however, did not discuss or mention in detail the same in the assessment order, no revision lies under section 263 of Income Tax Act 1961. We rely upon Judgments of Allahabad High Court in the case of CIT vs., Krishna Capbox Ltd., [2015] 372 ITR 310 (All.) and CIT vs., Metro and Metro [2018] 404 ITR 304 (All.). The Honorable Gujarat High Court in the case of CIT-1 vs., Amit Corporation [2012] 81 CCH 69 (Guj.) held that *“where A.O. after detailed verification of record and making enquiries had framed assessment, the CIT cannot revise the same under section 263 of the Income Tax Act.”* The same view is taken by the Hon’ble Karnataka High Court in the case of CIT & Another vs., Saravana Developers [2016] 387 ITR 239 (Karn.). It is also well settled Law that when A.O. has taken one of the possible view which is sustainable in Law and that the Commissioner of Income Tax does not agree with the view of the A.O, no revisional proceeding lies under section 263 of

the Income Tax Act, 1961. We rely upon Judgment of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd., (supra). We may note that if the Pr. CIT was feeling that it is a case of inadequate enquiry, he must make an enquiry to make-out a case under section 263 of Income Tax, 1961, that the assessment order is erroneous insofar as it is prejudicial to the interests of Revenue. He should hold an enquiry himself before coming to such conclusion. However, in the present case the Ld. Pr. CIT did not hold any enquiry into the matter and merely rejected the explanation of assessee without arriving at a definite finding that the assessment order is erroneous insofar as prejudicial to the interests of Revenue. The Hon'ble Delhi High Court in the case of Director of Income Tax vs., Jyoti Foundation [2013] 357 ITR 388 (Del.) held that "*Revisional Authority feeling a case of inadequate enquiry, must make enquiry to make out a case under section 263 of Income Tax Act.*" The assessee in the paper book has also filed an affidavit of Shri Satbir, in which he has confirmed that property was purchased in his name, but, he has not spent

any consideration. The property was registered in his name by the Company now known as “*Limited Liability Partnership Firm*” and entire sale consideration have been received by the Assessee-Firm being the owner. This would also strengthen the case of the assessee that it was owner of the property in question. The assessee also produced sufficient evidence before A.O. to show that it has earned agricultural income out of the sale of agricultural land and agricultural produce. Since the case was selected for limited scrutiny only on these points and assessee furnished adequate explanation and evidences before the A.O, which have been examined by the A.O, therefore, it is not a case of even inadequate enquiry. In the show cause notice issued by the Ld. Pr. CIT, Dated 21.12.2018, at the end of Para No.6, after considering the facts of the case noted that *“it seems that the A.O. has not properly examined the documents filed and merely accepted the explanation of the assessee without even asking further queries on the above emanated issues. Thus, it seems that the assessment order passed by the A.O. in this case is erroneous and prejudicial to the interests of the*

Revenue.” The Ld. Pr. CIT has referred the word “seems” twice in para 6 of the above show cause notice. It would, therefore, show that even he was not sure whether it is a fit case of invoking jurisdiction under section 263 of the Income Tax Act, 1961. Therefore, it is not the case of no enquiry by the A.O. Therefore, Explanation-2 to Section 263 of the Income Tax Act, 1961, would also not be attracted in the case of the assessee. Since the A.O. examined this issue in detail on account of limited scrutiny assessment on exactly on the point in issue and decided the case accordingly, therefore, there was no justification for the Ld. Pr. CIT to invoke the jurisdiction under section 263 of the Income Tax Act, 1961. In this view of the matter, we set aside the impugned order of the Ld. Pr. CIT passed under section 263 of the Income Tax Act, 1961 and restore the assessment order.

7. In the result, ITA.No.4551/Del./2019 of the Assessee is allowed.

ITA.No.4552/Del./2019 – A.Y. 2014-2015

M/s. Graffiti Technologies LLP, New Delhi.

8. The issue is same in this appeal. Therefore, following the Order in the case of M/s. Magic Landcon LLP (supra), we set aside the impugned order of the Ld. Pr. CIT passed under section 263 of the Income Tax Act, 1961 and restore the Order of the A.O.

9. In the result, ITA.No.4552/Del./2019 of the Assessee is allowed.

To sum-up, both the appeals of the Assessee are allowed.

Order pronounced in the open Court.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 26th February, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.