

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

**BEFORE, SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.3505/Del/2019  
(ASSESSMENT YEAR-2014-15)**

M/s Charm Investment Pvt. Ltd. 3927/28 Padam Singh Road, Karol Bagh, New Delhi-110005 PAN -AAACC 5167B	Vs.	Pr.CIT-2, R.No.394, CR. Building, New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant By	<b>Sh. Raj Kumar, CA</b>
Respondent by	<b>Sh. M. Barnwal, Sr. DR</b>
Date of Hearing	<b>07.02.2020</b>
Date of Pronouncement	<b>01.05.2020</b>

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:**

This appeal has been preferred by the assessee against order dated 22.03.2019 passed by the Ld. Principal Commissioner of Income Tax-2, Delhi {Pr.CIT} for Assessment Year 2014-15 and challenges the action of the Ld. Pr. CIT in passing order u/s 263 of the Income Tax Act, 1961 (hereinafter called as 'the Act') wherein it was held that the assessment order passed u/s 143(3) of the Act dated 30.06.2016 was erroneous in so far as being prejudicial to the interest of the Revenue and was set aside.

2.0 The brief facts of the case are that the assessee company is non-banking Finance Company engaged in the business of providing loans to its clients and for making investment in shares and properties. The return of income was filed declaring an income of Rs.1,63,290/-. However, tax had been paid on Book profit of Rs.16,07,775/- under provisions of section 115JB of the Act. The case was selected for scrutiny through CASS and, subsequently, the assessment was completed at an income of Rs.1,68,565/- after making an addition on account of interest u/s 244A of the Act.

2.1 Subsequently, the Ld. Pr. CIT issued a show cause notice dated 21.02.2019 and initiated proceedings u/s 263 of the Act on the ground that the assessee had shown capital gains of Rs.91,834/- on sale of a certain residential flat wherein, as per the sale deed, the circle rate of the property sold was Rs.48,57,600/- whereas the sale consideration said to be received was only Rs.44,00,000/-. Thus, as per the Ld. Pr. CIT, section 50C of the Income Tax Act would come into play. The show cause notice stated that the AO was bound to refer the matter to the Departmental Valuation Officer (DVO) but since the same was not done, the order was liable to be set aside. It was also stated in the show cause notice that the

cost of improvement amounting to Rs.6,88,500/- was in the nature of repairs and maintenance and did not qualify towards cost of improvement.

2.2 In response to the show cause notice, it was submitted by the assessee that the issue had been examined by the Assessing Officer (AO) during the assessment proceedings wherein the details of costs of improvement were duly submitted and the Assessing Officer had allowed the same after proper verification. It was also submitted by the assessee that the application of Sec.50C of the Act was not mandatory in all cases and that the AO had chosen not to apply the provisions of section 50C in his case and that the reference to the DVO was not mandatory.

2.3 However, the Ld. Pr. CIT did not accept the submissions of the assessee and held that since the assessment order passed by the Assessing Officer had been passed without making any enquiries into the claim of the assessee and further because the AO had failed to make the mandatory reference to the DVO, the same was prejudicial to the interest of the Revenue. The Ld. Pr. CIT also noted that the assessee had not deducted tax at source on the cost of improvement of Rs.6,88,500/-. The Ld. Pr. CIT went on to hold that the assessment order passed u/s 143(3) of the Act was erroneous in so far as being prejudicial to the interest of the

Revenue and was, therefore, to be set aside. The Assessing Officer was directed to frame the assessment afresh by conducting proper enquiries.

2.4 Aggrieved by this order, the assessee is now before the ITAT challenging the action of the Ld. Pr. CIT and has raised the following grounds of appeal:

*“1. That under the facts and circumstances, the asstt. order u/s. 143(3) Dtd. 30.06.16 is neither erroneous nor prejudicial to the interest of revenue, hence the Ld. PCIT wrongly assumed the jurisdiction u/s.263 of the I.T. Act.*

*2. That under the facts and circumstances, the Ld. PCIT exceeded his jurisdiction by invoking Sec.263 for holding that the A.O. should had referred the valuation of residential flat at Nehru Apartments, Kalkaji New Delhi to the District Valuation Officer for the purposes of Sec.50C of the I.T. Act.*

*2.1 That under the facts and circumstances, the issue of calculation of capital gain on sale of Nehru Apartment, Kalkaji flat, since examined by the A.O. u/s. 143(3) as per law, hence, the said order is neither erroneous nor prejudicial to the interest of revenue on this issue and specially w.r.t. Sec.50C of the I.T. Act.*

*2.2 That under the facts and circumstances, the directions of PCIT to A.O. for framing the asstt. afresh by conducting proper enquiries stands vitiated in view of specific findings of PCIT that the A.O. should had referred the valuation of flat to DVO, thus binding the A.O. to that extent thereby making it impossible to reframe the assessment on this issue by the A.O. as per law, as stands decided by him.*

3. That under the facts and circumstances, the Ld. PCIT exceeded his jurisdiction by invoking Sec.263 in holding that on the issue of cost of improvement of Rs.6,88,500/-, the A.O. has merely relied upon the vouchers submitted by the company and he did not examine the nature of expenses that will qualify for deduction for calculating capital gain.

3.1 That under the facts and circumstances, the order of A.O. on the issue of cost of improvement of Rs.6,88,500/- is neither erroneous nor prejudicial to the interest of revenue.

4. That the PCIT further erred in law and on merits for a finding in the impugned order u/s.263 that TDS was not deducted on cost of improvement of Rs.6,88,500/-, the issue which was not covered in the show cause notice therefore, any finding or direction on this issue is outside the scope of impugned proceedings u/s. 263 of the I.T. Act.

5. That on raising only two issues in SCN i.e. u/s.50C and examination of cost of improvement for calculation of capital gain on sale of flat, the Ld. PCIT erred in law and on merits in setting aside the complete assessment order which tantamount to setting aside all other issues and total assessment without any show cause notice on other issues.”

3. The Ld. Authorized Representative submitted that the Ld. Pr. CIT had wrongly invoked the provisions of Sec.263 by holding that the Assessing Officer should have referred the valuation of the residential flat to the DVO for the purpose of Sec.50C of the Act. Our attention was drawn to provisions of section and it was submitted that the word used is ‘may’ and therefore, the same is not mandatory. It was further submitted

that the Assessing Officer had duly raised query on the computation of capital gains at the time of assessment proceedings and for this purpose our attention was drawn to the notice issued u/s 142(1) of the Act dated 16.05.2016 issued by the Assessing Officer and it was submitted that it is not a case of lack of enquiry. Our attention was also drawn to the reply of the assessee dated 21.06.2016 wherein the assessee had submitted the details of the sale of purchase of property. The Ld. Authorized Representative submitted that the Assessing Officer had duly examined the documents and details furnished by the assessee and on being satisfied had not made any reference to the DVO as the difference was of only Rs.4,57,600/- which was approximately a difference of 10.4% of the declared value. It was submitted that, therefore, there was erroneous.

3.1 It was submitted that it was erroneous part of the Ld. Pr. CIT to have invoked Explanation-2 to Section-263 of the Act because such explanation can be invoked only where the assessment is made without enquiry or verification or where relief is allowed or where the assessment order is not passed in accordance with any direction or instruction of the Board or where the assessment order is not passed in accordance with the decision rendered by the Jurisdictional High Court or the Hon'ble Apex

Court. It was submitted that the assessee's case did not fall in any of the four conditions under which Explanation-2 can be invoked.

3.2 It was also submitted that the extent of enquiry is to be decided by the Assessing Officer and the same cannot be determined by the Ld. Pr. CIT. It was also submitted that even if the assessment order does not discuss the issue in detail, it cannot be inferred that no enquiry has been made. The Ld. Authorized Representative also argued that the Ld. Pr. CIT should have conducted the enquiry himself which he did not do and that he had merely directed the Assessing Officer to make the enquiry which was unsustainable in the eyes of law. Similar arguments were raised for other ground on which the assessment order was set aside i.e. the alleged failure of the Assessing Officer in examining the nature of cost of improvement expenditure.

3.3 Regarding the third reason stated by the Ld. Pr. CIT for setting aside the assessment order i.e., non deduction of TDS on cost of improvement expenditure, the Ld. Authorized Representative submitted that this issue was not raised in the show cause itself and, therefore, the same was outside the scope of the impugned order and no direction could have been given by the Ld. Pr. CIT in this regard. The Ld. Authorized

Representative prayed that the impugned order preserved to be quashed as the Ld. Pr. CIT had exceeded his jurisdictional in exercising his revisionary powers.

4.0 In response to the arguments of the Ld. Authorized Representative, the Ld. Departmental Representative vehemently supported the order of the Ld. Pr. CIT and submitted that provisions of Section 263 had been rightly invoked by the Ld. Pr. CIT and that it was apparent from the assessment order that there was a complete lack of enquiry by the Assessing Officer with respect to the issue of computation of capital gains.

5.0 We have heard the rival submissions and have also perused the material on record. It is seen that in response to the query raised by the Assessing Officer, the assessee had furnished copies of sale deed and purchase deed and also the bill pertaining to renovation work carried out in the residential flat sold by the assessee. It is undisputed fact that the assessee has shown a lower amount as sale consideration than as mentioned in the sale deed for the purposes of stamp duty. The Ld. Pr. CIT was of the opinion that the Assessing Officer should have referred the matter to the DVO as there was a variation in the two valuations and that

the failure of the Assessing Officer to make a reference to the DVO was an error as a result of which the assessment order became erroneous and prejudicial to the interest of the Revenue. However, the provisions of Section 50C(ii) lay down that where the assessee claims before any Assessing Officer that the valuation adopted and assessed or assessable by the Stamp Valuation Authority under sub-section (i) exceeds the fair market value of the property as on the transfer, the Assessing Officer 'may' refer the valuation of the capital asset to Valuation Officer. Thus, going by the language used, it is not mandatory in the Assessing Officer to make a reference to the DVO in all cases where the stamp duty valuation exceeds the fair market value. Therefore, it is our considered opinion that the order of the Assessing Officer cannot be held to be erroneous in so far as being prejudicial to the interest of the Revenue on this count. For, this proposition, we draw support from the order of the Co-ordinate Bench of ITAT Delhi Bench in the case of Jitindar S. Chadha Vs. Pr. CIT reported in [2019] 200 TTJ (Del) 98 wherein it had been held that the powers of the Assessing Officer u/s 55A of the Act were discretionary and that the Assessing Officer can take plausible view of the matter. Thus, in the present case also, it is our considered opinion that by not referring the

issue of valuation to the DVO, the Assessing Officer had taken one of the possible views and this discretion of the Assessing Officer cannot be termed as being erroneous as has been held by the Ld. Pr. CIT.

5.1 Similarly, the assessee had duly submitted the details of renovation which were carried out in the flat sold by him and the Assessing Officer, by taking one of the possible two views, accepted the same. Therefore, it cannot be said that the Assessing Officer did not make any enquiry whatsoever in this regard. The Assessing Officer called for certain details and the assessee submitted them. On the Assessing Officer being satisfied with the same, the Assessing Officer took one of the possible views to which the Ld. Pr. CIT might not have been in agreement but which the Ld. Pr. CIT has no power to change if the same has been taken after enquiry by the Assessing Officer. Therefore, we are not in agreement with the view taken by the Ld. Pr. CIT that the order passed by the Assessing Officer was erroneous in so far as being prejudicial to the interest of the Revenue.

5.2 The issue of non deduction of tax on the expenditure claimed towards cost of improvement was never a part of the show cause notice and a perusal of the reply submitted by the assessee before the Ld. Pr. CIT

also makes it apparent that the assessee was not confronted with this issue and was not given any opportunity to respond to the same. The impugned order also does not mention that the assessee was later required to respond on this issue. Thus, there was a complete lack of natural justice on the part of the Ld. Pr. CIT while setting aside the assessment order for this reason. Therefore, we are afraid, the same cannot be taken as a reason for treating the assessment order as erroneous. This is in line with the judgment rendered by the Hon'ble Apex Court in the case of CIT vs. Amitabh Bacchan in Civil Appeal No.5009 Of 2016 [Arising out of S.L.P.(C) No.11621 of 2009] wherein it has been held that without providing a proper opportunity on the issue the commissioner cannot exercise the revisionary powers.

5.3 Therefore, we are of the considered opinion that the impugned order fails to pass the tests laid down with respect to the exercise of the revisionary powers by the Commissioner and, therefore, we have no other option but to quash the order passed u/s 263 of the Act and allow the assessee's appeal.

6.0. In the final result, the appeal of the assessee stands allowed.

**Order pronounced in the Open Court on 01/05/2020.**

Sd/-  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Dated: 01/05/2020

*PK/Ps*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI