

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA NO. 6416/MUM/2018 : A.Y : 2014-15**

Shree Laxmi Developers vs. Principal Commissioner of  
Landmark, Office No. 511, Plot No. Income Tax - 2, Thane.  
26A, Sector-7, Kharghar, (Respondent)  
Navi Mumbai 400 703.  
**PAN : ACBFS9975M (Appellant)**

**Appellant by : None**  
**Respondent by : Shri Rajiv Harit**

**Date of Hearing : 30/01/2020**  
**Date of Pronouncement : 20/04/2020**

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER**

This appeal by the assessee is directed against order passed under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by the learned Commissioner of Income Tax (hereinafter referred to as "CIT") by the order dated 27.09.2018 and pertains to assessment year 2014-15.

2. The grounds of appeal read as under :-

"1. The Ld. Pr. Commissioner of Income Tax has erred in law as well as on facts and in the circumstances of the case in initiating the reopening proceedings and passing order u/s 263 of the I.T. Act, 1961.

2. That the Income Tax Officer has made addition u/s 68 of the Income Tax Act, 1961 for Assessment Year 2013-14 (i.e. earlier year) against which the appeal is pending before the 1<sup>st</sup> Appellate Authority. However, the Ld. Pr. Commissioner of Income Tax has failed to appreciate that the re-opening proceedings of the Assessment Year 2014-15 are based on the additions made in earlier year which is subject matter pending before the 1<sup>st</sup> appellate authority and therefore, it cannot be a matter of revision u/s 263 of the Act.

3. On the facts & circumstances of the case as well as in law the Ld. Pr. Commissioner of Income Tax, has failed to consider the detailed submissions made before him on 17-09-2018.

4. The Ld. Pr. Commissioner of Income Tax has erred in not following the Hon'ble High Court Judgment relied by the appellant having similar and identical facts without assigning any bonafide reason for the same."

3. The brief facts of the case on the basis of which learned CIT exercised his jurisdiction under Section 263 of the Act leading to the issue of show cause notice under Section 263 of the Act are culled out from the order of learned CIT as under :

"04. On perusal of records, it is observed that while completing the assessment proceedings for AY 2013-14, the AO had treated the unsecured loans obtained by the assessee as unexplained cash credit u/s 68 of the I.T. Act, 1961 as the assessee had failed to establish the identity, genuineness and creditworthiness of the creditors. During the year under consideration, it is seen that the assessee has claimed interest payment of Rs.40,72,734/- in its P&L account in respect of the unsecured loans which were disallowed in the year AY 2013-14.

*05. However, it is found that these interest expenses on those unsecured loans whose loan transactions were found not genuine, was not disallowed while passing the assessment order for AY 2014-15 and remained to be added to the income of the assessee while completing the assessment proceedings. In view of the above facts, a notice u/s 263 was issued to the assessee as assessment order passed is found to be erroneous in so far as it is pre-judicial to the interests of the revenue."*

The assessee responded as under:

*"This has reference to your notice u/s 263 of the income tax Act 1961 for Assessment Year 2014-15. It is observed that the said revision notice is issued on the basis of Income Tax scrutiny assessment u/s 143(3) of the Income Tax Act 1961 wherein the addition of Rs.4,58,25,000/- was made on account of on explain cash credits.*

*However during the course of hearing, we have submitted loan confirmations, bank statement of the party, copy of ITR & financial statement of accounts of the parties 85 some of the parties even visited the office of the assessing officer. Therefore identity of the creditors, creditworthiness of the creditors & genuineness of the transactions was proved at our end. However, inspite of this, the Assessing Officer has made above additions.*

*Therefore, being aggrieved by the said Assessment Order, we have filed appeal before the Commissioner of Income Tax, Appeal no CIT(A), Thane-2/10142/2016-17 challenging the said additions. The hearing of the said appeal is in process.*

*As regards the scrutiny assessment for Assessment Year 2014-15, you have issued notice u/s 263 of the Act proposing to disallow interest of Rs.40,72,734/- pertaining to the creditors whose amount is disallowed in the earlier assessment year i.e. Assessment Year 2013 14. However, as mentioned here in above, the hearing of our appeal before CIT(A)-2 Thane is going on and we expect the finality of the appeal shortly. Therefore your reopening of assessment has direct bearing on the result of said appeal and*

*we are most hopeful of result of the said appeal In our favour. Therefore, as per the doctrine of merger, the order of the Assessing Officer mergers with of order of the Appellate Authority.*

*In this connection, we rely on the Madhya Pradesh High Court judgment in the case of CIT vs Shalimar Housing and Finance Ltd. (210) 320 ITH 157 (MP), It has been held that, where an issue had become the subject matter of Appeal and such appeal has also been dealt with such issue could not become the subject matter of revision under section 263 of the Act."*

However, learned CIT was not convinced. He held that decision referred by the assessee was not applicable on the facts of the present case. He held that in the present case, assessee has not filed any appeal against the order passed under Section 143(3) passed on 29/12/2016 for Assessment Year 2014-15. Hence, he held that there is no question of merger of learned CIT(Appeals) order in this case. He noted that assessee has debited the interest amount to the Profit and Loss Account in respect of the unsecured loan which were disallowed in the earlier year. Hence, he held that Assessing Officer should have disallowed these interest expenses and added that to the return of income. Hence, he set aside the order of the Assessing Officer with direction to redo the assessment *de novo* after affording adequate opportunity to the assessee.

4. Against this order, assessee is in appeal before us. We have heard the learned Departmental Representative. None appeared on behalf of the assessee despite notice. Upon careful consideration, we find that it is undisputed that in none of the issues in the present assessment order, there was any appeal before the learned CIT (Appeals) in the present case. The

provision of Section 263(1) Explanation-1 sub-clause (c) of the Act which is relevant in this regard reads as under:

*"(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal."*

A reading of the above makes it amply clear that learned CIT is ousted of his jurisdiction under Section 263 of the Act only with reference to those matters which are in appeal and is being considered and decided for the assessment year under consideration. This section clearly deals with the issue in appeal for the impugned assessment year. The language of the Act is clear. It cannot be extrapolated that it refers to matter in appeal in any other assessment year other than the one which is subject matter of consideration of learned CIT. In this view of the matter, in our considered opinion, the learned CIT has correctly exercised his jurisdiction and his jurisdiction is not ousted by the provisions of the Act. If the assessee has filed any appeal in earlier assessment year, the same cannot impact the jurisdiction of learned CIT in exercising his jurisdiction under Section 263 for the current assessment year.

5. Moreover, we find that learned CIT has remitted the matter to the file of Assessing Officer to consider the issue *de novo* after giving the assessee proper opportunity of being heard. In this view of the matter, in our considered opinion, no prejudice will be caused to the assessee. If the matter is decided in favour of the assessee in earlier year's appellate proceedings, the same will be

available to the Assessing Officer. Hence, we do not find any infirmity in the order of learned CIT. Hence, we uphold the same.

6. In the result, appeal filed by the assessee stands dismissed.

Order pronounced in the open court on 20<sup>th</sup> April, 2020.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Sd/-  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

Mumbai, Date : 20<sup>th</sup> April, 2020

\*SSL\*

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai