

**IN THE INCOME TAX APPELLATE TRIBUNAL, "A" BENCH, KOLKATA**  
 [ Before Shri J.Sudhakar Reddy, AM and Shri Partha Sarathi Choudhury, JM ]

**I.T.A. No. 1123/Kol/2019**  
 Assessment Year:2014-15

Mohammad Ayub PAN: ACGPA3259D	Vs.	PCIT-9, Kolkata
Appellant		Respondent

**I.T.A. No. 1124/Kol/2019**  
 Assessment Year:2014-15

Hina Roohi PAN: AEYPR6057C	Vs.	PCIT-9, Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	03-11-2020
Date of Pronouncement	05-11-2020
For the Appellant	Shri H.V. Bhardwaj, FCA, Ld.AR
For the Respondent	Shri Vijay Shankar, CIT, Ld.Sr. DR

**ORDER**

**Per Shri Partha Sarathi Choudhury, JM**

These appeals preferred by the respective assessee emanates from the separate orders of the Ld. Pr. CIT-9, Kolkata dated 14-03-2019 and 15-03-2019 for the assessment year 2014-15 as per the following grounds of appeal:-

ITA No. 1123/Kol/2019 A.Y 2014-15

*1. That on the facts, circumstances of the case and in law the notice issued on 25-01-2019 is invalid.*

*2. That the order purported to have passed u/s. 263 is bad in law and on the facts of the case and is liable to be held as a nullity.*

*3. That the assessee craves leave to add to amend or withdraw any ground as above on or before the hearing of the appeal.*

ITA No. 1124/Kol/2019 A.Y 2014-15

*1. That on the facts, circumstances of the case and in law the notice issued on 25-01-2019 is invalid.*

*2. That the order purported to have passed u/s. 263 is bad in law and on the facts of the case and is liable to be held as a nullity.*

*3. That the assessee craves leave to add to amend or withdraw any ground as above on or before the hearing of the appeal.*

2. At the time of hearing before us both the parties herein have agreed that the facts and circumstances and the issues involved in both these appeals are identical and after hearing the submissions of the parties these cases of the respective assessees are heard together and accordingly disposed off by this consolidated order.

3. The assessees in these cases have taken both legal ground as well as ground on merits. That with regard to the legal ground in both the appeals (ITA No. 1123/Kol/2019 & ITA No. 1124/Kol/2019 for the AY 2013-14) the grievance of the assessee is that the notice issued on 25-01-2019 is invalid. This is so because the said notice u/s. 263 of the Act dt. 25-01-2019 was signed by ITO, Technical-9, Kolkata. The assessee, as per the submissions of the Ld.AR has submitted reply on 15-02-2019 in response to the said notice issued u/s. 263 of the Act. The Ld. AR of the assessee further submitted there is another notice u/s. 263 dated 13-02-2019 a second such notice and this was duly signed by Pr. CIT-9, Kolkata. On this legal ground, the assessee contends that the first notice u/s. 263 dated 25-01-2019 was signed by ITO, Technical-9, Kolkata, therefore, it was invalid. We are of the considered view that on this issue there is no technical defect made out in the case of the assessees. The purpose for which the said notice was served were duly conveyed to the respective assessees. So that they filed written submissions in respect thereof and the assessees were aware and it was within their knowledge that proceedings u/s. 263 were to

begin. Taking these facts and circumstances of the case, we find that assessee's legal ground in both the appeals are sance any merit. Hence, they are dismissed.

4. Regarding the ground on merits in both the appeals (ITA Nos. 1123 & 1124/Kol/2019 for the AY 2013-14) it was observed by the Ld. PCIT that during relevant financial year the assessee herein, Mr.Mohammad Ayub had purchased a residential flat jointly (co-owner of 50% share) with Smt. Hina Roohi, another assessee herein, in the project named 'Ideal Lake View' at Topsia, Kolkata and as per the Deed of Conveyance the purchase consideration was for Rs. 1,11,23,800/-, in addition, a further substantial stamp duty and registration fees were paid. It is evident from para 2 of the impugned order of the Ld. PCIT as per his observation that details of source of fund for investment including housing loan of Rs. 84 lakhs from Axis Bank another interest-bearing loan of Rs. 20 lakhs taken from M/s. Mindpower Tradelinks P.Ltd and Rs. 8.50 lakhs from Smt, Hina Roohi, another assessee herein were not enquired into by the AO. That further, during the assessment proceedings the assessee also did not furnish date wise schedule reflecting his share of payment of interest on loans, stamp duty/registration fees and submission regarding the source of repayment of loan/EMI along with supporting documents. The Assessing Office failed to verify the creditworthiness of M/s. Mindpower Tradelinks P.Ltd. In this scenario, it was held by Ld. PCIT that the order passed by the AO in respect of both the concerned assessees were erroneous in so far as it was prejudicial to the interest of the revenue.

5. At the time of hearing before us the Ld.AR of the assessee took us through para 2 of the assessment order dated 12-09-2016, wherein it is mentioned that:-

*“Thereafter, notice u/s. 142(1) dated 21-06-2016 was issued and also served upon the assessee calling for furnishing details of investment in property and to explain the source thereof, for production of Books of Accounts, bank statement etc. The assessee is asked to explain regarding salary income shown under TDS schedule of ITR is higher than the salary shown under Past B-II also.”*

6. In response to the above, the AR of the assessee appeared from time to time to represent his case and produced the details as called for including bank statements, cash book and other relevant papers, which were examined and test checked. The Ld. AR of the assessee submitted referring to page-6 of the P.B (paper book), wherein a letter has been submitted by the assessee to the AO explaining the detailed source of investments made in the said property. Thereafter, from pages 6-26 of the P/B all relevant information regarding the source of investment of the property, bank statement everything has been submitted/furnished before the Department. Thus, it was vehemently argued by the Ld. AR that the AO has made detailed enquiry of each and every aspect of the residential flat purchased jointly by both the assessees, which is evident on record. The source of investment has been duly explained also. Therefore, the order of the AO passed u/s. 143(3) of the Act is neither erroneous nor it is prejudicial to the interest of the revenue.

7. Per contra, Ld. DR placed strong reliance on the impugned order passed u/s. 263 of the Act.

8. We have heard the rival contentions, perused the case records, analysed the facts circumstances of the case of the assessees. We find that the Ld. PCIT has assumed his revisional jurisdiction u/s. 263 of the Act on the ground that the residential property purchased by both the assessee jointly co-owner with 50% joint owner/ship, the source of investment of such property, bank details etc were not verified by the AO while framing the assessment order. However, the facts on record demonstrates that the AO while framing the assessment u/s. 143(3) of the Act has called for various details specifically examining the source of investment of such property purchased jointly by both the assessees. The assessee has also furnished a letter to the AO dated 29-06-2016, which was received at his office (Office of the Income Tax Officer, Ward 25(3), Kolkata) on 1-7-2016 (affixing Office Seal), wherein the assessee has explained each and every details of the source of investment towards purchase of the said residential flat. Therefore, the AO has duly examined all the details and thereafter framed the assessment order u/s. 143(3) of the Act. The Ld. DR

could not refute the facts on record neither could place any evidence to show that no enquiry was done by AO regarding source of investment of the said flat. The Hon'ble Apex Court in *Malabar Industries Ltd. vs. CIT* [2000] 243 ITR 83(SC) wherein their Lordship have held that twin conditions should be satisfied before jurisdiction u/s 263 of the Act is exercised by the Id. Pr. CIT. The twin conditions which need to be satisfied are that (i) the order of the Assessing Officer must be erroneous and(ii) as a consequence of passing an erroneous order, prejudice is caused to the interest of the Revenue. In the following circumstances, the order of the AO can be held to be erroneous i.e. (i) if the Assessing Officer's order was passed on assumption of incorrect facts; or assumption of incorrect law; (ii) Assessing Officer's order is in violation of the principles of natural justice; (iii) if the AO's order is passed without application of mind; or (iv) if the AO has not investigated the issue before him. In the circumstances enumerated above only the order passed by the Assessing Officer can be termed as erroneous for the purpose of S.263 of the Act. Coming next to the second limb, the AO's erroneous order can be revised by the Ld. Pr. CIT only when it is shown that the said order is prejudicial to the interest of Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of *Malabar Industries (supra)* held that this phrase i.e. "prejudicial to the interest of the revenue" has to be read in conjunction with an "erroneous" order passed by the Assessing Officer. The Hon'ble Supreme Court, held that for invoking powers conferred by S.263 the Ld. Pr CIT should not only show that the AO's order is erroneous as a result of any of the situations enumerated above but CIT must also further show that as a result of an erroneous order, some loss is caused to the interest of the revenue. Their Lordship in the said judgment held that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. It was further observed that when the Assessing Officer adopts one of the course permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the Ld. CIT does not agree, it cannot be treated as an order prejudicial to the interest of the revenue unless the

view taken by the Assessing Officer is **unsustainable in law**. Reverting to the facts of the present case the AO has called for necessary details regarding the investment source in the said residential property and the assessee in their letter dt. 29.06.2016 received by the Department on 01-07-2016 has replied to all such queries and after such examination and enquiry only the AO has passed the assessment order, when investigation was done by the AO details/evidences regarding the house property were called for in such situation the order of the AO is not erroneous. Thereafter, once the AO has taken a view after enquiry and the Ld. Pr. CIT is not agreeable to that view of the AO the assessment order cannot be treated as an order prejudicial to the interest of the revenue. That further the Ld. Pr. CIT has not specifically with evidences shown the reasons why the order of the AO is erroneous and prejudicial to the interest of the revenue. There is no satisfaction arrived at before assuming revisional jurisdiction by the Ld. Pr. CIT, no reasons have been enumerated in his order showing any nexus between his satisfaction arrived at and the assessment order being erroneous so as to be prejudicial to the interest of the revenue.

9. We are of the considered view therefore on basis of the aforesaid analysis and examination of facts that the order passed u/s. 263 of the Act by the Ld. Pr. CIT in respect of both the assessee is arbitrary, ambiguous bad in law and liable to be quashed. We order accordingly.

10. In the result, both the appeals of the assessee (ITA Nos. 1123/Kol/2019 & 1124/Kol/2019 for the AY 2014-15) are partly allowed.

Order is pronounced in the open court on 5<sup>th</sup> November, 2020

Sd/-  
(J.Sudhakar Reddy)  
Accountant Member

Sd/-  
(Partha Sarathi Choudhury)  
Judicial Member

Dated : 5<sup>th</sup> November, 2020

**\*\*PP(Sr.P.S.)**

Copy of the order forwarded to:

1. Respective Appellant/Assessee: Sri Mohammad Ayub & Smt. Hina Roohi C/o V.N Purohit & CA Diamond Chambers, Unit-III, 4<sup>th</sup> Fl., Suite No. 4G, 4 Chowringhee Lane, Kolkata-16.
2. Respondent/Department : The Pr. CIT-9, Kolkata, Aaykar Bhawan Dakshin, 2 Gariahtat Road (S), 2<sup>nd</sup> Fl., Room No. 1, Kolkata.
3. CIT(A),
4. CIT- ,
5. DR, ITAT, Kolkata.

/True Copy,

By order,

Assistant Registrar