

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH, RAIPUR

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &  
SHRI PAWAN SINGH, JUDICIAL MEMBER  
I.T.A. No. 54/RPR/2016 for (AY: 2008-09)

M/s. Shree Shyam Sponge &  
Power Pvt. Ltd., 1<sup>st</sup> Floor,  
Mahamaya Tower, G.E. Road,  
Raipur (CG)

Vs. Principal Commissioner of  
Income Tax (Central), Bhopal.

PAN No. AAHCS 1901 N  
(Appellant)

(Respondent)

Assessee by : Shri Veekaas S Sharma, CA.  
Department by : Shri P.K. Mishra, CIT-DR

Date of hearing : 10/08/2021.  
Date of pronouncement : 10/08/2021.

**Order Under Section 254(1) of Income –tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal filed by the assessee is directed against the order of Learned Principal Commissioner of Income Tax, hereinafter called as “ld. PCIT” Bhopal, dated 08.02.2016 for the A.Y. 2008-09. The Assessee raised the following grounds of appeal:-

- “1. *In the facts and circumstances of the case, the ld. Pr. Commissioner of Income-tax has erred in re-opening the assessment u/s 263 of the Income-tax Act, 1961 and erred in directing the Assessing Officer to pass assessment order de-novo after making inquiries on the points set out in the notice, which were already examined and considered during original assessment proceedings.*
2. *The order of the ld. Pr. Commissioner of Income-tax is bad in law and on facts.*

3. *The appellant reserves the right to add, amend, alter and omit all or any of the grounds of appeal with permission of the Hon'ble Appellate Authority.”*
2. Brief facts of the case are that the assessee is a company engaged in the business of production of Sponge Iron from iron ore. The assessee filed its return of income for assessment year (AY) 2008-09 on 22.09.2008 declaring income of Rs. 61,30,610/-. A search action under section 132 was carried out in assessee's group on 21/06/2011. In search action, certain incriminating evidences were found. Consequent upon search, notice under section 153A was served on the assessee. In response to the notice under section 153A, the assessee filed its return of income for AY 2008-09 on 08.08.2012. The assessment for the year under consideration was completed under section 153A r.w.s. 143(3) on 27/03/2014. The Assessing Officer (AO) while passing the assessment order made additions on account of suppression of production of yield. Subsequently, the assessment was revised by Id. PCIT vide order dated 08/02/2016. The Id. PCIT before passing the order under section 263 issued a combined show-cause notice dated 28/05/2016 for the A.Ys. 2006-07 to 2012-13. For assessment year under consideration, the Id. PCIT identified specific issue that tax audit report reveals the provisions of payments like bonus, professional tax, commercial tax and entry tax etc. and that the AO has not examined/investigated this issue.
3. In response to the show-cause notice, the assessee filed its reply. In the reply the assessee specifically stated that the observation in the show-cause

notice is not correct. The AO has called for tax audit report and also books of account along with bills and vouchers. The assessee furnished audit report and provided particulars of payments made therein before due date of filing of return. The details contained therein are self-explanatory and no further disallowance under section 43B of the Act was called for. Therefore, the assessment order is neither erroneous nor prejudicial to the interests of the Revenue and that revision is not justified. The reply of the assessee was not accepted by the Id. PCIT. The Id. PCIT held that the AO did not examine or investigated the issue mentioned in the show-cause notice. The AO made assessment without conducting proper enquiry which is erroneous and prejudicial to the interests of the revenue. The AO was directed to carry out necessary enquiries for limited issues. Aggrieved by the order of Id. PCIT, the assessee has filed the present appeal before this Tribunal.

4. We have heard the submissions of learned Authorised Representative (AR) for the assessee and the learned Commissioner of income tax -Departmental Representative (CIT-DR) for the Revenue and have gone through the orders of the lower authorities. The Id. AR of the assessee submits that a search action was carried out on assessee's group on 21/06/2011. Consequent upon search, the assessment was completed under section 153A r.w.s. 143(3) for A.Ys. 2006-07 to 2012-13 in a common assessment order dated 27/03/2014. The Id. PCIT by exercising powers conferred under section

263 held that assessment order passed under section 153A r.w.s. 143(3) is erroneous on certain issues and set aside the case for *denovo* assessment. The Id.AR of the assessee submits that on the date of search operation under section 132, the assessment proceedings for the A.Y. 2008-09 had attained finality much prior to the search action. Accordingly, completed assessment cannot be disturbed in absence of incriminating material found during the search as has been held by Hon'ble Delhi High Court in PCIT Vs Meeta Gutguia in ITA No. 306 to 310 of 2017. The AO while passing the assessment order under section 153A r.w.s. 143(3) had not referred about any incriminating material found during the course of search. The Id.AR of the assessee stressed that even in the order of Id. PCIT, there is no reference or whisper about any incriminating material based on which the assessment order has been held erroneous. Therefore, the assumption of jurisdiction under section 263 is bad in law at the threshold and subsequent action being bad in law and *void ab-initio*.

5. On the other hand, Id. CIT-DR of the Revenue supported the order of the Id.PCIT. The Id. CIT-DR submits that the AO has not conducted proper enquiries, on various provisions made in the tax audit report and no disallowance under section 43B was made by the AO. Accordingly, assessment order under section 153A r.w.s. 143(3) is erroneous and prejudicial to the interests of the Revenue.

6. We have considered the rival submissions of both the parties and gone through the records of the case carefully. There is no dispute that a search action was carried out on the assessee's group. Consequent upon search, assessment under section 153A r.w.s. 143(3) was completed on 27/03/2014. A perusal of assessment order reveals that there was no incriminating material with regard to the issue identified by Id. PCIT for revising the assessment order. It is an admitted position under the law that at the time of search, assessment for the assessment year under consideration was not pending, therefore the assessment for the A.Y. 2008-09 remained unabated. Further, in the assessment order passed under section 153A r.w.s. 143(3), there was no issue that any incriminating material with regard to disallowance under section 43B was passed.
7. Since the issue identified by the Id. PCIT was not the subject matter of assessment completed under section 153A r.w.s. 143(3). The issue relating to disallowance under section 43B could be the subject matter of regular assessment alone. Regular assessment for the assessment year under consideration has already been expired when search action under section 132 was carried out on 21/06/2011. Therefore, the time limit for revising the assessment order, if any, for A.Y. 2008-09 could be passed within two years from the end of financial year in which the order sought to be revised was passed. Admittedly, the impugned order is passed by the Id. PCIT on 08/02/2016 which is much beyond the prescribed period of limitation of two

years from the end of relevant assessment year. Our view is also supported by the decision of Hon'ble Supreme Court in CIT Vs Alagendran Finance Ltd. [162 Taxman 465] (SC) and Bombay High Court in CIT Vs. ICICI Bank Ltd., [19 taxmann.com 142] (Bombay). Accordingly, the action initiated under section 263 is barred by time period prescribed under section 263(2) of the Act. Thus, the revision order passed qua A.Y. 2008-09 is bad in law and subsequent action initiated therein is void *ab-initio*. Considering, the facts that we have quashed the revision order on limitation issue only, therefore, discussions on the merits of the case have become academic. In the result the grounds of the appeal is allowed. In the result the appeal of the assessee is allowed.

Order pronounced on 10-08-2021 by placing result on notice board.

Sd/-  
**(PRADIP KUMAR KEDIA)**  
**Accountant Member**

sd/-  
**(PAWAN SINGH)**  
**Judicial Member**

**Dated: 10<sup>th</sup> August, 2021**

*Vr SPS*

*Copy to:*

1. The Assessee - M/s. Shree Shyam Sponge & Power Pvt. Ltd., 1<sup>st</sup> Floor, Mahamaya Tower, G.E. Road, Raipur (CG)
2. The Revenue – Pr.CIT (Central), Bhopal.
3. The D.R., Raipur.
4. Guard file.

By order

Sr. Private Secretary,  
ITAT, Raipur (on tour).