

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.83/M/2021
Assessment Years: 2014-15**

M/s. VSS Metals Pvt. Ltd., 4, Fairlie Place Dalhousie, Kolkata, West Bengal – 700 001 PAN: AAACF4136H	Vs.	Principal Commissioner of Income Tax, Central-2, Room No.1920, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Gaurav Kabra, A.R.
Revenue by : Shri Purushottam Tripuri, D.R.

Date of Hearing : 01.04.2021
Date of Pronouncement : 07.06.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 29.12.2017 of the Principal Commissioner of Income Tax [hereinafter referred to as the PCIT] relevant to assessment year 2014-15.

2. The only effective issue raised by the assessee in ground No.1 to 4 is against the invalid assumption of revisionary jurisdiction by PCIT under section 263 of the Act.

3. The facts in brief are that the assessee is engaged in the

business of shares trading and commodity trading on NSEL Exchange. The assessee company originally filed its return of income on 28.09.2014 declaring a loss of Rs 5,47,04,738/-. The case of the assessee was selected for scrutiny and the assessment was framed by the AO u/s 143(3) of the Act assessing the total loss at Rs 5,45,21,343/- after making an addition of Rs 1,83,395/- on account of disallowance of business promotion expenses. Thereafter, a search action was carried out u/s 132 of the Act on 24.02.2016 in the case of Shri Sanjay Kumar Saraf and his group of companies. The assessee was also covered in the said search. Thereafter a notice under section 153A of the Act was issued and in response thereto, the assessee filed its return of income declaring a loss Rs 5,45,21,343/-. The AO after examining, analyzing and verifying the details furnished by the assessee framed the assessment u/s 143(3) r.w.s 153A of the Act determining the total loss at Rs 5,41,86,522/- after making disallowance of Rs 3,34,821/- under section 14A of the Act.

4. Thereafter the Ld. PCIT by exercising the revisionary jurisdiction under section 263 of the Act issued notice u/s 263 of the Act on 16.11.2020 to the assessee stating that the order passed u/s 143(3) r.w.s 153A of the Act is erroneous and prejudicial to the interest of the revenue as there was a wrong claim of 'Business loss on NSEL trading of Rs 7.8 crore in its profit and loss account which was allowed in the computation of

income as business loss instead of Speculation loss. The PCIT after taking into account the reply and submissions of the assessee passed revisionary order under section 263 of the Act dated 23.12.2020 setting the assessment framed under section 143(3) r.w.s. 153A of the Act dated 29.12.2017 and directing the AO to frame assessment again.

5. We have heard the rival contentions of both the parties and perused the materials on records. The primary contention of the assessee is that the order sought to be revised u/s 263 the Act is the order passed u/s 143(3) r.w.s 153A Act. The ld AR submitted that during the course of search proceedings, no incriminating evidences/materials were found. Even the PCIT recorded the findings to this effect in his order on page 5 para 16. We note that the year under consideration being an unabated assessment which has attained finality on the date of search and therefore no addition could be made in absence of any incriminating material or evidence as has been held by the jurisdictional High Court in the case of All Cargo Global Logistics Ltd (374 ITR 645)(Bom). This fact is also discussed ,corroborated and proved during the assessment proceedings u/s 153A of the Act and the only addition made was on account of disallowance under section 14A of the Act. When DR was specifically asked as to how the action of the PCIT is justified, the ld DR simply relied on the order passed u/s 263 of the Act. Thus, we find merits in the contentions of the AR that

the said assessment framed under section 143(3) r.w.s. 153A of the Act can not be faulted with and held to be 'erroneous' and prejudicial to the interest of the revenue which is correctly framed by the AO as per the provisions of the Act. Under these circumstances the exercise of jurisdiction under section 263 of the Act can not be held to be valid.

6. The case of the assessee is also supported by the jurisdictional High Court in the case of CIT vs Murli Agro Products Ltd (49 taxmann.com 172) in which the Hon'ble High court has held that

“.....iii) Once it is held that the assessment finalized on 29.12.2000 has attained finality, then the deduction allowed u/s 80HHC would attain finality. In such a case, the AO, while passing the independent assessment order u/s 153A could not have disturbed the assessment order which has attained finality, unless the materials gathered in the course of the proceedings u/s 153A establish that the reliefs granted under the finalized assessment were contrary to the facts unearthed during the course of s. 153 A proceedings. In the present case, there is nothing on record to suggest that any material was unearthed during the search or during the s. 153A proceedings which would show that the relief u/s 80HHC was erroneous. In such a case, the AO, while passing the assessment order u/s 153A could not have disturbed the assessment order finalised on 29.12.2000 relating to s. 80HHC deduction and consequently the CIT could not have invoked jurisdiction u/s 263. Moreover, since the AO had made addition on account of undisclosed income at Rs.89 lakhs in the s. 153A assessment order, there was no question of computing book profits u/s 115 JA. When the CIT (A) deleted the addition without any direction to compute the book profits, the AO was bound to modify the assessment order as directed by the CIT (A). Therefore, no fault could be found with the AO in giving effect to the order of the CIT (A). Consequently, the CIT could not invoke jurisdiction u/s 263 on the ground that the assessment u/s 153A was erroneous or prejudicial to the interests of the revenue.”

7. On identical facts, the coordinate bench of Mumbai Tribunal while dealing with similar issue in the case of Wind

World India Infrastructure Pvt. Ltd. vs. PCIT (86 taxmann.com 279) has held that

“.....It is observed that the Assessing Officer after deliberating upon the contention of the assessee that as on the date on which the search and seizure proceedings under section 132 were conducted on it, viz. 14-3-2013, no assessment or reassessment proceedings for the year under consideration i.e. assessment year 2007-08 were pending, therefore, in the absence of any incriminating material found during the course of the search and seizure proceedings, no addition in respect of the unabated assessment for the year under consideration could be made in the hands of the assessee-company, had thus in the backdrop of the order of the 'Special Bench' of the Tribunal in case of All Cargo Global Logistics Ltd. v. Dy. CIT [2012] 137 ITD 287/23 taxmann.com 103 (Mum.) and order of Tribunal in case of Asstt. CIT v. Pratibha Industries Ltd. [2013] 141 ITD 151/28 taxmann.com 246 (Mum.) as were available at the time of the assessment proceedings and were specifically relied upon by the assessee before him, rightly refrained from making any addition in the hands of the assessee. The aforesaid view of the Tribunal that in case of an unabated assessment no addition in the absence of any incriminating material emerging during the course of the search and seizure proceedings conducted under section 132(1) can be made in the hands of an assessee, had been approved by the Jurisdictional High Court. Thus, in view of settled position of law, the Assessing Officer remaining within the four parameters of law having passed the assessment order under section 153A read with section 143(3), dated, 27-3-2015, the said assessment cannot be faulted with and held to be 'erroneous'. Thus, now when the assessment order passed by the Assessing Officer is not found to be 'erroneous', therefore, the Principal Commissioner had wrongly assumed jurisdiction and revised the order in exercise of the powers vested with him under section 263. Thus, the order passed by the Principal Commissioner under section 263 is set aside and the order passed by the Assessing Officer under section 153A read with section 143(3), dated, 27-3-2015 is restored.”

8. We also find merit in the alternative plea of the AR that in the immediately previous year relevant to assessment year 2013-14, income earned from NSEL was offered as business income and the same was duly accepted by the revenue in the assessment framed u/s 143(3) r.w.s 153A. We note that the Ld. PCIT has not disturbed the previous year. Therefore, once the revenue has accepted the income from trading in commodity on

NSEL as business income, then loss which arise from the NSEL trading cannot be termed as Speculation loss. Consequently, the view taken by the AO cannot be termed as erroneous. We are therefore inclined to hold that the jurisdiction under section 263 of the Act was invalidly exercised and consequently the order passed under section 263 of the Act by PCIT is bad in law and is hereby quashed.

9. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 07.06.2021.

Sd/-
(Amarjit Singh)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 07.06.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.