



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

[Through Virtual Hearing]

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT  
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.341/LKW/2017  
Assessment Year: 2012-13

M/s Moral Pharmaceuticals (P) Ltd. Mata Parvati Apartment Katen Lene Wali Chowk Kalyan East, Maharashtra	v.	Pr. CIT-2 Lucknow
TAN/PAN:AAGCM8051Q		
(Appellant)		(Respondent)

Appellant by:	Shri P. K. Kapoor, C.A.		
Respondent by:	Smt. Sheela Chopa, CIT (DR)		
Date of hearing:	06	10	2021
Date of pronouncement:	14	12	2021

**ORDER**

**PER A.D. JAIN, V.P.:**

This is assessee's appeal against the order of the Pr. CIT-2, Lucknow, dated 1.3.2017, passed under section 263 of the Income Tax Act, 1961.

2. The assessee has originally raised the following grounds of appeal:

*1. BECAUSE the territorial jurisdiction over the assessee did not vest in the "Pr. CIT", the impugned order passed by him is without jurisdiction and consequently the same deserves to be quashed.*

*WITHOUT PREJUDICE TO THE AFORESAID*

*2. BECAUSE the assessment order dated 25.03.2015 accorded fully with the provisions of law and the same could not have been held to be erroneous within the meaning of*

*said term as envisioned under section 263 of the Income Tax Act, 1961 (the Act) and the "Pr. CIT" could not have exercised his revisionary jurisdiction under section 263 of the 'Act' in relation to the said assessment order.*

*3. BECAUSE the "Pr. CIT" has erred in law and on the facts in setting aside the assessment order dated 25.03.2015 passed by 'Dy. Commissioner. of Income tax, Lucknow under section 143 (3) of the Act on the single issue by holding that the said assessment order was not only erroneous but also prejudicial to the interest of revenue and in setting aside the same in exercise of his revisionary power under section 263 with the direction to the assessing officer "To frame a fresh assessment order as per law, after making necessary enquiries and examination of the issues involved and affording a fair and reasonable opportunity of being heard to the assessee."*

*4. BECAUSE the "Pr. CIT" while exercising his revisionary powers under, section 263 of the Act, has completely failed to appreciate that:*

*a) On the issue raised in the show cause notice, the "AO" had made all such enquiries as were 'called for on the facts of the case;*

*b) the cash payments made by the appellant to M/s. Moral Capital Services Ltd.*

*c) enquiry u/s 133(6) of the Act in respect of cash payments was also made by the Assessing Officer.*

*and accordingly it could not have been held that there was no proper enquiry by the Assessing Officer so as to call for revision under section 263 of the Act.*

*5. BECAUSE the "Pr. CIT" has failed to show and specify as to how the order passed by the Assessing Officer ("AO") could be said to have been passed without making enquiries or verification which should have been made in the facts and circumstances of the case and as such Explanation 2(i) of section 263 of the 'Act' does not apply in the present case.*

*6. BECAUSE the "AO" passed the assessment after adequate enquiry, as he thought was required, and one has*

*to keep in mind distinction between 'lack of enquiry' and 'inadequate enquiry' and such a course of action of revisionary power under section 263 of the Act would be open only under the case of 'lack of enquiry' as held by the Hon'ble Delhi High Court in the case of CIT Vs. Sunbeam Auto Ltd. reported in [2010] 189 TAXMAN 436 (Delhi).*

*7 BECAUSE judgment of Hon'ble Allahabad High Court in the case of CIT Vs. Jagdish Kumar Gulati reported in 269 ITR 71 (All.) been relied upon by the "Pr. CIT" is distinguishable on facts as in the said case the "AO" himself had made an office note that proper enquiry had not been made due to lack of time.*

*8. BECAUSE the "AO" passed the assessment order taking one probable view after application of mind, therefore, the assessment order cannot be castigated as erroneous and prejudicial to the interest of revenue*

*9. BECAUSE the order appealed against is contrary to the facts, law and principles of natural justice.*

3. The assessee has also raised the following additional grounds of appeal:

*10. BECAUSE owing to the reason that the Dy. Commissioner, of Incometax-6, Lucknow was not validly vested with the jurisdiction of Assessing Officer over the assessee, the Pr. CIT-2, Lucknow could not have assumed revisionary jurisdiction under 263 of the Act in the case of the appellant and consequently, the order under section 263(1) of the Act passed by Pr.CIT-2, Lucknow is liable to be held as null and void.*

*11.BECAUSE mandatory notice under section 143(2) of the Act was not served within the statutory time limit rendering the assessment order passed void as a consequence of which, the revisionary proceedings u/s 263 got wholly vitiated, rendering the impugned under section 263(1) as null and void.*

*12.BECAUSE selection of case for scrutiny assessment is the sole prerogative of the Assessing Officer himself and in the present case, notice under section 143(2)(ii) issued on the basis of Computer Aided Scrutiny Selection Methodology (CASS) had vitiated the whole assessment proceedings rendering the assessment order under section'143(3), dated 25.03.2015 as bad in law, and consequently the said non-est assessment order could not have been validly subjected to revision under section 263 of the Act.*

4. The brief facts of the case are that the assessee filed the return for the year under consideration, declaring an income of Rs.1,40,390/- on 30.09.2012. The case of the assessee was selected for scrutiny and the assessment was completed under section 143(3) of the Act at an income of Rs.2,60,390/-. The case records of the assessee were called for and examined by the Pr. CIT. According to the Pr. CIT, it had emerged from the perusal of the record that the order passed by the Assessing Officer under section 143(3) of the Act was erroneous insofar as it was prejudicial to the interests of the Revenue. He, therefore, considering the facts, issued a show cause notice dated 21.11.1016 under section 263 of the Act, to the assessee, requiring it to explain as to why appropriate action under section 263 of the Act may not be taken in the case. The date of compliance was fixed for 07.12.2016. The notice was returned un-served, with the remark "Left address". The Pr. CIT again issued a notice dated 06.12.2016 and got the same served on the assessee's Counsel by the Income Tax Inspector. Thereafter, the matter was discussed with the Counsel of the assessee, Shri Pradeep Kapoor, FCA, who attended on behalf of the assessee.

5. On considering the facts of the case, the reply of the assessee and the material available on record, the Pr. CIT was of the view that the assessee's contention was not tenable and,

therefore, he held that the assessment order dated 25.3.2015 passed by the Assessing Officer under section 143(3) of the Act for assessment year 2012-13 was erroneous insofar as it was prejudicial to the interests of the Revenue and accordingly, he cancelled the assessment order as per the provisions of section 263(1) of the Act. He, accordingly, directed the Assessing Officer to frame a fresh assessment order as per law, after making necessary inquiries and examination of the issues involved and affording a fair and reasonable opportunity of being heard to the assessee.

6. Aggrieved by the order of the Pr. CIT, passed under section 263 of the Act, the assessee is in appeal before us. The Id. Counsel for the assessee, at the outset, emphasizing Ground no.1 read with Additional Ground no.10, submitted that the Dy. CIT-6, Lucknow was not validly vested with the jurisdiction of the Assessing Officer over the assessee and therefore, the assessment order passed under section 143(3) is without jurisdiction and deserves to be dismissed. He further submitted that since the order passed by the Assessing Officer is without jurisdiction, the Pr. CIT, Lucknow should not have initiated revisionary proceedings under section 263 of the Act.

7. The Id. Counsel for the assessee further submitted that the issue relating to the jurisdiction of the Assessing Officer was raised before the Pr. CIT, vide reply dated 29.12.2016 (APB:4) filed in response to the show cause notice dated 6.12.2016 issued by the Pr. CIT under section 263 of the Act. But the Pr. CIT, not acceding to the request of the assessee regarding the issue relating to jurisdiction, went ahead with the proceedings under section 263 of the Act. With regard to the issue relating to initiation of collateral proceedings on valid legal platform, the Id.

Counsel for the assessee has placed reliance on the following decisions:

1. 'Westlife Development Ltd. vs. Pr. CIT', [2016] 49 ITR (Trib.) 406 (Mum).
2. 'P.V. Doshi vs. CIT', [1978] 113 ITR 22 (Guj.).
3. 'Hema Knitting Industries vs. ACIT', [2010] 127 ITD 160 (Chennai).
4. 'Valiant Glass Works (P) Ltd. vs. ACIT', order dated 27.7.2016 in ITA No.1612/Mum/2013.

8. The ld. D.R., on the legal issue of jurisdiction, submitted that the Dy. CIT-6, Lucknow had valid jurisdiction over the assessee and the notice issued under section 143(2) of the Act was legal and valid, and that therefore, the contention of the assessee that the Dy. CIT-6, Lucknow was not validly vested with the jurisdiction of the Assessing Officer over the assessee, is not justified.

9. We have heard both the parties and have perused the material on record.

10. In 'Westlife Development Ltd. vs. Pr. CIT' (supra), it was held by the Bombay 'G' Bench of the Tribunal that the validity of order passed in primary (original) proceedings should be allowed to be examined even at subsequent stages only for the limited purpose of examining whether collateral (subsequent) proceedings had been initiated on a valid legal platform or not, and for examining the validity of assumption of jurisdiction to initiate collateral proceedings, and hence as per law, the assessee should be permitted to challenge the validity of the order passed

under section 263 of the Act on the ground that the assessment order was non est.

11. In 'Hema Knitting Industries vs. ACIT' (supra), the Chennai 'C' Bench of the Tribunal held that the dispute or defect as regards jurisdiction can always be subject matter of legal scrutiny when questioned; and that as long as such issue has not reached finality, it is always open to question or challenge in judicial proceedings, and that therefore, it was open to the assessee to take up this issue in the second round of litigation.

12. From the above decisions, in the absence of any decision to the contrary, it is clear that the validity of any decree can be challenged on the ground of lack of jurisdiction at any stage. It is also a fact that this issue was raised by the assessee before the Pr. CIT, vide letter dated 29.12.2016 (APB:3 – 12). The relevant portion, i.e., para 2 of the letter dated 29.12.2016 by the assessee to the PCIT, Lucknow (APB:4) is reproduced as under:

*“2. At the outset, it is most humbly submitted that the assessment order dated 25.03.2015 passed by the Dy. Commissioner of Income-tax, Range-6, Lucknow itself was without jurisdiction as per the detailed objection submitted during the course of assessment proceedings. For the said reasons itself, the show cause notice under reply is without jurisdiction. However, without prejudice to the aforesaid, the assessee begs to make the submission as follow.”*

13. It is also a fact that the notice under section 143(2) of the Tax Act was issued by the Dy. Commissioner of Income Tax, Range-VI, Lucknow. However, as available from Income Tax Return acknowledgement, bearing acknowledgement no.507789481300912 for the assessment year 2012-13 (APB:21), it is evident that the address provided by the assessee is of the State of Maharashtra. Moreover, the copy of notice issued by the

Assessing Officer under section 143(2) dated 30.9.2013 reveals that the same was issued on the address of the assessee at Kalyan, Maharashtra. Therefore, it is evident from record that the jurisdiction of the assessee lay with an ITO of Kalyan, Maharashtra and not with the Dy. Commissioner of Income Tax, Range-VI, Lucknow

14. Section 124 of the Income Tax Act, 1961, which concerns Income Tax authorities and their jurisdiction, reads as follows:

*“Jurisdiction of Assessing Officers.*

*(1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction—*

*(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and*

*(b) in respect of any other person residing within the area.*

*(2) Where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be determined by the Principal Director General or Director General or the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner; or where the question is one relating to areas within the jurisdiction of different Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, by the Principal Director General or Director General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioner or*

*Commissioner concerned or, if they are not in agreement, by the Board or by such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may, by notification in the Official Gazette, specify.*

*(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer—*

*(a) where he has made a return under sub-section (1) of section 115WD or under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or sub-section (2) of section 115WE or sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier;*

*(b) where he has made no such return, after the expiry of the time allowed by the notice under sub-section (2) of section 115WD or sub-section (1) of section 142 or under sub-section (1) of section 115WH or under section 148 for the making of the return or by the notice under the first proviso to section 115WF or under the first proviso to section 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier;*

*(c) where an action has been taken under section 132 or section 132A, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 153A or sub-section (2) of section 153C or after the completion of the assessment, whichever is earlier.*

*(4) Subject to the provisions of sub-section (3), where an assessee calls in question the jurisdiction of an Assessing Officer, then the Assessing Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-section (2) before the assessment is made.*

*(5) Notwithstanding anything contained in this section or in any direction or order issued under section 120, every*

*Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction by virtue of the directions or orders issued under sub-section (1) or sub-section (2) of section 120.”*

15. From the above, evidently, it is the Income-tax authorities specified in section 124 of the Income Tax Act, who have jurisdiction in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situated within the area, or where his business or profession is carried on. It is an undisputed fact that the business of the assessee is in the State of Maharashtra and not in Uttar Pradesh. Therefore, the notice was issued by an Assessing Officer not holding jurisdiction over the assessee. That being so, the notice is null and void and it is held to be so.

16. In 'Raza Textiles Ltd. vs. ITO', [1973] 87 ITR 539 (SC), it has been held by the Hon'ble Supreme Court that a jurisdictional fact cannot be erroneously decided and on the basis thereof, a penalty imposed, by an Assessing Officer.

17. In 'Indorama Software Solution Ltd. vs. ITO', [2013] 29 taxmann.com 78 (Mumbai), the notice issued under section 148 of the I.T. Act by an Assessing Officer not having jurisdiction over the matter was held to be illegal and void.

18. In 'PCIT vs. Mohd. Rizwan, Prop. M/s M.R. Garments', in ITA No.100 of 2015, it was held by the Hon'ble jurisdictional Allahabad High Court that since the notice issuing authority had no jurisdiction, the entire subsequent proceedings conducted by the Assessing Officer were illegal.

19. In 'ITO vs. M/s Arti Securities & Services Ltd.', 123 taxmann.com 395 (Lucknow Trib.), it was held by the Lucknow Bench of the Tribunal that where notice under section 143(2) of the I.T. Act had not been issued by an Officer having jurisdiction over the assessee, the assessment order as well as the order passed by the Id. CIT(A), were bad in law.

20. In view of the above, finding the grievance of the assessee, calling in question the jurisdiction of the Assessing Officer, to be justified, we accept the same. Accordingly, Ground no.1 and the Additional Ground nos.10,11 and 12 are accepted. The notice issued under section 143(2) of the Act is, therefore, quashed as null and void. Consequently, all the proceedings consequent thereupon, including the assessment order as well as the order under appeal, are quashed.

21. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 14/12/2021.

Sd/-  
[T. S. KAPOOR]  
ACCOUNTANT MEMBER

Sd/-  
[A. D. JAIN]  
VICE PRESIDENT

DATED:14/12/2021

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar