

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI PROMOD KUMAR (VICE PRESIDENT) AND  
MS. SUCHITRA KAMBLE (JUDICIAL MEMBER)**

**ITA No. 522/MUM/2021  
Assessment Year: 2015-16**

M/s Rameshwar Enterprises,  
401, Rangoli Time Complex,  
Dr.Ambedkar Road, Parel (E),  
Mumbai-400012.

**PAN No. AAHFR 2612 A  
Appellant**

Pr. CIT-20,  
Room No. 418, 4<sup>th</sup> floor, Piramal  
Chamber, Lal Baug, Parel,  
Mumbai-400012.

**Vs.**

**Respondent**

Assessee by : Mr. PiushChhajed, AR  
Revenue by : Mr. Sunil Kumar Jha, DR

Date of Hearing : 13/01/2022  
Date of pronouncement : 20/01/2022

**ORDER**

**PER MS. SUCHITRA RAGHUNATH KAMBLE, JM**

This appeal is filed by the assessee against the order dated 01.03.2021 passed by Pr. Commissioner of Income Tax-20 (in short 'Pr. CIT') by the assessee for assessment year 2015-16 u/s 263 of the Income Tax Act, 1961.

2. The assessee has raised following grounds of appeal is as under :

1. *The Ld. Pr. CIT erred under law by passing revision order merely based on disagreement with the conclusion arrived by the AO, wherein AO during the Assessing proceedings duly applied his mind assessing the interest paid on unsecured loans vis a vis balances is*

*partner's current account as to allowability of interest expenditure u/s 36(1)(iii).*

2. *On the facts and circumstances of the case, the Ld. Pr. CIT erred under law by passing revision order without giving opportunity of being heard.*

3. The assessee filed return of income on 30.09.2015 declaring total income at ₹7,10,710/-. The assessment was completed u/s 143(3) of the Income Tax Act, 1961 vide order dated 29.11.2017 thereby making disallowance of ₹2,14,219/- u/s 36(1)(iii) of the act and also disallowance of payment to related parties u/s 40A(2)(b) amounting to ₹2,40,000/-. The Pr. CIT issued notice u/s 263 on 05.02.2021 and 11.02.2021. On 01.03.2021, the Pr. CIT passed an *ex-parte* order without giving any opportunity to the assessee to file any reply and proceeded on the basis that the Assessing Officer should make fresh assessment after verifying the deployment of interest bearing funds for non-business purposes and allowability of interest expenses as per provisions of section 36(1)(iii) of the Act.

4. Being aggrieved by the order u/s 263 of the Act passed by the Pr. CIT, the assessee is before us.

5. The Ld. AR submitted that since the Pr. CIT has not given any opportunity of hearing or not allowed any reply to be filed within the short span of time of 15 days it will be appropriate to remand back the matter to the file of the Pr. CIT for proper adjudication.

6. The Ld. DR relied upon the order of the Pr. CIT passed u/s 263 of the Act.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee was not given any opportunity of hearing or to file any reply before the Pr. CIT. Besides this, the Pr. CIT has not at all discussed any issue for which the invocation of section 263 i.e. revisionary power was exercised by the Pr. CIT, therefore, it will be appropriate to remand back the issue to the file of the Pr. CIT to be decided on merit after taking cognizance of the reply/submissions of the assessee along with the documentary evidence to be produced before the Pr. CIT and thereafter take a proper/appropriate decision as per the due process of law. Needless to say, the assessee be given opportunity of hearing by following principle of natural justice.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 20/01/2022.**

Sd/-

**(PRAMOD KUMAR)  
VICE PRESIDENT**

Sd/-

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Mumbai;

Dated: 20/01/2022

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

M/s Rameshwar Enterprises | 4  
ITA No. 522/M/2021

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Mumbai**