

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**Before Sh. A. D. Jain, Vice-President**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 535/Del/2016 : Asstt. Year : 2008-09**

M/s ADM Agro Industries Kota & Akola Pvt. Ltd., Vatika Professional Point, 3 <sup>rd</sup> Floor, Golf Course Extension Road, Sector-66, Gurgaon-122018	Vs	Pr. CIT-1, "Aayakar Bhawan", 48, Arera Hills, Hoshangabad Road, Bhopal-462011
(APPELLANT)		(RESPONDENT)
<b>PAN No. AABCS9646L</b>		

**Assessee by : Sh. Pradeep Dinodia, CA  
Revenue by : Sh. Satpal Gulati, CIT DR**

<b>Date of Hearing: 07.12.2021</b>	<b>Date of Pronouncement: 08.02.2022</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of Id. PCIT-1, Bhopal dated 22.03.2016.

2. The operative portion of the order u/s 263 of the Income Tax Act, 1961 passed by the Id. PCIT is as under:

*In this case assessment for Assessment Year (2008-09) completed u/s 143(3) of the Income Tax Act, 1961 on 30.03.2014 by the Addl. CIT, Range-1, Bhopal. On examination of the records, it was seen that the said-assessment order is found to be erroneous and prejudicial to the interests of revenue on the following grounds:*

*i). As per provisions of Section 115JB(4) the calculation of book profit must be supported by a report from the chartered*

*Accountant in Form No.29B but the same has been filed and in the absence of the said Form acceptance of book profit is erroneous.*

*ii) The tax audit report as required u/s 44AB of the IT Act was to be filed, in absence of the tax audit report or other relevant materials, the claim of depreciation under the IT Act as well as other issues relating to disallowance u/s 43B of 40(a) (ia) were left to be verified.*

*iii) In the computation of total income, you have claimed short term capital gain at NIL, however, the description of the sold assets was not made available whereas the sale consideration was shown at Rs. 18,80,44,313/-.*

3. Accordingly, the notice was issued to the assessee on 04.02.2016 and served on the assessee.

4. Before the Id. PCIT, the AR of the assessee submitted the reply containing the following points:

- It has been alleged in the said notice that assessment order passed by the Assessing Officer has been passed in a very casual and hurried manner, therefore, under the powers conferred by the Act u/s 263, it has further been noticed that in spite of certain hearings fixed in April 2013 and thereafter in March 2014, certain details which were called for by the AO have been accepted and thereafter the case was concluded on 30th March 2014, because it was getting time barred on 31st March 2014.
- Based on the aforesaid facts, it has been inferred by your honour that the Assessing Officer did not make any

investigation and the order was passed on the basis of details that were available on records.

- At the outset, it is clarified that your honour has referred to assessment order dated 30.3.2014 u/s 143(3) of the Income-tax Act. However, such order was the order of re-assessment, which was passed u/s. 147/148 read with section 143(3) of the Income-tax Act. The dates mentioned in your impugned notice i.e. April 2013 and thereafter March 2014 were the dates which are applicable to re-assessment proceedings and your honour has completely overlooked/ignored the facts that all these dates were pertaining to reassessment proceedings and the original assessment u/s. 143(3) In this case had been passed on 29.12.2011.
- The original assessment under scrutiny had been passed by following proper and legal procedure of issuing notice u/s.143(2)/142(1) seeking details on various issues at length and also after incorporating the order passed by the TPO u/s.92CA(3) of the I.T. Act.
- To that extent, the notice issued by your honour is barred by limitation and is totally illegal, because the review u/s.263 could have been possible by 31<sup>st</sup> March 2014 as per the provisions of law.
- It was relied on the decision of the Hon'ble Supreme Court in the case of CIT vs. Alagendran Finance Ltd., 162 Taxman 465 (SC), Therefore, the proceedings initiated u/s.263 needs to be dropped on this preliminary ground also.

- It would be appropriate to highlight that assessment proceedings in this case were initiated on 11.10.2010, details were required again in November 2010 and December 2010 and the same were furnished in December 2010. Thereafter, since the matter has been referred to the Transfer Pricing Officer, the AO had to wait for the order of the TPO. As noted by the AO in his assessment order dated 29.12.2011, the order of the TPO was passed on 18th March 2011.
- Thereafter, the AO had passed the order u/s 143(3) on 29.12.2011 i.e. almost after 9 months of the receipt of the order of the TPO. Much prior to that in December 2010 itself, the assessee had furnished exhaustive details pursuant to the notices received and queries raised by the AO, as is normally done during assessment proceedings. All such details had been filed in response to the AO's queries, which culminated to the passing of the assessment order u/s. 143(3) of the I.T. Act. Thus, the proceedings of assessment went on and were open almost for a year.
- In March 2013, a notice u/s 147/148 was issued and the re-assessment order was passed in March 2014. Such re-assessment order was passed only with regard to the income, that according to the AO had escaped assessment and as per powers given under the law, the AO brought such income to tax. Therefore, your honour's view that order of the AO has been passed in a hurry and without applying mind, is not based on correct facts.
- Without prejudice that the proceedings are time barred u/s.263 of the I.T. Act, it would be appropriate to refer to

certain judicial pronouncements, which we are sure that your honour would be aware of, which explain various circumstances under which the powers u/s.263 can be invoked by the Commissioner of Income-tax. It has been time and again held that the twin conditions of invoking powers u/s.263 i.e. the order must be erroneous and it should be prejudicial to the interest of revenue, must be satisfied before the Commissioner of Income-tax can proceed to invoke such powers, some of the judgments on this proposition are as under:

- CIT Vs. Executors of Estate of Late H.H. Raj Kuverba Dowager 115 ITR 301, 305 (Kara.)
- Jagadhary Electricity Supply Co. 166 ITR 143 (Punjab)
- 163 ITR 129,137 (Mad.) - Venkata Krishna Rice Co. Vs. CIT.
- 160 ITR 123 (Karnataka) - Shivaputrappa Chanappa Mangoli
- 189 ITR, 772 (Allahabad) - K.N. Agarwal Vs. CIT
- 243 ITR 83, 87 (S.C.) - Malabar Industrial Co. Ltd. Vs. CIT
- 243 ITR 490, 500 (Madras) - CIT Vs. Seshasiyas Paper

5. The objections of the Id. AR have been overruled by the Id. PCIT who has observed that this case was transferred to the AO on 29.03.2014 vide order u/s 127 dtd.29.03.2014 passed by then Commissioner of Income Tax, Bhopal Later on, the Assessing Officer passed the assessment order on 30/3/2014 since the case was getting time barred on 31.03.2014. The Id. PCIT held that it is evident from record that the Assessing Officer did not make any investigation and passed the order on the basis of details available on record. It is an established law

that an assessment which is passed under section 143(3) of the I.T. Act, it is expected from Assessing Officer that he will make an enquiry to find out the correct assessable income of the assessee and not take the facts placed by the assessee on their face value. It is settled law that if the Assessing Officer fails to make proper enquiry, the assessment order passed by him is erroneous and pre-judicial to the interest of revenue.

6. As per Clause (a) & (b) to explanation 2 (inserted by finance act 2015 w.e.f. 1.6.2015) of section 263(1) of I.T. Act which reads as under:

*"For the purposes of this, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of revenue, if in the opinion of the Principal Commissioner or Commissioner-*

*(a) The order is passed without making inquiries or verification which should have been made;*

*(b) The order is passed allowing any relief without inquiring into the claim."*

7. In conclusion, the Id. PCIT held that the Assessing Officer did not examine the facts of the case and thus the assessment order passed by assessment order Assessing Officer is erroneous and prejudicial to the interest of revenue and thereby cancelled u/s 263 of the IT Act. The Assessing Officer was directed to reframe the assessment after examining the above said issues sufficient opportunity to the assessee of being heard.

**8. Heard the arguments of both the parties and perused the material available on record.**

9. The facts discernable are as under:

- The assessment proceedings for the A.Y. 2008-09 were initiated by the AO by issue of a notice u/s 143(2) dated 11<sup>th</sup> October 2010.
- The Transfer Pricing Officer passed the order u/s 92CA(3) dated 18<sup>th</sup> March 2011 which has been incorporated in the Assessment Order.
- Subsequent to the order of the TPO u/s 92CA(3), the Assessing Officer passed order u/s 143(3) on 29.12.2011.
- Later, a notice u/s 147 was issued on 18.03.2013 with regard to loss on account of Hedging of Commodities.
- An order u/s 147 has been passed on 30.03.2014 in which loss of Rs.9.74 crores on account of hedging activities disallowed.
- The Id. PCIT issued notice on 04.02.2016 against the order u/s 143(3) passed by the AO on 30.03.2014.
- The order u/s 143(3) passed by the AO on 30.03.2014 was passed u/s 147 after recording specific reasons.
- In the order dated 30.03.2014 already dealt with the specific reasons recorded and hence there was no omission on the part of the AO in passing the Assessment Order.
- The Id. PCIT has erred in treating the order dated 30.03.2014 as the order passed u/s 143(3) in course of regular assessment whereas the fact on record undisputedly proves that the order u/s 143(3) have been passed on 29.12.2011, order u/s 147 passed on 30.03.2014.

- Thus, an error has been crept in the order of the Id. PCIT treating the order dated 30.03.2014 as erroneous and prejudicial to the interest of the revenue on the points mentioned at para 2 of this order.
- Hence, the order of the Id. PCIT dated 22.03.2016 is liable to be obliterated on merits of the issue as well as the points raised by the Id. PCIT in the order u/s 263 are not subject matter of verification and examination in the Assessment Order passed on 30.03.2014 and on limitation, keeping in view the fact of passing of the order u/s 143(3) on 29.12.2011.

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

Order Pronounced in the Open Court on 08/02/2022.

Sd/-

**(A. D. Jain)**  
**Vice President**

**Dated: 08/02/2022**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**