

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

BEFORE SHRI PRASHANT MAHARISHI, AM AND SHRI PAVAN KUMAR GADALE, JM

**ITA No. 1167/Mum/2021**

(Assessment Year 2014-15)

M/s S.K. Ventures 1, Ground Floor, Block No.1- 25/145 Madhuban Hotel Road, Ulhasnagar, Kalyal, Mumbai-421003	Vs.	The Pr. Commissioner of Income Tax-3, 6 <sup>th</sup> Floor, A-wing, Ashar IT Park, Wagle, Industrial Estate, Thane West, Mumbai-400 064
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN No. AADAS2607K</b>		

<b>Assessee by</b>	:	Shri Devendra Jain, AR
<b>Revenue by</b>	:	Shri Jasbir S. Chouhan, CIT DR

<b>Date of hearing:</b>	16.03.2022
<b>Date of pronouncement :</b>	30.03.2022

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

1. This appeal is filed by M/s S.K. Ventures (the assessee/ appellant) against the order passed under section 263 of the Income-tax Act, 1961 (the Act) by the Pr. Commissioner of Income-tax-3, Thane [the learned CIT(A)] dated 24<sup>th</sup> March, 2020, wherein it has been held that assessment order passed under section 143(3) of the income-tax Act dated 27.12.2017 passed by the income-tax Officer, ward 2(4), Kalyan (the learned Assessing Officer) for Assessment Year 2015-16 is erroneous so far as, prejudicial to the interest of the Revenue and therefore, the Assessing Officer was directed to call

for requisite details, carried out verification and modify the order. The assessee is aggrieved and has preferred the following two grounds of appeal: -

*"1. In the facts and circumstances of the case and in law, the Ld. PCIT has erred in assuming jurisdiction under section 263 and holding that the order passed u/s. 143(3) by Ld. Assessing Officer dated 27.12.2017 is erroneous and prejudicial to the interest of Revenue.*

*2. In the facts and circumstances of the case and in law, the Ld. PCIT has erred in passing the impugned order u/s. 263 in utter haste and hurry during the period of pandemic of COVID-19; by neither giving any sufficient opportunity of being heard to the appellant nor considering the submissions made by the Appellant, thereby violating the principles of natural justice."*

2. The facts of the case shows that assessee is engaged in business of developers and builders, filed its return of income for Assessment Year 2015-16 on 31<sup>st</sup> October, 2015 declared income of Rs. 91,300/-. The case of the assessee was selected for limited scrutiny under Computer Aided Scrutiny Selection (CASS) for the reason;
- (i) mismatch in sales turnover reported in audit report and ITR and
  - (ii) large deduction claimed under Chapter VIA.

3. The learned Assessing Officer passed an assessment order under section 143(3) of the Act on 27.12.2017 accepting the return of income.
4. Records were examined by the learned PCIT and noticed that
  - a. the opening working in progress as on 01.04.2012 was of Rs. 10,43,11,000/- and closing work in progress as on 31.03.2013 was Rs. 5,08,85,143/-, however as on 01.04.2013, assessee took opening work in progress as Rs. nil and closing stock of Rs. 32,667/- for Assessment Year 2014-15. Therefore, there is a difference of Rs. 83,63,359/- suppressing the work in progress for Assessment Year 2015-16 therefore, the learned PCIT was of the view that the learned assessing Officer did not confront the assessee with above discrepancy but overlooked it .
  - b. It was further observed by him that assessee has claimed deduction of Rs.1,04,70,137/- under section 80IB of the Act and Assessing Officer overlooked the fact whether the assessee has fulfilled all the conditions of that section or not.
5. Therefore, a notice was issued to the assessee fixing date of hearing on 6<sup>th</sup> February, 2020. On 6<sup>th</sup> February, 2020, assessee sought adjournment. Next date was given on 28<sup>th</sup> February, 2020. The learned PCIT mentioned that none attended on that date and therefore decided the issue on merits of the case. He

held that the Assessing Officer is directed to verify with respect to the closing stock suppression of Rs. 83,66,359/- and also to verify whether the assessee has fulfilled all the requirement so far as a deduction under section 80IB(10) of the Act is concerned. He therefore set aside the order passed by the learned Assessing Officer with above direction vide order passed under section 263 of the Act on 29<sup>th</sup> March, 2020. Assessee is aggrieved with that order has preferred this appeal.

6. The learned Authorized Representative submitted that
  - a. the learned CIT(A) should not have passed an order in undue haste and hurry which has violated the principle of natural justice. He was of the view that there is no proper opportunity given to the assessee.
  - b. assessee has sent an email dated 19<sup>th</sup> March, 2020 to the learned Principal Commissioner of Income Tax, wherein detailed reply was submitted. However, the learned CIT(A) ignoring the above submission as if it is not received. As order was passed on 24<sup>th</sup> March, 2020, he should have considered the above explanation
  - c. On the merits of the case, he referred to the paper book submitted containing 41 pages.
    - i. On the first issue of suppression of value of stock by Rs. 83,66,359/- he has specifically

referred that this issue is raised by the learned Assessing Officer for which show cause notice dated 20.12.2017 was issued and assessee has submitted four replies dated 21.12.2017, 25.12.2017 and 26.12.2017. Based on this, the learned Assessing Officer did not make any addition, he therefore submitted that on this issue complete inquiry has been made by the Assessing Officer and confirmed again that there is no addition required to be made.

- ii. With respect to the second claim of deduction under section 80IB(10) of the Act, he submitted that the main reason for selection of the scrutiny was large deduction under Chapter VIA of the Act. Assessee replied vide letter dated 19.12.2017 and 3 other correspondences dated 21.12.2017 and therefore after considering the above replies the learned Assessing Officer allowed the claim of the assessee.
- d. In view of this, he submitted that the order passed by the learned Assessing Officer is after making due enquiries and therefore, the order passed cannot said to be erroneous so far as prejudicial to the interest of the Revenue.
- e. case of the assessee was selected for limited scrutiny and the learned Assessing Officer could have only examined the issue for which case was selected. He submitted that issue of suppression of work in

progress was beyond part of limited scrutiny and therefore could not have been verified by the learned Assessing Officer even otherwise. Therefore the PCIT does not have any jurisdiction to invoke the provisions of section 263 of the Act with respect to the above issue.

7. The learned CIT Departmental Representative supported the order of the learned PCIT.
8. We have carefully considered the rival contentions and perused the orders of the learned PCIT as well as the learned Assessing Officer. The return of the assessee was selected for Limited scrutiny only for the two issues : (i) large deduction under Chapter VIA claiming by the assessee and (ii) Sales Turnover mismatch. The learned PCIT invoked the provisions of Section 263 of the Act holding that the Assessing Officer did not inquire about the suppression of the work-in-progress as well as large deduction claimed by the assessee under section 80IB(10) of the Act. We find that issue of suppression of the work in progress was not at all part of the limited scrutiny scope before the Assessing Officer. Despite that the learned Assessing Officer examined the same and allowed the claim of the assessee. Therefore, now the issue arises whether the learned PCIT was within his powers to invoke the provisions of Section 263 of the Act on the issues which were not part of the examination before the learned Assessing Officer on the limited scrutiny, irrespective of the fact whether

the Id AO examined it or not. We are of the view that if the case of the assessee is selected for limited scrutiny, The Assessing Officer could have inquired only on the issues for which were part of The Limited scrutiny reasons. Ld AO did not have power to go beyond those issues unless the case of the assessee was converted in to complete scrutiny after taking necessary approval. No such approval was shown to us . Therefore Id AO could not have gone beyond those points and made inquiries on other issues which were not the reasons for selection of case for limited scrutiny. In the present case, the verification of work in progress or its suppression is not to be verified by the learned Assessing Officer and therefore, on that point, the learned CIT(A) could not have invoked the provision of Section 263 of the Act. On the other issue of large deduction claimed by assessee, we find that the same was inquired by the Assessing Officer during the course of assessment proceedings and after examination the deduction was granted to the assessee. This was one of the point on which the learned Assessing Officer raised the query vide letter dated 20<sup>th</sup> July, 2017. Assessee submitted the copy of certificate of completion of housing projects as well as the audit report for claiming deduction under section 80IB of the Act in form No.10 CCB. Further, the assessee gave complete details of the stock, sales of flats vide letter dated 19<sup>th</sup> December, 2017. Further vide letter dated 21<sup>st</sup> December, 2017, the details of closing

stock showing flat no was also submitted. Therefore, we find that the assessee has submitted whatever details were asked for by the Assessing Officer and thereafter allowed the claim of the assessee. It was also shown to him that these appeals for Assessment Year 2015-16 and the assessee is claiming deduction under section 80IB(10) of the Act since 2008-09. There has been no dispute with respect to the satisfaction of condition relevant to that section. Therefore, this issue was also examined by the learned Assessing Officer during the assessment proceedings.

9. However, the issue remains that the learned PCIT while passing the order on 24<sup>th</sup> March, 2020 has stated that assessee did not comply with date of hearing on 20<sup>th</sup> February, 2020 and therefore, order was passed without considering the explanation of the assessee. We find that assessee has sent email on 19<sup>th</sup> March, 2020 explaining the reasons that on account of provision of Section 263 of the Act cannot be exercised for the impugned assessment year. However, this explanation was not considered by the learned PCIT though order u/s 263 of the Act was passed on 24/3/2020. It is apparent that assessee did not attend the hearing on 20/2/2020 but before the order was passed assessee submitted its reply. Therefore in the interest of justice , we direct the assessee to produce the copy of the mail before the Id PCIT and raise all the contention once

again on the issue of allowability of claim u/s 80 IB (10) of the Act. When this proposition was expressed at the time of hearing , both the parties agreed to it. In view of this, we set aside the matter back to the file of the learned PCIT to examine the submission of the assessee sent through email dated 19<sup>th</sup> March, 2020 and then to decide the issue whether the order of the learned Assessing Officer is erroneous and prejudicial to the interest of the Revenue or not, only on the aspect of claim of deduction under section 80IB(10) of the Act. The learned PCIT on consideration of the explanation submitted by the assessee, if he feels that still the jurisdiction lies with him and the order passed by the learned Assessing Officer is still erroneous so far as prejudicial to the interest of the Revenue, grant opportunity for hearing to the assessee and then decide the issue on its merit. In view of this, Ground no 1 & 2 of the appeal are partly allowed.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30.03.2022.

Sd/-  
(PAVAN KUMAR GADALE)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 30.03.2022

*Sudip Sarkar, Sr.PS*

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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai