

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI**

**BEFORESHRI AMARJIT SINGH, ACCOUNTANT MEMBER &  
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.38/Mum/2021  
(A.Y. 2015-16)**

Mr. Raul A Rodrigues B-120, Arjun Centre, Govandi Station Road, Govandi, Mumbai	Vs.	Principal Commissioner of Income Tax -27 Room No. 301, 3 <sup>rd</sup> Floor, Tower No.6, Vashi Railway Station Commercial Complex, Vashi, Navi Mumbai - 400703
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABPR2718M		
Appellant	..	Respondent

Appellant by :	Shri Raturaj Gurjar
Respondent by :	Shri Salil Mishra

Date of Hearing	22.02.2022
Date of Pronouncement	26.04.2022

**आदेश / O R D E R**

**PER AMARJIT SINGH, AM:**

The present appeal filed by the assessee is directed against the order passed by the Pr.CIT-27, Mumbai which in turn arises from the order passed by the A.O u/s 143(3) of the Income Tax Act, 1961. The assessee has raised the following grounds before us:

- “(1) *The learned Pr. Commissioner of Income Tax- 27 (CIT) erred in setting aside the assessment order by invoking powers under s 263, when the*

*said assessment order was neither erroneous nor prejudicial to the interests of the revenue.*

- (2) *The learned CIT erred in passing the order u/s 263, by relying on irrelevant material & on the basis of surmises & conjectures. The order passed by the CIT is devoid of any merits & bad in law.*
- (3) *The learned CIT erred in directing for de-novo assessment without rebutting the submissions made in reply to show-cause notices u/s 263. In doing so, the learned CIT has erred in holding that,*
  - (i) *The assessing officer (AO) had not verified complete details of appellant's claim pertaining to capital introduction amounting to Rs.6,33,38,095/-.*
  - (ii) *The assessing officer (AO) had not verified complete details of appellant's claim pertaining to claim of deduction u/s 80A of Rs.1,31,25,938/-.*
  - (iii) *The assessing officer (AO) had not verified complete details of appellant's claim pertaining to purchase of office premises of Rs.5,41,84,757/-.*
  - (iv) *The assessing officer (AO) had not verified complete details of appellant's claim pertaining to payment of related parties u/s 40A(2)(b).*
- (4) *The Ld. CIT has further erred in holding that the Assessing officer has failed to make necessary enquiry and examination of claim of the appellant, without appreciating the fact that the appellant's case was originally assessed under limited scrutiny for exact same reasons for which provisions of section 263 were invoked. The Ld. CIT also failed to consider details filed along with reply to show cause notices u/s 263, which also consisted details filed during the original scrutiny proceedings.*
- (5) *The Order of learned CIT is against the weight of evidence, equity and natural justice.*
- (6) *The Appellant craves leave to add, alter or amend the above grounds of appeal.”*

2. All the grounds of appeal of the assessee as listed supra are interconnected on the issue of setting aside the assessment order by invoking powers u/s 263 of the Act, therefore, these ground of appeal are adjudicated together in this order.

3. Fact in brief is that the assessee has filed return of income declaring total income at Rs.530,56,400/- on 28.09.2015. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was

issued on 29.07.2016. The assessment u/s 143(3) of the Act was finalized on 03.11.2017 and income was assessed at the returned income of Rs.530,56,400/-.

Subsequently, the ld. Pr.CIT has initiated proceedings u/s 263 of the Act by issuing of notice u/s 263 of the Act on 27.11.2019. The ld. Pr.CIT observed that during the year the assessee had introduced capital to the amount of Rs.633,38,095/- but the assessee had not furnished supporting evidences pertaining to the increased in the aforesaid capital. It was also observed that the assessee had not substantiated deduction of Rs.131,25,938/- claimed u/s 80IA of the Act. It was further observed that the assessee had made addition to office premises of Rs.54,18,475/- and had made payments to related parties u/s 40A(2)(b) of the Act. Source of funds for acquisition of office premises and payments made to related parties were not substantiated by the assessee. Therefore, ld. Pr.CIT was of the view that Assessing Officer had not verified the details pertaining to the aforesaid transactions during the course of assessment proceedings. Therefore, the order passed u/s 143(3) of the Act was held to be erroneous insofar it is prejudicial to the interest of revenue within the meaning of Sec. 263 of the Income Tax Act, 1961.

4. During the course of appellate proceedings before us the ld. Counsel referred various pages of paper book comprising copies of document and detail of information furnished before the assessing officer during the course of assessment proceedings. The ld. Counsel referred page No. 24 of the paper book comprising copy of notice issued u/s 143(2) of the Act on 29.06.201. It is contended that the case of the assessee was selected for the purpose of limited scrutiny on the issue i.e (i) custom duty payment mismatch; (ii) detail of asset and liability; (iii)

payment to related person mismatch; and (iv) deduction under chapter (via). The ld. Counsel has further referred page no. 27 and 28 of the paper book pertaining to copy of notice issued u/s 142(1) of the Act on 21.07.2017 vide which as per question No. 5 to 8 of annexure A the assessee was asked to furnish the detail of pertaining to the issue identified in the limited scrutiny assessment. The ld. Counsel has also referred page no. 29 to 86 of the paper book pertaining to the various submission filed by the assessee during the course of assessment proceedings. The ld. Counsel also referred page no. 87 and 88 of the paper book relating to detail of difference in TDS and explanation about value of purchase and assessable value of import etc. The ld. Counsel after referring the aforesaid submission contended that ld. Pr.CIT has erred in setting aside the assessment order u/s 263 of the Act.

On the other hand, the ld. D.R submitted that assessing officer has not verified the issues involved in the case of the assessee. The ld. D.R has also referred Explanation 2 to Section 263 of the Act and contended that the A.O has passed assessment order without inquiry and verification.

5. Heard both the sides and perused the material on record. The assessment u/s 143(3) of the Act was finalized on 03.11.2017. Subsequently, the ld. Pr.CIT has held that order passed u/s 143(3) of the Act was erroneous insofar as it was prejudicial to the interest of revenue within the meaning of Sec. 263 of the Act on the reason that assessing officer has not verified details of assessee's claim pertaining to capital introduction amounting to (i) Rs.33,38,095/-; (ii) claim of deduction/s 80IA of Rs.131,25,938/- (iii) claim pertaining to purchase of office premise of Rs.541,84,750/- (iv) payment to related parties u/s 40(a)(b) of

the Act. The case of the assessee was selected for scrutiny assessment and categorically mentioned in the notice u/s 143(2) issued on 29.07.2016 that the case has been selected for examination of the following issue:

- “i. Custom Duty Paymet Mismatch*
- ii. Detaisl of Asset and Liabilities*
- iii. Payment to related persons mismatch*
- iv. Deduction under Chapter VI-A*

In connection with the assessment the A.O vide notice u/s 142(1) of the Act has raised following query pertaining to issues for which the case was selected for scrutiny assessment.

- “5. Kindly produce partywise details of goods imported/exported and details of Custom duty payments and other expenses.*

*Kindly substantiate/explain; alongwith necessary details & supporting evidences, the mismatch of Custom duty payments as shown in the ITR and the details of Duty paid as per Export Import Data.*

- 6. Please explain the reason why no entry has been made in the schedule ‘Assets and Liabilities’ of the e-filed return of income (ITR).*

*Kindly produce the details/ schedule of ‘Assets & Liabilities’, in the form as it would appear in the return of income.*

- 7. Kindly produce the complete details of transactions covered u/s 40(A)(2)(b) of the I.T. Act 1961 for the previous year ended on 31.03.2015.*

*As per the records, it is seen that there is a mismatch in amount paid to related persons u/s.40A(2)(b), reported in Audit Report and Income tax return. Kindly explain, alongwith necessary details, the reason for the discrepancy.*

- 8. Kindly produce the details & evidences of deductions claimed by you under Chapter VIA of the I.T. Act’ 1961.”*

In response the assessee has made submission before the assessing officer vide letter dated 21.08.2017 and letter dated 04.09.2017 respectively. After perusal of the submission filed by the assessee before the Assessing Officer it is noticed that assessee has explained with documentary evidences the issue which has been identified for

examination during the course of limited scrutiny in respect of custom duty payment mismatch, payments to related persons mismatch and deduction under Chapter VI-A of the Act claimed by the assessee. However, in respect of Assets and Liabilities during the course of assessment proceedings the A.O has only asked the assessee to produce the details/schedule of Assets and Liabilities in the form as it would appear in the return of income. The assessee has produced the detail in the form of schedule forming part of the Balance Sheet as on 31.03.2015. On perusal of the schedule of Balance Sheet it is observed there was substantial addition to the capital account of Rs.6,33,38,095/- and purchased of office premises of Rs.5,41,84,757/-. On perusal of material on record it is noticed that the Assessing Officer has not obtained relevant specific details/particulars of addition made to the capital account of the assessee and nature/details of substantial addition made to the office premises of assessee during the year under consideration. In respect of other issue i.e custom duty mismatch, payment to related person mismatch and deduction under Chapter VI-A, the A.O has made specific verification as evident from the submission of the assessee placed at Page No. 77 to 88 of the paper book. However, in respect of substantial addition made to the capital a/c of Rs.6,33,38,095/- and purchase of office premises of Rs.451,89,757/-, the A.O has even not obtained the basic specific detail/particulars related to these transactions. Addition made to capital a/c and purchase of office premises are the part of assets and liabilities. It is undisputed fact that the case of the assessee was selected for scrutiny assessment to examine the details of assets and liabilities. Therefore, under the parameter of scrutiny, it was imperative to examine the substantial changes happened in these two components of assets and liabilities. During the course of

appellate proceedings before us the ld. Counsel has placed reliance on the decision of CIT vs. Nirav Modi 390 ITR 292 (Bom). We consider that facts in the case of the assessee are distinguishable from the case referred since in the case of the assessee, the A.O has not examined the issue which was required to be examined in the line of the specific scrutiny assessment.

6. Looking to the above facts and circumstances we consider that in view of the Explanation 2 to Sec. 263, the order on the issue of addition to capital a/c and purchase of office premises is passed without any enquiry or verification by the assessing officer, therefore, order of the assessing officer is deemed to be erroneous and prejudicial to the interest of revenue to the extent of requirement to examine the aforesaid two issues. Therefore, we uphold the impugned order of the Ld. Pr.CIT subject to aforesaid terms and conditions.

7. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 26.04.2022.

Sd/-  
(SANDEETP SINGH KARHAIL)  
JUDICIAL MEMBER

Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Mumbai, Dated 26.04.2022

PS: Rohit

**आदेश की प्रतिलिपि ढ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलुय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,  
सत्यापित प्रति //True Copy//

(Asst. Registrar)  
ITAT, Mumbai