

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

**BEFORE SHRI S. RIFAUZ RAHMAN, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.1793/Mum/2020

(निर्धारण वर्ष / Assessment Years: 2014-15)

M/s. Darshan Construction B-001, Siddhivinayak Darshan, Ground Floor, J.R. Bricha Marg, Saatrasta, Mumbai-400011.	<b>बनाम/</b> Vs.	PCIT-21 Room No.364, 3 <sup>rd</sup> Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACFD1634M</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Pramod Kumar Parida & Kiran Vadher	
Revenue by:	Shri Sanjeev Kashyap (DR)	

सुनवाई की तारीख / Date of Hearing: 09/02/2022

घोषणा की तारीख /Date of Pronouncement: 28/04/2022

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 26.02.2019 passed by the Principal Commissioner of Income Tax-21, Mumbai [hereinafter referred to as the "PCIT"] relevant to the A.Y.2014-15 in which the Principal Commissioner of Income Tax-21 has invoked the revisional power u/s 263 of the I.T. Act, 1961.

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

*"1. Order u/s 263 is Bad-in-Law and may be vacated:*

*(i) The Id. Principal Commissioner of Income Tax (Pr.CIT) erred in assuming jurisdiction u/s. 263 without appreciating that the original scrutiny Assessment Order was neither erroneous nor prejudicial to the interest of the Revenue as the Assessing Officer had passed the same after due application of mind on the basis of entire materials submitted before him; therefore, the impugned Order u/s. 263 passed*



ITA No.1793/Mum/2020  
A.Y. 2014-15

*to insist and take another possible view which is bad-in-law; hence, the same may be quashed.*

*(ii) Without prejudice to above, assuming jurisdiction on the basis of change of opinion or on two views is not justified for making roving or fishing enquiry and to thrust another view; hence, the impugned Order u/s. 263 may be vacated.*

*(iii) Without prejudice to above, the addition made in a full fledge Scrutiny assessment had been deleted in rectification proceeding u/s. 154.*

*(iv) Without further prejudice to above, every. addition of same item as examined earlier should not be visited to revise the Order and be considered as prejudicial to the interest of Revenue particularly when entire materials were available before the Assessing Office who had applied his mind during original scrutiny assessment proceeding to take a particular view; therefore, on the assumed defective jurisdiction, the impugned Order u/s 263 may be treated as void-ab-initio.*

## **2. MERITS**

### **2.1) Deemed Addition - alleged less sales consideration Rs.55,54,99/-**

*The Id. Assessing Officer erred in making deemed addition to its business income without appreciating that the very gross receipts had after due elements of expenses had resulted to the income of Rs.28,45,001/- therefore, making further addition of Rs.55,54,999/- amounts to addition which is uncalled for and the same may be deleted.*

### **2.2) Addition u/s. 269SS- alleged cash receipt- Rs.32,27,61,458/-**

*The Id. Assessing Officer erred in making addition on alleged cash receipt as contravention to section 269SS where Section 269SS has no application and it was not a case of cash receipt but the closing balance in retired partners' Capital Account.*



*3. Levy of Penal Interest u/s. 234A 234B 234C and 234D*

*On merits, the Appellant denies its liability for penal interest.*

*The Appellant craves leave to add amend or alter all or any of the above Grounds of Appeal.”*

**3.** The brief facts of the case are that the assessee filed its return of income on 25.09.2014 declaring total income to the tune of Rs. nil for the A.Y.2014-15. The case was selected for limited scrutiny under CASS for following reasons: -

*“High turnover reported in service tax return compared to ITR and mismatch in sales turnover reported in Audit report and ITR.”*

The assessment was completed vide order u/s 143(3) of the Act, 1961 dated 30.12.2016 assessing the total income at Rs.43,79,000/- The assessee was engaged in the business of construction business. On appraisal of the assessment records, it was seen that the opening and closing stock of the assessee remained unchanged during the year under consideration i.e. at Rs.30,56,772/-. It indicated that the assessee did not carry out any activity for construction during the year. However, it was seen that the assessee had debited an amount of Rs.12,91,194/- for purchase Rs.28,95,341/- under the head Site Expenses and Rs.3,00,000/- under the head Brokerage/Commission. Hence, there is no relevance of these expenses with the business of the assessee. It was further seen that the assessee had sold two flats during the year under consideration for Rs.84,00,000/-. However, the assessee had shown gross income from operations at Rs.28,45,001/- only in its P & L Account. Thus, the assessee had under reported its income to the tune of Rs.55,54,999/-. On perusal of the clause 31(a) of Form 3CD report and balance-sheet as on 31.03.2014, it was seen that the assessee had accepted an amount of Rs.32,27,615/- in cash or otherwise than by an account payees cheque or bank drafts which was contravention of the



*ITA No.1793/Mum/2020  
A.Y. 2014-15*

provisions of Section 269SS. Although, the case was selected for limited scrutiny and the issue mentioned in para 2, 4 & 5 above was not the reason for selection. The AO was duty bound to obtain permission from Pr. Commissioner of Income Tax to convert it into complete scrutiny as the amount of addition on above issues was more than Rs.10 lakhs which was a pre-condition for converting limited scrutiny to complete scrutiny as per Instruction No.20/2015 dt. 29.12.2015 and Instruction No.5/2016 dt. 14.07.2016. However, the AO did not propose it to the Pr. Commissioner of Income Tax for obtaining the approval for converting it from limited to complete scrutiny and thereby verifying the issues on account of which addition on above account was possible and the quantum of which was more than 10 lakhs i.e. the prescribed limit as per Instruction No.20/2015 dt. 29.12.2015 and Instruction No.5/2016 dt. 14.07.2016. Thereafter, the notice was given and after the reply of the assessee, the PCIT invoked the revisional power. The PCIT was of the view that the order passed by AO was erroneous and prejudicial to the interest of the revenue and accordingly invoked the revisional power u/s 263 of the Act. The assessee was not satisfied, therefore, filed the present appeal before us.

**4.** We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. The reason for delay has properly been explained, therefore, in view of the reasons mentioned in the affidavit as well as in the application, we condone the delay. On appraisal of the order u/s 263 of the Act, we find that the initially, the assessment order passed u/s 143(3) of the Act was selected for limited scrutiny i.e. high turnover reported in service tax return compared to ITR and mismatch in sale turnover reported in Audited report and ITR. The PCIT is of the view that the AO should reopen the case for complete scrutiny, specifically on the reasons mentioned in para nos. 3, 4 & 5 of the PCIT order dated 26.02.2019.



ITA No.1793/Mum/2020  
A.Y. 2014-15

It is very strange how the AO could reach at a decision to convert the limited scrutiny case into the complete scrutiny case if he is not allowed to look beyond the reasons for limited scrutiny during the assessment proceedings. It is also very important to note that the Ld. PCIT himself stated that the issues on which he would like to be revised the order of the Ld. AO are beyond the scope of limited scrutiny. This itself proves that the Ld. PCIT was not empowered to invoke the provisions of Section 263 of the Act. Now the Ld. PCIT has found fault with the decision of Ld. AO by not referring the case to a complete scrutiny case. Assuming while denying, if the order of the Ld. PCIT has approved now then every limited scrutiny case selected according to the instruction to the CBDT should be revised under one and another pretext to found fault with the order of the Ld. AO and then it could be revised. Thus, it would be amounting to only negating the system of limited scrutiny itself. For this reasons, we do not found the order passed by Ld. AO is erroneous so far as the prejudicial to the interest of the revenue. In this circumstances, we set aside the order passed u/s 263 of the Act in question.

5. In the result, the appeal of the assessee is hereby allowed.

Order pronounced in the open court on this 28/04/2022

Sd/-

(S. RIFUAR RAHMAN)  
ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)  
JUDICIAL MEMBER

Mumbai; Dated 28/04/2022

Vijay Pal Singh, (Sr. PS)



ITA No.1793/Mum/2020  
A.Y. 2014-15

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

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

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**