

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

**BEFORE SHRI PRAMOD KUMAR, VP &  
Ms. KAVITHA RAJAGOPAL, JM**

आयकरअपीलसं./ I.T.A. No. 1206/Mum/2021  
(निर्धारणवर्ष / Assessment Year: 2015-16)

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| <b>Lokmanya Pan Bazar Association Ltd.</b><br>I-53 Lokmanya Pan Bazar, Behind Eastern Express Highway, Sion Chunabatti, Mumbai-400 022 | <b>बनाम/<br/>Vs.</b> | <b>Pr. CIT – 8,</b><br>Room No. 611, 6th floor, Aaykar Bhavan, Maharshi Karve Road, Mumbai-400 020 |
| स्थायीलेखासं ./जीआइआरसं ./PAN No. AAAC-8802-A  |                      |  |
| (अपीलार्थी/ Appellant)   | :                    | (प्रत्यर्थी / Respondent)  |

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| अपीलार्थीकीओरसे/ Appellant by        | : | Shri Dharan Gandhi, Ld. AR |
| प्रत्यर्थीकीओरसे/ Respondent by      | : | Ms. Shailja Rai, Ld. DR    |
| सुनवाईकीतारीख/ Date of Hearing       | : | 09.02.2022                 |
| घोषणाकीतारीख / Date of Pronouncement | : | 05.05.2022                 |

आदेश / ORDER

**Per Kavitha Rajagopal, Judicial Member:**

This appeal has been filed by the assessee as against the order passed by the Ld. Pr. CIT-8, Mumbai dated 03.03.2021

under section 263 of the Income Tax Act, 1961. The grounds of appeal are as follows:-

*1. On the facts and in the circumstances of the case and in law, the Ld. PCIT-8, Mumbai erred in invoking jurisdiction u/s 263 of the Act and thereby passing an order dated 03.03.2021 under the same section.*

*2. On the facts and in the circumstances of the case and in law, the Ld. PCIT -8, Mumbai erred in passing the impugned order u/s 263 of the Act dated 03.03.2021 giving specific directions to the Assessing Officer without considering the submission filed by the Appellant.*

*3. On the facts and in the circumstances of the case and in law, the Ld. PCIT -8, Mumbai erred in stating that the Assessing Officer did not conduct proper inquiries without appreciating the fact that the scrutiny of the Appellant was for limited purposes and the Assessing Officer could not have gone into such other issues.*

*4. On the facts and in the circumstances of the case and in law, the Ld. PCIT -8, Mumbai erred in stating that the Appellant is not entitled to claim depreciation on building and furniture.*

*5. The above grounds should be considered as independent and without prejudice to each other.*

*6. The Appellant craves leave to add, amend, modify or delete any grounds of appeal.*

2. The brief facts of the case are that assessee being a non-profit making association of Betal Leaf Merchants owns various building in PAN Bazar receiving rent from occupants who are members of the associations and licensees. The assessee is in the capacity of an administrator working for protecting the interest of

members associated to the trade or business of Betal Leaf, filed its return of income on 25.09.2015 for AY 2015-16 declaring total income at Rs. NIL and book profit at Rs. (-) 4,35,150/-. Subsequent to this, the case was selected for “Limited Scrutiny under CASS” to verify ‘Large any other deductions claimed in Schedule Book Profit’ for the relevant year under consideration. Assessment u/s 143(3) of I.T. Act was completed on 23.08.2017 where book profit u/s 115JB was determined at Rs. 24,37,775/-.

3. The Ld. Pr. CIT invoked section 263 of the Act wherein show cause notice dated 16.03.2021 was issued and further to the change of incumbent, a fresh notice was again served on 13.01.2021 giving sufficient opportunity to the assessee to present his case. From the observation of the Ld. Pr. CIT as per the assessment record and reply of the assessee, it is evident that the assessee owns assets in the nature of land, building and office furniture for which depreciation was claimed on building and furniture. As per the Ld. Pr. CIT, the assessee has claimed 30% deduction for rental income from house property u/s 24 and simultaneously claimed expenses including depreciation on these buildings on rental income from the same as income from business. The Ld. Pr. CIT has also elaborated that AO has failed to consider that the rental income of the assessee from house property is not eligible for further claim of expenses u/s 30 & 32 and carry forward and set off loss as depreciation on building cannot be sustained. Further, the Ld. Pr. CIT has stated that the AO has not examined that whether furniture was rented out

alongwith buildings by the assessee for claiming depreciation on such furniture u/s 32 of the Act. The assessee's plea that such claim was accepted in the earlier years was not acceded by Ld. Pr. CIT. The assessee's reply that for the rent received during previous year to the tune of Rs. 24,59,640/-, standard deduction of 30% was allowed and as there was no separate head available for property tax, the said expenses were included under Profit & Loss account was not accepted by the Ld. Pr. CIT. The assessee has also stated that assessee has not claimed any expenses with regard to income under house property. As far as contention that assessee was not into business, the assessee stated that it was a trade association rendering services to trade and its member and it received Rs. 2,99,781/- for various charges including hamali charges, fees for application form, miscellaneous income, additional service charges, water charges, additional conservancy charges, thereby claiming expenses under business income. The assessee's loss of Rs. 36,15,016/- pertain to such income. The brought forward loss of Rs. 16,99,883/- were unabsorbed depreciation and as per assessee's reply should be adjusted against income from other sources u/s 72 of the Act. Furthermore, the assessee raised objection on the ground that the case was selected for 'limited CASS' for the reasons 'Large any other deduction in Schedule Book Profit' and only on this, the AO had assessed, thereby denying the jurisdiction u/s 263 of the Act of Ld. Pr. CIT. This was not proved acceptable by the Ld. Pr. CIT who was of the view that AO has failed to make proper enquiry and has not brought on record the necessary facts to

establish the true character and nature of the assessee's income. The Ld. Pr. CIT relied on the Instruction No. 5/2016 of CBDT for conversion of limited scrutiny to complete scrutiny if the case warrants for the relevant AY 2015-16. The Ld. PCIT held that assessment order passed by AO u/s 143(3) dated 23.08.2017 is erroneous and prejudicial to the interest of revenue as per provision of explanation 2(a) & (b) of section 263 of the I.T. Act, thereby setting aside the said order and directed the AO to frame the order de novo.

4. Aggrieved by the said order, assessee is in appeal before us. During the appeal proceedings, the Ld. AR contended that in the case of limited scrutiny, there can be no fishing and roving enquiry and that the assessee's case will come under the monetary limit of Rs. 10 lakhs and that the case would squarely fall under the decision of Hon'ble Mumbai ITAT cited by Ld. AR. The Ld. AR also relied on plethora of cases.

5. On the other hand, Ld. DR stated that assessee company is Guarantee company and objected to the assessee's claim that it was business income and that the property tax should not have been claimed in the Profit & Loss account. The carry forward loss should be set off only on business income and further denied the contention of the Ld. AR that brought forward unabsorbed depreciation can be adjusted against income from other sources. The Ld. DR stated that Ld. Pr. CIT had rightly exercised the jurisdiction u/s 263 and that the appeal was liable to be dismissed.

6. We have heard the rival submission and perused the materials placed on record. It is evident that the assessee's case was selected for limited scrutiny under CASS reason being 'Large any other deduction in Schedule Book Profit'. It is pertinent to point out that the AO has sought for details pertaining to the limited scrutiny queries with regard to large deduction claimed in schedule book profit, thereby sustaining a loss. The assessee was also instructed to furnish copy of statement of unabsorbed losses and depreciation and also supporting documentary evidence to show income /receipts in Profit & Loss account. Upon satisfaction, the AO has passed the assessment order u/s 143(3) dated 23.08.2017 covering only the issues relating to the limited scrutiny. With reference to CBDT Instruction F. No. 225/26/2006 – ITA. II (Pt.) dated 08.09.2010, the mandate to convert a limited scrutiny case to complete scrutiny, there should be approval from the administrative Commissioner. The present case in hand has not dealt with in the said aspect. The Ld. Pr. CIT in the order has categorically mentioned that various issues have not being enquired by the AO, which does not fall under the purview of the limited scrutiny.

7. We are of the considered opinion that the case of the assessee under limited scrutiny was only for the reason 'Large any other deduction in Schedule Book Profit' thereby determining the assessment order as not erroneous and prejudicial to the interest of the revenue as per section 263 of the

Act. Resultantly, we hold that the order passed by the Ld. Pr. CIT u/s 263 of the Act is invalid and is directed to be quashed.

8. In the result, the appeal filed by the assessee is **allowed**.

*Orders pronounced in the open court on 05.05.2022.*

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| <i>Sd/-</i><br>(Pramod Kumar)<br>Vice President<br>मुंबई Mumbai; दिनांक Dated : 05.05.2022<br><i>Sr.PS. Dhananjay</i> | <i>Sd/-</i><br>(Kavitha Rajagopal)<br>Judicial Member |
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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**