

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'B' BENCH, HYDERABAD.**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

**ITA No.409/Hyd/2021
(Assessment Year : 2015-16)**

M/s. SNR Avenues Pvt. Ltd., Hyderabad. PAN AAPCS3892M	Vs.	Income Tax Officer, Ward 3(3), Hyderabad.
Appellant		Respondent
Appellant By : Shri T. Chaitanya Kumar, Adv.		
Respondent By : D. Komali Krishna, CIT-DR.		
Date of Hearing : 28.07.2022.		
Date of Pronouncement : 29.07.2022.		

O R D E R

Per Shri Inturi Rama Rao, A.M. :

This appeal filed by the assessee is directed against the order of the learned Pr. Commissioner of Income Tax (Appeals)-3, Hyderabad dt.30.03.2020 for the Assessment Year 2015-16.

2. The assessee raised the following grounds :

1. On the facts and circumstances of the case, the order passed by the learned Principal Commissioner of Income Tax (Pr. CIT) under Section 263 of the Act is bad, both in the eyes of law and on facts.
2. On the facts and circumstances of the case, the order passed by the learned Pr. CIT under Section 263 of the Act is bad, both in the eyes of law and on facts, having been passed without giving assessee an opportunity of being heard in violation of principle of natural justice.
3. On the facts and circumstances of the case, the order passed by the learned Pr. CIT under Section 263 of the Act is bad, both in the eyes of law and on facts, having been passed without giving assessee an opportunity posted for hearing on 26th March 2020, i.e. the Hon'ble Prime Minister was imposed complete Nation-wide Lock Down, due to Covid-19 pandemic situation.
4. The learned Pr. Commissioner ought to have appreciated that nationwide lockdown started on 23.03.2020, the case was posted on 26.03.2020, in the lockdown period which was strictly implemented, therefore, the learned Pr. CIT erred in passing an order u/ s 263 violating the principles of natural justice. Therefore, the same is invalid.
5. On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in ignoring the fact that the proceeding under Section 263 cannot be used for substituting opinion of the A.O. by that of the CIT.
6. The learned Pr. Commissioner erred in setting aside the order made u/s 143(3) by granting second innings to the Assessing Officer to make rowing enquiries as no specific head of expenditure is mentioned in respect of an amount of RsA.23Cr, therefore, the order is to be held null and void.
7. The learned Pr. Commissioner ought to have appreciated that the case is selected for scrutiny under CASS to verify specific issues, therefore, the AO may not have examined the issue of payment of donations as the same is not in the purview of scrutiny, therefore, the learned Pr. CIT erred in setting aside the order.
8. On the facts and circumstances of the case, Pr CIT has erred both on facts and in law in setting aside the issue of 40A(3) various expenses incurred by the appellant company to the tune of Rs.4.23 crore are added to the income of assessee.
9. The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary. ,

10. The ld. PCIT ought to have mentioned the specific transaction and specific date and also specific person, in respect of violation of provision of section 40A(3) by making payments more than Rs.20,000. Therefore, the order u/s. 263 is to be held as null and void.”

3. Briefly the facts of the case are as under :

3.1 The assessee is a company incorporated under the Companies Act, 1956. It is engaged in the business of execution of civil contracts. The Return of Income for the Assessment Year 2015-16 on 29.09.2016 declaring a total income of Rs.14,12,630. The Assessing Officer completed vide order dt.18.04.2017 passed u/s. 143(3) of the Act with a total income of Rs.19,12,530. While doing so, the Assessing Officer made an adhoc disallowance of expenses of Rs.5 lakhs. Subsequently, the PCIT, on examination of the assessment record found that the assessee company had incurred expenses of Rs.4.23 Crores in cash in violation of the provisions of section 40A(3) of the Act. The learned PCIT also found that the assessee company made a donations of Rs.15,000 which requires to be disallowed, the Assessing Officer had passed the order without examining the details under the provisions of section 40A(3) of the Act.

Accordingly, he formed an opinion that the assessment order passed by the Assessing Officer on 18.4.2017 is erroneous and prejudicial to the interest of revenue. Accordingly, he issued show cause notice on 20.03.2020 in exercise of powers u/s. 263 of the Act requiring the assessee company to explain on or before 26.3.2020, as to why the assessment order should not be set aside. In the absence of any explanation from the assessee, the learned PCIT had proceeded to pass the order u/s. 263 of the Act setting aside the assessment order and directed the Assessing Officer to redo the assessment after giving an opportunity of hearing to the assessee vide order dt.30.3.2020.

3.2 Being aggrieved by the order of the PCIT, the assessee is in appeal before us.

4. Learned Authorised Representative submitted that the PCIT had passed the order in gross violation of the principles of natural justice by not affording a reasonable opportunity of being heard to the assessee. He further

submitted that the assessee could not file the explanation on account of difficulties faced by the declaration of national lock down on account of Covid 19 pandemic. Thus he prayed that the order passed by the learned PCIT be set aside for de novo consideration.

5. On the other hand, the learned Departmental Representative has no serious objection to remit the matter back to the learned PCIT for de novo examination.

6. We have heard the rival submissions and perused the material on record. The issue in the present appeal relates to the validity of the revision order passed by the PCIT u/s. 263 of the Act. We had carefully gone through the order of revision passed by the learned PCIT. We find that the learned PCIT had granted only one opportunity of hearing to the assessee to explain as to why the power of revision cannot be exercised and posted the matter for hearing on 26.3.2020 i.e. during which the lock down was imposed nation-wide on account of Pandemic Covid 19 situation. Further more, the order of the revision was

passed on 30.03.2020; on the date falling within the period of Covid 19 lock down imposed. Thus it is clear that the learned PCIT had granted unreasonable short time to respond to the show cause notice and posted the matter for hearing during complete lock down period. We are at loss to understand as to how the learned PCIT could pass the order when the nation was under complete lock down i.e. ;on 30.03.2020. We also fail to understand as to how the learned PCIT failed to understand that an assessee could not respond to the show cause notice during the lock down period. Thus we are of the considered opinion that the order passed by the learned PCIT is in gross violation of principles of natural justice and we are considered opinion that the assessee was prevented from responding to the show cause notice for sufficient reasonable cause, therefore, we set aside the order of the revision passed by the learned PCIT and direct the learned PCIT to pass fresh order after giving reasonable opportunity of hearing to the assessee.

7. In the result, the appeal of the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 29th July, 2022.

Sd/-

(LALIET KUMAR)
Judicial Member

Sd/-

(INTURI RAMA RAO)
Accountant Member

Hyderabad, Dt. 29.07.2022.

* Reddy gp

Copy to :

1.	M/s. SNR Avenues Pvt. Ltd., C/o T Chaitanya Kumar, Advocate, 102, Gowri Apartments, H.No.3-6-195/B, Urduhall Lane, Himayathnagar, Hyderabad-500 084
2.	ITO, Ward 2(2), Hyderabad.
3.	Pr. C I T-3, Hyderabad.
4.	CIT(Appeals)-3, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.