

**INCOME TAX APPELLATE TRIBUNAL  
MUMBAI 'G' BENCH, MUMBAI**

**[Coram: Pramod Kumar, Vice President  
and, Kavitha Rajagopal, Judicial Member]**

ITA No.: 772/Mum/2021  
Assessment year: 2016-17

**Gopa Investment Co Pvt Ltd** ..... **Appellant**  
*605, Maker Chamber , 220 Jammalal Bajaj Road,  
Nariman Point, Mumbai 400 021 [PAN: AABCG3815F]*

**Vs.**

**Principal Commissioner of Income Tax-2**  
**Mumbai** ..... **Respondent**

**Appearances:**

**Paresh Shaparia** and **Hiral Shah** *for the appellant*  
**Jasbir Chauhan** and **Mehul Jain** *for the respondent*

Date of concluding the hearing : 27/05/22  
Date of pronouncing the order : 26/08/22

**O R D E R**

**Per Pramod Kumar, VP:**

1. By way of this appeal, the assesee has challenged the correctness of the order dated 29<sup>th</sup> November 2018 passed by the learned Principal Commissioner of Income Tax in the matter of revision under section 263 r.w.s. 143(3) of the Income Tax Act, 1961, for the assessment year 2016-17.

2. Grievance raised by the appellant are as follows:

1. *On facts and circumstances of the case and in law, the Learned Pr. CIT- 2 erred in passing order u/s 263.*

2. *The Learned Pr. CIT - 2 erred in treating the order passed by A.O. us 143(3) dated 29.11.2018 as erroneous and prejudicial to the interest of the revenue and thereby directing for fresh assessment as per provisions of section 263 of the IT Act, 1961.*

3. *The Learned Pr. CIT - 2 ought not to have treated order passed u/s 143(3) dated 29.11.2018 as erroneous or prejudicial to the interest of revenue.*

4. *The order passed by AO u/s 143(3) dated 29.11.2018 is neither erroneous nor prejudicial to the interest of the revenue.*

5. *The order passed u/s 263 is bad in law and requires to be squashed.*

6. *Without prejudice, on the merits of the matter, the brokerage expenses of Rs. 39,36,928 is an allowable expenses us 48 for determining the Long Term Capital Gains.*

3. To adjudicate on this appeal, only a few material facts need to be taken note of. The assessment under section 143(3), in this case, was completed on 29<sup>th</sup> November 2018. The income was computed under the normal provisions at Rs 12,90,55,592, and, under the MAT provisions under section 115JB, at Rs 15,26,76,587. The tax payable under the MAT provisions being more than the tax payable under the normal provisions, the assessment was finalized under the MAT provisions. Subsequently, however, the learned PCIT invoked his revisionary powers in respect of brokerage expenses of Rs 39,36,927 which was said to have been allowed without proper inquiry in the right perspective.

4. When the appeal came up for hearing, the short point made by the learned counsel was that since the tax has been imposed under the MAT provisions, irrespective of whether or not the above amount of Rs 39,36,927 is allowed as deduction in the computation of income under the normal provisions, there will be no impact on the tax liability of the assessee. The assessment order being subjected to the revision order, in the impugned proceedings, cannot there be said to be 'prejudicial to the interests of the revenue'. For this short reason, according to the learned counsel, the impugned revision order must be quashed. Learned Departmental Representative relies upon the order of the learned PCIT and does not point out as to how the order is prejudicial to the interests of the revenue.

5. As observed by Hon'ble Supreme Court, in the case of **Malabar Industrial Co Ltd Vs CIT [(2000) 243 ITR 83 (SC)]**, "**A bare reading of this provision makes it clear that the pre-requisite to exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the ITO is erroneous insofar as it is prejudicial to the interests of the revenue. The Commissioner has to be satisfied with twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the revenue. If one of them is absent - if the order of the ITO is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue - recourse cannot be had to section 263(1)**". In the present case, there is nothing before us to show as to how the error, even if there is any, is prejudicial to the interests of the revenue. The point on which revision is made by the learned PCIT, given the fact that the assessment being sought to be revised ultimately imposes a MAT tax liability only, will have no bearing on the tax liability of the assessee, or prejudice the interests of the revenue in any other manner also. In this view of the matter, and for this short reason alone, we quash the impugned revision order. The assessee gets the relief accordingly.

6. As the appeal is allowed for the short reason as discussed above, we see no need to deal with the other issues on merits. These aspects of the matter, as of now, are purely academic.

7. In the result, the appeal is allowed. Pronounced in the open court today on the 26<sup>th</sup> day of August 2022.

Sd/-

**Kavitha Rajagopal**  
(Judicial Member)

**Mumbai, dated the 26<sup>th</sup> day of August, 2021**

Sd/-

**Pramod Kumar**  
(Vice President)

*Copies to:*

<i>(1)</i>	<i>The appellant</i>	<i>(2)</i>	<i>The respondent</i>
<i>(3)</i>	<i>CIT</i>	<i>(4)</i>	<i>CIT(A)</i>
<i>(5)</i>	<i>DR</i>	<i>(6)</i>	<i>Guard File</i>

*By order*

*Assistant Registrar/ Sr PS  
Income Tax Appellate Tribunal  
Mumbai benches, Mumbai*