

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 363/Bang/2022</b>
<b>Assessment Year : 2017-18</b>

M/s. GMR Pochanpalli Expressways Ltd., No. 25/1, Skip House, Museum Road, Bengaluru – 560 025. <b>PAN: AACCG4570C</b>	<b>Vs.</b>	The Principal Commissioner of Income Tax, Bengaluru – 3.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Sunil Jain, CA
Revenue by	:	Shri Sumer Singh Meena, CIT DR-1

Date of Hearing	:	11-08-2022
Date of Pronouncement	:	29-08-2022

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal is filed by the assessee against order dated 31/03/2022 by the Ld.Pr.CIT, Bangalore – 3 for A.Y. 2017-18 on following grounds of appeal:

**Ground I: Order passed u/s 263 is arbitrary, contrary to the provisions of law and the settled legal position:**

1. On the facts and in the circumstances of the case and in law, the Learned Principal Commissioner of Income Tax, Bengaluru-3 ["PCIT"] has erred in passing order u/s. 263 to set aside the assessment order dated September 27, 2019 completed u/s. 143(3) with a direction to verify the claim of depreciation of Rs.32,33,40,632/- on carriageway asset and to redo the assessment after verification since the said assessment order completed is erroneous and/or prejudicial to the interest of the revenue.
2. The PCIT failed to appreciate and ought to have held that the order of assessment completed u/s. 143(3) in appellant's case is neither erroneous nor prejudicial to the interest of revenue;
3. The Appellant therefore prays that the order passed u/s 263 is arbitrary, contrary to the provisions of law and the settled legal position, void-ab-initio and the same is liable to be quashed.

**WITHOUT PREJUDICE TO THE ABOVE:**

**Ground II: Denial of claim of depreciation of Rs.32,00,75,250/- on the carriageway cost on Written Down Vale:**

1. On the facts and in the circumstances of the case and in law, the learned PCIT has erred in holding that the appellant is not entitled to claim depreciation of Rs.32,00,75,250/- on WDV of the carriageway cost..
2. The PCIT further erred in not considering that in compliance to Ind-As the carriageway was shown as financial asset in the books of account but the same forms part of Block of asset eligible for depreciation as per section 43(6) on WDV basis.
3. The PCIT failed to appreciate and ought to have held that
  - (i) the appellant had claimed depreciation of Rs.32,00,75,250/- WDV of the carriageway cost as determined in accordance with section 43(6) of the Act and as certified by the Tax Auditor in the Tax Audit report in the computation of total income;

- (ii) Entry in the books of account are not relevant for allowing claim of depreciation on any asset forming part of block of asset in accordance with the provisions of section 43(6) of the IT Act, 1961; and
  - (iii) Block of asset remain intact and there is no change in the amount of WDV forming part of block of asset and hence the appellant should be allowed depreciation on such WDV forming part of block of asset in accordance with the provisions of section 43(6)
4. The Appellant therefore prays that the direction of the PCIT to the Assessing Officer to verify the claim of depreciation of Rs.32,33,40,632/- on carriageway asset is bad in law, contrary to the provisions of law and thus is not sustainable in law when the appellant is entitled to claim of depreciation as per section 43(6) which was rightly allowed while completing the original assessment.

**Ground III: The Appellant craves leave to add, alter and/or amend all or any of the foregoing grounds of appeal.**

## **2. Brief facts of the case are as under:**

2.1 Assessee filed its return of income on 31/10/2017 declaring Nil income and current year loss of Nil. Return was processed u/s. 143(1) and the case was selected for limited scrutiny under CASS to verify the following:

- a) Expenses incurred for earning exempt income
- b) Sales turnover / receipts
- c) Investments / advances / loans

2.2 Thereafter, the Ld.AO completed the assessment on the income filed by the assessee. Subsequently 263 proceedings was initiated by the Ld.Pr.CIT on 19/03/2022 for the following reasons.



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX  
PCIT, Bengaluru-3

To, GMR POCHANPALLI EXPRESSWAYS LIMITED 25/1, Skip House , Museum Road Bangalore North BANGALORE 560025 , Karnataka India	
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PAN/TAN: AACCG4570C	AY: 2017-18	DIN & Notice No : ITBA/REV/F/REV1/2021- 22/1041033752(1)	Dated: 19/03/2022
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**NOTICE FOR THE HEARING**

**M/s/Mr/Ms**

**Subject:** Notice for Hearing in respect of Revision proceedings u/s 263 of the THE INCOME TAX ACT, 1961 – Assessment Year 2017-18.

In this regard, a hearing in the matter is fixed on **25/03/2022 at 10:51 AM**. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: [incometaxindiaefiling.gov.in](http://incometaxindiaefiling.gov.in)

Whereas GMR Pochanpalli Expressways Ltd (hereinafter referred to as "assessee") had filed its return of income u/s 139 of the Income Tax Act, 1961 (hereinafter referred to as "Act") for the Assessment Year 2017-18 on 31.10.2017 declaring total income of Rs. NIL.

2. Whereas the return of income filed by the assessee on 31.10.2017 was selected for scrutiny and notice u/s 143(2) of the Act was issued by the Income Tax Officer, Ward-3(1)(2), Bengaluru (hereinafter referred to as AO) on 14.09.2018.

3. Whereas the AO passed the order u/s 143(3) of the Act on 18.11.2019 by accepting the returned income.

4. Whereas the assessment records in your case for the AY 2017-18 were called for examination by the undersigned. During the course of examination of assessment records, it is observed that in the computation the assessee has added back an amount of Rs.8,43,163/- being depreciation as per the Company Act and reduced an amount of Rs.32,33,40,632/- being depreciation as per the Income Tax Act, thereby has claimed

Note: If digitally signed, the date of digital signature may be taken as date of document.  
BMTc BUILDING, 89 FEET ROAD, 6TH BLOCK, NEAR KHS GAMES VILLAGE, KORAMANGALA, BENGALURU, Karnataka, 560095  
Email: BANGALORE.PCIT3@INCOMETAX.GOV.IN,

Note:- The website address of the e-filing portal has been changed from [www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in) to [www.incometax.gov.in](http://www.incometax.gov.in)  
\* DIN- Document Identification No.

AACCG4570C- GMR POCHANPALLI EXPRESSWAYS LIMITED  
A.Y. 2017-18  
(TBA/REV/F/REV1/2021-22/1041033752(1))

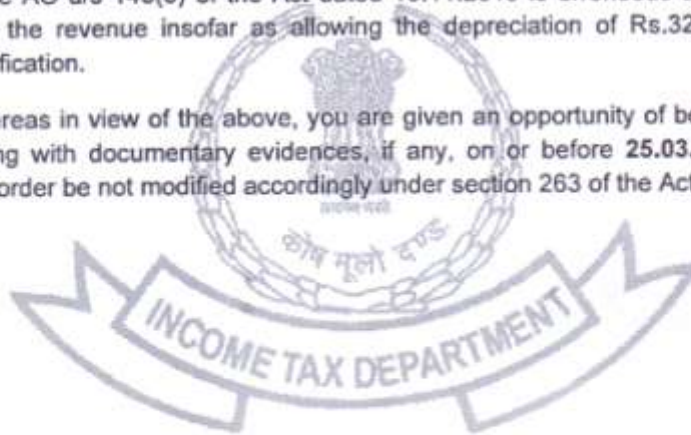
depreciation of Rs.32,33,40,632/-.

4.1 Whereas on perusal of the Asset Schedule as per the Company Act and Income Tax Act, it is observed that depreciation on carriageway asset (opening value of Rs.320,07,52,504/-) was claimed under the Income Tax Act, but as per the Company Act, the carriageway asset was deleted / removed.

4.2 Whereas on further verification of the balance sheet for the year under consideration, it is observed that the assessee has classified the carriage way asset (Fixed Asset) to Financial Asset i.e. shown as receivable under SCA. As such, the asset carriage way was no longer a fixed asset for the relevant Assessment Year. However, depreciation to the tune of Rs.32,33,40,632/- has been claimed by the assessee and the same was allowed by the AO on this said financial asset, which is not in order. The action of the AO in allowing the depreciation incorrectly and without proper verification is erroneous and prejudicial to the interests of the revenue.

5. Whereas for the reasons discussed in the preceding paras, I am of the opinion that the order of the AO u/s 143(3) of the Act dated 18.11.2019 is erroneous and prejudicial to the interest of the revenue insofar as allowing the depreciation of Rs.32,33,40,632/- without proper verification.

6. Whereas in view of the above, you are given an opportunity of being heard and show cause along with documentary evidences, if any, on or before 25.03.2022 as to why the impugned order be not modified accordingly under section 263 of the Act.



PREETI GARG  
PCIT, Bengaluru-3

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

2.3 The Ld.AR submits that the assessee filed response to the said notice on 28/03/2022, objecting the revisionary proceedings. The relevant objections filed by the assessee before the Ld.Pr.CIT, are reproduced as under:

28.03.2022 objecting for the proposed revision of the impugned order of the AO for the following reasons :

(a) *That all the documents along with other information / details called for by the AO vide notices issue du/s 143(2) and 142(1) of the Act have been considered and decided by the AO after thorough examination of records with the information available on record, after main details enquiries, after applying his mind to the facts and circumstances of the case vis-à-vis provision of the Income-tax law and settled legal position on record on computation of income under the income tax law as would be evident from the submissions made in subsequent paras. Accordingly, the order of the AO is not erroneous and prejudicial to the interests of the revenue.*

(b) *That the project site is owned by NHAI which is leased to the assessee-company in terms of concession agreement where the assessee has developed project facilities by incurring capital cost of Rs.701,44,66,146/- which was capitalized to fixed assets on which depreciation @10% as applicable to building in accordance under the provisions of Explanation 1 to section 32 read with section 43(6) of the Act has been claimed.*

(c) *That the project facilities developed on the project site made available by NHAI in terms of concession agreement and its ownership are still with the assessee itself and is therefore eligible for depreciation under the Income Tax Act, 1961 on the Written Down Value of the carriageway cost (i.e. under the block of assets of building) as determined u/s 43(6) of the Act.*

(d) *That the assessee is eligible for depreciation under the Income Tax Act, 1961 on the Written Down Value of the carriageway cost (i.e. under the block of assets of building) as determined u/s 43(6) of the Act irrespective of the accounting treatment of the said asset in the books of account.*

(e) *That the carriageway assets were classified under financial asset from fixed assets in compliance with Ind-AS requirements as well as that this treatment as per Ind-AS treated as financial asset and claim of depreciation as per the Act was disclosed in the computation of total income filed during the course of assessment proceedings and the same was considered by the AO while completing the assessment.*

(f) *That the assessee has been claiming the depreciation on the*

carriageway cost on WDV as applicable to the building under the provisions of section 43(6) of the Act.

(g) That the assessee has developed project facilities by incurring capital cost of Rs.701,44,66,146/- which was capitalized to fixed assets on which depreciation @10% as applicable to the building has been claimed in accordance with the provisions of Explanation 1 to section 32 read with section 43(6) of the Act

(h) That the assessee relied upon the decision of the Hon'ble Supreme Court in the case of Taparia Tools Ltd Vs JCIT (372 ITR 605) and Kedamath Jute Mfg. Co. Ltd. Vs CIT (1971) 82 ITR 363 on allowability of depreciation on Written Down Value of the carriageway cost as applicable under the provisions of Explanation 1 to section 32 read with section 43(6) of the Act.

1. That the carriageway cost is forming part of the block of assets (i.e. building) of the assessee and that the claim of depreciation on carriageway cost under the Block of Assets of Building as applicable to the building has been allowed for the earlier assessment years i.e. 2009-10 to 2016-17 and on similar basis, identical facts & based on the principles of consistency including the assessment year under consideration depreciation of carriage way claim of the assessee.

(j) That it is settled law that though the principles of res-judicata does not apply to the assessments, but the principles of consistency have to be followed where there is no change in the facts and relied on the following judicial decisions :

1. Radhasaomi Satsang Vs CIT (193 ITR 321) (SC)
2. Burmah shell Vs Chand (61 ITR 493) (Bom.)
3. Royal Business Centre Pvt Ltd Vs ITO (39 BCAJ 24) (Bom.)
4. CIT Vs Godavari (156 ITR 835) (MP) and others

2.4 The Ld.Pr.CIT after considering the above submissions, directed the Ld.AO to verify the claim of depreciation of Rs. 32,33,40,632/- on carriageway asset, and bring to tax, in accordance with law, after affording sufficient opportunity of being heard to the assessee.

2.5 Aggrieved by the order of Ld.Pr.CIT, assessee is in appeal before this *Tribunal*.

3. The primary objection by the Ld.AR is regarding the validity of revisionary proceedings. It is submitted by the Ld.AR that, the assessee's case was selected under limited scrutiny for verifying only three aspects being;

- i) Expenses incurred for earning exempt income
- ii) Sales turnover / receipts
- iii) Investments / advances / loans

4. The Ld.AR submits that, the issue considered by the Ld.Pr.CIT in the impugned order does not arise out of the assessment order. He

further submitted that, it is not the situation that, the limited scrutiny was converted into complete scrutiny by the Ld.AO during the assessment proceedings, that would grant the Ld.Pr.CIT, the right to consider any claim in the revisionary proceedings.

5. He further submitted that, the ambit of the original assessment proceeding for limited scrutiny under CASS, was admittedly in respect of only three issues that, is referred hereinabove, in response to which assessee furnished complete details during the assessment proceedings. It is the submission of the Ld.AR that, the Ld.Pr.CIT could not have, at all, entered into the issue of depreciation that was beyond the scope of original assessment, and therefore, the Ld.Pr.CIT was not right in directing the Ld.AO to consider the depreciation issue by holding the assessment order to be prejudicial in so far as erroneous to the interest of revenue.

The Ld.AR placed reliance on the decision of *Hon'ble Pune Tribunal* in case of *The Deccan Paper Mills Co. Ltd. vs. CIT* in ITA Nos. 1013 & 1635/Pun/2014, *Aakash Ganga Promoters & Developers vs. Pr.CIT* in ITA No. 164/CTK/2019 by order dated 18/12/2019 and *R&H Property Developers Pvt. Ltd. vs. Pr.CIT* in ITA No. 1906/Mum/2019 by order dated 30/07/2019 and *Mrs. Sonali Hemant Bhavsar vs. Pr.CIT* in ITA No. 742/Mum/2019 by order dated 17/05/2019 in support of its contentions.

6. On the contrary, the Ld.DR placed reliance on the impugned order and submitted that there was patent error on the face of the assessment order as the same has been passed without application of kind.

We have perused the submissions advanced by both sides in the light of records placed before us.

According to the provisions of [section 263](#) of the Act, after examination of records, the ld CIT finds that the order is erroneous and prejudicial to the interest of the revenue, then, he has power to revise such orders.

Therefore, the mandate given to the Ld.AO was to examine only the three issues referred to hereinabove in the preceding paras of this order. The Ld.Pr.CIT holds that the assessment order is erroneous for the reason that Ld.AO has not examined the issue of depreciation claimed by the assessee on carriageway asset.

7. There is no dispute that the case of the assessee was picked up for scrutiny under the category of limited scrutiny which is established from the assessment order and also the notice issued under section 143(2) of the Act. The CBDT has issued instructions instruction Nos.7/2014, 20/2015 and 5/2016 and also the CBDT letter dated 13 No.2017, according to which the Ld.AO couldn't have travelled beyond the scope of the scrutiny which are relied by the Ld.AR. For the sake of convenience we extract the relevant portions thereof hereunder:

*"CBDT Instruction No. 7/2014*

*The reason(s) for selection of cases under CASS are displayed to the Assessing Officer in AST application and notice u/s 143(2), after generation from AST, is issued to the taxpayer with the remark ".Selected under Computer Aided Scrutiny Selection (CASS)". The functionality in AST is being modified suitably to flag the reasons for scrutiny selection in AIR/CIB/26AS cases. This functionality is expected to be operationalized by 15th October, 2014. Further, the Assessing Officer while issuing notice under section 142(1) of the Act which is enclosed with the first questionnaire would proceed to verify only the specific aspects requiring examination/verification. In such cases, all efforts would be made to ensure that assessment proceedings are completed expeditiously in minimum possible number of hearings without unnecessarily dragging the case till the time-barring date.*

*CBDT Instruction No. 20/2015*

3. As far as the returns selected for scrutiny through CASS-2015 are concerned, two type of cases have been selected for scrutiny in the current Financial Year-one is 'Limited scrutiny' and other is Complete Scrutiny'. The assessee concerned have duly been intimated about their cases falling either in 'Limited scrutiny' or 'Complete Scrutiny' through notices issued under section 143(2) of the Income-tax Act, 1961 ('Act'). The procedure for handling 'Limited scrutiny' cases shall be as under:

(a) . . . .

(b) The Questionnaire under section 142(1) of the Act in 1 Limited scrutiny cases shall be not in confined only to the specific reasons/issues for which case has been picked up for scrutiny. Further, the scope of enquiry shall be restricted to the Limited scrutiny' issues.

CBDT Instruction No. 5/2016

"4. It is further clarified that in cases under 'Limited scrutiny/the scrutiny assessment proceedings would initially be confined only to issues under 'Limited scrutiny' and Questionnaires, enquiry, investigation etc. would be restricted to such issues. Only upon conversion of case to 'Complete Scrutiny' after following the procedure outlined above, the AO may examine the additional issues besides the issue(s) involved in 'Limited Scrutiny'. The AO shall also expeditiously intimate the taxpayer concerned regarding conducting 'Complete Scrutiny' in such cases."

CBDT Letter dated 30-11-2017

J Instances have come to notice of CBDT where some Assessing Officers are travelling beyond their jurisdiction while making assessments in Limited scrutiny cases by initiating inquiries on new issues without complying with mandatory requirements of the relevant CBDT Instructions dated 26-9-2014, 29-12-2015 and 14-7-2016. These instances have been viewed very seriously by the CBDT and in one case the Central Inspection Team of the CBDT was tasked with examination of assessment records on receipt of a I lee at ions of several irregularities. Amongst other irregularities, it was found that no reasons had been recorded for expanding the scope of limited scrutiny, no approval was taken from the PCIT for the conversion of the limited scrutiny case to a complete scrutiny case and the order sheet was maintained very perfunctorily. This gave rise to a very strong suspicion of mala fide intentions."

8. The above CBDT instructions and the letter clearly establish that it is not open for the Assessing Officer to travel beyond the reason for selection of an assessee that for limited scrutiny.

9. In such circumstances it has to be seen, whether, the Ld. PCIT was justified in holding the assessment order to be erroneous

insofar as it is prejudicial to the interest of the Revenue as the Ld.AO not considering the aspect which is beyond the purview of limited scrutiny. This issue has been considered by various benches of this *Tribunal*.

10. In case of *Deccan Paper Mills Co. Ltd. (supra)* Hon'ble Pune Bench of the *Tribunal* held, that:

*"40. Now, coming to the aspect of book profits which was considered by the Commissioner and the order of the Assessing Officer was held to be erroneous and prejudicial to the interest of revenue. In this regard, it may be pointed out that the case of assessee was picked up for scrutiny under CASS for the limited purpose of verifying the Chapter VI-A deduction. Once the case is picked up for specific purpose under CASS, then it is outside the purview of the Assessing Officer to look into any other aspect other than the aspect for which it is picked up. Hence, the Assessing Officer has not formed any opinion in respect of computation of book profits in the hands of assessee. Once, no such opinion has been formed by the Assessing Officer, the Commissioner has erred in holding the order of the Assessing Officer to be erroneous and prejudicial to the interest of revenue in this regard. Accordingly, we reverse the findings of the Commissioner. Accordingly, we hold that the order passed by the Commissioner under section 263 of the Act is invalid and the same is quashed for both the assessment years."*

11. In case of *R & H. Property Developer (P.) Ltd. (supra)* it was held that:

*'As a matter of fact, what cannot be done directly cannot be done indirectly. Accordingly, in terms of our aforesaid observations, we are of the considered view that as the A.O had aptly confined himself to the issue for which the case of the assessee was selected for limited scrutiny, therefore, no infirmity can be attributed to his order for the reason that he had failed to dwell upon certain other issues which were clearly beyond the realm of the reason for which the case of the assessee was selected for limited scrutiny as per the AIR information. We thus not being able to concur with the view taken by the Pr. CIT that the order passed by the A.O under sec. 143(3), dated 10-10-2016 is erroneous, therefore, set aside his order and restore the order passed by the A.O. As we have quashed the order passed by the Pr. CIT under sec. 263 on the ground of invalid assumption of jurisdiction by him, therefore, we refrain from adverting to and therein adjudicating the contentions advanced by the Id. A. R on the merits of the case, which thus are left open."*

12. Similar, is the view taken consistently by the benches of this *Tribunal* in the other two cases also, relied upon by the assessee.

In the circumstances, in view of the consistent view taken in similar matters we are of the considered opinion that when the assessing officer is bound to follow the CBDT instructions and while following such instructions and after verification of the material furnished by the assessee on the aspect covered by the limited scrutiny, is not open for the Ld. PCIT to say that not advertent to the other aspects of the competition would render the assessment order erroneous and prejudicial to the interest of the Revenue.

We are therefore of the opinion that the impugned order cannot be sustained and, the same is liable to be quashed. We accordingly quash the same.

**In the result, appeal of the assessee is allowed.**

**Order pronounced in the open court on 29<sup>th</sup> August, 2022.**

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 29<sup>th</sup> August, 2022.  
/MS /

Copy to:

- |               |                        |
|---------------|------------------------|
| 1. Appellant  | 4. CIT(A)              |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT        | 6. Guard file          |

By order

Assistant Registrar,  
ITAT, Bangalore