

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA BENCH "B", KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.149/Kol/2022
Assessment Year: 2017-18**

M/s. Hill Top Arcade Residency		ITO, Ward-32(1), Kolkata
3D, Duckback House, 41, Shakespeare Sarani, Kolkata-700017.	Vs.	
PAN: AABAH 3050 R		
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Manoj Kataruka, Advocate
Respondent by : Shri Sudipta Guha, CIT/DR

Date of Hearing : 28.06.2022
Date of Pronouncement : 22.09.2022

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the assessee is arising out of the order of ld. PCIT, vide order No. ITBA/REV/F/REV5/2021-22/1040694943(1) dated 14.03.2022 for AY 2017-18 passed u/s 263 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Grounds taken by the assessee are four in numbers, all of which relates to challenging the assumption of jurisdiction by the ld. PCIT in invoking the revisionary proceedings and passing the impugned order u/s 263 of the Act, in respect of two issues raised which are (i) in respect of advances received from customers and (ii) in respect of capitalization of project expenses.

3. Before us, Shri Manoj Kataruka, Advocate represented the assessee and Shri Sudipta Guha, CIT(DR) represented the department.

4. Brief facts of the case are that assessee is in the business of development of property. It filed its return of income on 29.10.2017 reporting total income as Nil which was assessed u/s 143(3) of the Act at nil income. Subsequent to the said assessment, ld. PCIT invoked the revisionary proceedings after calling for and examining the assessment records by raising the issue relating to advance received from customers reported in the balance sheet for AY 2016-17 at Rs. 20,00,000/- and the amount received from customers as reported in the balance sheet for AY 2017-18 at Rs. 3,72,77,107/-, which according to him should have been reported as Rs. 3,92,77,107/- (Rs. 20,00,000/- + Rs. 3,72,77,107/-). Thus, ld. PCIT observed that amount of Rs. 20,00,000/- was under-reported which has not been considered by the ld. AO in passing the assessment order. The other issue which the ld. PCIT raised is in respect of claim of project expenses of Rs. 1,84,56,488/- which includes purchase/cost of raw material. He noted that in the tax audit report, assessee has reported that it follows exclusive method of accounting in respect of sales tax, customs duty, excise duty, service tax and any other indirect tax. However, contrary to this, project cost has been accounted by including VAT of Rs. 23,37,284/- which ought to have been disallowed and added back to the total income of the assessee.

4.1 On the above issues raised by the ld. PCIT, a show cause notice was issued on 16.02.2022 requiring the assessee to substantiate its claim. Before the ld. PCIT, assessee filed its detailed reply which is reproduced in the impugned order itself.

5. Before us also, ld. Counsel for the assessee referred to the same submission and corroborated the same with the material placed in the Paper Book containing 62 pages.

6. Ld. Counsel for the assessee submitted in respect of the first issue relating to advance from customers that ld. PCIT has misunderstood and misread the balance sheet of the assessee for the impugned year. He pointed out by referring to the balance sheet placed in the Paper Book at page no. 30 & 48 to demonstrate that advance from customers are reflected in it as the net figure of all the years and not what is received during the year. Ld. Counsel stated that a balance sheet is defined as a statement of assets, liabilities and capital of a business at a particular point in time, giving details of balances, income and expenditure over the preceding period which is a cumulative reflection of the business assets and liabilities. He referred to the balance sheet as at 31.03.2016 wherein advance from customers is reported at Rs. 20,00,000/-. He then referred to the balance sheet as at 31.03.2017 which reports advance from customers as Rs. 3,72,77,107/- and thus stated that the balance of Rs. 20 lacs of the preceding year forms part of the balance of advance from customers in the current year as reported in the balance sheet. He further referred to the details of advances received from customers, tabulated at page 56 of the Paper Book to give a list of customers from whom the advances were received in the two respective years, referred by the ld. PCIT:

DETAILS OF ADVANCE RECEIVED FROM CUSTOMERS

<i>Name</i>	<i>As on 31.03.2016</i>	<i>As on 31.03.2017</i>
<i>Ajayvir Jangra</i>	<i>5,00,000.00</i>	<i>28,45,910.00</i>
<i>Dr. Kasim</i>	<i>5,00,000.00</i>	<i>28,80,620.00</i>
<i>Aditi Babbar</i>		<i>30,10,000.00</i>
<i>Sunil Sharma</i>	<i>5,00,000.00</i>	<i>28,38,360.00</i>
<i>Amitha B Shetty</i>		<i>31,97,000.00</i>
<i>Avinash Ashok Kumar</i>		<i>29,13,983.00</i>
<i>BS Konnur</i>		<i>31,61,475.00</i>
<i>K Sadasivam</i>		<i>29,05,000.00</i>
<i>Lakshmi BV</i>		<i>31,30,215.00</i>
<i>M S Shivaprasad</i>		<i>31,30,215.00</i>
<i>Mithun Kundapoor</i>		<i>5,00,000.00</i>
<i>Vinayak/ Revathi Naik</i>		<i>35,03,000.00</i>
<i>Basant/ Suparva Nayak</i>		<i>32,61,329.00</i>
<i>Kavya H.R.</i>	<i>5,00,000.00</i>	
TOTAL	20,00,000.00	3,72,77,107.00

7. Accordingly, ld. Counsel submitted that the consideration drawn by the ld. PCIT for invoking the revisionary proceedings u/s 263 of the Act by holding that advance from customers to the extent of Rs. 20,00,000/- is baseless, incorrect and not borne out of the records. He also stated that such an approach demonstrates non-application of mind by the ld. PCIT, and lack of rudimentary knowledge of accountancy for the purpose of reading a balance sheet. On the second issue relating to project expenses, ld. Counsel admitted that an inadvertent error occurred on the part of the auditor who had reported for exclusive method of accounting in tax audit report in respect of indirect taxes as against the inclusive method followed by the assessee. Ld. Counsel submitted that since there has been no sale during the year, the entire project expenses have been transferred to closing stock/work in progress and duly reported in the profit & loss account for which, he referred to page 31 of the Paper Book and is reproduced as under:

PROFIT & LOSS ACCOUNT FOR THE YEAR ENDED 31ST MARCH 2017

<i>PARTICULARS</i>	<i>Rs.</i>	<i>PARTICULARS</i>	<i>Rs.</i>
<i>To Opening Stock/ Work in progress</i>	7,57,94,032.70	<i>By Closing stock/ Work in progress</i>	17,09,30,777.69
<i>Project expenses</i>	9,51,36,744.99		
<i>Net profit</i>	-		
	17,09,30,777.69		17,09,30,777.69

8. By referring to the closing stock as reported in the P & L A/c, ld. Counsel submitted that the element of VAT which is included in the cost of purchases of raw materials also forms part of the closing stock / work in progress which is shown on the income side of the profit & loss account. Therefore, it does not result into any loss to the revenue since the closing stock which is inclusive of VAT of Rs. 23,37,284/- will become opening stock for the next year and thus there is no overstating

of expenditure by the assessee including the VAT component in its purchases of raw material as alleged by the ld. PCIT for invoking the revisionary proceedings u/s 263 of the Act. Ld. Counsel submitted that despite the detailed explanation, ld. PCIT passed the impugned order directing the ld. AO to verify in depth so as to examine the veracity of the claims made by the assessee. He thus set aside the assessment order for the purpose of in depth enquiry as noted by him in para 6 of the impugned order.

9. Per contra, ld. CIT, DR placed reliance on the order of the ld. PCIT and stated that there should not be any prejudice to the assessee if the matter is examined by the ld. AO in terms of directions given by the ld. PCIT in the impugned order.

10. We have heard the rival contentions and perused the material on record. Admittedly, it is an undisputed fact that assessee has disclosed advances received from customers in its audited balance sheet on the date of 31.03.2016 and 31.03.2017. Further, it is a rudimentary knowledge of accountancy that balance sheet is prepared with the balances in the books of accounts taken at a particular point of time, which is 31.03.2017 in the present case and a statement of assets, liabilities and capital of a business or an organization is prepared depicting financial picture at a particular given point in time. Balance sheet gives the whole picture which is a cumulative reflection of the assets, liabilities and capital on a particular date. The amount of advance from customers reported in the balance sheet "as on" 31.03.2017 for an amount of Rs. 3,72,77,107/- signifies the amount received from customers as advance upto the date of 31.03.2017 when the said balance sheet was drawn. Thus, this balance as on 31.03.2017 is inclusive of Rs. 20 lacs which was received by the assessee in the period prior to the financial year 2016-17 for which the balance was drawn "as on" 31.03.2016 wherein the advance received from customers

till that date was reported at Rs. 20 lacs in that balance sheet prepared as on 31.03.2016. Lack of such a rudimentary knowledge of accountancy for reading a balance sheet and thereby invoking the revisionary proceedings by holding that Rs. 20 lacs has been understated is not appreciated.

10.1 Further, we note that in respect of the second issue relating to project expenses in the tax audit report, it has been reported as exclusive method of accounting in respect of indirect taxes. Assessee has accounted for cost of purchases of raw material under an inclusive method but since there has been no sale during the year, the entire project expenses have formed part of the closing stock/work in progress taken on the income side of the profit & loss account. Thus the VAT component of Rs. 23,37,284/- is on both sides of the P & L A/c, on the debit side included in the cost of purchases and on the credit side in the closing stock. Therefore, there is no loss to the revenue on this account. Even if, by adopting the exclusive method of accounting, the VAT component is removed from the cost of purchases then at the same time, it will get removed from the closing stock/work in progress, making it revenue neutral. From the above factual matrix of the two issues raised by the ld. PCIT, we find that ld. PCIT has not applied his mind to arrive at a consideration which is erroneous in so far as prejudicial to the interest of the revenue, for passing the impugned order u/s 263 of the Act.

11. We observe that in the course of proceedings u/s 263 of the Act before the Ld. PCIT, assessee had furnished the relevant details and explained the issues raised through the show cause notice by the Ld. PCIT, supporting its contentions by various decisions. It is well settled law that for invoking the provisions of section 263 of the Act, both the conditions that the order must be erroneous and prejudicial to the

interest of revenue needs to be satisfied. This ratio stands laid down by various Hon'ble Courts.

12. For that, let us take the guidance of judicial precedence laid down by the Hon'ble Apex Court in the case of Malabar Industries Ltd. vs. CIT [2000] 243 ITR 83 (SC) wherein their Lordships have held that *twin conditions* needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer *must be erroneous and so far as prejudicial to the interest of the Revenue*. In the following circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed *on incorrect assumption of fact*; or (ii) *incorrect application of law*; or (iii) Assessing Officer's order is in *violation of the principle of natural justice*; or (iv) if the order is passed by the Assessing Officer *without application of mind*; (v) if the AO *has not investigated the issue* before him; [*because AO has to discharge dual role of an investigator as well as that of an adjudicator*] then in aforesaid any of the events, the order passed by the AO can be termed as erroneous order. Looking at the second limb as to whether the actions of the AO can be termed as prejudicial to the interest of Revenue, one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of Malabar Industries (*supra*) held that this phrase i.e. "*prejudicial to the interest of the revenue*" has to be read in conjunction with an *erroneous order* passed by the AO. Their Lordships held that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue unless the view taken by the Assessing Officer is unsustainable in law.

13. We find that the two issues in the present case are purely on facts which are verifiable from the records of the assessee. Examination and verification of the audited financial statements i.e. Balance Sheet and Profit & Loss account of the assessee reveals the correct state of their affairs in respect of the two issues raised in the impugned revisionary proceedings for which both, ld. PCIT and the ld. CIT, DR could not bring any material on record to controvert the verifiable factual position.

14. Accordingly, on the issues raised by the Ld. PCIT in the revisionary proceedings, no action u/s 263 of the Act is justifiable which in our considered view cannot be sustained under the facts and circumstances of the present case and judicial precedents dealt herein above. We, therefore, quash the impugned order u/s 263 of the Act and allow the grounds raised by the assessee.

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

Order pronounced in the open court on 22.09.2022.

**Sd/-
(SANJAY GARG)
JUDICIAL MEMBER**

**Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER**

Kolkata, Dated: 22.09.2022.
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: M/s. Hill Top Arcade Residency.
2. The Respondent: ITO, Ward-32(1), Kolkata.
3. The CIT, Concerned, Kolkata
4. The CIT (A) Concerned, Kolkata
5. The DR Concerned Bench

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata