

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.1314/Mum/2022
(Assessment Year :2017-18)**

M/s. Mahaavir Enterprises 66/67, Mahavir Centre, Plot No. 77, Sector – 17, Vashi, Navi Mumbai-400703	Vs.	Pr. Commissioner of Income Tax (Central), Aayakar sadan, Bodhi Towers, Salisbury Park, Gultekadi, Pune-411037
PAN/GIR No. AAOFM3668A		
(Appellant)	..	(Respondent)

Assessee by	Shri Prateek Jain
Revenue by	Shri A.B.Koli
Date of Hearing	29/09/2022
Date of Pronouncement	31/10/2022

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.1314/Mum/2022 for A.Y.2017-18 preferred by the order against the revision order of the Id. Principal Commissioner of Income Tax PCIT (Central), Pune u/s.263 of the Act dated 29/03/2022 for the A.Y.2017-18

2. The assessee has raised the following grounds of appeal:-

The following grounds of appeal are without prejudice to one another.

1. *On the facts and circumstances of the case and in law the Pr. Commissioner of Income Tax erred in passing the impugned order U/s. 263 of the Income Tax Act, 1961 ('the Act') without providing an adequate opportunity of being heard to the appellant as per the ground stated in the order or otherwise.*
2. *The Appellant submits that the order U/s .263 of the Act made by the Pr. Commissioner of Income Tax is bad in law, erroneous, invalid, void, in excess of and / or in want of jurisdiction and otherwise illegal.*
3. *On the facts and circumstances of the case and in law the Pr. Commissioner of Income Tax erred in holding that the assessment order passed by the Assessing Officer u/s .143(3) of the Act was erroneous and/or prejudicial to the interests of the revenue within the meaning of the provisions of section 263 to the extent of AO's action of not verifying the details and source of Rs 5,42,00,000/- being capital introduced during the year under consideration, as per the ground/s contained in the order or otherwise.*
4. *On the facts and circumstances of the case and in law the Pr. Commissioner of Income Tax erred in holding that the assessment order passed by the Assessing Officer u/s. 143(3) of the Act was erroneous and / or prejudicial to the interests of the revenue within the meaning of the provisions of section 263 to the extent of AO's action of not examining the details and source for investments made by the appellant during the year under consideration, as per the ground/s contained in the order or otherwise.*
5. *On the facts and circumstances of the case and in law the Pr. Commissioner of Income Tax erred in holding that the assessment order passed by the Assessing Officer u/s .143(3) of the Act was erroneous and / or prejudicial to the interests of the revenue within the meaning of the provisions of section 263 to the extent of AO's action of examining the investment in time deposit amounting to Rs. 21.58,65,487/-, as per the ground/s contained in the order or otherwise.*
6. *On the facts and circumstances of the case and in law the Pr. Commissioner of Income Tax erred in holding that the assessment order passed by the Assessing Officer u/s. 143(3) of the Act was erroneous and / or prejudicial to the interests of the revenue within the meaning of the provisions of section 263 to the extent of AO's action of not examining the investment in debentures amounting to Rs. 36,00.000/-, as per the ground/s contained in the order or otherwise.*
7. *On the facts and circumstances of the case and in law the Pr. Commissioner of Income Tax failed to consider that the assessment as framed u/s 143(3) by the Assessing Officer was after due application of mind*

and after considering the detailed replies on various dates as filed before him during the course of re-assessment proceedings.

8. The Appellant craves leaves to add, to amend, alter, modify and/or withdraw any or all of the above grounds of appeal, each of which are without prejudice to one another.

The appellant prays that the impugned order of the Pr. Commissioner of Income Tax may please be quashed and the order of the Assessing Officer may please be restored.”

3. We have heard rival submissions and perused the materials available on record. The assessee is a partnership firm engaged in the business of construction of residential and commercial buildings. The return of income for the A.Y.2017-18 was filed by the assessee firm on 23/08/2017 declaring total income at Rs.3,25,18,040/-. The assessment was completed u/s.143(3) of the Act on 28/11/2019 expecting the returned income. During the year under consideration, the assessee firm had received partner's capital of Rs.4,95,00,000/- from M/s. Mahaavir Universal Homes Pvt. Ltd., and Rs.47,00,000/- from M/s. Abhinandan Buildtech Pvt. Ltd. In the opinion of the Id. PCIT, the Id. AO had not made any enquiries with regard to the said capital introduction made by the partners in the firm. Further, from the ITS data, it revealed that there was a time deposit to the extent of Rs.21,58,65,487/- made by the assessee firm and assessee had also made investment in bonds and debentures to the extent of Rs.36,00,000/-. In the opinion of the Id. PCIT, the source of making these investments were not examined by the Id. AO. On these two grounds, the Id. PCIT treated the order of the Id. AO as erroneous and prejudicial to the interest of the Revenue and sought to revise the said order by invoking his revision jurisdiction u/s.263 of the Act.

3.1. The assessee in response to show-cause notice prima facie stated that adequate enquiries were indeed made by the Id. AO with regard to all the issues flagged by the Id. PCIT. The assessee pleaded that there

was a query raised by the Id. AO vide notice u/s.142(1) of the Act calling for details of all the balance sheet items which admittedly included the details of capital introduction made by the partners and details of various investments made by the assessee. The assessee had indeed replied to the same vide letter dated 12/09/2019 together with all the relevant annexures thereon. Further, the assessee pleaded that the partners of the assessee firm i.e. M/s. Mahaavir Universal Homes Pvt. Ltd., and M/s.Abhinandan Buildtech Pvt. Ltd., were also assessed by the very same Assessing Officer. In fact, the order u/s.143(3) of the Act was passed by the very same Id. AO in the case of M/s. Mahaavir Universal Homes Pvt. Ltd., for A.Y.2017-18 u/s.143(3) of the Act on 22/11/2019 which is six days prior to the date of completion of assessment in the case of assessee firm herein. Accordingly, it was pleaded that the Id. AO was duly satisfied with the copies of balance sheets and ledger extracts of partners submitted before the Id. AO wherein the capital introduced by the partners were duly reflected in their respective books together with their respective sources thereon. Hence, it was pleaded that there was sufficient enquiries made by the Id.AO and the Id. AO was duly satisfied with the availability of source in the hands of the partners for making capital contribution in the assessee firm.

3.2. With regard to the second issue of investment in time deposit as per ITS data, the assessee pleaded that even as per the show-cause notice issued by the Id. PCIT, the said investment was made only on 21/04/2017 which falls in A.Y.2018-19. Hence, there was no need or occasion for the Id. AO to examine the said investment while framing the scrutiny assessment for A.Y.2017-18 as it is not relevant for the completion of assessment for 2017-18. With regard to alleged investment in bonds and debentures to the extent of Rs.36,00,000/-, the assessee

pleaded that no such investment was ever made and that only investment which was made by the assessee is only a sum of Rs.6.30 lakhs towards fixed deposits kept with bank. It was categorically denied that no investment in debentures and bonds to the extent of Rs.36,00,000/- was made by the assessee.

3.3. The Id. PCIT completely ignored the aforesaid submissions of the assessee and proceeded to treat the order of the Id. AO as erroneous and prejudicial to the interest of the Revenue on the ground that the Id. AO had not made any enquiries with respect to the aforesaid two issues.

3.4. From the aforesaid narration of facts which remain undisputed before us, we find ---

- (a) With regard to capital introduction made by the partners, the financial statements of the partners were duly placed on record before the lower authorities. The same is also enclosed in the paper books filed before us. From the perusal of the said financial statements, for the relevant year under consideration, we find that the said partners have proper sources for making investment in capital contribution in the assessee firm. Moreover, it is not in dispute that the partners are also assessed by the very same Assessing Officer. We have also gone through the scrutiny assessment order of M/s. Mahaavir Universal Homes Pvt. Ltd (partner) u/s.143(2) of the Act on 22/11/2019 framed by the very same Assessing Officer as that of the assessee herein which is enclosed in pages 32 to 35 of the paper book. From the balance sheet of M/s. Mahaavir Universal Homes Pvt. Ltd, we find that the reserves and surplus of the said company is

41.90 crores which sufficiently proves the creditworthiness of the said party to make investment of Rs.4.95 Crores in assessee firm. Similarly, from the perusal of the balance sheet of M/s. Abhinandan Buildtech Pvt. Ltd (another partner), the reserves and surplus of the said company is Rs.12.20 Crores which sufficiently proves the creditworthiness for making investment of Rs.47,00,000/- in assessee firm. The transactions of making capital contribution in assessee firm have been duly reflected in their respective financial statements. It is not in dispute that the said capital contribution has been duly made in assessee firm through regular banking channels. Hence, the identity of the partners, creditworthiness of the partners and genuineness of transactions have been duly proved beyond doubt in the instant case. Hence, there is no case for even doubting the veracity of transaction of capital contribution by the partners in the assessee firm. When all these details were duly placed on record, it is primary duty of the Id. PCIT to bring on record as to what error is found in those documents, which was not done in the instant case. At the cost of repetition, we hold that all these documents have already been examined by the Id. AO during the course of scrutiny assessment proceedings and hence, the Id. AO had taken plausible view in the matter. The Id. PCIT in our considered opinion, cannot try to substitute his erroneous view in the place of correct view already taken by the Id. AO. Hence, the revision jurisdiction initiated u/s.263 of the Act on this aspect is hereby dismissed and quashed.

- (b) With regard to investment in time deposits to the extent of Rs.21,58,65,487/- based on ITS details, we find even as per the

show-cause notice of the Id. PCIT, the said investment was allegedly made only on 21/04/2017 which pertains to A.Y.2018-19. The Id. AO is only framing the scrutiny assessment for A.Y.2017-18. Hence, the Id. AO need not have to look into the transactions which had happened in A.Y.2018-19 while framing the scrutiny assessment for A.Y.2017-18. Hence, there cannot be any error in the order passed by the Id. AO for the A.Y. 2017-18 in this regard. Accordingly, the revision order passed by the Id. PCIT u/s.263 of the Act on this issue is devoid of merit and is hereby dismissed and quashed.

- (c) With regard to alleged investment made in bonds and debentures of Rs.36,00,000/-, we find from the financial statements of the assessee firm that assessee had made investments in bank deposits to the extent of Rs.6.30 lakhs which is duly reflected in its financial statements. The assessee had categorically denied that no investment of Rs.36,00,000/- was made in bonds and debentures by it. The assessee could be expected to prove what has been done by it. The assessee could not be expected to prove the negative. When the submission with regard to the fact of not making investment in bonds and debentures to the tune of Rs.36,00,000/- was made by the assessee before the Id. PCIT, the Id. PCIT did not bother to make any further verification or even confront the assessee as to from where he had obtained such information that assessee had made investment of Rs.36,00,000/- in bonds and debentures. The Id. PCIT took the figures mentioned in the ITS details to be sacrosanct and proceeded to treat the order of the Id. AO as erroneous and prejudicial to the interest of the Revenue on the ground that no enquiry has been carried out by

the Id. AO with regard to the same. In our considered opinion, it is primary duty of the Id. PCIT to atleast bring on record as to in what entity the assessee had made alleged investment in bonds and debentures to the tune of Rs.36,00,000/-. As stated earlier, the assessee cannot be expected to prove the negative i.e. the assessee cannot be expected to prove the genuineness of the transaction together with its sources for a transaction which has not been carried out by it. Accordingly, we hold that the order of the Id. AO cannot be treated as erroneous. Hence, the revision order initiated u/s.263 of the Act by the Id. PCIT on this aspect is devoid on merit and is hereby dismissed and quashed.

3.5. In view of the aforesaid observations, we have no hesitation in quashing the revision order passed by the Id. PCIT u/s.263 of the Act. Accordingly, the grounds raised by the assessee are allowed both on invalid assumption of jurisdiction as well as on merits.

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

Order pronounced on 31/10/2022 by way of proper mentioning in the notice board.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 31/10/2022
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai