

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'B' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.790/Del./2022  
(ASSESSMENT YEAR : 2017-18)**

Goel And Sons Associates,  
120B/1, Saket,  
Meerut – 250 001 (Uttar Pradesh).

vs. Pr.CIT,  
Ghaziabad.

**(PAN : AAQFG1915Q)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None  
REVENUE BY : Shri C.P. Pathak, CIT DR

Date of Hearing : 31.10.2022  
Date of Order : 03.11.2022

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of the Id.

Pr.CIT, Ghaziabad dated 17.03.2022 for the assessment year 2017-18.

2. The grounds of appeal taken by the assessee read as under :-

“1. That the Principal Commissioner of Income Tax, Ghaziabad while passing the order violated the principles of natural justice as no proper and sufficient opportunity was granted to respond to the show cause notice.

2. That the Worthy Principal Commissioner Of Income Tax has erred in law as well as on facts of the case in invoking provisions of section 263 of the Income Tax Act, 1961 and the order U/S 263 as passed, is arbitrary, unjust and illegal.

3. On the facts and in the circumstances of the case, the Worthy Principal Commissioner of Income Tax has erred in holding the assessment order dated 21-12-2019 passed U/S 143(3) by the Ld. Assessing Officer as erroneous and prejudicial to the interest of the revenue and finally setting aside the same to the file of Assessing officer. Observations made, inferences drawn and findings recorded by the Worthy Principal Commissioner of Income Tax in her order passed U/S 263 are incorrect, unreasonable and untenable in law.”

3. Brief facts of the case are that the assessee has e-filed its ITR for AY 2017-18 on 29.10.2017 declaring total income of Rs.1,01,700/-. Later on, the case was selected for complete scrutiny under CASS with reasons “real estate business with high closing stock and introduction of larger capital”. The ITO, Ward 1(2)(3), Meerut completed assessment order u/s 143 of the Income-tax Act, 1961 (for short 'the Act') dated 21.12.2019 on total income of Rs.1,01,700/-. Thereafter Id. CIT issued show-cause notice for invoking provisions of section 263 of the Act as under :-

"2. From perusal of assessment record, for the year under consideration, it is observed that the assessee had shown secured loan of Rs.4,80,87,019/- against opening balance of Rs.5,17,59,877/-. The assessee had debited interest of Rs.56,80,587/- on this loan and the same had been taken from the India Bulls Housing Finance Limited which is non-banking financial company and is not exempt from the TDS provisions of the Act. As per audit report, the assessee has not deducted any tax at source on payment of interest of Rs.56,80,587/- u/s 194A of the Act. Therefore, as per the provision of section 40(a)(ia) , 30% of the amount of interest of Rs.56,80, 586/- paid on loan, which works out to Rs.17,04,176/-, should have been

disallowed and added to the total income of the assessee which was not done by the AO.

3. In view of the above, the assessment order passed by the ITO, Ward-1 (2)(3), Meerut, is erroneous and prejudicial to the interest of revenue and may be cancelled or modified by invoking the provisions of section 263 of the Income Tax Act, 1961.”

4. Thereafter Id. CIT noted that in response of show cause notice dated 04.03.2022 fixed for hearing on 08.03.2022 neither assessee nor AR attended. Subsequently, notice for hearing vide DIN-ITBA/REV/F/REV1/2021-22/1040544843(1) dated 10.03.2022 was issued to the assessee given an opportunity to file its reply or explain its case through personal hearing on 15.03.2022. No compliance has been received so far from the side of assessee. From the above it is clear that the assessee has nothing to say in this regard.

5. Thereafter, Id. CIT discussed the matter and directed the AO to make proper enquiry and pass the assessment order.

6. Against this order, assessee has filed appeal before us. We have heard the Id. DR and perused the records.

7. We find that at the outset, the ground raised by the assessee is lack of proper opportunity. A perusal of the order shows that on the back of bare two notices which were said to be sent for compliance within 3/4 days, Id. CIT inferred that assessee has nothing to say.

8. In our considered opinion, on the facts and circumstances of the case, interest of justice will be served if the issue is remanded to the file of Id. CIT (A). Ld. CIT (A) is directed to consider the issue afresh after giving an opportunity of being heard to the assessee. We direct accordingly.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open court on this 03<sup>rd</sup> day of November, 2022.**

**Sd/-  
(YOGESH KUMAR US )  
JUDICIAL MEMBER**

**Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 04<sup>th</sup> day of November, 2022  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**

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