

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.719/M/2022  
Assessment Year: 2017-18**

M/s. Graceworks Realty & Leisure Pvt. Ltd., 462, Senapati Bapat Marg, Phoenix Mills Premises, Lower Parel, Mumbai – 400 013 <b>PAN: AAPCG2308P</b>	Vs.	Pr. Commissioner of Income Tax-8, 611, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Vijay Mehta, A.R.  
Revenue by : Shri Rakesh Garg, D.R.

Date of Hearing : 20 . 09 . 2022  
Date of Pronouncement : 24 . 11 . 2022

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

Appellant M/s. Graceworks Realty & Leisure Pvt. Ltd. (hereinafter referred to as the 'assessee') by filing present appeal sought to set aside the impugned order dated 22.02.2022 passed by the Pr. Commissioner of Income Tax (the PCIT) invoking revisionary jurisdiction contained under section 263 of the Income Tax Act (hereinafter referred to as the 'Act') on the grounds inter alia that:

*"1. On the facts and in the circumstances of the case and in law, the Hon'ble Principal Commissioner of Income Tax - 8 erred in invoking the provisions of Section 263 of the Act thereby assuming jurisdiction under the said provisions. The Hon'ble PCIT further erred in holding that the assessment completed in the case of appellant had been made without carrying out necessary enquires*

*into the specified issue and hence, the assessment order so passed by the learned A.O. u/s. 143(3) of the Act dated 29.12.2019 is erroneous and prejudicial to the interest of the revenue. The appellant prays that the order of the Principal CIT u/s. 263 may kindly be quashed and the assessment order of the Ld. A.O dated 29.12.2019 may be restored.*

*2. On the facts and in the circumstances of the case and in law, the Hon'ble Principal Commissioner of Income Tax - 8 erred in holding that, the assessment order passed by the Ld. AO u/s. 143(3) of the Act dated 29.12.2019 is erroneous and prejudicial to the interest of the revenue and hence set aside the appellant case back to the Ld. A.O. for making a fresh assessment. The appellant prays that the said action of Hon'ble Principal CIT may kindly be quashed.*

*3. On the facts and in the circumstances of the case and in law, the Hon'ble Principal Commissioner of Income Tax -8 erred in directing the Ld. A.O. to treat the Professional / Consultancy fees / Fee for technical services of Rs.1,39,77,878 (91,38,214 + 48,39,664) as against Rs.99,93,035.provided by the appellant in Return of Income filed u/s. 139(1) and treat the differential amount of Rs.39,84,843 as amount on which there has been short levy of tax and which has not been reflected in the books. The appellant prays that the said action of Hon'ble Principal CIT may kindly be quashed.*

*4. On the facts and in the circumstances of the case and in law, the Hon'ble Principal Commissioner of Income Tax -8 erred in issuing directions to the Ld. AO u/s. 263 of the Act for making a fresh assessment based on erroneous facts and without appreciating the fact that the appellant had filed an adjournment letter dated 18.02.2022 on the e-filing portal requesting the Hon'ble Principal Commissioner of Income Tax - 8 to grant some time to compile the information available, however, the Hon'ble Principal Commissioner of Income Tax -8 without giving sufficient opportunity of being heard to the appellant passed the order under section 263 of the Act. The appellant prays that the said action of Hon'ble Principal CIT may kindly be quashed.*

*5. The Appellant craves leave to add, alter, amend or withdraw any of the Grounds of Appeal herein above and to submit such further arguments, statements, documents and papers as may be considered necessary either at or before the hearing of the appeal.”*

2. Briefly stated facts necessary for adjudication of the issue at hand are: assessee company being a builder and developer filed its return of income declaring total income at Rs.32,56,03,455/-, which was subjected to scrutiny. Assessing Officer (AO) framed the assessment under section 143(3) at the total income of

Rs.1,33,14,592/- by making addition of Rs.16,94,31,857/-, Rs.73,23,206/-, Rs.44,90,799/- & Rs.3,88,57,312/- on account of disallowance of claim of interest expenditure, disallowance of unrealized rent, disallowance of deemed rental income in respect of vacant units respectively.

3. However, the Ld. PCIT by invoking the revisionary jurisdiction issued a notice under section 263 of the Income Tax Act, 1961 (for short 'the Act') by flagging the issue that "Rs.99,93,035/- is paid as fee for professional/consultancy/fee for technical services whereas in form No.3CD Rs.91,38,214/- and Rs.48,39,664/- on which TDS of Rs.6,80,932/- and Rs.4,83,971/- was deducted under section 194J of the Act were shown and no explanation or submission of reconciliation of excess amount of Rs.39,84,843/- was filed nor the same was examined during the assessment proceedings, thus the difference of Rs.39,84,843/- being not reflected nowhere in the books of accounts remains to be added back under section 69C being unexplained expenditure." Declining the contentions raised by the assessee the Ld. PCIT proceeded to conclude that "the AO has failed to examine the issue flagged by way of notice under section 263 of the Act in view of clause (a) of explanation 2 below sub section 1 of section 263, to this extent the assessment order passed by the AO is certainly erroneous, in so far as prejudicial to the interest of the Revenue and thereby set aside the assessment order passed by the AO and directed the AO to pass fresh order in accordance with law after providing opportunity of being heard to the assessee." Feeling aggrieved from the impugned order passed by the Ld. PCIT under section 263 of the Act the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly, the assessee has paid professional fee of Rs.39,84,843/- after deducting TDS under section 194J of the Act without debiting the said amount under the specific head in the profit & loss account. It is also not in dispute that on 18.02.2022 assessee moved an adjournment letter before the Ld. PCIT seeking reasonable time to respond to the notice under section 263 of the Act which is available along with screenshot of adjournment details reflected in e-filing portal of Income Tax Department, Government of India available at page 61 and 62 of the Act. In the screenshot available at page 62 of the paper book it is duly recorded that adjournment request filed on 18.02.2022 seeking time till 05.03.2022.

6. In the backdrop of the aforesaid undisputed fact when we examine the impugned order particularly para 2 it is recorded that despite issuance of notices none appeared on behalf of the assessee nor made any submissions on the requisite details and as such Ld. PCIT proceeded to decide the case ex-parte. Para 2 of the impugned order is extracted for ready perusal as under:

*“2. Notice under section 263 of the Act was issued to the assessee company through the ITBA vide No ITBA/REV/F/REV1/2021-22/1039703079( 1)on 14/02/2022 fixing date of hearing to 18/02/2022 at 11.30 AM with a request to attend the hearing in person or through authorized representative and to submit their representation, if any, along with supporting documents/information in support of the issues involved. It was further stated in the notice that personal attendance is not required and revision proceedings can be concluded on the basis of written submission/representations filed*

*in the office on or before the said due date or file the written submissions in the e-filing portal using the link: incometaxindiaefiling.gov.in or email the written submission to mumbai.pcit8@incometax.gov.in. However neither the assessee nor its authorised representative attended nor made its submissions on the given date. As there is no compliance from the assessee, it is presumed that the assessee does not have anything to state on the aforesaid matter and accordingly, the revision order under section 263 of the Income Tax, 1961 is being made on the basis of material available on records.”*

7. We are of the considered view that the Ld. PCIT has passed the impugned order without providing adequate opportunity of being heard to the assessee and recorded in para 2 extracted above that there is no compliance from the assessee to the notice issued and it is presumed that “the assessee does not have anything to tell on the aforesaid matter” are patently wrong as is evident from adjournment application moved by the assessee dated 18.02.2022 supported with copy of e-filing portal of Income Tax Department, Government of India, available at page 61 & 62 of paper book. The Ld. PCIT passed the order in haste even without rejecting the adjournment application moved by the assessee. So without entering into argument addressed by the Ld. A.R. for the assessee, we are of the considered view that the case is required to be remitted back to the Ld. CIT(A) to decide the issue on facts once for all by providing opportunity of being heard to the assessee. Consequently, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 24.11.2022.**

**Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 24.11.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.