

आयकर अपीलीय अधिकरण  
मुंबई पीठ “ई” मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य, एवं  
श्री एम बालगणेश, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “E” BENCH  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI M BALAGANESH, ACCOUNTANT MEMBER  
आ.आ.सं. ७५०/मुंबई/२०२२ (नि.वं. २०१७—१८)  
ITA No.750/MUM/2022 (A.Y.2017-18)

M/s Tricity Realty LLP  
1001/1002, Bhumiraj Costarica,  
Plot No.1-2, Sector 18 Off Palm  
Beach Road, Sanpada (E)  
Navi Mumbai-400 705  
PAN No. AAKFT6601L

..... अपीलार्थी / Appellant

बनाम Vs.

Principal Commissioner of Income Tax (Cen.)-2  
Room No.1920, 19<sup>th</sup> Floor, Air India Building  
Nariman Point,  
Mumbai-400 021

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा / Appellant by : Ms. Ritika Agarwal  
प्रतिवादी द्वारा / Respondent by : Shri Prakash R. Mane &  
Shri Chetan Kacha

सुनवाई की तिथि / Date of hearing : 02/12/2022  
घोषणा की तिथि / Date of pronouncement : 20/02/2023

आदेश / ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Principal Commissioner of Income Tax (Central), Mumbai-2 (hereinafter referred to as the “PCIT”) dated 16/03/2022 for assessment year 2017-18 passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).



2. Ms. Ritika Agarwal appearing on behalf of the assessee submits that the assessee filed its return of income for AY 2017-18 on 05/11/2017, declaring total income of Rs.14,00,430/-. The case of the assessee was selected for scrutiny under CASS. The Assessing Officer (AO) completed the assessment by making addition of Rs.3,34,648/- on account of notional rent vide order dated 23/12/2019 u/s 143(3) of the Act. Thereafter, the PCIT issued show-cause notice u/s 263 of the Act on 04/02/2022. The same is at page no. 342 of the Paper Book. The learned Authorised Representative (AR) submitted that a bare perusal of the show-cause notice would reveal that the PCIT has invoked revisional jurisdiction on a proposal from the AO. The PCIT has not made his independent examination and consideration before invoking provision of section 263 of the Act. This itself makes exercise of jurisdiction u/s 263 of the Act defective. In support of his contention, the learned AR of the assessee placed reliance on the decision of Pune Bench of the Tribunal in the case of Alfa Laval Lund AB vs. CIT in ITA No.1287/PUN/2017 for AY 2012-13 decided on 02/11/2021.

3. The learned AR submits that in reply to the show-cause notice, the assessee furnished a detailed reply on 21/02/2022 to the PCIT stating that the AO in scrutiny assessment proceedings had made detailed enquiries. It was further pointed that the AO had made independent enquiries u/s 133 of the Act as well. Some of the parties responded to the notices issued by the AO confirming the transactions. Wherever the parties did not respond, the assessee furnished all the necessary details to the AO. The AO after being satisfied from the replies and the confirmations from the concerned parties did not make any addition. The learned AR pointed that in assessment order, though, the AO has not discussed about the issue of unsecured loans and the enquiries made in respect thereof that does not mean the AO has not made enquiries or has not applied his mind on the reply furnished by assessee during assessment proceedings. Merely for the reason that the AO has not mentioned the details of enquiries in assessment order would not make the assessment order erroneous and prejudicial to



the interest of Revenue. The learned AR placed reliance on the decision of Hon'ble Apex Court in the case of CIT vs. Nirav Modi 244 taxmann.com 194.

4. To substantiate that the AO had made enquiries in respect of unsecured loans, the learned AR referred to the reply of assessee at page no. 171 of the Paper Book in response to notice u/s 142(1) of the Act. The learned AR further pointed that the said reply was uploaded on the official website of Income Tax Department on 19/12/2019. The acknowledgement is at page no. 176 and 177 of the Paper Book. The learned AR further referred to the reply of the assessee dated 19/12/2019 at page no. 180 to 185 of the Paper Book. Wherein, assessee had given details of the parties from whom unsecured loans are taken. The learned AR further referred to the list of the parties (at page no. 188 to 193 of the Paper Book) where loans were converted to the booking amount of flats. The learned AR submitted that the replies furnished by the assessee show that the AO had made detailed enquiries in respect of unsecured loans. Hence, it is not a case of lack of enquiry.

5. Per Contra, Shri Prakash R. Mane representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee.

6. Both sides heard. Orders of authorities below and the documents furnished by the assessee considered.

7. The provision of u/s 263 of the Act can be invoked only, if the twin conditions are satisfied that is i) the assessment order is erroneous and ii) prejudicial to the interest of Revenue. Both these conditions have to be simultaneously fulfilled. To form a prima facie opinion that the assessment order is erroneous and prejudicial in the interest of Revenue, the Act casts obligation upon CIT/PCIT to call for and examine records of the proceedings before the AO. Thus, examination of records and considerations thereof by the CIT/PCIT is sine qua non before exercising powers vested

u/s 263 of the Act. The CIT/PCIT cannot exercise revision powers on borrowed satisfaction or merely on the proposal from any other quarter.

8. In the instant case, we find that the PCIT in notice issued u/s 263 of the Act has stated at the outset that the proposal of revision u/s 263 of the Act was received from the AO. The relevant extract of the notice is reproduced herein below:

*“2. The Assessing Officer vide letter no. ACIT 28(3) u/s 263/TRL/2019-20 dated 13.02.2020, had submitted a Proposal for Revision u/s 263 of the Order passed u/s 143(3) dated 23.12.2019, on the following grounds.”*

Further, the CIT(A) in para 4 of the notice has recoded that, *“the AO has stated that he could not properly apply his mind to the submissions of the assessee”*. *“The Assessing Officer also further stated that due to oversight he did not add the above said unapproved loan credits.....”*. *“.....the Assessing Office has requested for cancellation of the order passed u/s 143 (3) and to revise the said order u/s 263....”* The above reasons in show cause notice suggest that the primary reason for invoking the provision of section 263 of the Act by PCIT was the proposal from the AO and not an independent enquiry by the PCIT. The Co-ordinate Bench of the Tribunal in the case of Alfa Laval Lund AB vs. CIT (supra) in somewhat similar case where a proposal for revision u/s 263 of the Act was received from the AO held as under:

*“4. Sub-section (1) of section 263 of the Act is an enabling provision which confers jurisdiction on the CIT to revise an assessment order which he considers erroneous and prejudicial to the interests of revenue. The process of revision u/s 263 of the Act initiates only when the CIT calls for and examines the record of any proceeding under this Act and considers that any order passed by the AO is erroneous and prejudicial to the interests of the revenue. The twin conditions of – (i) the CIT calling for and examining the record; succeeded by (ii) his considering the assessment order as erroneous etc. – are sine qua non for the exercise of power under this section. The use of the word ‘and’ between the expression ‘call for and examine the record ....’ and the expression ‘if he considers that any order ... is erroneous ...’ abundantly demonstrates that both these conditions must be cumulatively fulfilled by the CIT and in the same order, that is, the first followed by the second. In other words, the kicking in point for invoking jurisdiction u/s 263 is calling for and examining the record of any proceedings under the Act by the CIT leading him to consider the assessment order erroneous etc. A*

communication from the AO is not `the record of any proceedings under this Act'. To put it simply, the consideration that the assessment order is erroneous and prejudicial to the interests of the revenue should flow from and be the consequence of his examination of the record of proceedings. If such a consideration is not preceded by the examination of record of the proceedings under the Act, the condition for revision does not get magnetized.

5. It is trite that a power which vests exclusively in one authority, can't be invoked or cause to be invoked by another, either directly or indirectly. Section 263 of the Act confers power on the CIT to revise an assessment order, subject to certain conditions. Instantly, we are confronted with a situation in which the revision was initiated on the basis of the AO sending a proposal to the CIT and not on the CIT suo -motu calling for and examining the record of the assessment proceedings and thereafter considering the assessment order erroneous and prejudicial to the interests of the revenue. **The AO recommending a revision to the CIT has no statutory sanction and is a course of action unknown to the law. If AO, after passing an assessment order, ITA No.1287/PUN/2017 6 finds something amiss in it to the detriment of the Revenue, he has ample power to either reassess the earlier assessment in terms of section 147 or carry out rectification u/s 154 of the Act. He can't usurp the power of the CIT and recommend a revision. No overlapping of powers of the authorities under the Act can be permitted. As the revision proceedings in this case have triggered with the AO sending a proposal to the Id. CIT and then the latter passing the order u/s 263 of the Act on the basis of such a proposal, we hold that it became a case of jurisdiction deficit resulting into vitiating the impugned order.** Without going into the merits of the case, we quash the impugned order on this legal issue itself."

(Emphasized by us)

9. Thus, in the above facts of the case, we are of considered view that the jurisdiction assumed by the PCIT u/s 263 of the Act is defective. Hence, the proceedings flowing from defective jurisdiction are vitiating and liable to be quashed.

10. The assessee has referred to the queries raised by the AO in notice u/s 142(1) of the Act. The assessee has also drawn our attention to the acknowledgment of the replies uploaded during assessment proceedings. From perusal of the aforesaid replies it emanates that the assessee has time and again given details of the loan creditors. The documents on record clearly shows that the AO has examined the issue during scrutiny assessment proceedings. Merely for the reason that the AO has not given any finding in the assessment order would not mean that the issue was not examined by the AO



in scrutiny assessment. The Hon'ble Bombay High Court in the case of CIT vs. Gabriel India Ltd. 203 ITR 108 has held that where the claim of the assessee was allowed by the AO on being satisfied with the explanation of the assessee, the assessment order cannot be held to be erroneous simply because in the assessment order, he did not make an elaborate discussion in that regard. In the case of Nirav Modi vs. CIT (supra), the Hon'ble Bombay High Court has reiterated the above position. Therefore, the documents placed on record by the assessee explicitly indicates that the AO had made some enquiries with regard to unsecured loans during the relevant period. The jurisdiction u/s 263 cannot be invoked on an issue that was enquired by the AO during assessment proceedings.

11. Thus, taking into consideration, entire facts of the case we are of considered view that the PCIT has exceeded his jurisdiction while invoking the provision of u/s 263 of the Act. The impugned order is thus, quashed.

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

Order pronounced in the open court on Monday the 20<sup>th</sup> day of February 2023.

**Sd/-**

(M BALAGANESH)

**लेखाकार सदस्य/ACCOUNTANT MEMBER**

**Sd/-**

(VIKAS AWASTHY)

**न्यायिक सदस्य/JUDICIAL MEMBER**

मुंबई/Mumbai,

दिनांक/Dated: 20/02 /2023

Mahesh R. Sonavane

**प्रतिलिपी अग्रेषित of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/The Respondent.



3. आयकर आयुक्त (अ)/ The CIT(A)-
4. आयकर आयुक्त/ CIT
5. विभागीय प्रतिनिधी, आय. अपी. अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाईल/Guard file.

BY ORDER,

//True Copy//

(Dy. /Asst. Registrar)/  
Sr. Private Secretary  
**ITAT, Mumbai**