

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

[CONDUCTED THROUGH VIRTUAL COURT]

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 64/Rjt/2022
Assessment Year 2017-18**

M/s. Meet Build Con Partnership Firm, Office No. 105, Rajpath Avenue, 150 Feet Ring Road, Rajkot-360005 PAN: ABAFM0506G (Appellant)	Vs	Pr. CIT, Rajkot-1 (Respondent)
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**Assessee by: Shri R.K. Doshi, A.R.
Revenue by: Shri Shramdeep Sinha, CIT-D.R.**

Date of hearing : 06-02-2023
Date of pronouncement : 22-02-2023

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This assessee's appeal for A.Y. 2017-18, arises from order of the Principal Commissioner of Income Tax, PCIT, Rajkot-1 dated 24-01-2022, in proceedings under section 263 of the Income Tax Act, 1961; in short "the Act".

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

“(1) Grounds of Appeal as under are without prejudice to one another.

(2) The Revision Order under section 263 of the Act is bad in law and contrary to the facts of the case.

(3) The learned PCIT has erred in concluding that the assessment has been completed without conducting any inquiries/verification or incorrect application of law tantamount to erroneous orders as also order prejudicial to the interest of Revenue.

(4) The learned PCIT has erred in passing the order under section 263 of the Act when the subject matter of review is pending before CIT Appeals.

(5) The learned PCIT has erred in concluding that the assessment has been completed without conducting any inquiries/verification which is prejudice to the interest of Revenue even though the AO has dealt with the issues and further the AO has rejected the books of Accounts and estimated the income of @8% on the sales and also made addition of Rs.4,99,17,901 u/s.69A r.w.s. 115BBE of the Income-tax Act, 1961.

(6) The learned PCIT has erred in confirming the initiating Proceeding u/s.263 of the Act.

(7) The orders of the learned PCIT is illegal, unjustified and against the principles of natural justice.”

3. The brief facts of the case are that the Principal CIT observed that the return of income for assessment year 2017-18 was filed by the assessee firm declaring total income of ₹ 52,63,490/-. The assessment was completed under section 144 of the Act determining total income at ₹ 5,21,89,900/-. On examination of assessment records, it was noticed that a survey under

section 133A was carried out at the premises of the assessee firm on 30-12-2016 and during the survey, Shri Ashok Joshi (partner of the assessee firm) in a statement made voluntarily, made a disclosure of ₹ 6 crores as undisclosed income, over and above regular income of assessee firm and agreed that no expenditure against the said disclosure has to be claimed. However, Principal CIT observed that on going through the submission of the assessee firm dated 20-12-2019, assessee has declared an amount of ₹ 4,99,17,901/- as on-money receipt from the agreements of sale. Further, against the said amount, assessee has claimed set-off of expenses and reduced profit to ₹ 50,87,527/-. The AO rejected the books of accounts of the assessee and made addition of only of ₹ 4,99,17,901/- , however, since the partner of assessee firm had disclosed unaccounted income of ₹ 6 crores over and above the regular income of the firm, the AO should have made addition of ₹ 6 crores in place of ₹ 4,99,17,901/-. Further, Principal CIT also observed that on one hand the assessee firm is having huge cash on hand of ₹ 4.79 crores and on the other hand, the assessee firm has inflated its expenses by taking huge capital from partners to the tune of 44 crores and also loan of ₹ 1.17 crores on which interest was paid by the assessee firm. Accordingly, Principal CIT held that the AO while completing the assessment had not examined the facts of the case and the issues as discussed above. Therefore, the assessment order passed by the AO was erroneous as well as prejudicial to the interest of revenue and was accordingly set aside.

4. The assessee is in appeal before us against the above order passed by Principal Ld. CIT(Appeals) u/s 263 of the Act. The counsel for the assessee

submitted that Principal CIT has grossly erred in taking the view that the above issues were not considered by the AO during the course of assessment proceedings. He submitted that a perusal of pages 2, 3, 7 and 8 of the assessment order clearly shows that the very same issues, on the basis of which 263 proceedings were initiated by Ld. PCIT, were discussed in detail by the AO during the course of assessment proceedings. The assessee had filed detailed response to the above queries during the course of assessment, however, the AO rejected the assessee's books and estimated the profits of the assessee without allowing expenses against the same. The assessee has filed appeal against the aforesaid additions before Ld. CIT(Appeals) u/s 250 of the Act and the same is pending adjudication. The counsel for the assessee drew our attention to the grounds of appeal filed before Ld. CIT(Appeals) and submitted that identical issues, which are the subject matter of proceedings under section 263 of the Act, are also pending adjudication before Ld. CIT(Appeals). Accordingly, in light of various judicial precedents which have held that once the assessee has filed appeal against the certain issues and the same are pending adjudication before Ld. CIT(Appeals), then the Principal CIT is precluded from passing order with respect to those very issues which are subject matter of appeal before Ld. CIT(Appeals).

5. In response, DR relied upon the observations made by Principal CIT in the 263 order.

6. We have heard the rival contentions and perused the material on record. From perusal of records produced before us, we observe that the

issues raised by Principal CIT in the 263 proceedings have also been considered by the AO during the course of assessment proceedings. A perusal of the pages 2, 3, 7 and 8 of the assessment order shows that the same issues on the basis of which 263 proceedings have been initiated were considered by the AO as well. Further, the assessee has filed appeal against those same issues before Ld. CIT(Appeals) u/s 250 of the Act and the same are pending adjudication. In the case of **Smt. Renuka Philip v. ITO [2019] 101 taxmann.com 119 (Madras)**, the High Court held that where assessee sold a property and invested sale consideration from same for purchase of another property and claimed exemption under section 54, however, Assessing Officer allowed exemption under section 54F instead of section 54, and, assessee filed an appeal against said order, since larger issue was pending before Commissioner (Appeals), Commissioner could not invoke jurisdiction under section 263 against said order of Assessing Officer on account of statutory bar. In the case of **CIT v. Vam Resorts & Hotels (P.) Ltd [2019] 111 taxmann.com 62 (Allahabad)**, when an appeal is pending before Commissioner (Appeals), exercise of jurisdiction under section 263 by Commissioner would be barred. The ITAT Rajkot in the case of **Parin Furniture Ltd. in ITA Number 86 to 89/ Rajkot/ 2022 vide order dated 20-07-2022** held that when an appeal is preferred by the assessee under section 250 of the Act before CIT Appeals is pending against order passed by the learned AO under section 147 of the Act, the same cannot be revised under section 263 of the Act.

6.1 In view of the above observations, since the issues in respect of which 263 proceedings were initiated are pending adjudication before Ld.

CIT(Appeals) in appeal filed by the assessee under section 250 of the Act, the Principal CIT cannot proceed to simultaneously assume jurisdiction with respect to those very same issues which are under consideration before CIT(Appeals). Accordingly, in view of the above observations and in light of judicial precedents highlighted above, we are of the considered view that the order passed by Principal CIT is unsustainable and is therefore set aside.

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

Order pronounced in the open court on 22-02-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 22/02/2023

Sd/-
(SIDHHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot