

आयकर अपीलीय अधिकरण  
मुंबई पीठ " ई ", मुंबई पीठ  
श्री विकास अवस्थी. न्यायिक सदस्य एवं  
श्री गगन गोयल, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH " E ", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
आअसं. 948/मुं/ 2021 (नि.व. 2010-11)  
ITA NO. 948/MUM/2021(A.Y.2010-11)

Excel Enterprises,  
202, Swastik Apartment,  
Garden Lane, L.B.S Marg,  
Ghatkopar (West), Mumbai – 400 086.  
PAN: AABFE-3940-J

..... अपीलार्थी /Appellant

बनाम Vs.

Principal Commissioner of Income Tax, Mumbai -27,  
Room No.401, 4<sup>th</sup> Floor, Tower No.6,  
Vashi Station Complex,  
Vashi, Navi Mumbai 400 703

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : None

प्रतिवादी द्वारा/Respondent by : Smt. Esther Ninghauvung Hanghal

सुनवाई की तिथि/ Date of hearing : 10/01/2023

घोषणा की तिथि/ Date of pronouncement : 28/02/2023

**आदेश/ ORDER**

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the order of Principal Commissioner of Income Tax, Mumbai-27 [in short 'the PCIT'] dated 31/03/2021 passed under section 263 of the Income Tax Act, 1961 [in short 'the Act'] for the Assessment Year 2010-11.

2. A perusal of the file shows that notice of hearing of appeal was sent to the assessee through RPAD, which was duly served. The appeal was first listed for hearing on 01/11/2021. None appeared on behalf of the assessee on the said date and the appeal was adjourned to 13/12/2021. Fresh notice was issued to the assessee for 13/12/2021, which was duly served through RPAD. The assessee vide letter dated 03/12/2021 filed written submissions. Thereafter, the appeal was adjourned from time to time to hear the assessee, however, despite repeated notices none appeared on behalf of the assessee.
3. The assessee has assailed validity of order passed u/s. 263 of the Act by raising following grounds in appeal:

*“GROUNDS OF APPEAL*

- (a) The learned PCIT has erred in passing the order u/s 263 and directing the Assessing officer to revise the order dt 15-12-2017 passes u/s 143(3) r.w.s 147.*
- (b) The Appellant submits that no proper opportunity of hearing was given and due to lock down condition the Appellant could not found the Assessment order u/s 143(3) r.w.s.147 for the above year.*
- (c) The Appellant submits that since the time for filing of the Appeal is expiring and order u/s 143(3) r.w.s 147 is not available, the appellant requests your honour to accept the Appeal without 143(3) r.w.s 147 order and oblige.*
- (d) The Appellant will immediately file 143(3) r.w.s. 147 order as soon as the lock down is over.*
- (e) The Appellant craves leave to add, to amend, to alter, to withdraw, to modify and/or to substitute any or all the foregoing grounds of appeal and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing”*

4. The assessee has filed written submissions vide letter dated 03/12/2021. The same are reproduced herein under:

*“The only issue in the appeal is objection against revision order passed u/s 263 dated 31-03-2021 by the PCIT-22 Mumbai. The learned PCIT 27 has "set aside" the assessment order dated 15-12-2017 passed by the Assist. Commissioner of Income Tax 27 Mumbai. The learned PCIT held that the order pass u/s 143(3) r.w.s. 147 is erroneous in so far as it is prejudicial to the interests of the revenue within the meaning of Sec. 263 of the Income-tax Act. 1961 as the Assessing Officer failed to conduct proper inquiries, investigation and examination.*

*The appellant submits that as per the provision of Section 263, no order shall be made under subsection (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed. The relevant provision of section 263(2) is reproduced as under 263(2).*

***" 263(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed".***

*"In our case the order sought to be revised was passed on 15-12-2017 and the end of the financial year in which the order was passed therefore is 31-03-2018 and hence 2 year expires on 31-03-2020. No order therefore can be passed u/s 263 revising the order dt. 15-12-2017 after 31-03-2020. In our case the order is passed on 31-03-2021, i.e. beyond the expiry of 2 years and therefore is invalid and should be cancelled."*

*Further on merits also the learned PCIT has set aside the order on ground that "the submission of the assessee is considered and perused. However, in absence of documentary evidence, the same is not acceptable."*

*He held that the Assessment Order on the following two transactions are without any evidence to support.*

*Point 1 - Purchase of immovable property of Rs. 43,66,575/--*

*Point 2 - Contract receipt of Rs. 56,32,226/-.*

*Both the above transactions are reported in NMS data and in the order 143(3) r.w.s. 147 the income from the first transaction is already taxed as contract receipt and there is no evidence with income tax that it is a transaction for purchase of property. The second transaction is contract receipt for which also there is no evidence available with the Income tax.*

*Hence the assessment is reopened on the basis NMS data available with the income tax and there was no documents available with the assessee for the NMS data received by the income tax department and therefore the assessee could not submit any evidence to supported data received by the income tax.*

*In such cases we submit that it has been held by the various high courts that the income tax cannot make any addition in the income of the assessee only based on NMS data and without any evidence on records. Hence we submit that there is no evidence to suggest that the assessment made u/s 143(3) is erroneous. The A.O. therefore cannot make any addition only based on NMS data. Hence it is submitted that the order passed u/s 263 by the learned PCIT should be cancelled on merits also.*

*We therefore submit that the order passed 263 is passed after the expiry of the limitation period and hence invalid. Also on merits the same is not tenable under the law and hence should be cancelled and oblige."*

5. On 16/06/2022, the Id. Departmental Representative was directed to produce notification issued by CBDT, if any, extending time limit for passing the order under section 263 of the Act during the period of COVID-19 Pandemic. The Id. Departmental Representative vide letter dated 11/07/2022 furnished reply of the Assessing Officer on this issue and also placed reliance on the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (in short 'TOLA') to support the stand of Revenue of enlargement of time for passing order u/s. 263 of the Act. The reply from Department is extracted herein under:

*"2. With regard to assessee's plea that order passed u/s. 263 of the I. T. Act on 31.03.2021 is beyond the expiry of two years and therefore is invalid and should be cancelled, this is to submit that the order sought to be revised was passed on 15.12.2017 and hence, the time limit for passing order u/s. 263 expires on 31.03.2020*

*3. However, it may kindly be seen vide chapter-II (Relaxation of certain provision of specified Act) in Para 3(1) of notification dated 29.09.2020 that where any time-limit has been specified in, or prescribed or notified under the specified Act which falls during the period from the 20<sup>th</sup> day of March, 2020 to 31<sup>st</sup> day of December, 2020 or such other date after 31<sup>st</sup> day of December, 2020, as the Central Government may, by notification, specify in this behalf, for the completion or compliance of such action as-*  
*(a) Completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval, or such other action, by whatever name called, under the provision of the specified Act or the time-limit for completion or compliance or such action shall, notwithstanding anything contained in the specified Act, stand extended to the 31<sup>st</sup> day of March, 2021, or such other date after the 31<sup>st</sup> day of March, 2021, as the Central Government may, be notification, specify in this behalf.*

*4. Therefore, in view of the aforesaid notification the order passed u/s. 263 of the I.T. Act is well within the prescribed time limit."*

6. We have heard the submissions made by Id. Departmental Representative and have perused the written submissions filed by rival sides. The assessee has filed appeal assailing that the order passed by PCIT u/s. 263 of the Act is beyond limitation. The short contention of the assessee is, limitation for passing the revision order u/s. 263 of the Act was 31/03/2020,

whereas the order was passed on 31/03/2021, hence, the revision order suffers from the defect of limitation.

7. The provision of section 263(2) of the Act specifies limitation for passing the revision order. The relevant extract of sub-section(2) of section 263 of the Act is reproduced herein below:

*“(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.”*

The assessment order which was sought to be revised was passed on 15/12/2017. Thus, as per the provisions of sub-section(2) to section 263 of the Act, the revision order could have been passed in assessee's case on or before 31/03/2020, whereas the impugned order has been passed on 31/03/2021. Thus, the order u/s. 263 of the Act is time barred.

8. The contention of the Revenue is that before the order could be passed within the time limit specified u/s. 263(2) of the Act, there was lockdown in March, 2020 on account of COVID-19 Pandemic. A special legislation, TOLA was passed in the Parliament to mitigate the hardship caused due to unprecedented circumstances arising out of COVID-19 Pandemic. The Id. Departmental Representative pointed that TOLA extended the time limit for compliance of the provisions of the Act to 31/03/2021. The order has been passed within extended period of limitation. Hence, the order passed u/s. 263 of the Act by the PCIT is within limitation and valid.

8. We find that TOLA came into force on 31/03/2020 extending the time limit for completion or compliance under the Act to 31/03/2021. However, in the present case the period of limitation extended by TOLA would not come to the rescue of the Department as the limitation for passing the order u/s.

263 of the Act was on or before 31/03/2020. Section 1(2) of TOLA states that, it shall be deemed to have come into force on the 31<sup>st</sup> day of March, 2020. Therefore, in the instant case the time does not get enlarged, as the period for passing the order u/s. 263 of the Act had already elapsed. We find merit in the grounds raised by the assessee, hence, we hold the revision order passed u/s.263 of the Act beyond the period of limitation.

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

Order pronounced in the open court on Tuesday the 28<sup>th</sup> day of February, 2023.

Sd/-

( GAGAN GOYAL )

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 28/02/2023

Vm, Sr. PS(O/S)

**प्रतिलिपि अग्रेषितCopy 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 प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

BY ORDER,

(Dy./Asstt. Registrar), ITAT, Mumbai

//True Copy//