

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 673/Mum/2022 (A.Y. 2017-18)

Rupesh Corporation and Infraprojects

108, Charishma Centre, 19th Road,
Chembur, Mumbai-400071.

PAN: AALFR0868G

..... Appellant

Vs.

Pr.CIT, Circle
Room No. 401, 4th Floor, Tower No.6,
Vashi Railway Station Commercial Complex,
Vashi, Navi Mumbai-400703.

..... Respondent

Appellant by	:	Sh. Vimal Punmiya
Respondent by	:	Smt. Riddhi Mishra, CIT-DR
Date of hearing	:	09/11/2022
Date of pronouncement	:	25/01/2023

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of Principal Commissioner of Income Tax-27; Mumbai [for short 'PCIT'] dated 14.03.2022 under section 263 of the Income Tax Act, 1961 (for short 'the Act') for A.Y. 2017-18. The assessee has raised the following grounds of appeal:

"1. The Id. PCIT erred in passing an order u/s 263 setting aside the original assessment order u/s 143(3) and directing for a fresh assessment.

2. The assessee craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing."

2. Brief facts of the case are that assessee filed partnership firm filed its return of income on 29-10-2017, declaring total income at Rs. 1,67,99,910/-. The case was selected for scrutiny and assessed at returned income vide assessment order 14-12-2019. Thereafter a notice u/s 263 of the act was issued on 02-03-2022. A final order u/s 263 dated 14-03-2022 was passed and order of the AO found to be erroneous in so far as it is prejudicial to the interest of revenue. Vide this order Ld. PCIT-27 issued certain directions to make a fresh assessment keeping in view para-4.1 to 4.5 of the order passed u/s 263. For sake of clarity the directions as enumerated in order passed u/s 263 are listed below:

"4.1 The assessee has paid interest of Rs. 20,28,415/- to Mr. Rupesh Desai (HUF). The Assessing Officer has allowed the deduction of Interest paid without bringing on record any evidence to show that the amount borrowed from Mr. Rupesh Desai (HUF) was utilized for the purpose of business carried on by the assessee. The AO before allowing the deduction of the interest paid of Rs. 20,28,415/- to Mr. Rupesh Desai (HUF) should have examined whether the borrowed funds in respect of which the interest of Rs. 20,28,415/- was paid, was utilized for the business purposes.

4.2 The AO has allowed the claim of the assessee for deduction of the expenditure of Rs. 5.05 Crores debited under the head "Work-in-Progress". The AO before accepting the claim of the assessee should have verified and examined the expenses claimed by the assessee as deduction. The AO has failed to do so.

4.3 The partners of the assessee firm have introduced capital (Mr. Jignesh desai 2.55 Crores and Mrs. Poornima R. Desai Rs. 12.26 Crores) the AO has not bothered to examine the source of these funds. Even copy of the bank statement of the relevant period of these partners has not been obtained by the AO. In other words, the AO has failed to examine the capacity of the partners to introduce huge capital in the assessee firm.

4.4 The rate of net profit declared by the assessee in the AY 2017-18 is 5.35% as against the rate of net profit of 8.80% declared in the immediately preceding assessment year. The AO has not even obtained the explanation for fall in net profit rate. The question of examining the reasons for fall in the net profit rate by the AO does not arise, as the explanation itself was not called for by the AO.

4.5 The AO has accepted the unsecured loans of Rs. 12,77, 20,488/- appearing in the balance sheet without obtaining documentary evidences in support of creditworthiness (copy of the bank statement of the lenders, return of income etc.) The AO before accepting the unsecured loans of Rs. 12,77,20,488 as genuine should have examined the same with the help of document evidences viz bank statement, return of income etc.”

3. Being aggrieved with this action of the Ld. PCIT-27 assessee preferred this appeal before ITAT. We have gone through the order of AO passed u/s 143(3), copy of notice u/s 142(1) vide page no-37 to 42, copy of notice for proceedings u/s 263 from Ld. PCIT vide page no. 44 to 47 of the paper -book and order of Ld. PCIT passed u/s 263 dated 14-03-2022. The contents of objections by Ld. PCIT already mentioned supra and relevant points related to these objections as placed in notice u/s 142(1) are as under:

“4. Kindly furnish the ledger of Capital A/c of the partners of the assessee firm and the details of capital introduced/contributed by each of the partners of the 'assessee firm', during the year ended on 31.03.2016.

Also furnish the copy of duly signed 'confirmations' from the members of partners of the assessee firm' along with copy of their income tax return, bank statement etc. to substantiate the creditworthiness and identity of the aforesaid partners of the 'assessee firm' and genuineness of such capital introduction transactions. Kindly explain and substantiate, along with necessary details and supporting evidences, the genuineness of the capital introduction transactions' and that such 'capital introduction has been made by the partners of the assessee firm' from their disclosed sources.

5. Kindly furnish details of 'Unsecured Loans taken/received and interest expense paid/credited as per Performa given below, along with Loan confirmation, in respect of new loans. Old loans and Squared up loans during the year.

Sl. No.	Name of loan Creditor with PAN & Full postal address	Amount b/f as on 01.04.2016	Amount of loan taken during the year	Total interest	TDS made if any	Repayment of loan during year	Balance c/f as on 31.03.2017

Also furnish the details of 'Secured Loans taken/received and interest expenses paid/credited as per Performa given below, along with Loan confirmations, in respect of New loans, Old loans and Squared up loans during the year.

Kindly explain & substantiate, along with necessary & complete details and supporting evidences, that the sources of fund for the "Loans that have been squared up (both 'Unsecured Loans' & 'Secured Loans) during the year", is explained for Income tax purposes.

14. Kindly furnish the proper & complete details (Project wise) of (i) Opening Stock. (ii) Closing Stock, and (iii) Work in progress, if any.

Kindly furnish the following details to find out value of Closing stock/work in progress:-

(a)

Sl. No.	Flat No./Bungalow No.	Name of Buyer/Purchaser	Area in Sq. ft. (in BUA basis)	Date of sale	Document No.	Sale price.

[Note: (BUA) i.e. built Up Area]

(b)

Sl. No.	Item /nature of expenses/purchase	Quantity	Purchase price	Consumption	Value of Consumption

(c)

Sl. No.	Opening WIP in Sq. ft. Unit wise Flat /shop No. (on BUA basis)	Value of WIP added during the year in Sq. ft. (on BUA basis)	Sale of WIP in Sq. ft. (on BUA basis)	Closing WIP in Sq. ft. (on BUA basis)

(d) Total BUA of the Project in Sq. ft. =

(e) Total BUA for residential area the Project in Sq. ft. =

(f) Total BUA for commercial area the Project in Sq. ft. =

(g) Area of land (in Sq. ft.) and value of land =

(h) Date of commencement of the project (h) Date of completion of the project ="

4. These two para covers two of the objections of the Ld. PCIT in terms of submission i.e. para 3a and para 3e of the notice u/s 263 of the act. As far as objections raised by the Ld. PCIT in his notice vide para 3b and 3c were nowhere found place in the scrutiny notice u/s 142(1) issued by the AO. As far as point no. 3b and 3c of Ld. PCIT's notice are concerned, they are totally untouched in the notice u/s 142(1) and so in the assessment proceedings also.

5. We have gone through the submissions uploaded by assessee to AO vide dated 21-06-2019 and 12-12-2019 covers the information as filed before us also vide page no. 56 to 159. We observed that assessee furnished ITR, ledger account cum confirmation with PAN No. of the unsecured loans and enquiry relating to partners capital contribution. In these submissions we haven't find any submission of the assessee with reference to evidences relating to work in progress as claimed by the assessee in final accounts.

6. We further refer submissions of the assessee before ITAT and vide page no. 12 and 13 it is noticed that for unsecured loans and partners capital contribution assessee had not filed their bank statement and balance-sheets to substantiate genuineness and credit worthiness. Apparently no doubt assessee had fully complied with the requirements of notice issued by the AO u/s 142(1) but technically the proceedings carried out by the AO were not completed keeping in view the provisions of sec 68. Simply because AO triggers some enquiry and assessee complied also, still one has to see whether the requirements of law and satisfactory conclusion of the same. In this case without asking bank statements and financials of the creditors, enquiry u/s 68 can never be called to be concluded satisfactorily. The same principle is applicable to partners capital account also especially in a case where earlier these partners were creditors of the firm and in this year by converting their credit balances into partners contribution by inducting them as partners of the firm a detailed enquiry of this issue is required to establish the authenticity of the matter once for all.

7. As far as the issue relating to WIP is concerned, although that was part of notice issued u/s 142(1) but submissions with reference to that were not carrying any supporting evidence to substantiate the same. Balance two issues i.e. interest paid to Rupesh Desai HUF and substantial reduction in the net profit of the firm from 8.8 % in the previous year to 5.35% for the year under consideration were never the part of enquiry during the assessment proceedings.

8. We have gone through the judicial pronouncements relied upon by the assessee but the same are not applicable to the facts of the case as those were delivered on a different set of facts. Judicial pronouncements can laid down the

principle of law but the same has to be tested with reference to specific facts of the case. Assessee can't absolve simply by complying with the requirements of notice issued u/s 142(1). The litmus test in the proceedings of Sec. 263 is whether the assessment proceedings has been done in such a way that they are not erroneous in so far as prejudicial to the interest of revenue. The submissions of the assessee and the facts of the case would have rescued the assessee if this matter would have been u/s 148. In view of the above discussions we sustain the order passed by the Ld. PCIT and dismiss the grounds taken by the assessee.

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

Order pronounced in the open court on 25th day of January, 2023.

Sd/-

(ABY T VARKEY)

JUDICIAL MEMBER

Mumbai, दिनांक / Dated: 25/01/2023

SK, Sr.PS

Copy 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/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

BY ORDER,

//True Copy//

(Dy. /Asstt.Registrar)

ITAT, Mumbai