

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.1497/DEL/2020
Assessment Year 2015-16

DLF Garden City Indore Limited, 1-E, Naaz Cinema Complex, Jhandewalan Extension, New Delhi.	Vs.	Pr.CIT-03, New Delhi
TAN/PAN: AAFCA5034N		
(Appellant)		(Respondent)

Appellant by:	Shri R.S. Singhvi, CA Shri Satyajeet Goel, CA		
Respondent by:	Shri T. James Singson, CIT-DR		
Date of hearing:	04	05	2023
Date of pronouncement:	12	05	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed at the instance of the assessee against the revisional order of the Id. Pr.CIT-III, Delhi ('Pr.CIT' in short) dated 16.03.2020 wherein order passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) dated 30.09.2017 concerning AY 2015-16 was held to be erroneous in so far as prejudicial to the interest of the revenue within the meaning of Section 263 of the Act.

2. Briefly stated, the assessee is a real estate developer and filed its return of income which was revised later. The case was selected for limited scrutiny and the income was assessed at the

returned income without any adjustments for the Assessment Year 2015-16 in question.

3. The assessment carried out by the Assessing Officer was, however sought to be revised by the Pr.CIT. A show cause notice dated 23.07.2018 was issued to this effect.

“Whereas I have examined the assessment records of the above referred assessee company (here-in-after referred to as the assessee) for A.Y. 2015-16 wherein assessment was completed by the AO at the returned income of Rs. 3,86,35,180/- on 30.09.2017. It is further seen that the assessee had made a provision of Rs. 1,29,55,862- on account of anticipated loss and debited the same to the profit and loss account. The assessee has contended that the loss of Rs. 1,29,55,862- has been claimed as an expense duly approved by Accounting Standard-7 issued by Institute of Chartered Accountants of India. However, such provision is not an allowable expense in view of provisions of Section 145(2) of IT Act which provides that a provision made in the accounts for an accrued or known liability is an admissible deduction while other provision do not qualify for deduction under the Act. Expenditure allowable must actually exist at the time of financial reporting. Making provision for expenditure which depends upon an event is not an allowable expenditure. Since the provision made was not an ascertained liability, the same should have been disallowed and added back to the income of the assessee, which has not been done by the AO while passing assessment order us 143(3) on 30.09.2017.

Hence, the order passed by the assessing officer us 143(3) of the IT Act, 1961 dated 30.09.2017 is erroneous so far it is prejudicial to the interest of revenue for the A. Y. 2015-16 requiring a revisit on the entire issue under consideration. You are, therefore, directed to show cause as to why an order in terms of provisions of section 263 may not be passed for A.Y. 2015-16 setting aside the order passed u/s. 143(3) dated 30.09.2017 in your case.”

4. The Pr.CIT eventually set aside the assessment order framed under Section 143(3) and directed the Assessing Officer to redo the assessment in terms of observations made in revisional order.

5. Aggrieved by the revisional order, the assessee preferred appeal before the ITAT seeking to challenge the revisional order.

6. When the matter was called for hearing, the Id. counsel for the assessee adverted to the show cause notice and submitted that

the show cause notice broadly alleges failure of the Assessing Officer to examine the allowability of Rs.1,29,55,862/- towards provisions in the nature of anticipated loss and alleging that such provisions is not in the nature of ascertained liability.

6.1 In this regard, the ld. counsel for the assessee submitted that the assessee is engaged in construction business and the impugned loss was claimed as expenditure in terms of Accounting Standard-7, issued by Institute of Chartered Accountant of India (ICAI), based on Percentage of Completion Method (POCM) and the same method of accounting followed by the assessee has been accepted by the tax authorities on a year to year basis. Besides, POCM method of accounting for tax purposes has been upheld by Hon'ble Delhi High Court in the case of *CIT vs. Malibu Estate Ltd in ITA No.213/2015 & CM No.4961/2015*. During the year, the assessee has recognized the foreseeable losses and created provision thereof. The ld. counsel next submitted that in identical fact situation in the preceding Assessment Year 2014-15, the Co-ordinate Bench in ITA No.3731/Del/2019 order dated 07.09.2022 has held that the Revisional Commissioner was not justified in assuming jurisdiction under Section 263 towards such losses and therefore, the issue is no longer *res integra*.

7. We have perused the revisional order and examined the case records with the assistance of the respective sides. We straightway noticed that Pr.CIT in paragraph 4 of the impugned revisional order referred to the similar action taken under Section 263 in Assessment Year 2014-15 also and proceeded to revise the assessment order on the similar footing as adopted in AY 2014-15. The revisional order passed in AY 2014-15 has been set aside and cancelled by the Co-ordinate Bench as pointed out on behalf of the

assessee. This being so, there is no reason for us to take a different view in the matter.

8. In consonance with the fate of the revisional order for AY 2014-15 in terms of order of Co-ordinate Bench, the action of the Pr.CIT under Section 263 is set aside and cancelled and the order of the Assessing Officer under Section 143(3) is restored.

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

Order pronounced in the open Court on 12/05/2023.

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

DATED: /05/2023

prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**