

**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.1070/DEL/2022
Assessment Year 2018-19

M/s. Havells India Limited 904, 9 th Floor, Surya Kiran Building K.G. Marg Connaught Place New Delhi	Vs.	PCIT Central Delhi-2 New Delhi
TAN/PAN: AAACH0351E		
(Appellant)		(Respondent)

Appellant by:	Shri Akshat Jain, CA		
Respondent by:	Shri T. James Singson, CIT-DR		
Date of hearing:	11	05	2023
Date of pronouncement:	17	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. Principal Commissioner of Income Tax (Central), Delhi-2 ('Pr.CIT' in short) dated 30.03.2022 wherein order passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) dated 31.12.2019 concerning AY 2018-19 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. When the matter was called for hearing, the Id. counsel submitted that the twin condition for applicability of Section 263 is not fulfilled in the present case. Elaborating the stance, the

assessee submitted that a disallowance of Rs.1,15,00,000/- was proposed to be made under Section 263 on account Shahenshah Scheme which has the result of modifying the taxable income under the normal provisions of the Income Tax Act. However, eventually there is no change in the book profit computed under Section 115JB of the Act by such disallowance. The assessee has been charged to taxation under the alternative Scheme under Section 115JB of the Act as per the Scheme of the Act. The Id. counsel contends that ultimate result of such adjustment will be lesser credit under MAT to this extent of Rs.39,79,920/- which the assessee is entitled to carry forward in the subsequent year for availing credit in accordance with law. However, in the instant case, the assessee has switched to Section 115BAA of the Act w.e.f. AY 2020-21 and as a result of exercising the option under Section 115BAA of the Act, the assessee is no longer entitled to avail the carry forward credit of MAT in the subsequent year. Consequently, in totality, no prejudice has resulted to the Revenue when the assessment upto AY 2020-21 is taken into account in so far as this issue is concerned. On being suggested by the Bench, the Id. counsel has filed an affidavit dated 11.05.2023 of the assessee-company to the effect that it has not availed any tax benefit flowing under Section 115JB applied in the instant assessment year and thus no prejudice whatsoever has caused to the Revenue.

3. The Id. DR for the Revenue, on the other hand, states that the explanation offered on behalf of the assessee though plausible but is not verifiable at present. The Id. CIT-DR refers to paragraph 5.3 of the revisional order and claims that it is not correct to say that no prejudice has been caused to the Revenue by claiming an unsustainable provision. The Id. CIT-DR accordingly

submitted that no interference with the revisional order is called for.

4. The contents of affidavit filed by the assessee-company is reproduced hereunder:

AFFIDAVIT

I Surjit Kumar Gupta, son of Late Shri Ved Prakash Gupta, resident of 57, Friends Colony (East), New Delhi – 110065 hereby solemnly affirm and declare as under:

1. That I am an Income Tax assessee and my Permanent Account Number is **AAAPG3515A**.
2. That I am a Director of M/s Havelis India Limited having its Corporate office at QRG Towers, 2D, Sec- 126, Expressway Noida - 201304 Uttar Pradesh, PAN **AAACH0351E** and presently assessed with Deputy Commissioner of Income Tax, Central Circle – 17, Delhi.
3. That the assessment in the case of assessee company was completed under section 153A of the Income tax Act, 1961 (hereinafter referred as the "Act") for the assessment year 2018-19 by Deputy Commissioner of Income Tax, Central Circle – 17, New Delhi (hereinafter referred as the "Ld. AO") vide order dated 31.12.2019 and the total income of the appellant was assessed at an income of Rs. 472,24,59,620/- thereby making addition of Rs.6,04,110/- u/s 14A of the Act. Finally, the assessment was completed on book profit of Rs. 962,14,73,499/-, u/s 115JB of the I. T. Act.
4. That the Pr. Commissioner of Income Tax, Central – 2, Delhi has passed the order u/s 263 of the Act dated 30.03.2022 and held that the assessment order passed u/s 153A read with section 143(3) of the Act dated 31.12.2019 is erroneous as well as prejudicial to the interest of revenue being no enquiry has been made by the Ld. AO in respect of provision made for "Shahenshah Scheme".
5. That the appellant against the Revision Order passed u/s 263 of Act by the Pr. Commissioner of Income Tax, Central – 2, Delhi has preferred an appeal before the Hon'ble ITAT, Delhi raising a ground that order passed by the AO is not prejudicial to the interest of Revenue being the appellant is liable to pay similar tax under the provisions of Section 115JB of the Act even after the disallowance of Provision of "Shahenshah scheme".




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6. That even the reduction in Mat credit available after the disallowance of Provision of "Shahenshah scheme" is also not prejudicial to the interest of revenue being the appellant has forgone the MAT credit available w.e.f. from AY 2020-21 by opting tonew tax regime u/s 115BAA of the Act in the Income Tax return filed for the assessment year 2020-21

New Delhi



Deponent

VERIFICATION

I, Surjit Kumar Gupta s/o Late Shri Ved Prakash Gupta, deponent hereby declare and verify that the contents of paras 1 to 6 are true to my knowledge and belief and nothing have been concealed and no part of it is false.

New Delhi



Deponent



ATTESTED
NOTARY PUBLIC
(INDIA)

11 MAY 2023

5. In the light of the assertions made on behalf of the assessee duly supported by the affidavit in this regard that no revenue benefit has been derived by the assessee from the alleged error in the order and no extra MAT credit has been availed in the later years, we find merit in the plea of the assessee that no prejudice has caused to the revenue on account of issue of provisions towards unascertained liabilities raked up by the Pr.CIT in the revisional proceedings.

6. Thus, without going into the merits of the correctness of alleged error on account of the provision or otherwise on the

touchstone of Section 263 of the Act, we set aside the order of the Pr.CIT at the threshold on the ground that the twin prerequisites for invocation of revisional powers under Section 263 is not available in the present case.

7. Resultantly, the revisional order is set aside and quashed.
8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 17/05/2023

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

DATED: /05/2023

prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**