

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.220/SRT/2019

(निर्धारणवर्ष / Assessment Year: (2014-15)

(Physical Court Hearing)

M/s Shhlok Triton Associates, F.P.No.388, Paikee Udhna Darwaja, Ring Road, Surat-395002	Vs.	Principal Commissioner of Income-tax-1, Surat, Room No.123, 1 <sup>st</sup> Floor, Aayakar Bhawan, Majura Gate, Surat-395002
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACLFS 6819 A		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Assessee by : Shri Rasesh Shah, C.A

राजस्व की ओर से /Respondent by: Shri Ashok B. Koli, CIT-D.R

सुनवाई की तारीख/ Date of Hearing : 19/04/2023

घोषणा की तारीख/ Date of Pronouncement : 22/05/2023

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

By way of this appeal, the assessee has challenged the correctness of the order passed by the Learned Principal Commissioner of Income Tax-1,Surat (in short “ld. PCIT”] dated 26.03.2019, under section 263 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for assessment year 2014-15.

2. Grounds of appeal raised by the assessee are as follows:

*“1. On the facts and in the circumstances of the case as well as law on the subject, the learned Commissioner of the Income Tax has grievously erred in initiating the proceedings u/s 263 of the Act,1961.*

*2. On the facts and in the circumstances of the case as well as law on the subject, the learned Commissioner of the Income Tax has grievously erred in assuming jurisdiction u/s263 of the Act,1961.*

*3. On the facts and in the circumstances of the case as well as law on the subject, the learned Commissioner of the Income Tax has erred in violating the principles of natural justice by not the mentioning the grounds for initiating action u/s 263 of Income Tax Act, 1961 in the show cause notice issued. As such the order passed u/s 263 is void ab-initio. The action of the Ld. CIT was wholly unreasonable, uncalled for the bad in law.*

4. On the facts and in the circumstances of the case as well as law on the subject, that the order of u/s 263 is merely '**change in opinion**'. The order u/s 143(3) of the Income Tax Act passed by the Ld AO does not in any way represent erroneous order. The action of the Ld. CIT was wholly unreasonable, uncalled for and bad in law.

5. On the facts and in the circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax has grievously erred in assuming that the Assessing Officer had not verified the unsecured loans during the course of proceeding and not made proper inquiry or verification finalized the order of assessment u/s 143(3) of the I.T. Act is contrary to the fact of the case.

6. On the facts and in the circumstances of the case as well as law on the subject, the entire proceedings are bad-in-law and invalid as assessment order u/s 143(3) of the Act for the same year were framed, wherein due inquiry was made.

7. On the facts and in the circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax has grievously erred in setting aside the assessment order framed u/s 143(3) of the I.T. Act without pointing out as to how the order is erroneous and prejudicial to interest of revenue.

8. It is therefore prayed that the above proposed proceedings may please be revoked as learned members of the Tribunal may deem it proper.

9. Appellant craves liberty to add, alter, or delete any of the ground(s) either before or in the course of the hearing of the appeal.”

3. Succinctly, the factual panorama of the case is that assessee before us is a firm and had filed return of income for A.Y. 2014-15 on 27.11.2014 declaring total income of Rs.2,32,06,770/-. During the year under consideration, the assessee firm was engaged in the business of builder, developers and construction activities. Scrutiny assessment u/s 143(3) of the Act was finalized on 09.12.2016 accepting the returned income shown by the assessee firm.

4. Later on, Ld. PCIT exercised his jurisdiction u/s 263 of the Act. On perusal of the scrutiny records, it was observed by ld PCIT that one of the reasons for selection of case under scrutiny was unsecured loans from the persons who have not filed their returns of income. During the year under consideration the assessee firm had obtained unsecured loans from the various parties including following parties.

Sr. No.	Name of the party	Amount in Rs.
1.	Ashok P Thadani	Rs.25,00,000/-

2.	Shri Narendra Kumar Jain	Rs.22,00,000/-
3.	Smt Sunita Ashok Tadani	Rs.30,00,000/-
Total		Rs.77,00,000/-

While going through the case record, it was noticed by Id PCIT that assessee-firm during the course of assessment proceedings had not furnished required documents and details and non-furnishing of requisite details and corroborative evidences indicates that the loan of Rs.77,00,000/- as above obtained from the above tabulated three parties cannot be considered as genuine. The Assessing Officer has not examined the genuineness of the loan transaction. Therefore, Id.PCIT issued a notice u/s 263 of the Act to the assessee. In response thereto, the assessee-firm filed written submission vide letter dated 25.03.2019 and contended that issue had been adequately inquired and dealt upon and then passed order u/s.143(3) of the Act accepting the returned income. The assessee-firm also submitted confirmation, returns of income and bank statement of the parties who extended loan to the assessee-firm. However, Id PCIT rejected the contention of the assessee and observed that assessment order passed u/s 143(3) of the Act for A.Y. 2014-15 on 30.11.2016 is erroneous and prejudicial to the interest of revenue and therefore Id PCIT directed the Assessing Officer to recompute and determine the correct total income of the assessee-firm after making necessary disallowances of wrong claims made by the assessee-firm. Therefore, the assessment order u/s 143(3) of the Income-tax Act, 1961 dated 23.12.2016 for A.Y. 2014-15 in assessee`s case was set-aside by Id PCIT with the direction to Assessing Officer to frame the assessment *de novo*.

5. Aggrieved, by the order of Id PCIT, the assessee is in appeal before us.

6. Shri Rasesh Shah, Learned Counsel for the assessee argued that the issue raised by the Id PCIT had been adequately enquired and dealt upon and then Assessing Officer passed order u/s143(3) of the Act accepting the returned

income, therefore order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of revenue.

7. The Id Counsel also stated that revision order u/s 263 of the Act was passed in haste and hurry therefore, assessee could not submit material evidences before Id PCIT. Therefore, Id Counsel states that another opportunity should be given to the assessee to submit material facts and evidences before Id PCIT.

8. On the other hand, Learned CIT-DR for the Revenue submitted that Assessing Officer has passed a cryptic order and there is no mention in the assessment order about the examination of the issue raised by Ld. PCIT. Therefore, the order passed by the Ld. PCIT should be upheld.

9. We have heard the rival parties and have gone through the material placed on record. We note that para 3 of the revision order u/s 263 of the Act, of Id PCIT, states as follows:

*“.....Accordingly, vide show cause notice dated 14.03.2019, the assessee firm was provided an opportunity of being heard & to offer explanation, if any, as well as to adduce evidence, if any, against the proposal of revision u/s. 263 of the Act. A complete detail of the facts on account of which the remedial action u/s. 263 of the Act proposed was discussed in the show-cause letter. The said notice was handed over to the jurisdictional Assessing Officer concerned to serve the same upon the assessee firm. The Assessing Officer concerned duly served the notice upon the assessee firm on 15.03.2019. In response to the said notice, the assessee firm through its authorized representative, Shri S.N. Satyan, CA, vide letter dated 22.03.2019 had requested to adjourn the hearing to any date after five days. It was clearly mentioned in the show cause notice that this matter is getting time barred by limitation on 31.03.2019 and therefore requested to furnish the reply on or before scheduled date of hearing and in the event of failure to comply to the notice, order u/s. 263 of the Act will be passed on merits on the basis of material available on record without affording any further opportunity, in whatsoever case may be. **Show cause notice was served upon the assessee firm on 15.03.2019 i.e. one week before the scheduled date of hearing; in spite of that the assessee firm requested for adjournment for more than five days which is not possible considering the limitation matter .....**”*

10. From the above findings of Id PCIT, it is abundantly clear that assessee-firm requested for adjournment for more than five days which was not possible for Id PCIT, considering the limitation matter/period. Therefore, we note that Id PCIT has not allowed sufficient time to the assessee to file the material evidences

and documents before Id PCIT, therefore, it establishes that Id PCIT has passed the order in hurry.

11. We also note that Id PCIT has given a general direction to the Assessing Officer to frame entire assessment order afresh. The findings of Id PCIT is reproduced below for ready reference:

*“5. In the light of the above discussions, the assessment order in the case of M/s Shhlok Triton Associates passed u/s 143(3) of the Act for A.Y. 2014-15 on 30.11.2016, is found to be erroneous and prejudicial to the interest of revenue and the AO concerned is accordingly directed to recompute and determine the correct total income of the assessee firm after making necessary disallowances of wrong claims made by the assessee firm. Therefore, the assessment order u/s 143(3) of the Income-tax Act, 1961 dated 23.12.2016 for A.Y. 2014-15, in the instant case, is set-aside with the direction to frame the assessment **De novo**. The necessary order may be passed in time and as per the provisions of law. The Assessing Officer concerned is directed to give reasonable opportunity of being heard to the assessee before finalizing the assessment proceedings.”*

12. From the above findings of Id PCIT in his 263 order, it is vivid that Id PCIT has given a general direction to the Assessing Officer to frame entire assessment order again, whereas Id PCIT in his revision order raised the specific issue to examine the **unsecured loan** by the Assessing Officer. Hence the direction given to the Assessing Officer is not in accordance with the specific issue identified by Id PCIT.

13. Therefore, we note that Id PCIT has not provided adequate opportunity to the assessee to file relevant material evidences and documents before him during the revision proceedings and hence the revision order u/s 263 of the Act was passed by Id PCIT in hurry. Besides, Id PCIT has directed the Assessing Officer to frame the entire assessment afresh which is not acceptable, as the issue identified by Id PCIT was **unsecured loan**, and direction would have been given by Id PCIT only for examination of unsecured loan. We note that the Hon'ble Supreme Court in M.S.Gill vs The Chief Election Commission 1978 AIR SC 851 held “The dichotomy between administrative and quasi-judicial function vis-à-vis the doctrine of natural justice is presumably obsolescent after Kraipak (A.K. Kraipak vs UOI AIR 1970 SC 150) which makes the water-shed in the application of natural justice to administrative proceedings. The rules of natural

justice are rooted in all legal systems and are not any new theology. They are manifested in the twin principles of *nemo judex in parte sua* (no person shall be a judge in his own case) and *audi alterem partem* (the right to be heard). It has been pointed out that the aim of natural justice is to secure justice. Considering the above facts, we note that assessee has not given sufficient opportunity of being heard and could not plead his case successfully before the Id. PCIT, hence it is a violation of principle of natural justice. We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, we deem it fit and proper to set aside the order of the Id. PCIT and remit the matter back to the file of the Id. PCIT to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

14. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced on 22/05/2023 by placing record on notice board.

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

Sd/-  
(Dr. A.L. SAINI)  
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 22/05/2023

*Dkp Outsourcing Sr.P.S*

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Senior Private Secretary/Private  
Secretary/ Assistant  
Registrar,ITAT, Surat