

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI**

**BEFORE  
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 278/Del/2021  
Asstt. Year: 2015-16

Manohar Lal Sarraf and Sons Pvt. Ltd., B-81, Bhisim Pitamah Marg, Defence Colony, New Delhi – 110 024 PAN AAECM0243Q (Appellant)	Vs.	Pr. CIT Ghaziabad.       (Respondent)
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Assessee by:	Ms. Prem Lata Bansal, Sr. Advocate Shri Vinay Sahni, CA Shri Shivang Bansal, Advocate
Department by:	Ms. Sarita Kumari, CIT-DR
Date of Hearing:	20.03.2023
Date of pronouncement:	23.05.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order dated 27.01.2021 of the Ld. Pr. Commissioner of Income Tax, Ghaziabad (**"Pr. CIT"**) passed by him under section 263 of the Income Tax Act, 1961 (**the "Act"**) pertaining to Assessment Year (**"AY"**) 2015-16.

2. The assessee has taken the following grounds of appeal:-

"1. That the Ld. Pr. CIT has erred in passing the order u/s 263 of the Act on the ground that the order passed by the Assessing Officer u/s 143(3) of the Act was found to be erroneous and prejudicial to the interest of Revenue.

2. *That the Ld. Pr. CIT has erred in passing the order u/s 263 of the Act without jurisdiction and without authority of law, therefore, the order is liable to be set aside.*
3. *That the Ld. Pr. CIT has erred in passing the order u/s 263 of the Act purely on the basis of information passed on by the Office of the Dy. Director of Audit Centre, ITRA, Allahabd, and without application of sound mind of Ld. Pr. CIT , which is against the provision of law as well as bad in law.*
4. *That the Ld. Pr. CIT has erred in invoking the provisions of section 263 of the Act on the ground that no supportive documents for cost of improvement of Rs 5,23,386/- for each property sold have been filed by the Assessee for claiming Long term Capital gain and he also forgot to consider that inadequate / insufficient inquiry does not amount to lack of inquiry so as to attract the provisions of section 263 of the Income Tax Act.*
5. *That the Ld. Pr. CIT has erred in invoking the provisions of section 263 of the Act on the ground that the Assessing Officer had failed to make sufficient inquiries while passing the regular assessment order whereas the extensive inquiry had been made by the Assessing Officer during the original assessment proceeding, hence the directions given by the Pr. CIT to frame the fresh assessment is contrary to law.*
6. *That the Ld. Pr. CIT has erred in holding the capital expenditure of Rs 22,84,561/- incurred by the Assessee for the Lifetime conversion charges & parking charges for the said properties paid to Appropriate Government authority during F.Y. 2007-2008 & 2010-2011 as revenue expenditure without application of mind and not allowing the indexation method on such capital expense as cost of improvement for calculation of Long term capital gain , which is against the provision of law and bad-in-law.*
7. *That the Ld. Pr. CIT has erred in passing the order u/s 263 of the Act by giving direction to the Ld. AO to re-compute the capital gain after taking cost of acquisition of both the properties sold at Rs 1,10,19,401/- instead of Rs 1,33,03,962/-actually as claimed by the assessee in ITR , by ignoring the Life time conversion charges & parking charges of Rs 22,84,561/-paid by the company and the same had been capitalized in books of accounts properly as per the norms and accounting standards during F.Y. 2007-2008 & 2010-2011 respectively.*
8. *That the Ld. Pr. CIT has erred in passing the order u/s 263 of the Act purely and exclusively on the basis of difference of opinion with the Ld. AO that the said cost of improvement as claimed by the assessee is of revenue expenditure, therefore, apprehension of Pr. CIT in invoking the provisions of section 263 of the Act is bad-in-law.*
9. *That the appellant seeks leave to add, amend, alter, abandon or substitute any of the above grounds during the hearing of the appeal.”*

3. The Ld. AR invited our attention to the review of the assessment order dated 29.08.2017 in the case of the assessee by the Ld. Pr. CIT appearing at page 260-261 of the Paper Book. The Ld. AR submitted that while Item (iii) of the review states that sufficient evidence has been brought on record for additions made and these are properly discussed in the assessment order, the comments say otherwise. Therefore, it is apparent that the Ld. Pr. CIT has made contradictory statements.

3.1 The Ld. AR argued that the Ld. Pr. CIT has passed the impugned order under section 263 of the Act on the basis of audit objection which is contrary to the settled legal position and referred to the decision of Hon'ble Punjab & Haryana High Court in CIT vs. Sohana Woolen Mills (2008) 296 ITR 238 (P&H).

3.2 The Ld. AR also contended that in the case of the assessee the twin conditions precedent, namely that the order is erroneous in so far as it is prejudicial to the interests of Revenue have not been satisfied. There is nothing in the order of the Ld. Pr. CIT which shows that the assessment order passed by the Ld. Assessing Officer ("**AO**") is in any way erroneous.

3.3 It is further submitted by the Ld. AR that the Ld. AO has examined all the details/evidence produced before him during the assessment proceedings and then he arrived at his conclusions. Thereafter, the Ld. Pr. CIT cannot invoke the revisionary powers under section 263 of the Act.

3.4 A detailed written submission has been filed by the Ld. AR which appears at pages 1-27 of the Paper Book.

4. The Ld. CIT-DR, on the other hand, supported the order of the Ld. Pr. CIT and drew our attention to para 5.2 of the order. She argued that the Ld. AO has not made proper enquiry, therefore Ld. Pr. CIT has rightly invoked section 263 of the Act. She also submitted that the impugned order of the Ld. Pr. CIT nowhere mentions that the impugned order was passed on the basis of audit objection. She invited our attention to the Explanation 2 inserted in section 263 of the Act by the Finance Act, 2015 w.e.f. 01.06.2015

and cited number of decisions in support of the proposition that where the Ld. AO did not make any proper enquiry, resort to section 263 of the Act was justified.

5. We have given careful thought to the rival submissions and perused the records. The Ld. Pr. CIT found from the assessment order dated 29.08.2017 for AY 2015-16 passed under section 143(3) of the Act that the assessee sold two properties and declared capital gain at Rs. 83,79,359/-. The cost of acquisition was claimed at Rs. 1,16,86,934/- incorrectly, and cost of improvement at Rs. 5,23,386/- for each property without submitting any supporting documents. He required the assessee to show cause why the assessment be not held to be erroneous and prejudicial to the interests of Revenue. The assessee submitted reply, a copy of which is at page 270-292 of the Paper Book. Attention of the Ld. Pr. CIT was drawn to para 3 and 4 of the assessment order. In para 3 the Ld. AO stated, inter alia that the books of account were also produced which were examined on test check basis. In para 4 the Ld. AO observed that after considering all the facts and material available on record as well as discussion with the ARs of the assessee, the assessment is completed on returned income.

5.1 On the basis of the above observations/findings of the Ld. AO in the assessment order, the contention of the assessee before the Ld. Pr. CIT as also before us is that the Ld. AO had examined all the records, evidences, supporting documents and books of account and passed the assessment order only after due diligence and after making necessary examination and after application of mind. We are inclined to agree with the contention of the assessee. It is not a case where assessment order has been passed without making enquires or verification. We are of the view that mere concise order does not lead to a conclusion that no enquiry has been made or the assessment order is erroneous.

6. According to the Ld. Pr. CIT, the assessee had incorrectly claimed the cost of acquisition while calculating the capital gain arising from sale of the properties. It had reduced the quantum of capital gain by claiming

indexed cost of improvement on account of conversion charges and parking in the years 2007-08 and 2010-11 at Rs. 22,84,561/-. Before the Ld. Pr. CIT it was explained by the assessee that the said sum of Rs. 22,84,561/- was paid to Municipal Corporation of Delhi. These charges were claimed towards cost of acquisition as it was one time charges paid for realising the enduring benefit arising out of the properties. Therefore, the expenditure was capital in nature and was capitalised in the books of account in the year in which it was incurred. During assessment proceedings the same explanation was submitted before the Ld. AO who after considering all the details had come to the conclusion that the assessee had correctly computed and declared the capital gain at Rs. 83,79,360/-. In such a scenario, in our opinion, the Ld. Pr. CIT had no jurisdiction under section 263 merely because the Ld. AO did not express his satisfaction in so many words in the assessment order as held in CIT vs. Reliance Communication Ltd. (2017) 396 ITR 217 (Bom). SLP filed by the Department against the decision (supra) has been dismissed by the Hon'ble Supreme Court reported in 389 ITR (St) 39.

7. On the facts and in the circumstances of the assessee's case, after considering the material placed by both the parties before us, we have come to the conclusion that assumption of jurisdiction by the Ld. Pr. CIT under section 263 of the Act is not in accordance with law. We, therefore, vacate the impugned order and allow the appeal of the assessee.

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

**Order pronounced in the open court on 23<sup>rd</sup> May, 2023.**

**sd/-**  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

**sd/-**  
**(ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

Dated: 23/05/2023

***Veena***

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1. Applicant

2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

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Date on which the fair order is placed before the Dictating Member for pronouncement	
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