

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

**BEFORE**

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

ITA No. 1068/Del/2021  
Asstt. Year: 2016-17

Mohak Real Estate Private Limited, 1 <sup>st</sup> Floor, Shopping Mall Complex, Arjun Marg, DLF Phase-1, DLF City, Gurgaon, Haryana-122 002. PAN AAECM4453E	Vs.	PCIT-4, Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri R.S. Singhvi, CA Shri Satyajeet Goel, CA
Department by:	Shri Sumit Kumar Verma, Sr. DR
Date of Hearing:	23.03.2023
Date of pronouncement:	25.05.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order of the Ld. Pr. Commissioner of Income Tax, Delhi-4 (**"PCIT"**) dated 17.03.2021 passed under section 263 of the Income Tax Act, 1961 (**the "Act"**) pertaining to the Assessment Year (**"AY"**) 2016-17.

2. The grounds raised by the assessee are as under:-

- "1. That on facts and in circumstances of the case, Ld. CIT was not justified in assuming jurisdiction u/s 263 even though the assessment order is neither erroneous nor prejudicial to the interest of revenue, and the order u/s 143(3) was passed after proper satisfaction.*

2. *That the order dated 17.03.2021, passed u/s 263 of the Act is perverse, against the principles of natural justice, passed without, considering detailed submissions filed by the appellant before the Ld. CIT.*
3. *That assumption of jurisdiction u/s 263, presuming, and merely on basis of audit objection and lack of enquiry by the AO is bad in law, ignoring the fact that the order u/s 143(3) dated 07.12.2018 was passed by the Ld. AO, seeking details/information as desired to his satisfaction.”*

3. The appeal was filed late by 114 days. Vide application dated 07.07.2021 the assessee sought condonation of delay in view of Hon'ble Supreme Court's order dated 27.04.2021 in Miscellaneous Application No. 665/2021 in SMW(C) No.3/2020, a copy of which accompanied the application. After hearing the parties the delay is condoned.

4. The Ld. AR submitted that the assessee company is real estate developer. It filed its return for AY 2016-17 on 15.10.2016 declaring income of Rs. 12,85,64,070/-. The case was selected for scrutiny. The Ld. Assessing Officer (**“AO”**) completed the assessment under 143(3) of the Act on 07.12.2018 after carrying out detailed scrutiny. The Ld. PCIT, however cancelled the said assessment order invoking the provisions of section 263 of the Act and directed the Ld. AO to pass fresh assessment order denovo.

4.1 The Ld. AR further submitted that the assessee filed detailed reply to show cause notice under section 263 dealing with each and every observation of the Ld. PCIT. However, the Ld. PCIT did not consider the reply on merits. The observations of the Ld. PCIT in para 4 of his order are contrary to questionnaire and replies filed during the course of assessment and detailed submission filed in response to show cause notice under section 263. According to the Ld. AR the order of the Ld. PCIT is prima facie unsustainable as it is not based on facts of the case and settled legal principles. In support of his arguments he referred to several decisions and emphatically relied on the decision of Hon'ble Supreme Court in PCIT vs. Shreeji Prints (P) Ltd. (2021) 130 taxmann.com 294 (SC).

5. The Ld. DR drew our attention to Explanation 2 inserted in section 263 of the Act by Finance Act, 2015 w.e.f. 01.06.2015. He supported the order of Ld. PCIT and cited a number of decisions in support thereof.

6. We have considered carefully the submission of the parties; perused the record as also the decisions relied upon by the parties. It is revealed from the assessment order that the Ld. AO was well aware that the case of the assessee was selected for scrutiny under CASS. Accordingly, he issued and served upon the assessee notice under section 143(2) to produce evidence in support of its return. Thereafter, the Ld. AO sent to the assessee notice under section 142(1) of the Act along with detailed questionnaire of 38 questions (copy at page 43-47 of Paper Book) to which the assessee filed its reply (copy at page 48-55 of Paper Book). The Ld. AO stated in the assessment order that "in compliance to statutory notice issued, replies/details as called for during the course of assessment proceedings were submitted by the assessee company during the course of hearings of the case held on various dates". Then the Ld. AO says that "the documents and replies filed in response to various queries raised were duly considered". This amply demonstrates that the Ld. AO applied his mind to the reply/submissions/explanations and evidence filed/produced by the assessee before him. It is not a case of non-enquiry. In the backdrop of the above factual matrix, it is rather difficult to arrive at the conclusion as the Ld. PCIT did that the Ld. AO has not made proper investigation and enquiries rendering the assessment order passed under section 143(3) of the Act erroneous and prejudicial to the interests of Revenue. The judicial consensus is that where the records indicate that the Ld. AO called for details which were also furnished, there can be no inference of lack of enquiry so as to justify jurisdiction of the Ld. PCIT under section 263 of the Act. Inadequacy of enquiry in a matter of opinion does not confer revisional jurisdiction.

7. From the order of the Ld. PCIT passed under section 263 of the Act it is observed that in the show cause notice he raised certain issues and made observations to which the assessee gave reply in seriatim followed by legal

submissions (copy at page 5-40 of the Paper Book) but not a word thereupon has been mentioned by the Ld. PCIT. This is contrary to the law laid down by the Hon'ble Delhi High Court in PCIT vs. Delhi Airport Metro Express Pvt. Ltd. (2017) 398 ITR 8 (Delhi) wherein the Hon'ble Jurisdictional High Court held that for purposes of exercising jurisdiction under section 263 the conclusion that the order of the AO is erroneous and prejudicial to the interests of the Revenue has to be preceded by some minimal enquiry. In fact, if the Ld. PCIT is of the view that the AO did not undertake any enquiry, it becomes incumbent on him to conduct such enquiry. Nothing of the sort has been done by the Ld. PCIT in the case of the assessee before us.

8. In Synergy Waste Management (P) Ltd. vs. ACIT (2016) 49 ITR (Trib) 8 (Delhi) it is held that if an AO, acting in accordance with law, makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because according to him the order should have been written more elaborately. Section 263 does not visualise a case of substitution of the judgment of the Commissioner for that of the AO.

9. The Ld. DR referred to newly inserted Explanation 2 to Section 263(1) of the Act introduced by the Finance Act, 2015 w.e.f. 01.06.2015 in support of the order of the Ld. PCIT. In our opinion this cannot be done as in the show cause notice the Ld. PCIT has nowhere mentioned to invoke the Explanation 2 to Section 263 of the Act. Likewise, the assessee cannot take a plea of assumption of jurisdiction by the Ld. PCIT on the basis of audit objection without there being any material in the record to substantiate the plea.

10. In the light of the facts and legal position set out above, we are of the view that the Ld. AO made enquiries and after applying his mind he completed the assessment under section 143(3) of the Act accepting the income declared by the assessee in its return. Therefore, assumption of jurisdiction under section 263 of the Act by the Ld. PCIT is not in accordance with law and we hereby cancel the impugned order.

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

**Order pronounced in the open court on 25<sup>th</sup> May, 2023.**

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

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

Dated: 25/05/2023

***Veena***

Copy forwarded to -

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

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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