



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No.29/CTK/2023

Assessment Year : 2015-16

Sultan Enterprises Pvt Ltd., At:Plot No.161, Azad Nagar, Sundarpada, Bhubaneswar.	Vs.	Pr. CIT, Bhubaneswar-1
PAN/GIR No.AASCS 1016 R		
(Appellant)	..	(Respondent)

Assessee by : Shri Sidharth Ray, Sr. Advocate/Shri K.K.Sahoo, Adv
Revenue by : Shri Abani Kanta Nayak, CIT DR

Date of Hearing : 26 /05/2023

Date of Pronouncement : 26 /05/2023

ORDER

Per George Mathan, JM

This is an appeal filed by the assessee against the order u/s.263 of the Act passed by the Id Pr. CIT, Bhubaneswar-1 dated 18.3.2021 in Appeal No.ITBA/REV/F/REVs/2020-21/1031592241(1) for the assessment year 2015-16.

2. Shri Sidharth Ray, Id Sr Advocate and Sri K.K.Sahoo, Id Advocate appeared for the assessee and Shri Abani Kanta Nayak, Id CIT DR appeared for the revenue.

3. The appeal is time barred by 684 days. The assessee has filed condonation petition 31.1.2023, wherein, it is stated that the assessee had challenged the order u/s.263 of the Act dated 18.3.2021 of the Pr. CIT before the Hon'ble High Court of Orissa, which was registered as W.P.(C) No.23596/2022. The aforesaid writ petition was disposed of on 19.12.2022 and the Hon'ble High Court directed to file an appeal before the Tribunal before 1st of February, 2023 with an application for condonation of delay, explaining the delay on account of pendency of writ petition. In compliance to the direction of the Hon'ble High Court, the assessee has filed the appeal on 31.1.2023. Therefore, there was a delay of 684 days. It was submitted that the delay in filing of the appeal be condoned and same be adjudicated on merits.

4. After hearing both the sides and in view of the direction of the Hon'ble High Court in W.P (C) No.23596 of 2022 dated 19.12.2022, the delay in filing the appeal by the assessee is condoned and admitted for adjudication.

5. It was submitted by Id Sr Advocate that there is only one issue being challenged against the revision order and that was in respect of limitation. It was the submission that the assessment year involved is 2015-16. The original assessment order came to be passed u/s.143(3) on 18.12.2017. It was the submission that consequently an order of revision u/s.263 of the Act could have been passed within the period of limitation by 31.3.2020

being the period of two years from the end of the relevant assessment year in which the order was passed. It was the submission that a show cause notice u/s.263 of the Act has been issued on 26.2.2021 and the order has been passed only on 18.3.2021. It was the submission that the limitation had been extended in respect of certain proceedings of the Income tax Act by The Taxation and other laws (Relaxation and amendment of certain provisions) Act, 2020. It was the submission that as per the provisions of clause 3(1)(a), the provisions provided for extension of limitation are in respect of completion of any proceedings or passing of any order or issuance of any notice, etc, which falls during the period 20.3.2020 to 31.12.2020 stood extended to 31.3.2021. It was the submission that as the period of limitation itself had expired by the time the notice u/s.263 had been issued, the proceedings u/s.263 and consequential order is liable to be annulled. Ld Sr. counsel placed reliance on the decision of Hon'ble Supreme Court in the case of Thirumalai Chemicals Ltd vs Union of India & Ors in Civil Appeal Nos. 3191 -3194 of 2011 dated 11th April, 2011 to submit that in para 20, the Hon'ble Supreme Court has held as follows:

"20. Learned author in order to establish the above proposition referred to the decision of the Court of Appeal in The Ydun case [THE YDUN (1899) Probate Division at page 236 (The Court of Appeal) where the Court held that the amending legislation dealt with procedure only and therefore applied to all actions whether commenced before or after the passing of the Act and even in respect of previously accrued rights. The principle laid down in 'The Ydun' was applied in The King vs. Chandra Dharma (1905) 2 KB 335 and it was held that if a statute shortening the time within which proceedings can be taken is retrospective then it is impossible to give good reason, why a statute extending the time within which proceedings be

taken, should not be held to be retrospective. The Judicial Committee of Privy Council in *Yew Bon Tew v. Kenderaan Bas Mara* (1982) 3 All E.R. 833, opined that whether statute has retrospective effect, cannot in all cases safely be applied by classifying statute as procedural or substantive and pointed out in certain situation the Court would rule against a retrospective operation. Limitation provisions therefore can be procedural in the context of one set of facts but substantive in the context of different set of facts because rights can accrue to both the parties. In such a situation, test is to see whether the statute, if applied retrospectively to a particular type of case, would impair existing rights and obligations. An accrued right to plead a time bar, which is acquired after the lapse of the statutory period, is nevertheless a right, even though it arises under an Act which is procedural and a right which is not to be taken away pleading retrospective operation unless a contrary intention is discernible from the statute. Therefore, unless the language clearly manifests in express terms or by necessary implication, a contrary intention a statute divesting vested rights is to be construed as prospective. A statute, merely procedural is to be construed as retrospective and a statute while procedural in nature affects vested rights adversely is to be construed as prospective. The manner of filing an appeal, under sub section (2) of [Section 19](#) of FEMA and the time within which such an appeal has to be preferred and the power conferred on the Tribunal to condone delay under the proviso to sub-section (2) of [Section 19](#) are matters of procedure and act retrospectively, so as to cover causes of action which arose under FERA. Since the appeal was filed under FEMA with an application for condonation of delay such an appeal has to be considered by the Tribunal under the proviso to sub-section(2) of [Section 19](#) FEMA and if the Company shows sufficient cause for not filing the appeal in time then the Tribunal can condone the delay and entertain the appeal, especially when there is no accrued right to the respondent to plead a time bar. The legal position is summarized thus by Justice G.P. Singh in *Principles of Statutory Interpretation* (12th Edition-Page 541) thus:-

"Statutes of Limitation are thus retrospective in so far as they apply to all legal proceedings brought after their operations for enforcing causes of action accrued earlier...."

6. It was the further submission that The Taxation and other laws (Relaxation and amendment of certain provisions) Act, 2020 does not refer to the provisions of section 263 of the Act and, therefore, it cannot be said that said extension provided by The Taxation and other laws (Relaxation and amendment of certain provisions) Act, 2020 extended the limitation

provided under the provisions of section 263 of the Act. He further drew our attention to the decision of the Hon'ble Supreme Court in the case of Bank of Baroda vs Kotak Mahindra Bank Limited (2020) 17 SCC 798 to submit that the provisions of limitation were substantive provisions. It was thus the submission that as on the date of the issuance of notice u/s.263, the limitation for passing of the order had already expired and insofar as The Taxation and other laws (Relaxation and amendment of certain provisions) Act, 2020 did not apply to the provisions of section 263 and, therefore, the order u/s.263 passed by the Pr. CIT on 18.3.2021 is barred by limitation and is liable to be quashed.

7. In reply, Id CIT DR submitted that in view of the decision of Hon'ble Supreme Court in the case of Gita Devi Agarwal vs CIT, 76 ITR 496 (SC) and CIT vs Amitabh Bachan(2016), 69 taxmann.com170(SC) there is no requirement of issuance of notice in respect of the proceedings u/s.263 of the Act. It was the submission that the assessee had attended the proceedings and had participated in the proceedings and consequently, the order has been passed within the extended limitation provided by The Taxation and other laws (Relaxation and amendment of certain provisions) Act, 2020. It was the submission that the limitation period had been extended from 31.3.2020 to 31.3.2021 and the proceedings had been validly completed before expiry of the limitation and order was valid. It was the submission that The Taxation and other laws (Relaxation and

amendment of certain provisions) Act, 2020 was substantive Act of the Parliament by which the limitation had been extended. It was the further submission that no vested right can be claimed against the act of the Parliament much less an act passed by the Parliament. It was the further submission that the decision of Hon'ble Supreme Court in the case of Thirumalai Chemicals Ltd (supra) had no application insofar as the said decision related to the provisions of repeal and saving clause in respect of Foreign Exchange Amendment Act, 1999 in relation to the Appellate Tribunal therein. It had no relation to the issue of limitation.

8. We have considered the rival submissions. At the outset, what is required is an understanding of the Taxation and Other Laws (Relaxation and amendment of certain provisions) Act, 2020. This has been published in the Official Gazette on 29.9.2020. A perusal of clause 3(1) of the said provision alongwith clause 3(1)(a) reads as follows:

"3(1) Where any time limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20^t day of March, 2020 to the 31st day of December, 2020, or such other date after the 31st day of December, 2020, as the Central Government may, by notification, specify in this behalf, for the completion or compliance of such action as –

(a) Completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval, or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the specified Act: "

9. The words used in clause 3(1) are "for the completion or compliance of such action". The action contemplated are in the said clause and sub-clause that we are concerned that is (a). The sub clause (a) has extended the period in respect of (i) completion of any proceedings , (ii) passing of any order, (iii) issuance of any notice, intimation or notification, sanction or approval, or This is in respect of any authority, commission or tribunal, by whatever name called, under the provisions of the specified Act. The Income Tax act, 1961 is one of the specified Act as provided in clause (2) of the said Act. A perusal of clause 3(1)(a) thus clearly shows that when the period of limitation fell between 20.3.2020 and 31.12.2020, then such period of limitation stood extended to 31.3.2021. The issuance of any notice is specified in clause 3(1)(a). The notice u/s.263 has admittedly been issued on 26.2.2021. The stand taken by the Revenue that no notice needs to be issued is fallacious. A perusal of the provisions of section 263 itself provides that the assessee is to be informed of what are the proceedings being initiated against him. It is only after the assessee is informed that he can be heard and for the purpose of being heard, a notice would admittedly have to be issued. Now, as we have earlier noticed that the provisions of clause 3(1)(a) have extended the period for issuance of notice if such period for the purpose of issuance of notice fell between 20.3.2020 and 31.12.2020. In the present case, the time limit for issuance of notice did fall within the said period insofar as the limitation was

31.3.2020. As the limitation for the purpose of passing the order would also stand extended insofar as the provisions of clause 3(1) and 3(1)(a) used the word "completion". This being so, it is held that the notice issued u/s.263 and the order passed u/s.263 on 18.3.2021 is within the period of limitation and consequently, same stands upheld.

10. In the result, appeal of the assessee stands dismissed.

Order dictated and pronounced in the open court on 26/05/2023.

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(Ramit Kochar)
ACCOUNTANT MEMBER
As per separate concurring order
Sd/- Accountant Member

Sd/-
(George Mathan)
JUDICIAL MEMBER

ITA No.29/CTK/2013 A.Y. 2015-16
Sultan Enterprises Private Limited, Bhubaneswar v. Pr. CIT-1, Bhubaneswar.

Concurring Order (Per Ramit Kochar, AM)

I have carefully gone through the appellate order of my Id. Brother JM and I concur with the decision and conclusion arrived at my Id. Brother(JM) in dismissing the appeal filed by the assessee. But for the completeness of the matter and the reasoning thereof, I proposed to pass this separate concurring order. The facts are briefly stated by my Id. Brother(JM) in his appellate order. The Id. Sr. Advocate Shri Sidharth Ray representing the assessee had stated at the outset before the Division Bench that the only issue agitated in this appeal is regarding limitation in the issuance of notice u/s 263 as well in the conclusion of the revisionary proceedings u/s 263 of the Income-tax Act, 1961 by Id. PCIT . It was stated before the Bench that so far as merits of the issue's raised by Id. PCIT in the revisionary proceedings, the assessee does not have any case on the merits of the issues. It was the submission of the Id. Sr. Advocate that the impugned assessment year is assessment year 2015-16. The original assessment proceedings u/s 143(3) of the 1961 Act read with Section 143(2) and 142(1) for assessment year 2015-16 were completed by Id. Assessing Officer vide assessment order dated 18.12.2017 passed u/s 143(3) of the 1961 Act. It was the say of Id. Sr. Advocate that the revisionary order u/s 263 ought to have been passed by Id. PCIT latest by 31.03.2020 i.e. within two years from the end of the financial year in which the assessment order dated 18.12.2017 sought to be revised was passed. The Id. Sr. Advoate drew our attention to provisions of Section 263(2) of the Income-tax Act, 1961 . It was submitted by Id. Sr. Advocate that notice of hearing u/s 263 was issued by Id. PCIT on 26.02.2021, while revisionary order u/s 263 was passed by Id. PCIT on 18.03.2021. Thus, the Id. Sr. Adocate submitted that revisionary order passed by Id. PCIT u/s 263 is time barred as it ought to have been passed latest by 31.03.2020. The assessee has taken similar ground of appeal vide ground No. 2 raised in the memo of appeal filed with the Income-Tax Appellate Tribunal, Cuttack. On being asked by the Division Bench, the Id. Sr. Advocate stated before the Bench that the Parliament has passed The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020(in Short 'TOLA, 2020') which received the assent of the President of India on 29.09.2020. The Id. Sr. Advocate drew our attention to Section 3(1) of the TOLA, 2020 and

submitted that where, any time limit has been specified in , or prescribed of notified under, the specified Act which falls during the period from the 20th day of March ,2020 to the 31st day of December, 2020, or such other date after the 31st day of December, 2020 , as the Central Government may, by notification , specify in this behalf, for the completion or compliance of such action , inter-alia, as completion of any proceeding or passing of any such order or issuance of any notice , intimation, notification , sanction or approval, or such other action, by whatever name called , by any authority, commission or tribunal , by whatever name called , under the provision of the specified Act, and where completion or compliance of such action has not been made within such time, then the time limit for completion or compliance of such action, shall notwithstanding anything contained in the specified Act, stand extended to the 31st March , 2021 ,or such other date after the 31st day of March , 2021, as the Central Government may, by notification , specify in this behalf. The Income-tax Act, 1961 is a specified Act under TOLA, 2020 , as is specified in Section 2(1)(b)(ii) of TOLA, 2020. The said Act of 2020(TOLA,2020) was brought in during Covid-19 pandemic. It was submitted by Id. Sr. Advocate that Section 263 of the 1961 Act is not amended , and since TOLA, 2020 is enabling Act , it cannot be extended to Section 263 of the 1961 Act. It was submitted that the notice was required to be issued u/s 263 and the proceedings were to be completed u/s 263 , within the time limit provided u/s 263(2) i.e. latest by 31.03.2020 , and since the notice u/s 263 was not issued within period of limitation as prescribed u/s 263(2), the right accrued and vested in the assessee and the Id. PCIT loses right to issue notice u/s 263 as the right accrues to the assessee which goes vested in the assessee. The Id. Sr Advocate relied upon the judgment and order of Hon'ble Supreme Court of India in the case of **Thirumalai Chemicals Limited v. Union of India**, in Civil Appeal No. 3191-3194 of 2011. Our attention was drawn to para 20 of the aforesaid judgment and order passed by Hon'ble Supreme Court . My Id. Brother(JM) has already reproduced the said para in his order. It was the say of Id. Sr. Advocate that there is no whisper about Section 263 in TOLA,2020. The Id. Sr. Advocate also placed reliance on the order of Hon'ble Allahabad High Court in the case of **Rajeev Bansal v. UOI** , in Writ Tax No. 1086 of 2022. The Id. Sr. Advocate also placed reliance on the judgment and order of Hon'ble Supreme Court of India in the case of **Bank of Baroda v. Kotak Mahindra Bank**, reported in (2020) 17 SCC 798, in Civil Appeal No. 2175 of 2020, decided on 17th March,

2020. Thus, prayers were made by Id. Sr. Advocate to quash the revisionary order dated 18.03.2021 passed by Id. PCIT u/s 263 of the 1961 Act.

2. The Id. CIT DR on the other hand submitted that notice dated 26.02.2021 was issued by Id. PCIT u/s 263 of the 1961 Act. The Id. CIT DR referred to provisions of TOLA, 2020 . The Id. CIT DR relied upon the decision of Hon'ble Supreme Court in the case of **Gita Devi Aggarwal v. CIT** , reported in (1970) 76 ITR 496(SC) and **CIT v.Amitabh Bachchan**, reported in (2016) 69 taxmann.com 170(SC) , and submitted that Section 263 of the 1961 Act does not require any show cause notice to be given to the assessee by Id. PCIT, and only opportunity of hearing is required to be given. The assessee's Partner along with counsel appeared before Id. PCIT and made representations, hence principles of natural justice were duly complied with by Id PCIT. It was submitted that limitation was extended by TOLA, 2020 owing to Pandemic Covid-19, and it was an act passed by Parliament which received assent of President of India on 29.09.2020 , extending period of limitation. It was submitted that TOLA, 2020 was not an enabling Act , but a substantive Act passed by Parliament. Our attention was drawn to the Gazette Notification No. 63 dated 29.09.2020 issued in Gazette of India to promulgate The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (No. 38 of 2020) after it received assent of President of India on 29.09.2020. It was submitted by Id. CIT DR that Income-tax Act, 1961 is a specified Act in Section 2 of TOLA, 2020. Our attention was drawn to Section 3(1)(a) of the TOLA Act, 2020. It was submitted by Id. CIT DR that TOLA, 2020 is a substantive act which extended the limitation, inter-alia, to pass revisionary order u/s 263 by 31.03.2021. It was submitted that TOLA, 2020 was a substantive Act passed by Parliament and there is no vested right in case of Statute Passed by Parliament. It was submitted that no notice u/s 263 was required to be issued by Id. PCIT and only hearing was required to be given as held by Hon'ble Supreme Court in the case of **Gita Devi Aggarwal**(supra) and **Amitabh Bachchan**(supra). It was submitted that the Id. PCIT has time to pass the revisionary order u/s 263 until 31.03.2021 in view of limitation period being extended by TOLA, 2020. The revisionary order was passed by Id. PCIT on 18.03.2021 u/s 263, which was within the time prescribed u/s 263 as extended by TOLA, 2020. Thus , prayers were made by Id. CIT DR to uphold the revisionary order passed by Id. PCIT u/s 263, dated 18.03.2021. So far as merits of the issue referred to in the revisionary order passed by Id.

PCIT u/s 263, dated 18.03.2021, it was submitted by Id. CIT DR that the Id. Sr. Advocate has already conceded that the assessee does not have any case on the merits of the issue invoked by Id. PCIT vide aforesaid revisionary order.

3.I have considered rival contentions and perused the material on record. I have already gone through the appellate order pronounced by my Id. Brother(JM) and I am in agreement with the decision arrived at my Id. Brother(JM). I am passing the separate concurring order for the sake of completeness and for reasoning thereof. This appeal was filed late by the assessee beyond the time provided u/s 253(3) of the 1961 Act. My Id. Brother(JM) has condoned the delay vide para 3 and 4 , in view of directions of Hon'ble High Court of Orissa . I am in complete agreement with my Id. Brother (JM) in his decision to condone the delay . It is already conceded by Id. Sr. Advocate representing assessee that the assessee does not have any case on the merits of the issue raised by Id. PCIT in his revisionary order dated 18.03.2021 passed u/s 263 of the 1961 Act. The only surviving issue before me is the limitation for invoking the provisions of Section 263 of the 1961 Act. It is an admitted position that original assessment was concluded by the learned Assessing officer vide assessment order dated 18.12.2017 passed u/s 143(3) of the 1961 Act. The Id. PCIT invoked revisionary powers u/s 263 of the 1961 Act wherein show cause notice to invoke revisionary powers u/s 263 was issued by Id. PCIT on 26.02.2021 to the assessee(DIN and Notice No. ITBA/REV/F/REV1/2020-21/1031035631(1)), which ultimately culminated into an revisionary order dated 18.03.2021 passed by Id. PCIT u/s 263 of the 1961 Act(DIN & Order No. ITBA/REV/F/REV5 / 2020-21/1031592241(1)). The provisions of Section 263(2) of the 1961 Act provides that no order shall be made u/s 263(1) after expiry of two years from the end of the financial year in which the order sought to be revised was passed. The assessment year under consideration is assessment year 2015-16. The assessment order sought to be revised by Id. PCIT by invoking revisionary powers u/s 263 , was passed by Id. Assessing Officer on 18.12.2017 u/s 143(3) of the 1961 Act. The show cause notice u/s 263 was issued by Id. PCIT on 26.02.2021 , while revisionary order was passed by Id. PCIT u/s 263 on 18.03.2021. This is clearly beyond the time stipulated u/s 263(2) , as the revisionary order ought to have been passed by Id. PCIT u/s 263 before 31.03.2020 i.e. within 2 years from the end of the financial year in which the order sought to be revised was passed. There was a spread of

Pandemic Covid-19 disease , which led to disruption across globe in the normal working and human sufferings including large number of casualties due to spread of aforesaid pandemic disease. There were lockdowns announced by Central and State Government across India to check the spread of the Covid-19 Pandemic disease. There was lot of human sufferings and casulities due to aforesaid disease Covid-19. Hon'ble Supreme Court in the case ***In Re. Cognizance for Extension of Limitation*** (Suo Motu Writ Petition(C) No. 3 of 2020 in filing appeals,suits, petitions,applications and other quasi judicial proceedings suspended/extended limitation period from time to time by several orders, from 15.03.2020 until 28.02.2022. The Parliament passed an Act named The Taxation and Other Laws (Relaxations and Amendment of Certain Provisions) Act, 2020(No. 38 of 2020) , and it received assent of President of India on 29.09.2020. It was published/notified in the official Gazette of India on 29.09.2020 at No. 63. As Preamble of the said Act Reads was an Act to provide for relaxation and amendment of provisions of Certain Acts and for matters connected therewith or incidental thereto. I will refer to said Act as TOLA, 2020 for sake of convenience. Thus, this Statute was to provide for relaxation of provisions of the Act and for matters connected therewith or incidental thereto. TOLA, 2020 is applicable to the Specified Act and Income-tax Act, 1961 is a specified Act vide Section 2(1)(b)(ii) of TOLA, 2020. Section 3(1) of TOLA, 2020 , inter-alia, clearly provides that where, any time limit has been specified in , or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 31st day of December, 2020 , for the completion or compliance of such action , as completion of any proceedings or passing of any order or issuance of any notice, intimation , sanction or approval , or such other action, by whatever name called , by any authority, commission or tribunal , under the provision of the specified act ,and where completion or compliance of such action has not been made within such time, then , the time limit for completion or compliance of such action shall, notwithstanding anything contained in the specified Act, stand extended to the 31st day of March, 2021. Thus, in the instant case, the revisionary proceedings u/s 263 ought to have been completed by 31st March 2020, but owing to TOLA, 2020, the said period get extended until 31.03.2021 for Id. PCIT to pass an revisionary order u/s 263 of the 1961 Act. The Id. PCIT issued SCN dated 26.02.2021 and passed revisionary order u/s 263 on 18.03.2021, which is within the extended limitation period upto 31.03.2021 as provided under TOLA, 2020. It is also pertinent at this stage to refer to Section 1(2) of the

TOLA, 2020, which stipulates that save as otherwise provided , this Act shall be deemed to have come into force on the 31st March, 2020. Thus, by deeming fiction as enacted in the Statute itself Parliament has given it a retrospective effect to have come into force from 31st March 2020 by way of deeming fiction enacted vide Section 1(2) of TOLA, 2020. Thus, albeit power to pass revisionary order u/s 263 in the instant case as provided u/s 263(2) lapsed on 31.03.2020 but by way of deeming fiction as provided u/s 1(2) of TOLA, 2020 in express terms wherein intention of the Parliament is discernible in express term, the limitation to pass revisionary order get extended as provided u/s 3 of TOLA to 31.03.2021 , as by way of deeming fiction TOLA, 2020 got into force with retrospective effect from 31.03.2020, thus even though the limitation as provided u/s 263(2) expired, it got fresh lease of life by virtue of retrospective coming into effect of TOLA, 2020 effective from 31.03.2020 by virtue of intention clearly manifested by Parliament in express terms by virtue of Section 1(2) of TOLA, 2020. The TOLA, 2020 was passed by Parliament as an Act , which got President assent on 29.09.2020 and was notified in the official gazette of India on 29.09.2020. Thus, it is to be held that revisionary order dated 18.03.2021 passed by Id. PCIT u/s 263 was within the time limit as provided under Income-tax Act, 1961 read with TOLA, 2020. So far as is issuance of notice dated 26.02.2021 u/s 263 is concerned, the Id. CIT DR has rightly relied upon the judgment and order of Hon'ble Supreme Court in the case of **Smt. Gita Devi Aggarwal**(supra) and **Mr. Amitabh Bachchan**(supra) that there is no requirements to issue show cause notice, and the only requirement is to issue grant hearing to the assessee to comply with principles of natural justice. In the instant case, the assessee's partner namely Mr.Shaikh Abdul Hasan alongwith Chartered Accountant , Mr. Deepak Agarwal, FCA appeared before Id. PCIT during revisionary proceedings u/s 263 , and explained the case before Id. PCIT. Thus, the principles of natural justice were duly complied with by Id. PCIT as opportunity of hearing was granted by Id. PCIT. In any case show cause notice was also issued u/s 263 by Id. PCIT on 26.02.2021 to the assessee, which was also within the extended time limit under TOLA, 2020. Section 3(1)(a) also extends the period of limitation for issuance of notice under the specified Act wherein Income-tax Act, 1961 is a specified Act under TOLA, 2020, and hence show cause notice u/s 263 issued on 26.02.2021 shall also be a proper and valid notice within the extended time limit under TOLA, 2020. Hon'ble Supreme Court in the case of **Mr. Amitabh Bachchan**(supra) at para 10 and 11 , observed/held as under:

“10. Reverting to the specific provisions of Section 263 of the Act what has to be seen is that a satisfaction that an order passed by the Authority under the Act is erroneous and prejudicial to the interest of the Revenue is the basic pre-condition for exercise of jurisdiction under Section 263 of the Act. Both are twin conditions that have to be conjointly present. Once such satisfaction is reached, jurisdiction to exercise the power would be available subject to observance of the principles of natural justice which is implicit in the requirement cast by the Section to give the assessee an opportunity of being heard. It is in the context of the above position that this Court has repeatedly held that unlike the power of reopening an assessment under Section 147 of the Act, the power of revision under Section 263 is not contingent on the giving of a notice to show cause. In fact, Section 263 has been understood not to require any specific show cause notice to be served on the assessee. Rather, what is required under the said provision is an opportunity of hearing to the assessee. The two requirements are different; the first would comprehend a prior notice detailing the specific grounds on which revision of the assessment order is tentatively being proposed. Such a notice is not required. What is contemplated by Section 263, is an opportunity of hearing to be afforded to the assessee. Failure to give such an opportunity would render the revisional order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice. Reference in this regard may be illustratively made to the decisions of this Court in Gita Devi Aggarwal v. CIT [1970] 76 ITR 496 and in CIT v. Electro House [1971] 82 ITR 824 (SC). Paragraph 4 of the decision in Electro House (supra) being illumination of the issue indicated above may be usefully reproduced hereunder:

"This section unlike Section 34 does not prescribe any notice to be given. It only requires the Commissioner to give an opportunity to the assessee of being heard. The section does not speak of any notice. It is unfortunate that the High Court failed to notice the difference in language between Sections 33-B and 34. For the assumption of jurisdiction to proceed under Section 34, the notice as prescribed in that section is a condition precedent. But no such notice is contemplated by Section 33-B. The jurisdiction of the Commissioner to proceed under Section 33-B is not dependent on the fulfilment of any condition precedent. All that he is required to do before reaching his decision and not before commencing the enquiry, he must give the assessee an opportunity of being heard and make or cause to make such enquiry as he deems necessary. Those requirements have nothing to do with the jurisdiction of the Commissioner. They pertain to the region of natural justice. Breach of the principles of natural justice may affect the legality of the order made but that does not affect the jurisdiction of the Commissioner. At present we are not called upon to consider whether the order made by the Commissioner is vitiated because of the contravention of any of the principles of natural justice. The scope of these appeals is very narrow. All that we have to see is whether before assuming jurisdiction the Commissioner was required to issue a notice and if he was so required what that notice should have contained? Our answer to that question has already been made clear. In our judgment no notice was required to be issued by the Commissioner before assuming jurisdiction to proceed under Section 33-B. Therefore the question what that notice should contain does not arise for consideration. It is not necessary nor proper for us in this case to consider as to the nature of the enquiry to be held under Section 33-B. Therefore, we refrain from spelling out what principles of natural justice should be observed in an enquiry under Section 33-B. This Court in Gita Devi Aggarwal v. CIT, West Bengal ruled

that Section 33-B does not in express terms require a notice to be served on the assessee as in the case of Section 34. Section 33-B merely requires that an opportunity of being heard should be given to the assessee and the stringent requirement of service of notice under Section 34 cannot, therefore, be applied to a proceeding under Section 33-B." (Page 827-828).

[Note: Section 33-B and Section 34 of the Income Tax Act, 1922 corresponds to Section 263 and Section 147 of the Income Tax Act, 1961]

11. It may be that in a given case and in most cases it is so done a notice proposing the revisional exercise is given to the assessee indicating therein broadly or even specifically the grounds on which the exercise is felt necessary. But there is nothing in the section (Section 263) to raise the said notice to the status of a mandatory show cause notice affecting the initiation of the exercise in the absence thereof or to require the C.I.T. to confine himself to the terms of the notice and foreclosing consideration of any other issue or question of fact. This is not the purport of Section 263. Of course, there can be no dispute that while the C.I.T. is free to exercise his jurisdiction on consideration of all relevant facts, a full opportunity to controvert the same and to explain the circumstances surrounding such facts, as may be considered relevant by the assessee, must be afforded to him by the C.I.T. prior to the finalization of the decision."

The Id. Sr. Advocate has stated before the Bench that the right got accrued /vested in favour of the assessee when the time limit for revisionary order u/s 263 by Id. PCIT expired on 31.03.2020 , in view of provisions of Section 263(2) and this vested right cannot be unsettled by passing TOLA, 2020 which was notified in Official Gazette of India on 29.09.2020. Thus, in nut-shell the argument of the Id. Sr. Advocate is that once the right accrues in favour of the assessee by lapse of time for passing revisionary order as stipulated u/s 263(2) which expired on 31.03.2020, then even by an Act passed by Parliament , such right cannot be unsettled and taken away from the assessee as the said right accrued and vested in favour of the assessee. The Id. Sr. Advocate has relied upon three judgments and orders , to support his contentions:

- a) Hon'ble Allahabad High Court in the case of **Mr. Rajeev Bansal v. UOI & Ors.**(supra)
- b) Hon'ble Supreme Court in the case of **Bank of Baroda v. Kotak Mahindra Bank**(supra)
- c) Hon'ble Supreme Court in the case of **Thirumalai Chemicals Limited v. Union of India**(supra)

Firstly , the judgment and order passed by Hon'ble Allahabad High Court in the case of **Mr. Rajeev Bansal** , the notice was issued by AO u/s 148 after 01.04.2021. There was

amendment by Finance Act, 2021 in Section 148, the pre-existing sections 147 to 151 had been repealed and replaced by new provisions. The validity of the reassessment proceedings initiated against the assessee u/s 148 by issuing notices u/s 148 between 01.04.2021 to 30.06.2021 came up for consideration before Hon'ble Allahabad High Court , and it was held that the reassessment proceedings initiated with the notice u/s 148(deemed to be notice u/s 148-A), issued between 01.04.2021 and 30.06.2021 , cannot be conducted by giving benefit of relaxation/extension under TOLA, 2020, and the time limit prescribed in Section 149(1)(b) (as substituted w.e.f. 01.04.2021) cannot be counted by giving such relaxation from 30.03.2020. The Hon'ble Allahabad High Court held that in respect of the proceedings where the first proviso to Section 149(1)(b) is attracted , benefit of TOLA, 2020 will not be available to Revenue, or in other words, the relaxation law under TOLA, 2020 would not govern the time frame prescribed under the first proviso to Section 149 as inserted by the Finance Act, 2021 in such case. Thus, as could be seen that in the case of **Rajeev Bansal**(supra), the facts were entirely different and distinguishable as in the instant case with which we are presently seized with.

Secondly, the Id. Sr. Advocate has relied upon the judgment and order of Hon'ble Supreme Court in the case of **Thirumalai Chemicals Limited**(supra) and it is averred that once the time limit as prescribed u/s 263(2) is over/expired on 31.03.2020, the assessee gets vested and accrued right and hence TOLA, 2020 which was enacted and notified on 29.09.2020 cannot unsettle the vested and accrued right in favour of the assessee, and the revisionary proceedings invoked by Id. PCIT against the assessee by relying on relaxation and extension of time limit as provided u/s 3 of TOLA, 2020 is bad in law. The relevant extract of the aforesaid judgment relied upon by Id. Sr. Advocate is reproduced by my Id. Brother(JM) in para 5 of his appellate order. It is clear from the aforesaid judgment and order of Hon'ble Supreme Court that an accrued right to plead a time bar, which is acquired after the lapse of statutory period , is nevertheless a right , even though it arises under an Act which is procedural and a right which is not to be taken away pleading retrospective operation unless a contrary intention is discernible from the statute. The Hon'ble Supreme Court held that , therefore, unless the language clearly manifest in express terms or by necessary implication, a contrary intention a statute divesting vested right is to be construed prospective. Thirdly, reliance was placed on the judgment and

order of Hon'ble Supreme Court in the case of **Bank of Baroda v. Kotak Mahindra Bank**(supra) to plead that the law of limitation is not merely procedural but a substantive law .In the instant case before us, Section 1(2) and 3(1)(a) of TOLA, 2020 clearly manifest its intention in express terms that it is meant to be retrospective in nature and has divested the right which might have accrued/vested in favour of the assessee to plead time bar by deeming TOLA, 2020 to have come in force on the 31st day of March 2020, by virtue of Section 1(2) of TOLA, 2020. Thus, the TOLA, 2020 was to provide for relaxation of provisions of the Act and for matters connected therewith or incidental thereto. TOLA, 2020 was brought in keeping in view extra-ordinary situation faced by the Country due to spread of epidemic Covid -19 leading to lockdowns announced by Central and State Government and human miseries faced by this disease leading to large number of human casualties and health crisis. Even Hon'ble Supreme Court extended/suspended the limitation for filing appeals,suits, petitions,applications and other quasi judicial proceedings from 15.03.2020 to 28.02.2022 by various orders passed from time to time, keeping in view extra-ordinay situation faced by Cournty due to spread of pandemic Covid-19 in india. TOLA, 2020 is applicable to the Specified Act and Income-tax Act, 1961 is a specified Act vide Section 2(1)(b)(ii) of TOLA, 2020. Section 3(1) of TOLA, 2020 , inter-alia, clearly provides that where, any time limit has been specified in , or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 31st day of December, 2020 , for the completion or compliance of such action , as completion of any proceedings or passing of any order or issuance of any notice, intimation , sanction or approval , or such other action, by whatever name called , by any authority, commission or tribunal , under the provision of the specified act ,and where completion or compliance of such action has not been made within such time, then , the time limit for completion or compliance of such action shall, notwithstanding anything contained in the specified Act, stand extended to the 31st day of March, 2021. Thus, in the instant case, the revisionary proceedings u/s 263 ought to have been completed by 31st March 2020, but owing to TOLA, 2020, the said period get extended until 31.03.2021 for Id. PCIT to pass an revisionary order u/s 263 of the 1961 Act. The Id. PCIT issued SCN dated 26.02.2021 and passed revisionary order u/s 263 on 18.03.2021, which is within the extended limitation period upto 31.03.2021 as provided under TOLA, 2020. It is also pertinent at this stage to refer to Section 1(2) of the TOLA, 2020, which stipulates that

save as otherwise provided , this Act shall be deemed to have come into force on the 31st March, 2020. Thus, by deeming fiction as enacted in the Statute itself Parliament has given it a retrospective effect to have come into force from 31st March 2020. Thus, albeit power to pass revisionary order u/s 263 in the instant case as provided u/s 263(2) was to lapse on 31.03.2020 but by deeming fiction as provided u/s 1(2) of TOLA, 2020 which was manifested in the statute in express terms and is discernible from the statute in express terms , the limitation to pass revisionary order get extended as provided u/s 3 of TOLA to 31.03.2021 , as by deeming fiction TOLA, 2020 got into force with retrospective effect from 31.03.2020, thus the limitation as provided u/s 263(2) got fresh lease of life by virtue of retrospective coming into effect of TOLA, 2020 effective from 31.03.2020 by way of express manifestation of intention of Parliament in Section 1(2) of TOLA, 2020. The TOLA, 2020 was passed by Parliament as an Act , which got President of India assent on 29.09.2020 and was notified in the Official Gazette of India on 29.09.2020. Thus, it is to be held that revisionary order dated 18.03.2021 passed by Id. PCIT u/s 263 was within the time limit as provided under Income-tax Act, 1961 read with TOLA, 2020 , and I uphold the same. Thus, I concur with the decision of my Id. Brother(JM) in dismissing the appeal filed by the assessee, vide this concurring order. The appeal of the assessee stand dismissed. I order accordingly.

4. In the result appeal of the assessee in ITA No. 29/CTK/2023 for assessment year 2015-16 stand dismissed.

5. This order was pronounced in the open court on the conclusion of hearing on 26.05.2023 in the presence of both the parties and reduced to writing and signed on 29.05.2023.

Sd/-

(Ramit Kochar)
Accountant

Member
Cuttack, Dated 29.05.2023

Copy of the Order forwarded to :

1. The Appellant : Sultan Enterprises Pvt Ltd., At:Plot
No.161, Azad Nagar, Sundarpada, Bhubaneswar
2. The Respondent: Pr. CIT, Bhubaneswar-1
3. The CIT(A)-, Bhubaneswar-1
4. DR, ITAT, Cuttack
5. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack