

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

BEFORE

**SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No.784/Del/2022
Asstt. Year: 2015-16

Novaerum Automotive Private Ltd. C-3, Hosiery Complex Noida, Phase-II, Noida, Uttar Pradesh 201 305 PAN AABCE8157A (Appellant)	Vs.	AO, Ward18(3) C.R. Building ITO, I.P. Estate New Delhi 110 002 (Respondent)
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Assessee by:	Shri C.V. Dharkar, CA
Department by:	Shri Dilip Singh Kothari, CIT Dr
Date of Hearing	14.06.2023
Date of pronouncement	26.07.2023

ORDER

PER AMIT SHUKLA, JM

The aforesaid appeal has been filed by the assessee against order dated 11.3.2021 passed by Ld. PCIT, Delhi 4 under revisionary jurisdiction under section 263 of the Act for the assessment year 2015-16.

2. In the grounds of appeal, the assessee has challenged the setting aside of the assessment order dated 15.12.2017 passed under section 143(3). At the outset, appeal of the assessee is barred by 351 days. In the petition for condonation of delay the assessee has submitted that the physical copy of the order was not received, hence he was not aware of the passing of order under section 263. Further, due to COVID Pandemic there was delay in filing the appeal. After hearing both the parties, we find that there is a reasonable cause in filing the appeal belatedly. Accordingly the delay of 351 days is condoned.

3. The facts in brief are that the assessment under section 143(3) was completed by the Assessing Officer vide order dated 15.12.2017 at an income of Rs. 28,54,85,400/- as against NIL income.

4. Thereafter, on perusal of the assessment record the Ld. CIT made made following observations in his show cause notice:-

“The Income Tax assessment records in your case for the AY 2015-16 have been called for and examined. I have noticed that the then Assessing Officer, ITO, Ward-18(4), Delhi while framing the assessment order u/s 143(3) of the IT Act, 1961 has allowed the business expenses of Rs. 58,54,048/- claimed in profit & loss whereas the same was not to be allowed In the hands of the assessee company for the reason that no business activity had taken place during the year under consideration.

As per clause (a) of explanation-2 to section 263 of the I T Act, 1961 an order passed by the Assessing Officer shall be deemed to be erroneous In so far as it is prejudicial to the interest of the Revenue, if, in the opinion of the Pr. Commissioner of Income Tax the order is passes without making enquiries of verification which should have been made.

In view of this, the order passed by the Assessing officer us 143(3) of the Act on 15.12.2017 is not only erroneous in law but also prejudicial to the interest of the revenue. I, therefore, intend to exercise the powers vested with me under section 263 of the Income Tax Act. 1961 to pass an appropriate order.

You are hereby required to show cause as to why an order under section 263 of Income Tax Act, 1961 should not be passed to revise the assessment order passed by the then Income Tax Officer, Ward-18(4), 15.12. 2017 u/s 143(3) of the IT Act, 1961.

You are given an opportunity to present your case before the undersigned on or before 17.03,2021 at 03:30 PM, failing which the proposed action will be executed. ”

5. As noted by the Ld. PCIT, assessee had not filed any reply despite opportunity of hearing given to the assessee. Accordingly, the Ld. PCIT gave following directions:-

“4. The assessee has shown rental income of Rs.47,65,558/- and other income of Rs.57,342/- totally Rs.48,22,900/-. Against this rental expenditure of Rs.47,65,558/- has been claimed along with other expenses totalling, Rs.58,54,048/-, resulting in a loss of Rs.10,31,345/-. No enquiry

has been made ^assessing officer in respect of nature of receipts and expenses to ascertain their assessment and allowability under correct head of income. It is held that the assessment order dated 15 12 2017 for AY 2015-16 is erroneous and prejudicial to the interests of revenue. Therefore the said order is set aside and restored to the file of AO for passing, fresh assessment order in the light of above observations/directions regarding receipts expenses in P&L account and their assessment under appropriate head after giving an opportunity of hearing to assessee.”

6. Since assessee has not filed any reply nor has represented his case before Ld. PCIT in revision proceedings u/s 263 and now before us. Ld. Counsel had made various propositions which are factual and legal, which in absence of any observation and finding of Ld. PCIT on these propositions cannot be appreciated. Therefore, in the interest of justice, we feel that matter should be restored back to the file of the Ld. PCIT and assessee is directed to comply with the notices and submit the reply or explanation on all the proposition legal as well as factual before the Ld. PCIT. Ld. PCIT should pass fresh order on the issue raised by him in the show cause notice after giving due and effective opportunity to the assessee. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 26th July, 2023.

**sd/-
(G.S. PANNU)
PRESIDENT**

**sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 26/07/2023

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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	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	