

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

I.T.A.No.144/Ind/2020
A.Y. : 2015-16

M/s. DBL Betul Sarni Tollways Ltd., Bhopal (PAN: AAECD6222A)	बनाम/ Vs.	Pr. CIT-1, Bhopal
Appellant/Assessee		Revenue/Respondent

I.T.A.No.145/Ind/2020
A.Y. : 2015-16

M/s. DBL Tikamgarh Nowgaon Tollways Ltd., Bhopal (PAN: AAECD8604L)	बनाम/ Vs.	Pr. CIT-1, Bhopal.
Appellant/Assessee		Revenue/Respondent

I.T.A.No.146/Ind/2020
A.Y. : 2015-16

M/s. DBL Ashok Nagar Vidisha Tollways Ltd., Bhopal. (PAN: AAECD5553C)	बनाम/ Vs.	Pr. CIT-1, Bhopal.
Appellant/Assessee		Revenue/Respondent

I.T.A.No.147/Ind/2020
A.Y. : 2015-16

M/s. DBL Jaora Sailana Tollways Ltd., Bhopal. (PAN: AAECD4621R)	बनाम/ Vs.	Pr. CIT-1, Bhopal
Appellant/Assessee		Revenue/Respondent

Assessee by	:	Shri Hitesh Chimnani and Shri Yash Kukreja, ARs
Revenue by	:	Shri P.K. Mishra, CIT DR

Date of Hearing	19.07.2023
Date of Pronouncement	31.07.2023

आदेश / O R D E R

(Per Bench:

These four appeals are filed by different assessee of same group assailing four different revision-orders dated 17.02.2020 (in ITA No. 144 & 145/Ind/2020) and 31.01.2020 (in ITA No. 146 & 147/Ind/2020), all passed by learned Pr. Commissioner of Income-Tax-1, Bhopal ["PCIT"] u/s 263 of Income-tax Act, 1961 ["the Act"] and all concerning assessment-year ["AY"] 2015-16, which in turn arise out of respective assessment-orders passed by Assessing Officers ["AO"]. Since the assessee-appellants in these appeals are part of the same group and the controversy to be settled is also identical, all four appeals were heard together and being disposed by this single order.

2. Heard the learned Representatives of both sides at length and case-records perused.

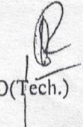
3. Briefly stated the facts are such that all of the four assessee-appellants are companies in the nature of "Special Purpose Vehicle" established to undertake the development of highway projects, each one was

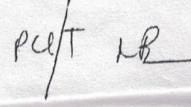
having a separate highway project as the names of respective assessee themselves demonstrate. Their holding/main company is Dilip Buildcon Ltd. ["DBL"]. These assessee-appellants filed their respective returns of income to Income-tax Department and their assessments were completed u/s 143(3). Subsequently, Ld. PCIT undertook revisionary action u/s 263 and passed revision-orders dated 17.02.2020 and 31.03.2020 as narrated in the beginning, those revision-orders are impugned orders in present appeals. Being aggrieved by impugned orders, the assessee have come in these appeals before us.

4. Ld. AR for the assessee made a very strong and straightforward submission attacking the jurisdictional deficit in the revisionary-action undertaken by PCIT. To demonstrate this, he filed copies of record (order-sheets) obtained by assessee from Income-tax department in all four cases; the same are scanned and re-produced below:

14.01.2020 PUCs are proposal u/s 263 of IT Act in the case of M/s DBL Betul Sarni Tollways Ltd, Bhopal for AY 2015-16 submitted by the DCIT-1(1), Bhopal and forwarded by the JCIT, Range-1, Bhopal vide letter F.No. JCIT/R-1/BPL/MARA/263-Proposal/2019-20/ dated 23.08.2019 may kindly be perused. If approved notices u/s 263 fixing the case for hearing on 29.01.2020 may be issued to the assessee. Draft notices u/s 263 of IT Act is put up for approval/sign.



ITI

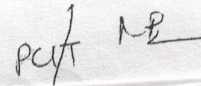

ITO(Tech.)


PCIT

14.01.2020 PUCs are proposal u/s 263 of IT Act in the case of M/s DBL Tikamgarh Nowgaon Tollways Ltd, Bhopal for AY 2015-16 submitted by the DCIT-1(1), Bhopal and forwarded by the JCIT, Range-1, Bhopal vide letter F.No. JCIT/R-1/BPL/MARA/263-Proposal/2019-20/ dated 23.08.2019 may kindly be perused. If approved notices u/s 263 fixing the case for hearing on 29.01.2020 may be issued to the assessee. Draft notices u/s 263 of IT Act is put up for approval/sign.


ITI


ITO(Tech.)


PCIT

9/01/2020

PUC is proposal u/s 263 of IT ACT in the case of DBL Ashoknagar Vidisha Tollways Ltd for A.Y.2015-16 submitted by the DCIT-1(1) Bhopal and forwarded by the Jt.CIT, Range-1, Bhopal vide his letter F.No.JCIT/R-1/BPL/263 Proposal/2019-20 dated 06/09/2019 which may kindly be perused. If approved show cause notice u/s 263 for the A.Y.2015-16 may be issued to the assessee fixing the case for hearing on 21.01.2020. Draft notice u/s 263 of the IT Act is put up for approval/sign. Pls.


ITO(Tech)


PCIT-1

11/01/2020

PUC is proposal u/s 263 of IT ACT in the case of DBL Jdra Sailana Tollways Ltd for A.Y.2015-16 submitted by the DCIT-1(1) Bhopal and forwarded by the Jt.CIT, Range-1, Bhopal vide his letter F.No.JCIT/R-1/BPL/263 Proposal/2019-20 dated 12/09/2019 which may kindly be perused. If approved show cause notice u/s 263 for the A.Y.2015-16 may be issued to the assessee fixing the case for hearing on 21.01.2020. Draft notice u/s 263 of the IT Act is put up for approval/sign. Pls.


ITO(Tech)


PCIT

5. These order-sheets are in the sequence of captioned appeals starting from ITA No. 144/Ind/2020. It is submitted by Ld. AR that the facts flowing from all order-sheets are same except change of dates. Therefore, it would suffice to take note of the first order-sheet and the conclusions drawn therefrom would apply to all cases *mutatis mutandis*. Then, Ld. AR analysed the contents of first order-sheet in the open court word by word and submitted that the order-sheet very clearly reveals the manner in which revision was initiated, namely (i) Order-sheet is dated 14.01.2020; (ii) the proposal for revision was received by PCIT from AO; and (iii) the draft-notice itself was ready with the proposal and put up before PCIT for approval/sign. Then, Ld. AR carried us to Para No. 3 of revision-order and showed that the show-cause notice u/s 263 dated 14.01.2020 was issued by PCIT. Ld. AR submitted that it is very much apparent that it is not the PCIT who has called for and examined the records of assessment-proceeding; it is the AO who has mooted the proposal for revision, prepared draft notice and placed before PCIT for signature. Then, the PCIT issued show-cause notice on 14.01.2020 itself which is exactly the same date on which the proposal was placed before him. Ld. AR strongly contended that these facts transpired by the record of department clearly show that the PCIT has not called for and examined the record of assessment-proceeding done by AO as prescribed and required by section 263; it is the AO who has examined his own record, set into motion the jurisdiction of revision and thereby usurped the power of PCIT. That apart, the preparation and placing of draft notice by AO before

PCIT and issuance of same by PCIT on the very same date to assessee goes to reveal that the PCIT has not applied his mind to the case of assessee at all, he has mechanically signed and approved the draft notice placed before him. Ld. AR submitted that the issues raised in revision were quite substantial which required a deep examination and consideration of assessment-records but the PCIT has given immediate approval/signature which shows that he had not even examined the record of proceeding; he had signed the draft-notice mechanically. Ld. AR submitted that the verdict of section 263 is very clear, specific and unambiguous which prescribes "*The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous*" Thus, to invoke revision, not only the PCIT has to himself call for and examine the record of proceeding conducted by AO but also himself consider that the assessment-order passed by AO is erroneous-cum-prejudicial to the interest of revenue. But in the present case, the PCIT has neither called for nor considered; the entire exercise is done by AO. Therefore, the revisionary action suffers from a serious jurisdictional deficit, consequently the revision-order is liable to be quashed.

6. To support the proposition narrated above, Ld. AR placed a strong reliance on decision of ITAT, Pune in **Alfa Laval Lund AB Vs. CIT(IT/TP)**,

Pune, ITA No. 1287/Pun/2017, order dated 02.11.2021. In this decision, the Hon'ble ITAT, Pune has considered an exactly same issue, analysed the prescription and requirement of section 263 and finally held that the revision exercise done by PCIT suffered from a jurisdictional deficit. Accordingly, the ITAT quashed the revision-order. The relevant paragraphs of order are reproduced below:

"3. We have heard both the sides through Virtual Court and gone through the relevant material on record. It can be seen from para 4 of the Id. CIT"s order that:

"A proposal for revision u/s 263 of the IT Act, 1961 was received from DCIT(IT)-1, Pune through the Jt.CIT(IT), Pune vide letter No. Pn/Jt.CIT(IT)/263/2016-17/61 dated 23.05.2016".

It is thus manifest that the edifice of the revision in the extant case has been laid on the bedrock of receipt of the proposal from the AO. At this stage, it would be worthwhile to have a glance at sub-section (1) of section 263 of the Act, which runs as under:-

"The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he, may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."

4. *Sub-section (1) of section 263 of the Act is an enabling provision which confers jurisdiction on the CIT to revise an assessment order which he*

considers erroneous and prejudicial to the interests of revenue. The process of revision u/s 263 of the Act initiates only when the CIT calls for and examines the record of any proceeding under this Act and considers that any order passed by the AO is erroneous and prejudicial to the interests of the revenue. The twin conditions of – (i) the CIT calling for and examining the record; succeeded by (ii) his considering the assessment order as erroneous etc. – are sine qua non for the exercise of power under this section. The use of the word ‘and’ between the expression ‘call for and examine the record’ and the expression ‘if he considers that any order ... is erroneous ...’ abundantly demonstrates that both these conditions must be cumulatively fulfilled by the CIT and in the same order, that is, the first followed by the second. In other words, the kicking in point for invoking jurisdiction u/s 263 is calling for and examining the record of any proceedings under the Act by the CIT leading him to consider the assessment order erroneous etc. A communication from the AO is not ‘the record of any proceedings under this Act’. To put it simply, the consideration that the assessment order is erroneous and prejudicial to the interests of the revenue should flow from and be the consequence of his examination of the record of proceedings. If such a consideration is not preceded by the examination of record of the proceedings under the Act, the condition for revision does not get magnetized.

5. *It is trite that a power which vests exclusively in one authority, can't be invoked or cause to be invoked by another, either directly or indirectly. Section 263 of the Act confers power on the CIT to revise an assessment order, subject to certain conditions. Instantly, we are confronted with a situation in which the revision was initiated on the basis of the AO sending a proposal to the CIT and not on the CIT suo motu calling for and examining the record of the assessment proceedings and thereafter considering the assessment order erroneous and prejudicial to the interests of the revenue. The AO recommending a revision to the CIT has no statutory sanction and is a course of action unknown to the law. If AO, after passing an assessment order, finds something amiss in it to the detriment of the Revenue, he has ample power to either reassess the earlier assessment in terms of section 147 or carry out*

rectification u/s 154 of the Act. He can't usurp the power of the CIT and recommend a revision. No overlapping of powers of the authorities under the Act can be permitted. As the revision proceedings in this case have triggered with the AO sending a proposal to the Id. CIT and then the latter passing the order u/s 263 of the Act on the basis of such a proposal, we hold that it became a case of jurisdiction deficit resulting into vitiating the impugned order. Without going into the merits of the case, we quash the impugned order on this legal issue itself.

6. *In the result, the appeal is allowed."*

7. With aforesaid submission, Ld. AR prayed this Bench to quash the revision-order passed by PCIT.

8. Per contra, Ld. DR for the Revenue submitted that there are multiple communications and in-house working in department before show-cause notice is actually issued to assessee. He stressed that the draft-notice was prepared by AO at the behest of PCIT. He submitted that the objection raised by Ld. AR that the show-cause notice issued on the very same day on which proposal is mooted before PCIT does not have any merit because it cannot be said that the PCIT could not apply mind on the same day.

9. We have considered rival contentions of both sides and perused the material placed before us. On perusal of the order-sheets (reproduced above) and show-cause notices issued by PCIT in all four cases, we find that the PCIT received proposal for revision from AO and the AO has even placed draft-notices before PCIT for signature. Thus, the Ld. AR is successfully able to demonstrate that the revision in these cases had been conducted on the bedrock of AO's proposal and draft-notice. That means, the conditions prescribed in section 263 are not fulfilled. We have gone through the decision of ITAT, Pune cited above and find that the said decision quashing the revision has been rendered on exactly same set of facts. Although Ld. DR for the revenue has dutifully made certain arguments as noted in foregoing

paragraph but neither able to rebut the arguments made by Ld. AR nor the applicability of the decision of ITAT, Pune on facts or in law. Therefore, respectfully following the said decision, we are inclined to hold that the present case is having a jurisdictional deficit resulting into vitiating the impugned order. Therefore, we quash the impugned order on legality aspect itself and restore the original assessment-order passed by AO. Since we have quashed the revision-order, the pleadings made by both sides on merits are not required to be dealt.

10. Resultantly, all four appeals of assessees are allowed.

Order pronounced in the open court on 31.07.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 31.07.2023

CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore*