

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'E' : NEW DELHI)**

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

**ITA No.3088/Del./2018  
(ASSESSMENT YEAR : 2013-14)**

Majestic Properties Pvt. Ltd.,  
1/18B, Asaf Ali Road,  
New Delhi – 110 002.

vs.

Pr.CIT, Central 3,  
New Delhi.

**(PAN : AAACM7158E)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Dr. Rakesh Gupta, Advocate

Shri Somil Aggarwal, Advocate

REVENUE BY : Shri Subhra Jyoti Chakraborty, CIT DR

Date of Hearing : 07.08.2023

Date of Order : 10.08.2023

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of the Id.  
Pr.CIT (Central)-3, New Delhi dated 05.03.2018 pertaining to the  
assessment year 2013-14.

2. The grounds of appeal taken by the assessee read as under :-

“1. Whether on the facts and in law, the Ld CIT is justified in setting aside the assessment order dated 30.03.2016 passed u/s 143(3) for making it a fresh holding it to be erroneous and prejudicial to the interest of revenue within the meaning of section 263 of the Income Tax Act, 1961 on the ground that:-

- a) The penalty u/s 271B should have been initiated in the assessment order passed by AO which was not done.
- b) The amount of loss on sale of towers at Jaipur project at Rs.8069180/- which was debited to profit & loss account should have been disallowed being capital in nature.
- c) The amount of service tax at Rs.2126345/- which was not paid before the due date of ITR should have been disallowed u/s 43B.”

3. Briefly stated, in this case, Id. Pr.CIT issued notice to the assessee that following issues have been left unverified by the AO in passing the order dated 30.03.2016 passed under section 143 (3) of the Income-tax Act, 1961 (for short 'the Act') :-

“(i) As per the tax audit report in Form 3CD, the accounts for A.Y. 2013-14 of company were audited on 30.03.2015, whereas under the provisions of section 44AB of the Act, the audit should have been completed on or before the due date of filing of return which was 30.09.2013. Therefore, for failing to get accounts audited as required u/s 44AB within the specified date, the penalty proceedings u/s 271B should have been initiated in the assessment order passed by AO which was not done, leading to passing of an erroneous order in so far as it was prejudicial to the interest of Revenue.

(ii) It was further observed that as per para 21 (a) of the tax audit report filed by the assessee, a capital expenditure of Rs.80,69,180/- on account of loss on sale of tower at Jaipur, has been debited to Profit and Loss a/c for A.Y. 2013-14. However, the said amount of capital loss has not been disallowed by the AO while framing the assessment u/s 143(3) completed on 30.03.2016. The capital expenditure- of Rs.80,69,180/- cannot be allowed u/s 37 of the Act and is liable to be disallowed and be added to the income of assessee for A.Y 2013-14 which was not done by the AO, leading to passing of an erroneous order in so far as it was prejudicial to the interest of Revenue.

(iii) It was further seen that as per para 26(i)(B)(9b) of tax audit report, statutory liabilities of Rs.22,36,295/- on account of service tax of Rs.21,26,345/- and WCT of Rs.22,194/- was not paid on or before due date of filing of return of income u/s 139(1) of the Act. Therefore, the statutory liabilities of Rs.22,36,295/- not paid within the due date of filing of return of income u/s 139(1) of the Act cannot be allowed u/s 43B and is liable to be disallowed and be added to the income of assessee for A.Y 2013-14. However, the AO had allowed such deduction as claimed by the

assessee, leading to passing of an erroneous order in so far as it was prejudicial to the interest of Revenue.”

4. Ld. Pr. CIT was not satisfied with the response of the assessee and finally held that the order passed by the AO is erroneous insofar as prejudicial to the interest of the Revenue and accordingly, he set aside the order and directed the AO to pass a speaking order as per law.

5. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

6. Ld. Counsel of the assessee submitted that grounds on which Id. Pr.CIT has passed 263 order are not sustainable. On the first issue of non-initiation of penalty u/s 271B of the Act, he submitted that this cannot be said to be any error in the assessment order as it has been held in various judicial pronouncements that penalty u/s 271B need not be initiated during the course of assessment proceedings and such penalty is de hors the assessment order. Therefore, he submitted that there cannot be an error in the assessment order on this score much less for any revision by Id. Pr.CIT. In this regard, Id. Counsel for the assessee relied upon several case laws as under :-

- (i) Assam State Warehousing Corporation vs. CIT 288 ITR 25 (Gau);
- (ii) Manohar Lal vs. DCIT 53 TTJ 105 (JP); and
- (iii) ACIT vs. Madan Roller Flour Mills Ltd. 71 ITD 274 (ASR).

6.1 Ld. Counsel further submitted that 271B does not postulates any satisfaction of AO, hence revision order passed by ld. Pr.CIT on this account is not sustainable.

6.2 As regards second issue of non-disallowance of capital loss, ld. Counsel for the assessee submitted that this issue has been raised in view of the audit objection. For this, he referred to paper book page no.54 where this item was pointed out by the audit party as 'incorrect allowance of capital expenditure'. Ld. Counsel for the assessee in this regard referred to following case laws for the proposition that revision u/s 263 is not permissible on the basis of the objection of the audit party :-

- (i) CIT vs. Sohana Woollen Mills 296 ITR 0238 (P&H);
- (ii) Paramjit Sing vs. Pr. CIT (2018) 48 CCH 0199 (Chd)
- (iii) M/s. Refex Industries Ltd. vs. DCIT, ITA No.972/2014 dated 09.09.2014 (Chennai);
- (iv) Sartaj Singh vs. Pr. CIT (2016) 179 TTJ 0017 (ASR)(UO);
- (v) Jaswinder Singh vs. CIT (2012) 150 TTJ 0033 (Chd);
- (vi) Vikram Kaswan vs. CIT (2016) 46 CCH 0561 (Chd.)

Furthermore, ld. Counsel of the assessee submitted that assessee is in a business of real estate and the impugned loss in any case is revenue loss.

6.3 As regards third issue of non-payment of statutory liabilities on account of service-tax and WCT, ld. Counsel of the assessee fairly submitted that he will not be contesting this ground.

7. Per contra, ld. DR for the Revenue relied upon the order of the ld. Pr.CIT passed u/s 263 of the Act.

8. Upon careful consideration, on the first issue of non-initiation of penalty u/s 271B of the Act, we find that submissions of the Id. Counsel of the assessee in this regard are cogent. The case laws cited duly establish that no issue of satisfaction by the AO is required for initiating this penalty. Hence, this plank of revision is not sustainable and we set aside the order of Id. Pr.CIT in this regard.

8.1 As regards the issue of non-disallowance of loss on sale of tower, it is duly emanating that this aspect was raised on the basis of audit objection. The case laws cited by the Id. Counsel of the assessee duly establish that revisionary power u/s 263 cannot be initiated on the basis of audit objection. Hence, we set aside the order passed by the Id. Pr.CIT on this issue.

8.2 As regards last issue of disallowance of statutory dues not paid before the due date of return, we find that Id. Counsel has fairly conceded that he will not be contesting this aspect. Hence, revision order is sustained on this issue.

9. In the result, the appeal filed by the assessee is partly allowed.

**Order pronounced in the open court on this 10<sup>th</sup> day of August, 2022.**

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

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

**Dated the 10<sup>th</sup> day of August, 2022/TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.Pr.CIT (Central)-3, New Delhi
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.

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