

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA**

[Before Dr. Manish Borad, Accountant Member &  
Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 386/Kol/2023**  
**Assessment Year : 2018-19**

Luv-Kush Projects Limited	Vs.	Pr. CIT-2, Kolkata
PAN: AAACL 3631 M		
Appellant		Respondent

Date of Hearing	05.06.2023
Date of Pronouncement	23.08.2023
For the Assessee	Shri Giridhar Dhelia, FCA
For the Revenue	Shri G. Hukugha Sema, CIT

**ORDER**

**Per Sonjoy Sarma, JM:**

This appeal filed by the assessee is directed against the order of ld. Pr. CIT-2, Kolkata vide order dated 25.03.2023 u/s 263 of the Act pertaining to A.Y. 2018-19. The assessee has raised following grounds of appeal:

*"1) For that the revision order passed by the Ld. PCIT is bad in law as well as on facts and hence the same be quashed.*

*2) For that the notice under section 263 of the Act as well as revision order passed based on some "departmental system generated report" which was not part of the assessment order for asst. year 2018-19 and was never in knowledge of the assessee therefore asst. order on account of the same cannot be held erroneous or prejudicial to the interest of the revenue and hence the same be quashed.*

*3) For that the said "departmental system generated report" was not provided to the appellant by the Ld. PCIT on specific request in writing based only on which the notice under section 263 of the Act as well as revision order was passed is violation of Principals of Natural Justice and hence the same be quashed.*

*4) For that the revision order passed by the Ld. PCIT is based on the carry forward of business loss originated and part of assessment order for asst. year 2017-18 passed u/s 143(3) on 26/12/2019 and*

*therefore not the subject matter of revision of asst. order for asst. year 2018-19 under section 263 of the Act and hence the same be quashed.*

*5) For that the Ld. PCIT erred in setting aside the assessment order wherein the assessment order passed for asst. year 2018-19 by the Ld. AO is neither erroneous nor prejudicial to the interest of the revenue and hence the same be quashed.*

*6) For that under the facts and circumstances of the case, the revision order passed by the Ld. PCIT is liable to be quashed.*

*7) The appellant craves leave to produce additional evidences in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules 1963.*

*8) The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of the appeal.”*

2. Brief facts of the case are that the assessee filed its return of income for the A.Y. 2018-19 by declaring total income of Rs. Nil and also paid taxes u/s 115JB on book profit of Rs. 50,25,929/- as per Form No. 29B filed by the assessee. The return filed by the assessee was processed u/s 143(3) of the Act, NFAC, Delhi on 09.03.2021 by accepting the return of income filed by the assessee for the assessment year in question.

3. The ld. PCIT on examination of the assessment record for the year ended 31.03.2018, he observed that the assessee filed its return of income on 31.10.2017 by showing loss at Rs. 6,79,826/- and the ld. AO made an addition of Rs. 19,28,027/- u/s 14A for the assessment order passed u/s 143(3) dated 26.12.2019. However, as per departmental system generated report (schedule CFL: Details of losses to be carried forwarded for future years) business loss of Rs. 6,79,826/- pertaining to A.Y. 2017-18 was allowed to be carried forward for future years.

Therefore, he viewed that assessing officer allowed excess and irregular carry forward of business loss of Rs. 6,79,826/- pertaining to A.Y. 2017-18 and resultantly under assessed income of Rs. 6,79,826/- in the hands of assessee. Therefore, assessment order dated 09.03.2021 prima facie appears to be erroneous in so far as it is prejudicial to the interest of revenue. Accordingly, the ld. PCIT issued a notice dated 15.02.2023 to the assessee by stating that why the assessment order dated 31.3.2021 passed u/s 143(3) of the Act shall not be set aside to the file of assessing officer for fresh adjudication on the issue as discussed in above. In compliance to the notice issued by ld. PCIT, assessee has submitted its reply on 22.02.2023, the relevant portion of the extract is reproduced herein below:

*“3. That we have read with above said Asst, Order for the Asst Year 2018-19 along with Computation Sheet attached to it and part of the same which is subject matter of instant revision proceedings, however, nowhere we found mention of the said business loss of Rs. 6,79,826/- pertaining to A,Y 2017-18, as allowed to be carried forward for future years.*

*4. Therefore, we are unable to understand how the Assessing Officer has allow the said purported excess and irregular carry forward of business loss of Rs. 6,79,826/- pertaining to AY 2017-18 and how come the same resulted in under assessment of income of Rs. 6,79,826/-.*

*5. In addition to above, we hereby say and submit that we, not have claimed and/or availed any such business loss of Rs 6,79,826/- originated and brought forward from Asst. Year 2017-18 and therefore there is no question of underassessment of income of Rs. 6,79.826/-.*

*6. In any case in relation to mentioning of departmental system generated report (schedule CFL: Details of losses to be carried forwarded for future years) of A.Y. 2018-19, we hereby most humbly request you to kindly provide us a copy of the said departmental system generated report.*

7. Further, we would like to reproduce hereunder the relevant extracts from the said Asst. Order for asst, year 2018-19 hereunder:

*“1.....The case was selected for Complete Scrutiny' assessment under the E-assessment Scheme, 2019 on the issue of "Verification of transactions". Notice u/s. 143(2) was issued and served on the assessee, subsequently notices u/s. 142(1) was issued calling for details AAACL3631M-LUV-KUSH PROJECTS LIMITED A.Y. 2018-19 ITBA/AST/S/143(3)/2020-21/1031360450(1) which was duly served.*

*2. After perusal of the Return of income, material available on record and the reply filed on 09/12/2020 & 22/02/2021 to the notices u/s142(1), the explanation of the assessee on the above issue is accepted and no addition is made.”*

8. Therefore, during the said asst. proceedings under "Complete Scrutiny Notices Under section 143(2) and under section 142/1) of the Act were issued by the ld. Assessing Officer and in reply to the same explanations we submitted by the Assessee Company which were accepted by the Ld. A.O and Assessment was completed as per Asst. Order dated 09/03/2021.

9. Therefore, it is very much on record that the Ld. AO during assessment proceedings under section 143(3) of the Act examined all relevant documents of the assessee Company in the course of assessment proceedings, made every possible enquiry and after being satisfied with the explanation of the assessee decided the assessment as per law.

10. It is further submitted that for taking recourse to the provision of Sec. 263 of the Income Tax Act, 1961, two primary conditions have to be satisfied:-

- a) The order has to be erroneous in so far as unsustainable in law, and
- b) The order must be prejudicial to the interest of revenue.

*The AO, after examining every aspect of the case and being satisfied with the documents/records provided by us with respect to the return of income filed by the Company, made assessment u/s.143(3) of the Act. Under the circumstances, the order of the AO as far as it relates to the transactions of the said asst. year, examination of the assessment records isn't, in any way, erroneous which caused prejudice to the interest of revenue.”*

4. However, after perusing the submission made by the assessee, ld. PCIT hold that impugned assessment order dated 09.03.2021 passed by NFACT, Delhi u/s 143(3) of the Act is erroneous and prejudicial to the interest of revenue and set aside the impugned assessment order to the file of AO with the direction to consider the submission made by the assessee and directed to frame the assessment afresh after providing the assessee reasonable opportunity of being heard.

5. At the time of hearing before the Tribunal, ld. AR submitted that assessee did not avail any such loss of Rs. 6,79,826/- originated and brought forwarded from assessment year 2017-18 as alleged by the ld. PCIT in his order dated 25.03.2023 passed u/s 263 of the Act and in such circumstances, there is no question of under assessment of income as alleged by ld. PCIT in his order. The ld. AR in order to substantiate his argument, he has placed before us a paper book containing various documents including computation of business income for the A.Y. 2017-18 and extract from ITR 2018-19 to show the fact that assessee did not brought forward any loss from A.Y. 2017-18 as alleged by ld. PCIT in his order. Hence, there is no error in the assessment order passed u/s 143(3) dated 09.03.2021. Therefore, the ld. PCIT invoked jurisdiction u/s 263 of the Act is bad in law and has to be set aside by this Tribunal.

6. On the other hand, ld. DR supported the order passed by the ld. PCIT and vehemently opposed the submission made by the ld. AR before the Tribunal.

7. We after hearing the rival submission and on perusal of the material available on record, we notice from the facts of the case is that the assessee has not claimed or availed any such business loss of Rs. 6,79,826/- as originated and brought forwarded from assessment year 2017-18 as alleged by ld. PCIT in his order while invoking the revisionary jurisdiction u/s 263 of the Act. We also going through the fact find that assessee has not claimed any brought forward loss from assessment year 2017-18 while calculating the income for the assessment year in question. Therefore, invoking of revisionary jurisdiction by the ld. PCIT u/s 263 does not call for. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the assessment order passed by the assessing officer u/s 143(3) of the Act vide order dated 09.03.2021 is neither erroneous nor prejudicial to the interest of revenue. Therefore, we quashed the order passed by the ld. PCIT u/s 263 of the Act dated 25.03.2021.

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

Order pronounced in the open court on 23.08.2023.

Sd/-

Sd/-

(Manish Borad)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 23.08.2023  
*Biswajit*

Copy of the order forwarded to:

1. Appellant- Luv-Kush Projects Limited, C/o. AGSS & Co. Siddha Weston, 1<sup>st</sup> Floor, Room No. 1E, 9, Weston Street, Kolkata-700013.
2. Respondent – Pr. CIT-2, Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata