

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1286/Mum/2023

(Assessment Year 2018-19)

Shree Sai Consultants
1, Ram Krupa Devji Bhimji Lane,
Mathurdas Road, Kandivali West,
Mumbai-400067

(Appellant)

PAN No. AAMFS8806J

Assessee by

: Shri.Mahaveer Jain.AR

Revenue by

: Shri.Dr.kishore Dhule.CIT.DR

Date of hearing: 06.09.2023

Date of pronouncement : 09.10.2023

PCIT-
Room No. 808, Kautilya
Bhavan, C-41 to C-43, G
Block, Bandra Kurla Complex,
Bandra (East),
Mumbai-400051

(Respondent)

ORDER

PER PAVAN KUMAR GADALE, JM:

01. The assessee has filed the appeal against the order of the Principal Commissioner of Income tax-42, Mumbai [hereinafter 'the Ld. Pr.CIT'] passed u/sec 263 of the Income-tax Act, 1961 [hereinafter 'the Act'].

02. The assessee has raised following grounds of appeal:

"1.That, on the facts and circumstances of the case and in law, the order passed by the Ld. PCIT-42 u/s 263, merely on presumptions without any material evidences, is bad in law and is liable to be quashed.

2. That on the facts and circumstances of the case and in law, the Ld. CIT-33 erred in exercising revisionary powers under section 263 without giving any finding as to how the order passed by the assessing officer is "erroneous" as well as "prejudicial to the interest of the revenue, and as such, the order passed- u/s 263 is bad in law and is liable to be set aside in view of the decision of the Hon'ble Apex Court in the case of Malabar Industrial Co. Ltd vs. CIT (243 ITR 83).

3. That, on the facts and circumstance of the case and in law, the Ld. PCIT-42 erred in holding that the assessment order dated 22.04.2021 passed u/s 143(3) of the Act by the assessing officer was "erroneous" and "prejudicial to the interest of the revenue" and also erred in partially setting aside the same and directing the Assessing Officer to frame the assessment order de-novo after making thorough verification

4. 4.1. That on the facts and circumstances of the case and in law, Ld. PCIT erred in passing the order u/s 263 and directing the assessing officer to examine the issue de-novo when the issue is subject matter of appeal before the CIT(A)

4.2. That on the facts and circumstances of the case and in law, Ld. PCIT erred in passing order u/s 263 on the issue which is subject matter of appeal ignoring well settled legal position that PCIT cannot assume revisional jurisdiction on

the issues which are subject matter of appellate proceeding before CIT(A), hence, order passed by Ld. PCIT is bad in law and without jurisdiction and liable to be quashed.

5. That on the facts and circumstances of the case and in law, the Ld. PCIT erred in exercising revisionary powers without considering the fact that the recourse to section 263 cannot be invoked where two views are possible, as decided in the case of Malabar Industrial Co. Ltd. (Supra), and as such, the order passed is bad in law and is liable to be quashed.

6. That on the facts and circumstances of the case and in law, the Ld. PCIT not considering the fact that detailed examination had already been done by the Ld. Assessing officer at the time of original proceedings u/s 143(3), and as such, the Ld. CIT would not be justified in exercising revisionary powers under section 263 of the Act.”

03. At the time of hearing, the Ld.AR has not pressed the grounds of appeal No.5 & 6. Accordingly they are treated as withdrawn and are dismissed.
04. The brief facts of the case are that, the assessee is engaged in the business of building construction & redevelopment of residential and commercial premises. The assessee has filed the return of income for the assessment year 2018-19 disclosing a total loss ₹ 8,73,428/-. Subsequently, the assessee's

case was selected for complete scrutiny under the E-assessment scheme 2019 on the following issues of (i) income from real estate business (ii) default in TDS & Disallowance for such default. Whereas the Assessing Officer (A.O) has issued notice u/sec 143(2) and U/sec 142(1) of the Act. The assessee has submitted copy of return of income, audited report, audited balance sheet and profit & loss account and copy of commencement certificate. The AO found that the assessee is following project completion method and in the balance sheet has disclosed the closing work in progress. The AO has considered the details of information filed and the facts with respect to the non deduction of the TDS on the expenditure claimed in the profit and loss account. Further, the assessee has not provided complete details in respect of unsecured loans/creditors. The assessing officer considered the fact that the assessee was following Project completion method and treated the expenditure as work in progress and TDS was not deducted and no proper details are submitted and estimated the aggregate disallowance of expenditure of Rs.1,61,22,341/-

05. On second disputed issue, the AO found that the assessee has obtained unsecured loans as per the list provided and partially supported with the

confirmations. The AO found that the assessee has not provided complete details of PAN No. of the parties, address of the parties, bank statements and financial statements of loan creditors. Since the assessee has not substantiated the identity, creditworthiness, and the genuineness of unsecured loans and in the absence of complete details, the A.O has made an addition of 20% of the Unsecured loans of Rs.2,44,08,202/- which works out to Rs 48,81,640/- and assessed the total income of Rs. 2,01,30,553/- and passed order u/s 143(3) of the Act dated 22.04.2021.

06. Subsequently, the Ld. PCIT on perusal of the record and information found that, the assessee had received unsecured loans of ₹17,35,13,340/- from 24 parties and only 8 parties have responded to the show cause notice issued in the assessee proceedings. Whereas the AO has made adhoc addition of 20% of unsecured loans as the PAN No., confirmations and other details loans could not provided. The Ld. Pr.CIT is of the opinion that the AO has erred in making the adhoc disallowance @20% and allowed 80% of the unsecured loans despite failure on the part of the assessee to prove the genuineness, identity and creditworthiness of loan creditors. Further the AO has passed the assessment

order without making necessary enquires and Pr.CIT has issued notices but there was no compliance. Finally the Ld. Pr.CIT has considered the findings of AO order U/sec143(3) of the Act and observed that the order passed by the AO is erroneous and prejudicial to the interest of the revenue and is set-aside and issued the directions to the AO observing at Page no. 5 Para 9 of the order as under:

"09. *"In view of the above, I am of the considered opinion that the assessment order dated 22.04.2021 passed by the AO u/s. 143(3) r.w.s 144B of the Act is erroneous and prejudicial to the interest of Revenue, in so much as the assessment was made without proper verification and inquiries on the issue which the AO was expected to make in view of facts and circumstances discussed above and at the cost of repetition, are summarized herein below:*

- *The assessee raised loans from 24 parties.*
- *The assessee furnished confirmation from just 7 parties out of 24 parties*
- *Pan was provided in the case of 8 parties.*
- *No details, not even the PAN was provided for the remaining 16 parties.*
- *The AO without making any further enquiries made an adhoc disallowance of 20% of the loans raised from 15 parties.*

- *No such disallowance was made from one Party, Rajesh Life Spaces, was made even though not even the PAN details were furnished.”*

Finally, the Ld. PCIT has passed the order u/s 263 of the Act dated 14.03.2023.

07. Aggrieved, by the order of the Pr.CIT, the assessee has filed appeal before the Hon'ble Tribunal. At the time of hearing the Ld. AR has not pressed ground of appeals no. 5 and 6. Since, the assessee has not filed any submission before the Ld. PCIT, the ground of appeal raised in Para 4.2 of the original appeal memo is treated as additional ground of appeal.. The Ld. AR's contentions are that the Ld. Pr.CIT has erred in considering order passed by the AO is erroneous and prejudicial to the interest of the revenue irrespective of the facts that the assessee has complied with the information and notices to ITBA in the assessment proceedings. The AO having examined and on verifying the facts and has made addition of Rs. 1,61,22,341/- as the assessee has not deducted TDS on the expenses incurred under various heads. Similarly, the AO has made adhoc addition @ 20% of unsecured loans though the assessee has filed details of names, addresses, Pan, ledger accounts. Whereas the AO has issued draft order and made addition. For various reasons and due to covid effect, the assessee could not file objections to the draft order and but aggrieved by the order U/sec 143(3)r.w.s 144B of the Act. The assessee has filed appeal with the CIT(A) challenging

the additions made by the A.O. Whereas the Pr.CIT has erred in invoking provisions under section 263 of the Act on the same addition which is a subject matter of appeal before the CIT(A) and relied on the judicial decisions. Per Contra, the Ld.DR made submissions in respect of applicability of provisions of Sec. 263 and explanation (2) of the Act and the AO has overlooked the various facts in respect of unsecured loans and the provisions of section 263(1) of the Act can be invoked, where the Ld. CIT(A) has not decided the appeal and is still pending and the Ld.DR supported the order of Pr.CIT.

08. We have heard the rival submission and perused the materials on record. The Ld. AR submitted that the order passed by the Ld. CIT(A) is bad in law as the order passed by the AO is not prejudicial to the interest of the revenue. The contentions of the Ld. AR are that the AO has considered the submissions in respect to the unsecured loans and whereas the AO has considered the facts observed that the assessee has not provided complete details of PAN No. of the parties, address of the parties, bank statements and financial statements of loan creditors. Since the assessee has not substantiated the identity, creditworthiness, and the genuineness of unsecured loans and in the absence of complete details, the A.O has made an addition of 20% of the Unsecured loans of Rs.2,44,08,202/- which works out to Rs 48,81,640/-. The

contentions raised by the Ld. AR that the Assessing officer has applied the mind and took a possible view. The assessee has filed appeal with the CIT(A) challenging the additions made by the A.O. Whereas the PCIT has erred in invoking provisions under section 263 of the Act on the same addition which is a subject matter of appeal before the CIT(A). When a query was raised to the Ld.AR for non compliance to the notices issued U/sec 263 of the Act, the explanations are that due to technical difficulties the assessee could not respond and prayed for one more opportunity to substantiate with the material evidences before the Pr.CIT. We find the notices of hearing are issued on various dates referred at Page 2 Para 4&5 of the order, but there was no response and thus the Pr.CIT came to a conclusion that the assessee neither attended the proceedings nor made relevant submissions in response to show cause notices and passed the revision order U/sec263 of the Act based on the material available on record. And there could be various reasons for non appearance of the assessee which cannot be overruled. Therefore, considering the principles of natural justice shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, we set aside the order of the Pr.CIT and remit the entire disputed issues to the file of the Pr.CIT to adjudicate afresh and the



assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information. Accordingly, allow the grounds of appeal of the assessee for statistical purposes.

09. In result, the assessee appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 09.10.2023.

Sd/-
(OM PRAKASH KANT)
(ACCOUNTANT MEMBER)

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Mumbai, Dated: 09.10.2023

Aniket Singh Rajput, Stenographer.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai