

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "D" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Narender Kumar Choudhry (JM)

I.T.A. No. 1949/Mum/2023 (A.Y. 2018-19)

Mars Enterprises & Hospitality Private Limited 1C Georgina, Sherly Rajan Road, Bandra West Mumbai-400 050. PAN : AAKCM 4707H (Appellant)	Vs.	PCIT Room No. 344 3 rd Floor Aayakar Bhavan M.K. Road Mumbai-400020. (Respondent)
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Assessee by	Shri Madhur Agarwal & Shri Ravikant Pathak
Department by	Ms. Sanyogita Nagpal
Date of Hearing	18.09.2023
Date of Pronouncement	23.11.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the revision order dated 30.3.2023 passed by PCIT-2, Mumbai under section 263 of the I.T. Act for A.Y. 2018-19. The assessee is challenging the validity of the revision order passed by learned PCIT.

2. The facts relating to the case are stated in brief. The assessee is engaged in the business of running a hotel, restaurant, club and allied business activity. The assessment in the hands of the assessee for the year under consideration was completed by the Assessing Officer under section 143(3) of the Act on 24.2.2021 accepting the return of income filed by the assessee. The learned CIT(A) examined the assessment record and took the view that the assessment order is erroneous and prejudicial to the interest of revenue. Accordingly, he initiated the revision proceedings under section 263

of the Act. The content of the notice issued by learned PCIT is extracted in the revision order as under:-

1. "In your case, the relevant case records were called for the AY 2018-19 and examined. It is seen from the examination of the said records that the Return of Income was filed for the year on 07.01.2019 declaring total income of Rs.68,78,588/-. The assessment was completed u/s 143(3) on 24.02.2021 accepting the returned income.
 2. On perusal of the case records, it is noticed that you have offered proportionate rent receipt of Rs.2,65,53,867/- for taxation and balance rent receipt of Rs. 1,50,43,393/- is offered for taxation in subsequent year. However you have taken credit for entire TDS. Thus, excess TDS credit was allowed to you and accordingly excess refund was granted.
 3. From the income from house property the assessee had claimed deduction of interest u/s 24. As part of the rent receipt is offered in subsequent AY, the proportionate interest needs to be allowed as deduction.
 4. Further, you have claimed interest expenditure of Rs.5,21,23,226/-. As no details of payments are available, the allowability of this interest expenditure as business expenditure needs to be examined.
 5. You have debited rent, rates, taxes of Rs.47,17,040/- and taxes paid of Rs.68,78,699/-. The said payments were in respect of the rental income on which you have already claimed statutory deductions u/s 24 of the Act. Hence, these expenses are not allowable business expenditure.
 6. You have debited Rs. 1,48,488/- under Swatch Bharat Cess, the same is not an allowable expenditure.
 7. It is prima facie noticed that the above issues have not been inquired/verified during the course of assessment proceedings and the consequent assessment order is erroneous in so far as it is prejudicial to the interest of the revenue."
3. Before PCIT, the assessee furnished various details in respect of the above said issues and contended that there is no error in the order passed by the Assessing Officer. However, learned PCIT did not agree with the contentions of the assessee and took the view that the Assessing Officer has failed to examine these issues in proper perspective. In this regard learned PCIT placed reliance on Explanation 2 to section 263 of the Act. Accordingly, he set aside the assessment order and directed the Assessing Officer to

conduct requisite inquiries in accordance with the discussion made by him and frame assessment de novo. Aggrieved by the order passed by learned PCIT the assessee is in appeal before us.

4. The Ld A.R submitted that the assessee has submitted proper explanations before the Ld PCIT in order to prove that there was no error in any of the issues mentioned above. He submitted that, even if it is assumed that there is an error, still no prejudice will be caused to the revenue, since the total income will not undergo a change. He submitted that the Ld PCIT is expected to examine the details furnished by the assessee before him and satisfy himself that there is an error before revising the assessment order. In this regard, he relied upon the decision rendered by Hon'ble Delhi High Court in the case of CIT vs. Vikas Polymers (2012)(341 ITR 537)(Delhi), wherein it was held as under:-

“14. From the above, in our considered opinion, it is clear that in the ultimate analysis it is a pre-requisite that the Commissioner must give reasons to justify the exercise of suo motu revisional powers by him to reopen a concluded assessment. A bare reiteration by him that the order of the Income tax Officer is erroneous in so far as it is prejudicial to the interests of Revenue, will not suffice. The exercise of the power being quasi-judicial in nature, the reasons must be such as to show that the enhancement or modification of the assessment or cancellation of the assessment or directions issued for a fresh assessment were called for and must irresistibly lead to the conclusion that the order of the ITO was not only erroneous but was prejudicial to the interests of the Revenue.....”

He further submitted that the revision order u/s 263 of the Act could be passed only if both the twin conditions, viz., (a) order is erroneous and (b) it is prejudicial to the interests of revenue, are satisfied. If one of the twin conditions are not satisfied, then the Ld PCIT is precluded from passing revision order.

5. The Ld D.R, however, submitted that the AO did not examine any of the above said issues during the course of assessment proceedings. Hence, all the assessment order is rendered erroneous and prejudicial to the

interests of revenue in view of deeming provision stated in the Explanation 2 of sec. 263 of the Act.

6. We heard the parties and perused the record. It is an admitted fact that the assessing officer did not examine any of the issues pointed out by Ld PCIT in his revision order. We noticed that the Ld PCIT has invoked Explanation 2 to sec. 263 of the Act. The said provision applicable to the year under consideration reads as under:-

“Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

As per clause (a) of Explanation 2 extracted above, the order passed without making inquiries or verification which should have been made shall be deemed to be erroneous in so far as it is prejudicial to the interests of revenue. In view of the deeming provision mentioned above, we are of the view that the Ld PCIT was right in holding that the impugned assessment order is rendered erroneous and prejudicial to the interests of revenue.

7. The Ld A.R argued that the Ld PCIT did not examine any of the explanations furnished by the assessee before him on various issues raised by him in the revision notice. According to Ld A.R, there were no errors on any of the issues and hence a due indulgence on the part of Ld PCIT on the explanations so given by the assessee would have made him to accept the fact that these issues do not make the assessment order erroneous and

prejudicial to the interests of revenue. However, in view of the legal fiction brought into sec. 263 by way of Explanation 2, we are unable to accept the above said contentions of the assessee. Accordingly, we do not find any infirmity in the impugned revision order passed by Ld PCIT.

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

Order pronounced on 23.11.2023.

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai.; Dated : 23/11/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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