

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted through E-Court at Ahmedabad)**

**BEFORE HRI WASEEM AHMED, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.178/Rjt/2022  
(Assessment Year: 2017-18)

Shri Jay Khodiyar Majoor S M Ltd., At Chhalanka, Junagadh, Visavadar, Gujarat-362130 [PAN No.AAAAS3171R]	Vs.	The Principal Commissioner of Income Tax-1, Rajkot
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri D. M. Rindani, A.R.
<b>Respondent by:</b>	Shri Shramdeep Sinha, CIT DR

<b>Date of Hearing</b>	14.12.2023
<b>Date of Pronouncement</b>	20.12.2023

**ORDER**

**PER SIDDHARTHA NAUTIYAL, JM:**

This appeal has been filed by the assessee against the order passed by the Ld. Principal Commissioner of Income Tax-1, (in short “Ld. PCIT”), Rajkot in DIN & Order No. ITBA/REV/REV5/2021-22/1040227890(1) vide order dated 01.03.2022 passed for Assessment Year 2017-18.

2. The assessee has taken the following grounds of appeals:-

*“1. The learned Principal Commissioner of Income-tax – Rajkot -1, Rajkot erred in holding that the assessment order dated 27-12-2019 passed u/s 143(3) of the Act was erroneous and prejudicial to the interest of revenue and thus erred in assuming jurisdiction u/s 263 of the Act, in the light of show cause notice and the order passed u/s 263 of the Act and hence the impugned order is bad in law.*

*2. The learned Principal Commissioner of Income-tax, Rajkot -1, Rajkot erred in setting aside the assessment order framed u/s 143(3) of the Act by holding that the A.O. has not conducted any inquiries/verification in respect of claim of deduction u/s 80P(2)(d) of the Act and in respect of non-deduction of tax deducted at source u/ 194C of the Act on contract expenses.*

3. *The learned Principal Commissioner of Income-tax, Rajkot – 1, Rajkot failed to appreciate that the issue regarding claim of deduction u/s 80P of the Act was duly examined by the assessing officer by way of specific inquiry/notice and reply thereto, while finalizing assessment proceedings, u/s 143(3) of the Act.*

4. *The appellant craves leave to add, amend, alter and withdraw any ground of appeal anytime upto the hearing of this appeal.”*

3. The issue for consideration before us is the challenge to the validity of legality of notice of 263 order passed by Ld. PCIT on the ground that the scope of the first notice for revision under Section 263 of the Act cannot be enhanced by way of issuance of subsequent notice by Principal CIT.

4. The brief facts of the case are that the Ld. PCIT issued notice dated 19.10.2022 on the assessee on the ground that on perusal of records, it is seen that the assessee has shown the total interest income of Rs. 1,02,543/- including interest on fixed deposit receipts from Bank of Baroda and claimed deduction under Section 80P on entire profit earned during the year under consideration. The Ld. PCIT was of the view that in the assessment order, the Assessing Officer allowed deduction of interest income under Section 80P of the Act without enquiry into the claim of the assessee. Accordingly, the assessee was asked to demonstrate as to why the assessment order should not be held to be erroneous and prejudicial to the interest of Revenue. In response to the aforesaid notice, the assessee filed response dated 28.01.2022, in which it was submitted that the Assessing Officer had already disallowed entire deduction of Rs. 28,39,345/- claimed by the assessee under Section 80P of the Act in the assessment order dated 27.12.2019. Further, as per Para 3.4 and 4 of the assessment order, the deduction under Section 80P with respect to the interest income of Rs. 1,02,543/- from Bank of Baroda had been disallowed by the Assessing

Officer and added to the income of the assessee. Accordingly, the assessment order is not erroneous with respect to the aforesaid issue raised by Ld. PCIT. Thereafter, the Ld. PCIT issued another notice dated 04.02.2022 in which it was stated that the assessee had claimed contract expenses of Rs. 8,24,30,247/- in the Profit & Loss Account and the same was allowed by the Assessing Officer. The Ld. PCIT observed that in view of Section 194C of the Act, TDS should have been deducted on aforesaid contract expenses. However, as per Tax Audit Report, TDS had not been deducted by the assessee. Therefore, in view of Section 40(a)(ia) of the Act, 30% of the contract expenses should have been disallowed on account of non-deduction of tax at source. However, the assessee did not file any response to the aforesaid notice and accordingly, the Ld. PCIT set-aside the assessment order as being erroneous and prejudicial to the interest of the Revenue.

5. Before us, the Counsel for the assessee submitted that on this issue of non-deduction of taxes under Section 194C of the Act, admittedly the Assessing Officer had not made any inquiry and to that extent the observations of Ld. PCIT could not be faulted with. However, the Ld. Counsel for the assessee submitted that the scope of 263 proceedings cannot be enhanced by issuance of another notice, especially in light of the fact that when the basis of initial notice dated 19.01.2022 under Section 263 stood satisfied and therefore, the assessment proceedings could not be held to be erroneous and prejudicial to the interest of the Revenue. It was submitted that enhancing the scope of 263 proceedings by way of subsequent notice would be clearly against the principal of natural justice. It was further

submitted that in the second notice, seemingly a specific direction was given to the Assessing Officer to set-aside the original assessment proceedings and hear the matter afresh.

6. In response, the Ld. D.R. submitted that there is no statutory bar under Section 263 of the Act which prohibits the Ld. PCIT to raise another issue, if from the records it is found that certain inquiry was not conducted, which should have been made during the course of assessment proceedings while framing the assessment order. Further, it was submitted that even the assessee has not objected to the fact that to that extent the assessment order is erroneous and prejudicial to the interest of the Revenue. It was further submitted that it is also not the case of the assessee that the second notice dated 04.02.2022 is time barred and hence, in absence of any specific prohibition under Section 263 of the Act, the Ld. PCIT is well within his rights to raise any alternate ground during the course of 263 proceedings.

7. We have heard the rival contentions and perused the material on record. The prime issue for consideration is before us is whether once the assessee has satisfied the Ld. PCIT that the assessment order is not erroneous and prejudicial to the interest of the Revenue with respect to reasons recorded in the first notice dated 19.01.2022, then whether the Ld. PCIT is permitted to revise the original assessment order on another issue, not forming part of the initial notice, on the basis of which 263 proceedings were initiated. In our view, we agree with the contention of the Ld. D.R. that there is no specific prohibition under Section 263 of the Act which prohibits the Ld. PCIT to give a finding with respect to any other aspect of the assessment order, if from the records it is find that the assessment has

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over-looked this issue. Admittedly in this case, the Assessing Officer had no plausible reason to explain the lack of inquiries with respect to non-deduction of TDS under Section 194C of the Act and there was no reason why disallowance under Section 40(a)(ia) of the Act was not made while framing the impugned assessment year. Further, in absence of any specific restriction on the powers of Ld. PCIT during the course of 263 proceedings itself, which were admittedly not barred by jurisdiction i.e. the second notice dated 04.02.2022 was not barred by period of limitation of two years as prescribed under Section 263 of the Act, we find no infirmity in the order of Ld. PCIT under Section 263 of the Act, so as to call for any interference.

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

<b>This Order pronounced in Open Court on</b>	<b>20/12/2023</b>
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**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 20/12/2023

*TANMAY, Sr. PS*

**TRUE COPY**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट / DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot