

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3502/Mum./2023

(Assessment Year : 2014-15)

Darshan Construction
B-001, Siddhivinayak Darshan
Ground Floor, J.R. Boricha Marg
Saathrasta, Mumbai 400 011
PAN - AACFD1634M

..... Appellant

v/s

Income Tax Officer
Ward-22(1)(6), Mumbai

..... Respondent

Assessee by : None

Revenue by : Smt. Sanyogita Nagpal

Date of Hearing - 19/02/2024

Date of Order - 21/02/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 03/08/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), Delhi, National Faceless Appeal Centre, [*"learned CIT(A)"*], for the assessment year 2014-15, which in turn arose from the order dated 27/12/2019 passed under section 143(3) r/w section 263 r/w section 144 of the Act.

2. When this appeal was called for hearing neither anyone appeared on behalf of the assessee nor was any application seeking adjournment. Therefore, in view of the above, we proceed to decide the present appeal ex-parte, qua the assessee after hearing the learned Departmental Representative ("*learned DR*") and on the basis of material available on record.

3. We have considered the submissions of the learned DR and perused the material available on record. The brief facts of the case are that the assessee is a partnership firm and is engaged in the activity of development of SRA projects. During the year under consideration, the assessee filed its return of income on 25/09/2014 declaring a total income of Rs. Nil. The return filed by the assessee was selected for scrutiny and vide order dated 30/12/2016 passed under section 143(3) of the Act the total income of the assessee was assessed at Rs. 43,79,000 by making addition under section 43CA of the Act. Subsequently, the learned PCIT-21, Mumbai vide revision order dated 26/02/2019 passed under section 263 set aside the aforesaid assessment order passed under section 143(3) of the Act and directed the Assessing Officer ("*AO*") to reassess the income of the assessee as per the directions in the revision order. Pursuant to the aforesaid directions issued by the learned PCIT, the AO passed the order dated 27/12/2019 under section 143(3) r/w section 263 r/w section 144 of the Act computing the total income of the assessee at Rs. 32,83,16,460 after making addition under section 269SS of the Act and addition on account of sale consideration of two flats. It is undisputed that this order is the subject matter of the present appeal.

4. We find that in the appeal by the assessee against the aforesaid order dated 26/02/2019 passed under section 263 of the Act, the coordinate bench of the Tribunal in M/s Darshan Construction v/s PCIT, in ITA no. 1793/Mum/2020, for the assessment year 2014-15, vide order dated 28/04/2022 set aside the order passed under section 263 of the Act. The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as under:-

"4. We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. The reason for delay has properly been explained, therefore, in view of the reasons mentioned in the affidavit as well as in the application, we condone the delay. On appraisal of the order u/s 263 of the Act, we find that the initially, the assessment order passed u/s 143(3) of the Act was selected for limited scrutiny i.e. high turnover reported in service tax return compared to ITR and mismatch in sale turnover reported in Audited report and ITR. The PCIT is of the view that the AO should reopen the case for complete scrutiny, specifically on the reasons mentioned in para nos. 3, 4 & 5 of the PCIT order dated 26.02.2019. It is very strange how the AO could reach at a decision to convert the limited scrutiny case into the complete scrutiny case if he is not allowed to look beyond the reasons for limited scrutiny during the assessment proceedings. It is also very important to note that the Ld. PCIT himself stated that the issues on which he would like to be revised the order of the Ld. AO are beyond the scope of limited scrutiny. This itself proves that the Ld. PCIT was not empowered to invoke the provisions of Section 263 of the Act. Now the Ld. PCIT has found fault with the decision of Ld. AO by not referring the case to a complete scrutiny case. Assuming while denying, if the order of the Ld. PCIT has approved now then every limited scrutiny case selected according to the instruction to the CBDT should be revised under one and another pretext to found fault with the order of the Ld. AO and then it could be revised. Thus, it would be amounting to only negating the system of limited scrutiny itself. For this reasons, we do not found the order passed by Ld. AO is erroneous so far as the prejudicial to the interest of the revenue. In this circumstances, we set aside the order passed u/s 263 of the Act in question."

5. Since the revision order dated 26/02/2019 passed under section 263 has been set aside by the coordinate bench, the order dated 27/12/2019 passed under section 143(3) r/w section 263 r/w section 144 pursuant to the

directions of the learned PCIT under section 263 of the Act has no legal basis to be sustained and accordingly, the same is quashed.

6. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 21.02.2024

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 21.02.2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

By Order

Assistant Registrar
ITAT, Mumbai