

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER  
&  
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

**I.T.A. No. 382/Kol/2021**  
**Assessment Year: 2015-16**

<b>Halmira Estate Tea Private Limited</b> 23, Pankaj Mullick Sarani Ballygunge Circular Road Kolkata - 700019 <b>[PAN : AAACH6210N]</b>	Vs	<b>Principal Commissioner of Income Tax (2), Kolkata</b>
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri P.J. Bhide, A/R
Revenue by :	Shri Abhijit Kundu, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 29/11/2023  
घोषणा की तारीख /Date of Pronouncement: 27/02/2024

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The present appeal is directed at the instance of the assessee against the order of the learned Principal Commissioner of Income Tax - 2, Kolkata (hereinafter the "ld. Pr. CIT") dt. 10/06/2020, passed u/s 263 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2015-16.

2. The assessee has raised the following grounds of appeal:-

"1. That on the facts of the case the order passed by PCIT(2) Kolkata on 10.06.2020 u/s of the Act, is bad in law.

2. That the assessment order passed by the Assessing Officer on 10.11.2017 u/s. 143(3) after due consideration of documents submitted by the Appellant was neither erroneous nor prejudicial to the interests of the Revenue and therefore the order appealed against be cancelled."

3. Brief facts of the case as culled out from the records are that the assessee is a company and income of Rs.2,63,990/- declared in the return of income for Assessment Year 2015-16 filed on 30/09/2015. Case selected for scrutiny through CASS and assessment framed u/s 143(3) of the Act disallowing excessive deduction claimed u/s 80IE of the Act at Rs.6,86,200/-, thereby assessing income at Rs.9,34,400/-. Before concluding the assessment, relevant notice u/s 143(2) and 142(1) of the Act were issued and duly served and the reply to the questionnaire issued u/s 142(1) of the Act filed by the assessee enclosing necessary details.

3.1. Subsequently, the Id. Pr. CIT, called for the assessment records and after going through the same noticed that there is a transaction of purchase of property valuing at Rs. 11.41 Crores which has not been verified by Id. Assessing Officer. After considering the records, the Id. Pr. CIT assuming jurisdiction u/s 263 of the Act issued notice u/s 263 of the Act, dt. 06/03/2020, which read as follows:-

*"On examination of the assessment records of above mentioned assessment year 2015-16, it appears prima facie that there was failure on part of the A.O to assess the income correctly and as such, the instant order u/s 143(3) is erroneous in so far as it is prejudicial to the interest of the revenue within the ambit of sec. 263 of the Income Tax Act, 1961.*

*In this regard the following discrepancies have been observed:*

*"Purchase of property for Rs. 11.41 Cr. had not been verified at all. The officer accepted the claim only on the basis of a ledger copy and some bank entries. Even the concerned deed of conveyance is not placed on record. But the A.O completed the assessment without necessary legal verification or investigation in this case and accordingly without making any addition in the assessment order u/s 143(3) dated 10.11.2017".*

*In view of the above, you are hereby allowed an opportunity of being heard, either personally or through an authorized representative, in my office at Room no 60, 3rd floor, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700069 on 12/03/2020 at 10:45 A.M./P.M., and show cause as to why an order u/s 263 of the*

*I. T. Act, 1961 shall not be passed in your case enhancing/modifying/cancelling the assessment order in question or directing a fresh assessment to be made.*

*In the event of failure to comply with the above, it shall be presumed that you have no objection to the proposed action and the matter shall be finalised on merits on the basis of material on record, without further notice."*

4. During the course of revisionary proceedings, Id. Counsel for the assessee made detailed submissions stating that the assessee entered into an agreement for purchase of a building at Mumbai on 28/11/2014. Copy of ledger account of capital work in progress filed in support of the claim with all relevant entries appearing in the audited balance sheet. He also stated that the assessee availed loan from ICICI Bank for purchasing this property. Further it was also submitted that the Id. Assessing Officer had asked for necessary details in the questionnaire attached to notice u/s 142(1) of the Act and complete details were filed. Therefore, this transaction has been examined thoroughly by the Id. Assessing Officer. However, the Id. Pr. CIT was not satisfied and he held the order of the Id. Assessing Officer as erroneous and prejudicial to the interest of the revenue for not examining the transaction of purchase of property and directed the Assessing Officer to pass fresh assessment order after examining the transaction of purchase of property in question. The relevant finding of the Id. Pr. CIT reads as follows:-

*"6. I have carefully considered the facts of the case and gone through the submission of the assessee. On perusal of the assessment record, it is seen that, the primary reason for scrutiny i.e. purchase of property for Rs. 11.41 crores had not been verified at all by the AO. The AO accepted the claim only on the basis of a ledger copy and some bank entries and even, the conveyance deed is not placed on record. On the other hand, the AR of the assessee has stated that, in the course of assessment proceedings, the Assessing Officer has directed assessee to explain the above investment. The same was explained by the Assessee's Authorized*

Representative vide its letter dated 15.09.2017, wherein in Para-4, it has been explained as under:

*“Large investment in property (AIR) as compared to total income. The Assessee has entered into an Agreement for purchase of building at Upper Worli, Mumbai from Shreeniwas Cotton Mills Limited, on 28th November 2014. The total consideration is Rs. 11,41,07,130/-. A copy of ledger of Capital WIP (Building) Account is enclosed, showing the payment made at various dates. The Assessee has availed loan from ICICI Bank for such purchase or property. Copy of Bank Statement of various Bank has been enclosed for payment made to Shreeniwas Cotton Mills Ltd.”*

*During 263 proceedings, the AR has stated that, the possession of the aforesaid property in Mumbai was not handed over by the seller before 31.03.2015 and the amount paid by the assessee is reflected in the balance sheet under the head Capital Work in progress. The relevant Agreement for purchase was duly registered with the Joint Registrar, Mumbai City-IV and the entire amount of Rs.11.41 crores has been paid by the assessee. The possession of the property was handed over by the seller to the assessee in June 2015. The assessee has not put to use this property and hence, has continued as capital work in progress. Further, the AR has stated that, the seller i.e. Shreeniwas Cotton Mills Ltd of Mumbai has not reported that it has been paid by the assessee any amount in excess of the amounts specified in the said agreement. Therefore, the order passed by the AO is not erroneous and prejudicial to the interest of the revenue, since, order was passed after taking into consideration of the assessee's submission.*

*On perusal of the assessment order and record, it is seen that, the AO has not carried proper verification/investigation with regard to the source of investment of Rs. 11.41 crores for purchasing a building at Upper Worli, Mumbai, one of the posh areas in Mumbai, as it can be seen from the assessment order. Even, the deed of conveyance for purchase of property is not on record and the submission of the assessee has been accepted on the basis of ledger copy and some bank entries, without verifying the source of investment made by the assessee. In this regard, reliance is placed in the case of CIT vs. Anand Kumar Jain reported in 231 Taxman 534(AII) order dated 03.11.2014 relying on the ratio laid down by SC in Malabar Industrial Co Ltd. (109 Taxman 66) has held that order passed by AO without applying his mind to the material available on record is erroneous and such order can be revisioned u/s.263 of the Act. Therefore, the assessment order passed by the AO appears to be erroneous and prejudicial to the interest of the revenue.”*

5. Aggrieved the assessee is now on appeal before this Tribunal.
- 6 (a). The Id. Counsel for the assessee, took us through the paper book containing 75 pages filed on 15/06/2023 and another paper book filed

on 22/02/2022 containing 95 pages. His arguments are focused on the fact that the case of the assessee was selected for scrutiny for “large investment in property” and the ld. Assessing Officer has called for the details in the notice issued u/s 142(1) of the Act and detailed enquiry has been conducted. After considering the details including the bank statements, loan statement of ICICI Bank, ledger of the parties attached to the said transaction, the ld. Assessing Officer has come to the conclusion that transaction is genuine and no addition is called for. He also submitted that though the ld. Assessing Officer has not made any observation in the body of the assessment order but the details have been examined. He thus submitted, that firstly the ld. Pr. CIT erred in assuming jurisdiction and secondly even on merits, there is no scope of any addition because all the elements required to prove the genuineness of the transaction has been placed before the lower authorities as well as before the ld. Pr. CIT.

6 (b). The ld. D/R, on the other hand, vehemently argued on the order of the ld. Assessing Officer as well as of the ld. Pr. CIT.

7. We have heard contentions and perused the material placed on record. The first issue for our consideration is whether the ld. Pr. CIT as erred in assuming jurisdiction u/s 263 of the Act. Since the issue before us pertains to the invocation of jurisdiction u/s 263 of the Act, we find that the provisions of Section 263 of the Act has a direct bearing on the issue raised before us, therefore, it is pertinent to take note of this Section which reads as under:

"263(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

*Explanation-* For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,-

(a) an order passed on or before or after the 1<sup>st</sup> day of June, 1988 by the Assessing Officer shall include-

(i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;

(ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorized by the Board in this behalf under section 120;

(b) record shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Commissioner;

(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1<sup>st</sup> day of June, 1988, the powers of the Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.

*Explanation-* In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded."

8.1. A bare perusal of the sub section-1 would reveal that powers of revision granted by section 263 to the learned Commissioner have four compartments. In the first place, the learned Commissioner may call for and examine the records of any proceedings under this Act. For calling of the record and examination, the learned Commissioner was not required to show any reason. It is a part of his administrative control to call for the records and examine them. The second feature would come when he will judge an order passed by an Assessing Officer on culmination of any proceedings or during the pendency of those proceedings. On an analysis of the record and of the order passed by the Assessing Officer, he forms an opinion that such an order is erroneous in so far as it is prejudicial to the interests of the Revenue. By this stage the learned Commissioner was not required the assistance of the assessee. Thereafter the third stage would come. The learned Commissioner would issue a show cause notice pointing out the reasons for the formation of his belief that action u/s 263 is required on a particular order of the Assessing Officer. At this stage the opportunity to the assessee would be given. The learned Commissioner has to conduct an inquiry as he may deem fit. After hearing the assessee, he will pass the order. This is the 4<sup>th</sup> compartment of this section. The learned Commissioner may annul the order of the Assessing Officer. He may enhance the assessed income by modifying the order. He may set aside the order and direct the Assessing Officer to pass a fresh order. At this stage, before considering the multi-fold

contentions of the Id. Representatives, we deem it pertinent to take note of the fundamental tests propounded in various judgments relevant for judging the action of the CIT taken u/s 263.

8.2. Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. vs. CIT* (2000) 243 ITR 83 (SC) has laid down following ratio with regard to provisions of section 263 of the Act:

*“There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer; it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. The phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the revenue - Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 (SC) and in Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC).”*

9. While going through the above judgement of the Hon'ble Apex Court and the relevant provisions of the Act, we first need to examine whether the issue referred by the Id. Pr. CIT in the show cause notice has been examined by the Id. Assessing Officer and whether proper enquiry has been conducted. For this, we have gone through the notice dated 13/08/2021 issued u/s 142(1) of the Act placed at 23 to 26 of the

paper book and we find that in the annexure attached to the said notice, point no. 4, 5 & 6 of the said annexure, are focused only for examining the transactions of purchase of property. The relevant questions mentioned in the said annexure are as follows:-

*"4. Completed details of the purchased property Copy of the Agreement for purchase made with Shreeniwas Cotton Mills Ltd dt- 28 13 2014 The differences if any between the purchase value and the "stamp duty value and the reasons for the same.*

*5. Complete details of the source / loans availed of for purchase of the said property Copy of-bank statement(s) of the bank accounts highlighting the payments in respect of property purchased sold during the year.*

*6. Deed of Conveyance for "the purchase of the said property and the date on which the said property was .put to use for business purposes"*

10. In reply thereto, the assessee made submissions on 15/09/2017 stating that the assessee entered into an agreement for purchase of building at Upper Worli, Mumbai from Shreeniwas Cotton Mills Limited on 28/11/2014 for a total consideration of Rs.11,41,07,130/-. Copy of ledger of Capital work in progress (Building) Account, showing the payments made on various dates was filed. It was also submitted that the assessee availed mortgage loan from ICICI Bank will purchase of this property. Before us also all the relevant details filed with the Assessing Officer has been placed in the details of this transaction was appearing in the audited balance sheet at schedule no. 9 under the head fixed assets (capital work in progress). Copies of the mortgage loan letter issued by ICICI Bank is also placed before us. It clearly establishes that the Id. Assessing Officer has carried out extensive enquiry about the alleged transaction to which a satisfactory reply was filed by the assessee. The Id. Assessing Officer has thereafter

made proper application of mind and after being satisfied with the genuineness of all the transactions and the value of the purchase consideration, completed the assessment. Thus, it cannot be said that the order of the Assessing Officer is erroneous since a thorough enquiry has been conducted and one of the views permissible under law has been taken by the Id. Assessing Officer. It is judicially settled that for holding the order of the Assessing Officer is erroneous and prejudicial to the interests of the revenue both the conditions need to be fulfilled and in absence of any one condition being fulfilled, the Id. Pr. CIT, cannot assume jurisdiction u/s 263 of the Act. Since as per our examination of the facts, the order of the Assessing Officer is not erroneous, there was no scope for the Id. Pr. CIT to revisit the order of the Id. Assessing Officer. Therefore, the impugned order u/s 263 of the Act is quashed and assessment order framed u/s 143(3) of the Act dt. 10/11/2017, is restored. The effective grounds raised by the assessee are hereby allowed.

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

**Order pronounced in the Court on 27<sup>th</sup> February, 2024 at Kolkata.**

*Sd/-*

**(SANJAY GARG)  
JUDICIAL MEMBER**

*Sd/-*

**(DR. MANISH BORAD)  
ACCOUNTANT MEMBER**

Kolkata, Dated 27/02/2024

*\*SC Sp/2*

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata