

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" NEW DELHI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No. 3250/Del/2018
Asstt. Yr: 2014-15**

Jagbir Singh, Prop. DSR Construction, 1/63, Sector-24, Rohini, New Delhi.	<u>Vs</u>	Pr. CIT-13, New Delhi.
PAN: AIEPJ6561H		
APPELLANT		RESPONDENT
Assessee represented by		Shri C.S. Anand, Adv.
Department represented by		Mr. Waseem Arshad, CIT(DR)
Date of hearing		29.02.2024
Date of pronouncement		01.05.2024

ORDER

PER M. BALAGANESH, AM:

The captioned appeal, preferred the assessee, is directed against the order of learned Principal Commissioner of Income-tax-13, New Delhi, dated 26.02.2018, passed u/s 263 of the Income-tax Act, 1961, pertaining to the assessment year 2014-15.

2. The only effective issue to be decided in this appeal is as to whether the learned Principal Commissioner of Income-tax (Pr.CIT) was justified in cancelling the assessment framed by the learned Assessing Officer (AO) by invoking revisional jurisdiction u/s 263 of the Act in the facts and circumstances of the instant case.

3. We have heard rival submissions and perused materials available on record. The assessee is the sole proprietor of M/s DSR Constructions, which was carrying on the business of construction with material and labour work. The assessee was also the sole proprietor of M/s Gaurav Homes, which did not carry out any effective business. The assessee had maintained books of account and other records, got the same audited by a firm of Chartered Accountants and had filed consolidated audited financial statements together with tax audit report for the F.Y. 2013-14 relevant to A.Y. 2014-15 before the learned AO, while filing the return of income, declaring total income of Rs. 19,12,380/-. All the details that were called for by the learned AO from time to time were duly furnished by the assessee. The learned AO framed the assessment u/s 143(3) of the Act on 14.03.2016 after giving a categorical finding that the required details were examined by him together with verification of books of account and supporting vouchers on test check basis. The learned AO had also mentioned that in the year under consideration, total turnover had been shown at Rs. 11,34,46,076/- with gross profit of Rs. 1,01,21,357/-, yielding a gross profit rate of 8.92%, which was higher than the gross profit rate of 8.47%, declared in the immediately preceding year. The learned AO categorically held that the trading results declared by the assessee for the year under consideration are accepted.

4. This assessment was sought to be revised by the learned Pr. CIT by invoking revisional jurisdiction u/s 263 of the Act based on the proposal received from Additional CIT, Range-38, New Delhi, stating that the assessment was completed in haste without

looking or properly verifying the purchases, rent expenses, labour charges and also other expenses. The learned Pr. CIT had justified his revisional jurisdiction by verification of the order-sheet noting dated 19.02.2018 from the case records and found that these expenses were not subjected to any examination by the learned AO during the course of assessment proceedings. Accordingly, he proceeded to cancel the assessment order and directed the learned AO to make assessment afresh after making appropriate enquiries and verification.

5. At the outset, it is not in dispute that initiation of revision proceedings u/s 263 of the Act by the learned Pr. CIT has been carried out in the instant case not on his own volition, or on examination of the records of the assessee by him by independently applying his mind. Instead, the revisional proceedings had been initiated based on a proposal received from the Additional CIT, which fact is also mentioned in para 2 of the order of learned Pr. CIT. Hence, it is a clear case of borrowed satisfaction by the learned Pr. CIT, which is in complete violation of provisions of Section 263 of the Act. In the case before us, it is not in dispute that the Pr. CIT invoked the proceedings u/s 263 of the Act on the request of the Id. Addl. CIT. Under section 263(1) of the Act, it clearly says, "The Commissioner may call for and examine the records of any proceedings under this Act, and if he considers ... ", which means that proposal for initiation of revision proceedings must be initiated by the Id. CIT, because, it is the Id. CIT who has to call for and examine the records. Whereas in the instant case, the Id. PCIT did not initiate the proceedings himself but initiated the proceedings on the proposal received from the Id. Addl. CIT. Only on receipt of proposal from the Id. Addl.

CIT, the Pr. CIT initiated revision proceedings. As mentioned above, that the proposal for initiation of revision proceedings must be initiated by the CIT, which is not the case at present, therefore, the initiation of proceedings u/s 263 of the Act at the instance of the Id. Addl. CIT are invalid. This view of ours is further fortified by the following decisions:-

a) Decision of Mumbai Tribunal in the case of Vinay Pratap Thacker in ITA No. 2939/Mum/2011 dated 27.2.2013

As per Section 263(1), the CIT must himself come to a conclusion, after applying his own mind, because, the words used in the section are"..... and if he considers ...",here, application of his own mind becomes important. It is important to examine the similarity of the expression used under section 147(1) and 263(1). Under section 147(1), the expression used is "has reason to believe" and under section 263(1), the expression used is "if he considers". Though the expressions used are not verbatim parimateria, but the meaning which is to be drawn in both the expressions are parimateria, i.e., an independent, unpolluted and un-adopted application of mind by the officer, invoking the provision.

We have seen from the impugned order of the CIT, dated 11.02.2011, the CIT admits, "A proposal was received on 10.06.2010 from the AO under section 263 of the Income Tax Act, 1961, pointing out some discrepancies/short comings in the assessment order". This clearly shows that in so far as the CIT was concerned, he did not apply his own mind..... We are of the considered opinion that the CIT could not have invoked the jurisdiction under section 263 without his own independent application of mind.

b) Decision of Kolkata Tribunal in the case of Rupayan Udyog Vs. CIT in ITA No. 1073/Kol/2012 dated 28.11.2018

The power vested in the CIT is that of revisional jurisdiction to interfere with the order of AO, if it is erroneous in so far as prejudicial to the revenue and therefore, the power to exercise the revisional jurisdiction is vested only with Pr. CIT/Commissioner if he considers the order of the AO to be erroneous in so far as prejudicial to the interest of the revenue. The power cannot be usurped by the AO to trigger the revisional jurisdiction vested with the CIT as per the scheme of the Act which gives various powers to various authorities to exercise and they have to exercise powers in their respective given sphere which is clearly ear-marked and spelled out by the statute. Here, we note that the AO who is empowered by the Act to assess a subject within a prescribed time period has first assessed the assessee and later after passing of time has taken up a proposal with the CIT to exercise his revisional jurisdiction cannot be countenanced for the simple reason that when in the first place the AO noticing that he failed to properly enquire before assessing the assessee within the time limit prescribed by the statute cannot be allowed to get fresh innings to reassess because it was his duty to enquire properly within the time limit prescribed by the statute.

c) Decision of Ahmedabad Tribunal in the case of Shanti Exim Ltd Vs CIT reported in (2017) 88 taxmann.com 361 (Ahd. Tribunal)

The Commissioner set aside assessment order in exercise of his power under section 263 on the ground that the Assessing Officer did not make any independent verification to establish the genuineness of the purchase transaction of the assessee-company with eight parties.

Held that the action under section 263 initiated on the basis of recommendation by the concerned Assessing Officer/Joint Commissioner. The said Assessing Officer has categorically held that the order of his predecessor is erroneous and prejudicial to the interest of the revenue. Thereafter the case record was called for by the Commissioner. If the recommendation would not have received from

the successor Assessing Officer, then the Commissioner would even not have initiated the proceedings under section 263. Therefore, it could not be termed that the Commissioner himself has called for the records. In this case, the record has been called for only after the recommendation received from the successor Assessing Officer. In similar situation, the ITAT, Mumbai "A" Bench in the case of Ashok kumar Shivpuri v. CIT dated 07-11-2014, in ITA No.631 (M) of 2014, held that the revision proceedings simply on the basis of proposal from the Assessing Officer is not valid, because section 263(1) says that proposal for initiation of revision proceedings must be initiated by the Commissioner. It is the Commissioner who has to call for and examine the records; but in the instant case the proposal came from the Assessing Officer and on receipt of the proposal, the Commissioner initiated revision proceedings, which is not justified.

d) Decision of Mumbai Tribunal in the case of Adishwar K. Jain Vs. CIT in ITA No. 3389/Mum/2014 dated 12.03.2018

We may refer to a plea set-up by the assessee based on the decision of our co-ordinate Bench in the case of Ashok Kumar Shivpuri, ITA No. 631/Mum/2014 dated 07.11.2014. In this case, the Tribunal found that the Commissioner invoked Sec. 263 of the Act based on a proposal received from the Assessing Officer. The Tribunal found it inconsistent with the requirement of Sec. 263(1) of the Act and held that the initiation of proceedings u/s 263 of the Act was bad-in-law. The aforesaid proposition also supports the infirmity in the action of the Commissioner in as much as para 2 of the impugned order brings out that the initiation of proceedings u/s 263(1) of the Act is based on the proposal of the Assessing Officer dated 03.01.2013.

e) Decision of Mumbai Tribunal in the case of Ashok kumar Shivpuri v. CIT in ITA No.631 (M) of 2014 dated 7.11.2014

It has been observed that the assessment was framed subject to valuation by the DVO. We further find that the proposal was received by the CIT from the AO,

which clearly means that there has been no independent application of mind by the CIT, because section 263(1) clearly says, "The Commissioner may call for and examine the records of any proceedings under this Act, and if he considers ... ", which means that proposal for initiation of revision proceedings must be initiated by the CIT, because, it is the CIT who has to call for and examine the records. But in the instant case the proposal came from the AO and on receipt of the proposal, the CIT initiated revision proceedings. Therefore, in our opinion, the proceeding gets flagged at the threshold. - We, therefore, hold that the proceedings were bad in law and thus subsequent proceedings are annulled.

f) Decision of Pune Tribunal in the case of Span Overseas Ltd. Vs. CIT, Pune in ITA No. 1223/PN/2013 dated 21.12.2015

The Commissioner of Income Tax has invoked the provisions of section 263 without applying his own independent judgment and merely at the behest of proposal forwarded by the Dy. Commissioner of Income Tax is against the spirit of Act. Thus, the impugned order is liable to be set aside.

g) Decision of Hon'ble Bombay High Court in the case of CIT Mumbai vs Maharashtra Hybrid Seeds Co. Ltd in Income Tax Appeal No. 47 of 2002 dated 4.9.2018

9. As rightly held by the Tribunal, this note firstly shows that all the explanations and arguments of the Assessee have been considered by the Assessing Officer and secondly that the action taken under [Section 263](#) is only on the basis of the audit party's note or report, who it would appear, ultimately did not approve of the Assessing Officer's view regarding the allowability of the deduction. Admittedly, the CIT has not referred to any audit objection but in the light of the note, the Tribunal held that it would be a fair inference that his action under [Section 263](#) was consequent upon the audit objection. Be that as it may, this office note clearly shows that the Assessing Officer had taken all explanations and arguments of the Assessee into consideration before allowing deduction. This being the case, the CIT could not have merely substituted his own views for that of the Assessing Officer by invoking Section 263 of the I. T. Act.

6. In view of the above observations and respectfully following the various judicial precedents relied upon hereinabove, we have no hesitation to quash the revision order u/s 263 of the Act, passed by the learned Pr. CIT. Accordingly grounds raised by the assessee are allowed.

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

Order pronounced in open court on 01.05.2024.

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:01.05.2024.

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI