

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.1225/Mum/2024
Assessment Year: 2014-15**

Alcoa Trading Pvt. Ltd. Monaji Building, 3 rd Floor, Room No. 54, Champa Gali, M.J. Market, Kalbadevi Road, Mumbai-400002. PAN: AAICA 3535 D	Vs.	ITO, Ward-2(1)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Prakash Jhunjunwala
Revenue by : Shri Ajay Chandra, CIT/DR

Date of Hearing : 13.06.2024

Date of Pronouncement : 09.07.2024

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

This appeal of the assessee for the assessment year 2014-15 is directed against the order dated 19.01.2024 passed by the Id. Principal Commissioner of Income-tax - 2, Mumbai` [hereinafter referred to as 'the Id. PCIT].

2. Grounds taken by the assessee are as under:

"1. On facts and circumstances of the case and in law, Ld. Pr. CIT erred in passing the revision order u/s.263, though the re-assessment order passed u/s. 147 was itself bad in law and thus, the revision of an invalid reassessment order is also bad in law:

2. On facts and circumstances of the case and in law, the Order passed u/s 263 is grossly invalid, since had been passed in complete deviation to the show-cause notice and Ld. Pr. CIT had not issued any show-cause notice to decide the issues for which the revision order u/s 263 has been passed;

3. On facts and circumstances of the case and in law, the Pr. CIT erred in passing the revision order u/s. 263, though the re-assessment order passed u/s.147 is not erroneous and in so far is not prejudicial to interest of the revenue;

4. The Ld. Pr. CIT, before passing the revision order u/s.263, ought to considered the vital facts, being;

a) The assessee had not advanced any loans to the disputed 2 parties of Rs.30,00,000/- and accordingly, the revision order had been passed on considering incorrect facts;

b) The AO, on due application of mind, had adopted a legally sustainable view, thus such reassessment order cannot be held as erroneous in so far as prejudicial to the interest of revenue;

c) The Ld. AO upon calling for specific details and examining the facts, had passed the reassessment order, thus such order cannot be held as erroneous in so far as prejudicial to the interest of revenue;

d) It is not a case of lack of enquiry, since the AO upon conducting adequate enquiries had passed the reassessment order on accepting the contention of the appellant.”

2.1. Fact in brief is that assessee filed its return of Rs. 11,067/- on 20.09.2014. Subsequently, on the basis of information received, the case was reopened u/s 147 of the Act by issuing of notice u/s 148 of the Act on 30.03.2021. As per the information available the assessee received the following amounts from the listed parties:

Sl. No.	Date	Name of the party from whom amount received	Amount (Rs.)
1	14.06.2013	Alco Trading	25,00,000
2	28.11.2013	Shristidata Traders Pvt. Ltd.	15,00,000
3	28.11.2013	Tarashakti Trading Pvt. Ltd.	5,00,000
		Total	45,00,000

3. On verification, the assessing officer observed that the aforesaid companies with which the assessee was having transactions were shell companies and the same were not doing any real business and were also not existed at the given address. The assessing officer also

ascertained that the aforesaid companies were “strike off” from the list of companies and same were found to be linked with M/s. Timelink Sells Pvt. Ltd., a Kolkata based company engaged in providing accommodation entries. During the course of assessment proceedings as per the material on record filed by the assessee, the assessing officer found that the assessee has not received any amount from the concerns reported on the basis of which the case of the assessee was reopened, therefore, the AO has accepted the reply of assessee and did not make any addition to the return of income filed by the assessee.

4. Afterwards the ld. Pr. CIT, Mumbai-2 has issued a show cause notice u/s 263 of the Act to the assessee on 05.12.2023 alleging that assessee had entered into transactions amounting to Rs. 25,00,000/- with M/s. Timelink Sells Pvt. Ltd. and Rs. 5,00,000/- with M/s. Tarashakti Trading Pvt. Ltd. which were shell companies and were providing accommodation entries. Therefore, the transaction of Rs. 30,00,000/- were in the nature of unexplained cash credit. The PCIT for the above reasons proposed to revise the assessment order dated 21.03.2022 u/s 263 of the Income Tax Act. The assessee submitted vide letter dated 06.12.2023 that on the similar basis the case of the assessee was reopened and reason for escapement of income could not be established as the same order cannot be subject matter of 263 proceedings. The ld. PCIT passed order u/s 263 of the Act on 19.01.2024 and also stated that assessee company had advanced loan of Rs. 25,00,000/- to M/s. Timelink Sells Pvt. Ltd. and Rs. 5,00,000/- to M/s. Tarashakti Trading Pvt. Ltd. and observed that the source of funds for advancing loan was out of sale proceeds of unlisted shares aggregating to Rs. 4,73,11,000/-. The PCIT further mentioned that the sale proceeds of aforesaid sales were neither examined by the AO nor assessee had made any submission on this issue. Therefore, the ld. PCIT has set aside the order passed u/s 147 r.w.s. 143(3) dated

21.03.2022 treating the same as erroneous as well as prejudicial to the interest of revenue by invoking the provisions of Explanation 2 of section 263 of the Income-tax Act.

5. During the course of appellate proceedings before us, the learned counsel, at the outset submitted that during re-assessment proceedings, the assessing officer has verified the whole issue of alleged transaction with M/s. Timelink Sells Pvt. Ltd. and M/s. Tarashakti Trading Pvt. Ltd. and after detailed verification and enquiry did not make any addition on the basis of submissions filed by the assessee that it had not entered into any transaction with the said parties. The ld. Counsel also filed paper book comprising copies of notices issued u/s 142(1) of the Act and various submissions filed by the assessee during the course of assessment proceedings before the assessing officer. The ld. Counsel has also placed reliance on the various judicial pronouncements as per their copies placed in the paper book on the proposition that if no addition was made on the subject matter in the re-assessment proceeding then the PCIT could not have triggered revisionary proceedings u/s 263 of the Act. The ld. Counsel also referred the judicial pronouncements on the proposition that when revisionary order was passed other than ground for which revision proceedings were initiated the same were not sustainable in law.

6. On the other hand, ld. DR supported the order of ld. PCIT.

7. Heard both the sides and perused the material on record. Without reiterating the fact as discussed (supra) in this order, the ld. PCIT has initiated the proceedings u/s 263 of the Act by issuing of show cause notice on 05.12.2023. The relevant extract of the show cause notice is reproduced as under:

“1. In your case, the relevant case records were called for the AY 2014-15 and examined. It is seen from the examination of the said records that the

Return of Income was filed for the year on 20.09.2014 declaring total income of Rs. 11,067 The assessment was completed u/s 143(3) r.w.s. 147 of the Act on 21.03.2022 accepting the returned income.

2. On perusal of the case records, it is noticed that you had entered into transaction amounting Rs.25,00,000/ with M/s Timelink Sells Pvt Ltd. and Rs. 5,00,000/- with M/s. Tarashakti Trading P. Ltd. which are shell companies and were providing accommodation entries. Accordingly, the transaction of Rs.30,00,000/- are in the nature of unexplained cash credit. In view of the aforesaid reasons, it is proposed to revise the assessment order dt. 21.03.2022 under section 263 of the Income-tax Act, 1961, being erroneous in so far as it is prejudicial to the interest of revenue since it has been made without proper enquiries & verification which should have been made.

3. In view of the aforesaid reasons, it is proposed to revise the assessment order dt. 21.03.2022 invoking provisions of section 263 of the Income-tax Act, 1961, as undersigned is satisfied that the said assessment order dt. 21.03.2022 is erroneous in so far as it being prejudicial to the interest of revenue, specifically also in view of the provisions of explanation 2 to section 263(1) of the Act, since it has been made without proper inquiries & verification which should have been made.

4. You are hereby given an opportunity to represent your case as to why the proposed action u/s 263 be not pursued and necessary order be passed on the issues discussed above as well as other issues that may come to the notice of the undersigned during this proceeding. You or any duly authorized person may comply to this notice latest by 11.12.2023 at 11:30 AM.

5. You are requested to make submission online through ITBA system on or before the due date. Failure to comply will lead to the conclusion that you have nothing to offer and you are agreeable to the proposed action as deemed fit on the materials avail on record or gathered during these proceedings.”

7.1. It is evident from the show cause notice as referred above that the proceeding u/s 263 of the Act was initiated on the basis of alleged transaction of the assessee with M/s. Timelink Sells Pvt. Ltd. and M/s. Tarashakti Trading Pvt. Ltd. amounting to Rs. 25,00,000/- and Rs. 5,00,000/- respectively.

7.2. In this regard, we have perused re-assessment order passed u/s 147 r.w.s. 144B of the Act by the assessing officer on 21.01.2022 on the assessee's transaction with M/s. Timelink Sells Pvt. Ltd. and M/s. Tarashakti Trading Pvt. Ltd. amounting to Rs. 25,00,000/- and Rs. 5,00,000/- respectively. In the concluding part of the assessment order, the assessing officer had categorically accepted the details filed by the assessee after making verification that assessee had not received any amount from the alleged parties who were engaged in providing accommodation entries. In this regard, who have perused the copies of documents placed in the paper book filed by the assessee. The assessing officer has reopened the case as per the reasons recorded placed at page no. 9 & 12 of the paper book wherein the case was reopened on the basis of information that assessee was having transaction of Rs. 25,00,000/-, Rs. 15,00,000/- and Rs. 5,00,000/- with the shell companies and categorically mentioned the name of Alcoa Trading Pvt. Ltd., Shristidata Traders Pvt. Ltd., Tarashakti Trading Pvt. Ltd. engaged in providing accommodation entries as discussed (supra) in the order.

8. We have perused the copy of notice u/s 142(1) of the Act issued by the assessing officer on 21.01.2022 in the case of assessment proceedings wherein as per question no. 3 & 4, the assessing officer has categorically asked the assessee about the loan transaction and the investment made etc. In response, the assessee vide submission dated 18.02.2022 and 16.03.2022 submitted that it had no transaction with M/s. Alcoa Trading Pvt. Ltd. during the F.Y. 2013-14 relevant to A.Y. 2014-15 in respect of amount of Rs. 25,00,000/-. Similarly, the assessee also submitted that it was also not having any transaction of Rs. 15,00,000/- & Rs. 5,00,000/- with M/s. Tarashakti Trading Pvt. Ltd. and M/s. Shristidata Traders Pvt. Ltd. respectively.

8.1. We further noticed that during the course of proceeding u/s 263 of the Act all these facts were brought to the knowledge of the PCIT that during the course of assessment proceedings u/s 147 of the Act, the assessing officer has already verified the same issue on the basis of which re-assessment was made. However, the ld. PCIT has not disproved the relevant submission made by the assessee.

8.2. In the case of PCIT vs prosperous Buildcon (P) Ltd. (2023) 156 taxmann.com 446 (Delhi), the Hon'ble Delhi High Court held that if assessing officer did not bring to tax the amount on the basis of which reason to believe was framed then the PCIT could not have triggered proceedings u/s 263 of the Act.

8.3. The ITAT Mumbai Bench 'A' in the case of Aishwarya Rai Bachchan vs PCIT (2022) 135 taxmann.com 335 (Mumbai), it is held that where assessing officer recorded reasons on the basis of which reassessment was initiated but did not make any additions in reassessment proceedings, in such case primary reason to believe that income had escaped assessment would fail and reassessment could not be treated as valid order and said invalid order could not be subject matter of section 263 proceedings.

8.4. The ITAT Kolkata Bench 'B' Vesuvius India Ltd. vs CIT, Kolkata (2012) 23 taxmann.com 425 (Kol) held that when revision order is passed on ground other than grounds for which revision proceedings are initiated same is not sustainable in law.

8.5. The High Court of Delhi in CIT vs Leisure Wear Exports Ltd. (2011) 11 taxmann.com 54 (Delhi) held that assessment order has been passed by assessing officer after taking into account assessee's submissions and documents furnished by him and no material whatsoever has been brought on record by Commissioner which showed

that there was any discrepancy or falsity in evidences furnished by assessee, order of assessing order cannot be set aside for making deep inquiry only on presumption and assumption that something new may come out.

9. In the case of the assessee, the ld. PCIT has exercised revisionary power u/s 263 of the Act in respect of the assessment made under section 147 of the Act on the issue which was subject to examination and rectification in the reassessment proceedings without making any proposed addition. It is demonstrated from the material placed on record that in the case of the assessee, assessing officer has made specific enquiry during the course of assessment proceedings u/s 147 of the Act and after considering the submission of the assessee no addition was made. Therefore, we consider that ld. PCIT is not justified in holding that assessing officer has not made specific enquiries with regard to the alleged issue of transaction with accommodation entry providers. The Ld. PCIT failed to justify the invoking of provisions of Explanation 2 to section 263 of the Act. In the light of the above facts and findings as elaborated (supra) in this order, we consider that order passed u/s 263 of the Act is not sustainable in law, therefore order passed u/s 263 is quashed. Accordingly, the appeal of the assessee is allowed.

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

Order pronounced in the open court on 09.07.2024.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 09.07.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai