

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

**SHRI MS. PADMAVATHY S, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2493/MUM/2024
(Assessment Year: 2018-19)**

&

**ITA No. 2495/MUM/2024
(Assessment Year: 2019-20)**

**ITA No. 2494/MUM/2024
(Assessment Year: 2020-21)**

Mahaveer Chand

13, Amidhara Shopping Centre, Amarpadma
Road, Bhayander (West), Mumbai - 401101
[PAN: ACTPC9687]

..... **Appellant**

Vs

**Principal Commissioner of Income
Tax (Central)- 1**

Room No. 1001, 10th Floor, Pratishta
Bhavan, Old CGO Annexe, M.K. Road,
Mumbai - 400020

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Prakash Jhunjunwala
For the Respondent/Department : Smt Sanyogita Nagpal

Date

Conclusion of hearing : 23.07.2024
Pronouncement of order : 29.07.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. These are three appeals preferred by the Assessee for the Assessment Years 2018-19, 2019-20 and 2020-21, since identical grounds were raised in these three appeals the same were heard together and are, therefore, being disposed off by way of common order.

Assessment Year 2018-19

2. We would first take up appeal for the Assessment Year 2018-19 [ITA No. 2493/MUM/2024] preferred by the Assessee challenging

the order, dated 20/03/2024, passed by the Learned Principal Commissioner of Income Tax (Central), Mumbai-1, [hereinafter referred to as the '**PCIT**'] under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as '**the Act**') revising the Assessment Order, dated 30/09/2021, passed by the Deputy Commissioner of Income Tax Central Circle-2(4), Mumbai under Section 153A read with section 144 of the Act.

3. The Appellant has raised following grounds of appeal in ITA No. 2493/Mum/2024:

"The appellant company prefers an appeal against the revision order passed u/s.263 dated 20/03/2024 by Ld. Principal Commissioner of Income Tax (Central)- 1. Mumbai on following amongst other grounds each of which are without prejudice to any other :-

1. *On facts and circumstances of the case and in law, the Pr. CIT erred in passing the revision order u/s.263 without providing an adequate opportunity of being heard to the appellant, thereby seriously violated the principle of natural justice;*
2. *On facts and circumstances of the case and in law, the Pr. CIT erred in passing the revision order u/s.263, though the assessment order is not erroneous and in so far is not prejudicial to interest of the revenue;*
3. *On facts and circumstances of the case and in law, the Pr. CIT erred seriously in directing the AO to compute the tax u/s 115BBE @ 60%, though the addition has been made in the assessment order of undisclosed commission income u/s 28 of Rs 2,40,79,519/-;*
4. *The Ld. Pr. CIT, before passing the revision order u/s.263, ought to considered the vital facts, being;*
 - a) *The provision of Sec 115BBE shall not apply since the addition has not been made in the assessment order u/s 68 to 69D of the Act;*
 - b) *It is not a case of lack of enquiry, since the AO upon conducting adequate enquires, had passed the assessment order on making the addition of commission income u/s 28 of the Act;*

c) *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."*

3. When the appeal was taken up for hearing the Learned Authorised Representative submitted that assessment was framed on the Appellant vide Assessment Order, dated 30/09/2021, and addition of INR 2,34,46,000/- was made in the hands of the Appellant by the Assessing Officer holding the same to be undisclosed commission income of the Appellant. The tax liability was computed as per the applicable slab rates. However, subsequently the Learned PCIT passed order under Section 263 of the Act directing the Assessing Officer to compute tax liability of the Appellant by adopting the rate of 60% as per Section 115BBE of the Act. The Learned Authorized Representative for the Appellant submitted that the addition of undisclosed commission income of INR 2,35,05,825/- was made by the Assessing Officer under Section 28 of the Act and therefore, the provisions contained in Section 115BBE of the Act were not applicable. In this regard reference was made to paragraph 7.5 of the Assessment Order. In response to the query, regarding the manner in which the Learned PCIT had dealt with the aforesaid submission of the Appellant, it was submitted that the notice, dated 06/03/2024, whereby the Appellant was granted only a period of 7 days to respond to the notice, was not served upon the Appellant. Therefore, the Appellant was not able to file reply/response before the Ld. PCIT. It was submitted that very short period of time was granted to the Appellant to respond to the notice and that the Appellant was proceeded ex-parte without service of any further notice. Referring to Ground No. 1 raised in the present appeal, the Learned Authorized Representative for the Appellant submitted that the order impugned was passed in violation of the principles of natural justice.

4. On perusal of the impugned order passed under Section 263 of the Act we find that only one notice, dated 06/03/2024, was issued giving Appellant whereby time till 13/06/2024 was given to the Appellant to file a response. The impugned order records that no response was received from the Appellant. The Appellant was proceeded ex-parte and order under Section 263 was passed on 20/06/2024. We note that Section 263 of the Act mandates that before passing order under Section 263 of the Act, opportunity of being heard should be granted to the assessee. It is the case of the Appellant that the effective opportunity of being heard was not granted in the present case. Given the facts and circumstances of the present case we find merit in the aforesaid submission of the Appellant. It is apparent that the Appellant was proceeded ex-parte after the failure to respond to the first notice itself. Accordingly, we set aside the order, dated 20/03/2024, passed under Section 263 of the Act with the directions to the Learned PCIT to pass order under Section 263 afresh after giving the Appellant herein opportunity of being heard. The Appellant is directed to co-operate and file reply/submission before the Ld. PCIT diligently without seeking unnecessary adjournments. Thus, in terms of the aforesaid, Ground No. 1 raised by the Appellant is allowed for statistical purposes. In view of the aforesaid, Ground No. 2, 3 and 4 are dismissed as being infructuous.

Assessment Year 2019-2020 & 2020-2021

5. We note that identical facts prevail in Assessment year 2019-2020 and 2020-2021. There being no change in facts and circumstances of the case and the applicable legal position, our reasoning, findings and adjudication in appeal for the Assessment Year 2018-19 shall apply mutatis mutandis to corresponding grounds raised in the present appeals. Accordingly, in view of paragraph 3 & 4 above, we set aside the order, dated 20/03/2024, passed under

Section 263 of the Act for the Assessment Years 2019-2020 & 2020-21 with the directions to the Learned PCIT to pass order under Section 263 afresh after giving the Appellant herein opportunity of being heard. The Appellant is directed to co-operate and file reply/submission before the Ld. PCIT diligently without seeking unnecessary adjournments. Thus, in terms of the aforesaid, Ground No. 1 raised by the Appellant in both the appeals is allowed for statistical purposes while all the other grounds (i.e. Ground No. 2, 3 and 4) are dismissed as being infructuous.

6. In result, all the three appeal preferred by the Assessee are treated as allowed for statistical purposes.

Order pronounced on 29.07.2024.

Sd/-
(Ms. Padmavathy S)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 29.07.2024
Poonam Mirashi,
Stenographer

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai