

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
ITA No. 3215/MUM/2024
(A.Y.2010-11)

DCIT – 14(1)(1), Room No. 432, 4 th Floor Aayakar Bhavan, M.K.Road, Mumbai -400020.	Vs.	M/s.Aadi Industries Ltd 320/7, Siddhivinayak Housing Society, Hingwals Lane, Ghatkopar (East), Mumbai – 400075.
PAN/GIR No. AAACJ8256G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Shri Manoj Kumar Sinha, Sr. DR
Respondent by	None

सुनवाई की तारीख/Date of Hearing	07.08.2024
घोषणा की तारीख/Date of Pronouncement	12.08.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the revenue against the order of National Faceless Appeal Centre(NFAC), Delhi / CIT(A) passed u/sec143(3) r.w.s263 u/sec 250 of the Act. The revenue has raised the following grounds of appeal:

1 Whether on the facts and circumstances of the case, the ld.CIT(A) is justified in allowing the appeal filed by assessee against the order u/s 143(3) r.w.s. 1247 r.w.s. 263 of Act by holding that the ITAT has annulled the corresponding 263 order, ignoring the fact that the revenue has not accepted the decision of ITAT annulling the 263 order and appeal has been filed before Hon'ble Bombay High Court, which is pending?

2) The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

3) The appellant craves leave to amend, or alter any grounds or add a new ground, which may be necessary.

2. The brief facts of the case are that, the assessee company is engaged in the business and has filed the return of income for A.Y.2010-11 on 14.10.2010 disclosing a total income of Rs.1,99,89,697/-, Subsequently, the Assessing Officer (A.O) has received information from the DDIT(Inv), that the assessee has obtained accommodation entries from shell entity M/s Bhumi sales Corporation. Therefore the A.O has reason to believe that the income has escaped assessment and issued notice u/sec 148 of the Act. In compliance to notice, the assessee has filed return of income on 06.12.2017 disclosing a total income of Rs.1,99,89,700/-. Subsequently, the notice u/sec 143(2) and u/sec 142(1) of the Act are issued. In compliance to the notices, the Ld. AR of the assessee appeared and filed the submissions vide letter dated 13.12.2017 on the disputed issue referred at Page 3 Para 6 of the order as under:

“6. We would like to submit that M/s Bhumi Sales corporation is our sale party. We have sold goods to M/s Bhumi Sales Corporation. Copy of ledger account and the sales bills in the books of M/s Aadi Industries ltd are enclosed. You have alleged that the assessee has obtained accommodation entries. But in the case under consideration the assessee has actually sold the goods to the alleged party. Hence under the circumstances we request you to drop the proceedings initiated.”

3. The A.O find that the assessee has filed the ledger account of m/s Bhumi Sales Corporation in the books of accounts of the assessee, bank statement and auditors certificate and also verified that the assessee has made sales to the party and finally the A.O has assessed the total income of Rs.1,99,89,700/- and passed the order u/sec 143(3) r.w.s 147 of the Act dated 30.12.2017.

4. Subsequently the Pr. CIT on perusal of the record and information found that the order passed by the AO u/sec 143(3) r.w.s 147 of the Act is erroneous and prejudicial to the interest of the revenue and has issued directions to the AO vide order u/sec 263 of the Act dated 17.03.2020. In compliance to the directions of the Pr.CIT, the AO has issued notice u/sec 142(1) of the Act and called for the information on the accommodation entries and dealt on the facts, information and submissions of the assessee at Para 5 to 8 of the order and finally rejected the books of accounts u/sec 145(3) of the Act and estimated net profit@6% of the turnover, which works out to Rs.4,58,88,204/- and assessed the total income of Rs.4,75,15,450/- and passed the order u/sec 143(3) r.w.s 147 r.w.s 263 of the Act dated 29.09.2021.

5. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). In the appellate proceedings the CIT(A) has considered the grounds of appeal, submissions of the

assessee and findings of the AO and the decision of the Honble Tribunal in the assessee's own case set aside the order u/sec 263 of the Act. Since the revision order u/sec 263 of the Act was annulled by the Hon'ble ITAT, the CIT(A) observed that the consequential order passed in pursuance of order u/sec 263 of the Act cannot survive and allowed the assessee's appeal. Aggrieved by the order of the CIT(A), the revenue has filed the appeal before the Hon'ble Tribunal.

6. At the time of hearing, the Ld.DR submitted that the CIT(A) has erred in annulling the assessment order passed u/s 143(3) r.w.s 147 r.w.s 263 of the Act relying on the Hon'ble Tribunal decision. Further, the Ld.DR emphasized that the revenue has not accepted the decision and filed the appeal before the Honble High Court. None appeared on behalf of the assessee.

7. We heard the Ld.DR submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld.DR that, the CIT(A) has erred in annulling the assessment order passed u/sec 143(3) r.w.s 147 r.w.s 263 of the Act based on the decision of the assessee's own case for the same assessment year where the Hon'ble tribunal has treated the revision order passed u/sec 263 of the Act as invalid. The contentions of the Ld.DR are that the Hon'ble Tribunal decision is not accepted by the revenue and the appeal u/sec 260A of the

act was filed before the jurisdictional Hon'ble High court. We find the CIT(A) considered the grounds of appeal, submissions of the assessee, and the findings of the Assessing officer and the decision of the Honble Tribunal in the assessee own case set aside the order u/sec263 of the Act and allowed the assessee appeal observing at Page 12 Para 12 to 14 of the order read as under :

"12.0 Aggrieved with the order of the PCIT u/s 263, the assessee filed an appeal before the Hon'ble ITAT, Mumbai Bench. The Hon'ble ITAT has allowed the appeal of the assessee by annulling the revision order u/s. 263 of the Pr.CIT and restoring the assessment order of the AO passed u/s. 143(3) ws 147 of the Act vide its order dated 30.12.2017. The relevant portion of the Decision of the Hon'ble ITAT, Mumbai is given below for ready reference:

14. In brief, assessee has aggrieved with the revision order passed u/s.263 of the Act and in the above grounds of appeal assessee objected for initiation of 263 proceedings as well as directing the Assessing Officer to complete or reframe the assessment in a particular manner. All the above grounds are relating to revision proceedings only.

15. At the time of hearing, Ld. AR brought to our notice Para No. 4 of the Assessment Order and submitted that Assessing Officer has duly verified the submissions made by the assessee that assessee has only sold the goods and not purchased as alleged by the investigation wing that it has provided accommodation entries and the same was accepted by the Assessing Officer and taken one of the possible views. Further, he brought to our notice Page No. 13A of the Paper Book to submit that notice was issued for the reason that Assessing Officer failed to disallow the sales expenses which is erroneous as well as prejudicial to the interest of the Revenue. He submitted that the issues raised in notice issued u/s. 263 of the Act are different than the issue raised in the revision proceedings in this regard he relied on the decision of the Hon'ble Supreme Court in the case of CIT v. Greenworld

Corporation [2019] 314 ITR 81 (SC). He also brought to our notice decision of the Hon'ble Supreme Court wherein it was held that jurisdiction u/s. 263 can be exercised only when both the following conditions are satisfied that (i) the order of the Assessing Officer should be erroneous and (ii) it is to be prejudicial to the interest of the Revenue. These conditions are conjunctive. An order of the assessment passed by the Assessing Officer should not be interfered with only because another view is possible. Further, he brought to our notice the ratio in the above decision that commissioner, or for that matter, any higher authority may have supervisory jurisdiction over the Assessing Officer, it is difficult to conceive that even the merits of the decision should be discussed and should be rendered by the higher authority, who is the supervisory authority. It is one thing to say that while making the orders of the assessment, the Assessing Officer should be bound by the statutory circulars issued by the CBDT but it is another thing to say that the assessing authority exercising quasi-judicial functions, keeping in view the scheme contained in the Act, would lose his independence to pass an independent order of the assessment.

16. Further, he brought to our notice Para No. 2 of the order passed u/s. 263 of the Act that the proposal u/s. 263 was submitted by the DCIT 14(1)(1), Mumbai, vide letter dated 08.03.2019. In the said proposal it was stated that the case was reopened u/s. 147 of the Act on the basis of specific information received that the assessee has obtained accommodation entries/bogus bills to the tune of Rs. 72,52,414/- during the period 2009-10 relevant to A.Y. 2010-11 from Shri Chandrakant J. Dherai who was running the proprietary concern in the name of M/s. Bhumi Sales Corporation. He submitted that the revision proceedings u/s. 263 of the Act can only be initiated by the Ld. Pr.CIT suo moto and it cannot be revised on the behest of the any assessing authority under the Act. In the given case the revision proceedings were initiated on the behest and reference made by DCIT, in this regard he relied on the decision of the Vinay Pratap Thacker v. CIT in ITA. No. 2939/Mum/2011 dated 27.02.2013 in which Coordinate Bench has decided the issue in favour of the assessee that 263 proceedings cannot be initiated

based on the proposals or reference from assessing officer, TAX DEPAR

17. Further, he submitted that 263 order passed by the Ld. Pr.CIT beyond the issues raised in notice issued u/s.263 of the Act. In this regard he relied on the case of Pr.CIT v. M/s. Universal Music India Pvt. Ltd., in Income Tax Appeal No. 238 of 2018 (Bombay High Court).

18. On the other hand, Ld. DR objected to the submissions made by the Ld. AR objecting the reference of proposal by the Assessing Officer before the Ld. Pr.CIT. He submitted that Assessing Officer can initiate or give reference/proposal to Pr.CIT with regard to initiation of revision processing and only Ld. Pr.CIT can apply his mind and take a proper decision. Therefore, this is within the internal procedures laid down by

19. With regard to initiation of revision proceedings on the wrong finding that the bogus purchases were issued by the assessee in reality assessee has only sold. In this regard, Ld. DR submitted that Ld. Pr.CIT has only given a direction. Therefore, there is no prejudicial caused to the assessee since the issue is only direction were given to make a proper verification.

20. Considered the rival submissions and material placed on record, Ld.AR has submitted and contested three different issues relating to initiation of revision proceedings u/s. 263 of the Act. Without going into other issues raised by the Ld. AR we are inclined to focus on the issue of reference made by the Assessing Officer in order to initiate the revision proceedings u/s. 263 of the Act. This issue is squarely considered by the Coordinate Bench in the case of Vinay Pratap Thacker v CIT (supra) wherein the Coordinate Bench has held as under: -

"23. 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, which the

Hon'ble Supreme Court of India has said in ICICI Bank (supra) that there should be an independent application of mind.

24. On perusal of the SCN and the impugned order, we find that there is a departure from the reasons taken to invoke the provisions under section 263, this also finds favour with the arguments advanced by the AR and get covered by the decisions cited by him.

25. We also have to accept the arguments of the AR with respect of applicability of section 50C on lease hold properties, because, this is an undisputed fact that the impugned property was a leased property, even though, it is a long lease, but the title of the same shall always remain with the actual owner, in the present case, BMA. Though the issue is squarely covered by the cited decisions, but going by the submissions of the DR that it is a case of deemed ownership, itself creates a doubt that whether there has to be an application of section 50C or not. This doubt, in our considered opinion is fatal to invocation of provisions of section 263, because provision of section 263 cannot be invoked where the issue becomes debatable, because if the issue is debatable it goes out of the scope of administration provisions but would fall in the realm of judicial provisions, which is not the purpose and context of section 263, which, in our opinion is to deal only on two realms simultaneously, i.e. whether the order passed by the AO is erroneous in so far as it is prejudicial to the interest of revenue.

26. In the instant case, the CIT, by invoking the jurisdiction under section 263 stepped on the correctness and questioned the applicability of section 50C on leased property in the SCN, he, therefore transgressed into the judicial territory, which he cannot. LINCOME TAY DEPARTMENT

27. We are aware of the decision of Hon'ble Bombay High Court in the case of Gabriel India Ltd, reported in 203ITR 108, wherein, the Hon'ble Bombay High Court held, "CIT cannot revise order merely because he disagrees with the conclusion arrived at by the ITO". We are also aware of the case of CIT vs Sunbeam Auto Ltd, reported in 227 CTR 133, wherein the Hon'ble Delhi High Court drew a distinction between "Lack of

inquiry" and "inadequate enquiry" and held that in the case of inadequate enquiry, provisions under section 263 cannot be invoked. In our opinion, in the instant case, this is neither the case of inadequate enquiry nor lack of enquiry at the regular assessment stage.

28. Taking into consideration the entire gamut of facts and judicial decisions, placed before us, 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; on otherwise debatable issues and by merely disagreeing on the view taken by the AO.

29. In the result, we set aside the order of the CIT dated 11.02.2011, passed under section 263 and annul the initiation of revision proceedings and as a consequence, we restore the order passed by the AO, under section 143(3) dated 15.12.2008."

21. Respectfully following the above said decision, we are also of the opinion that Ld. Pr.CIT could not have invoked the jurisdiction u/s. 263 of the Act without his own independent application of mind, particularly when the issue is arising from the Assessment Order passed by Assessing Officer, which Assessing Officer himself cannot review by referring the issues to Pr. CIT. It means he is adopting to use the back door entry to reassess the completed assessment. Accordingly, we are also set-aside the order passed u/s. 263 of the Act and annul the initiation of revision proceedings, as a consequence, we restore the order passed u/s. 143(3) r.w.s. 147 of the Act.

22. In the result, appeal filed by the assessee is allowed."

13.0 Technically, the impugned order passed u/s 143(3) r.w.s. 147 r.w.s 263 not a valid order since the order u/s 254 of the ITAT was passed annulling the revision order. Irrespective of the situation, when the order of the ITAT is dated 24.11.2022 i.e., prior or later to the date of passing the impugned order of the AO u/s. 143(3) r.w.s 147 r.w.s 263 of the Act; once the order passed u/s 263 is annulled, the consequential order passed in pursuance of order u/s 263 cannot be survived and base order [i.e., 143(3) r.w.s. 147 of the Act] which was

subjected to revision gets the life. Therefore, the merits of the case in the consequential order u/s 143(3) r.w.s. 263 need not required to be adjudicated by the lower appellate authority i.e., CIT(A). Therefore, the grounds of appeal on merits of the case are not taken up for the adjudication.

14.0 In result, the appeal filed by the appellant, M/s. AADI Industries Limited against the order u/s.143(3) r.w.s. 147 r.w.s 263 of the Act for the AY 2010-11 is allowed.”

8. We find the CIT(A) has dealt on the facts, provisions and decision of the Honble Tribunal. When the revision order u/sec 263 of the Act was set-aside being invalid and any subsequent proceedings shall become in fructuous. The Ld.DR could not controvert the findings of the CIT(A) with any new cogent material or information but relied on the Assessing officer order. Accordingly, we do not find any infirmity in the order of CIT(A) who has relied on the Hon'ble tribunal decision and passed a reasoned order and we upheld the same and dismiss the grounds of appeal of the revenue.

9. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 12.08.2024

Sd
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 12/08/2024
KRK

Copy of the Order forwarded to:

1. The Appellant,
 2. The Respondent
 3. The CIT(A)-
 4. CIT
 5. DR, ITAT, Mumbai
 6. Guard file.
- //True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai