

IN THE INCOME TAX APPELLATE TRIBUNAL,

DELHI BENCH: 'E' NEW DELHI

**BEFORE SHRI S RIFAUZ RAHMAN, ACCOUNTANT MEMBER
AND
MS MADHUMITA ROY, JUDICIAL MEMBER**

ITA No. 1266/DEL/2022

Assessment Year: 2017-18

MADHURI ENTERPRISES PRIVATE LIMITED F-26/124, SECTOR-7, ROHINI, DELHI-110085	Vs.	PCIT-4 NEW DELHI
PAN :..AAACM8923F		
(Appellant)		(Respondent)

Assessee by	Sandeep Goel, Advocate, Kapil Goel, Advocate
Department by	Shri Subhra Jyoti Chakraborty, CIT, DR

Date of hearing	30.05.2024
Date of pronouncement	14.08.2024

ORDER

PER S RIFAUZ RAHMAN, ACCOUNTANT MEMBER

Assessee has filed this appeal against the order of Principal Commissioner of Income Tax, Delhi-4(learned PCIT) dated 23.03.2022 by raising following grounds of appeal:-

- i) That in admitted and undisputed facts of the case. Impugned revision order passed u/s 263 of 1961 Act by PCIT 4 Delhi is illegal, unlawful and are totally contrary to provisions of 1961 Act and passed in violation of mandatory jurisdictional conditions stipulated under the 1961 Act *as underlying assessment order passed u/s 143(3) do not qualify the prerequisite of being “erroneous and prejudicial to interests of revenue”;*
- ii) That in admitted and undisputed facts of the case, impugned revision order passed u/s 263 of 1961 Act by PCIT 4 DELHI is founded on non existing, vague and invalid show cause notice (scn)(s) issued u/s 263 *on totally wrong assumption and presumption vis a vis aspect of inquiry during assessment on cost of improvement is concerned;*
- iii) That in admitted and undisputed facts of the case, impugned revision order passed u/s 263 of 1961 Act by PCIT 4 DELHI impugned revision order passed u/s 263 transgresses beyond the scope of SCN issued u/s 263 *vis a vis aspect of 2nd cost of improvement (Rs.72.86.67) is concerned* as scn issued was limited to aspect of a) cost of acquisition and b) first cost of improvement without any iota of SCN on aspect of 2nd cost of

improvement (Rs.72,86,367) which vitiates the impugned order for violation of principle of natural justice.

2. **Brief facts of the case**

Assessee has filed his return for income for assessment year 2017-18 on 31.12.2017 declaring nil income. The case was selected for scrutiny under CASS on the issue of large investment in property as compared to total income and abnormal increase in cash deposits during demonetization period as compared to pre-demonetization period. Accordingly notice under Section 143(2) and 142(1) were issued and served on the assessee. The assessment u/s 143(3) was completed on 27.12.2019 accepting the return submitted by the assessee without making any addition.

3. Learned PCIT on examination of case records, observed that assessee has sold an immovable property of Rs. 2.25 crores. He claimed indexed cost of acquisition and improvement as under:-

Sr.No.	Particulars	Amount	Amount
1.	Sale consideration		Rs.2,25,00,000/-
2.	Cost of acquisition 25,71,370/-		
	Indexed cost of acquisition 25,71,370 divided by 480 multiplied by 1125	60,26,648/-	

	1 st cost of improvement Rs.23,47,321/-		
	Indexed cost of improvement 23,47,321 divided 1024 multiplied by 1125	25,78,844	
	2 nd cost of improvement	72,86,367/-	
	Total indexed cost of acquisition and improvement	1,58,91,859/-	1,58,91,859/-
	Long Term Capital Gain		Rs.66,08,141/-

4. Further, Learned PCIT observed that the assessing officer has not made any enquiry about the indexed cost of improvement of Rs. 60,26,648 (cost of Rs. 25,71,370/-). No supporting evidence of cost of improvement and cost of acquisition obtained or verified. In view of the above facts learned PCIT observed that the assessment completed under Section 143(3) of the Act was erroneous in so far as it is prejudicial to the interest of revenue. Accordingly notice u/s 263 of the Act was issued and served on the assessee. In response assessee submitted that the assessing officer specifically asked for relevant information on cost of improvement and acquisition notice u/s 142 dated 11.7.2019. The reply of the assessee is re-produced at pages 4-6 of the order. After consideration of the submission of the assessee, PCIT has observed that assessee in his reply has stated that AO has made exclusive enquiry about cost of acquisition and improvement. They also stated that copy of sale deed, invoice of cost of improvement was filed. With the above acknowledgement, learned PCIT observed that however, the assessee

has not given clear reply whether documents related to indexed cost of acquisition and indexed cost of improvement were filed or not. The assessment was completed through e-proceeding. All the documents filed by the assessee were available on record. However, it was observed that the silent of the assessee regarding furnishing of cost and improvement clearly gives a message that assessee has not filed any supporting document. Thus AO has allowed cost of acquisition and cost of improvement claimed by the assessee without any supporting evidence. It was observed that the AO has no information about the period of holding of the assets but AO has allowed indexation of the same. However, learned PCIT observed certain discrepancies in paras 6.2, 6.3 relating to cost of improvement where the bills were issued after the date of sale deed, the AO has not followed the provisions of Section 50C that the value of stamp as per stamp valuation officer of property was Rs.3.58 crores whereas assessee has declared stamp duty of Rs.2.25 crores and declared the capital gain accordingly. With the above observations learned PCIT held the assessment was passed u/s 143 of the Act for the year 2017-18 was both erroneous and prejudicial, accordingly directed the assessing officer to redo the assessment *de novo* after giving reasonable opportunity to the assessee of being heard before completing the assessment.

5. Aggrieved with the above order assessee has filed present appeal before us. At the time of hearing learned AR brought to our notice page 2 of the revision order passed u/s 263 of the Act and submitted that learned PCIT observed that assessing officer has not verified the cost of acquisition and improvement and also stamp duty valuation u/s 50C of the Act. In this regard he brought to our notice page 5 of the Paper Book and submitted that two issues were highlighted in the notice that assessing office has not made enquiry about indexed cost and indexed cost of improvement and no such property was existed in the balance sheet. AO has not made any enquiry whether the property sold by the assessee at Narela Industrial Area, Delhi is the same as E-715 or D-715. He submitted that in the order learned PCIT has raised the issue of cost of second improvement. The same was not raised in show cause notice. He brought to our notice order giving effect order passed u/s 143 read with section 263 of the Act dated 14.7.2023. He further submitted that the issue raised by the learned PCIT in show cause notice was accepted by the assessing officer and no addition was proposed in the order giving effect to the order passed u/s 263.

6. Before us Learned AR raised two issues that the direction given by the PCIT in order u/s 263 that no specific show cause notice was issued in this regard and second issue is the assessing officer has made

complete enquiry and passed the assessment order. In this regard he brought to our notice at pages 14-15 of the Paper Book in which specific queries were raised by the AO during original assessment proceedings. He relied on the case of Hon'ble Bombay High Court in the case of Nilkanth Tech Park Private Limited.

7. On the other hand Learned DR submitted that assessing officer has passed cryptic order and not discussed the issues whether he has verified the information collected from assessee or not. He vehemently supported the findings of learned PCIT and relied on them.

8. Considered the rival submissions and material placed on record. We observed that no doubt the AO has passed cryptic and non-speaking order. However, the AO has enquired the relevant information relating to indexed cost of acquisition, indexed cost of improvement during the assessment proceedings. The issues raised by learned PCIT in show case notice issued u/s 263 of the Act was properly enquired by the AO in original proceedings accepting the submission of the assessee. After verification while passing order giving effect u/s 263 of the Act, the AO has verified the issues raised by ld. PCIT and proceeded on the other issue raised by the learned PCIT on cost of second improvement, this was not the issue raised in show cause notice. After considering the above facts on record the same issue was considered by the Hon'ble

Bombay High Court in the case of Nilkanth Tech Park Private Limited(*supra*) and it is held as under:

“ 10. A point was raised by Mr Sharma that there is no discussion on this in the assessment order. It is settled law as held in the judgment of this court in ***Aroni Commercials Ltd vs Deputy Commissioner of Income Tax- 2(1)*** that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the A.O. while completing the assessment and it is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised.

11. It will also be apposite to reproduce Paragraph No.8 of the judgment of this court in ***Commissioner of Income Tax vs Fine Jewellery (India) Ltd*** and it reads as under:

8. *We find that the impugned order of the Tribunal does record the fact that specific queries were made during the assessment proceedings with regard to details of expenditure claimed under the head “miscellaneous expenses” aggregating to Rs.2.94 crores. The respondent-assessee had responded to the same and on consideration of response of the respondent-assessee, the Assessing Officer held that of an amount of Rs. 17.98 lakhs incurred on account of repairs and maintenance out of Rs.2.94 crores is capital expenditure. This itself would be indication of*

application of mind by the Assessing Officer while passing the impugned order. The fact that the assessment order itself does not contain any discussion with regard to the balance amount of expenditure of Rs.1.76 crores, i.e. Rs. 2.94 crores less Rs.17.98 lakhs claimed as revenue expenditure would not by itself indicate non-application of mind to this issue by the Assessing Officer in view of specific queries made during the assessment proceedings and the respondent – assessee’s response to it. In fact this Court in the case of “Idea Cellular Ltd vs Deputy CIT(2008) 301 ITR 407(Bom) has held that if a query is raised during the assessment proceedings and responded to by the assessee, the mere fact that it is not dealt with in the Assessment Order would not lead to a conclusion that no mind had been applied to it.

Moreover, from the nature of expenditure as explained by the petitioner to the Assessing Officer during the assessment proceedings itself indicates that the view that the same were in the realm of revenue expenditure, is a possible view. Therefore, we find no fault in the impugned order having followed the binding decision of the Supreme Court in the case of Max India Ltd. (supra), while allowing the appeal before it.

Accordingly, non substantial question of law arise for consideration. Thus, appeal is dismissed. No order as to costs.

12. Accordingly, no substantial question of law arise for consideration. Thus, appeal dismissed. No order as to costs.”

9. Respectfully, following the above decision we are inclined to accept the ground raised by the assessee that Assessing Officer has made proper enquiry in the original assessment proceedings even though it is

non-speaking order. Accordingly, grounds filed by the assessee are allowed.

10. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 14th August, 2024.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

**Sd/-
(S RIFAUH RAHMAN)
ACCOUNTANT MEMBER**

Dated: 14th August, 2024

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Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi