

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM &  
SHRI RAHUL CHAUDHARY, JM**

**I.T.A. No. 2115/Mum/2024  
(Assessment Year: 2018-19)**

<b>Rolta Shares &amp; Stocks Pvt. Ltd.</b> 21 <sup>st</sup> Floor, Maker Tower F, Cuffe Parade, Mumbai-400005 <b>PAN : AAACR3156M</b>	Vs.	<b>DCIT, Central Circle-1(1),</b> Room No. 903, 9 <sup>th</sup> Floor, Pratishta Bhavan, Old CGO Annexe, M.K. Road, Mumbai-400020.
<b>Assessee)</b>	:	<b>Respondent)</b>

**Assessee/Appellant by** : Shri Shekher Gupta, CA  
**Revenue/Respondent by** : Smt. Sanyogita Nagpal, CIT-DR

**Date of Hearing** : 15.07.2024  
**Date of Pronouncement** : 01.08.2024

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the assessee is against the revision order of the Principle Commissioner of Income Tax (Central) (PCIT) passed under section 263 of the Income Tax Act 1961 (the Act) dated 26.03.2024 for Assessment Year (AY) 2018-19. The assessee raised the following grounds of appeal.

*“1. On the facts and circumstances of the case and in law the Principal CIT has erred in initiating proceedings u/s. 263 of the Income Tax Act, 1961 by wrongly assuming Jurisdiction u/s. 263 hence, the order passed is bad in law and void-ab-initio.*

*2. Without prejudice to the ground No.1, the learned Principal CIT has erred in passing the revisionary order u/s. 263 of Income Tax Act in spite of the fact that the learned assessing officer had made adequate enquiries during the*

*course of the assessment proceedings and the assessing officer has take a permissible view. The order passed by the assessing officer is neither erroneous nor prejudicial to the interest of the revenue and hence, the order of the principal CIT to be set aside.*

*3. The learned principal CIT has revised the order of the assessing officer u/s. 263 only on the basis of the audit objection and hence such an order u/s. 263 is illegal and bad in the eyes of law.*

*4. The assessee craves leave to add, alter or amend the above grounds of appeal.”*

2. The assessee is a company engaged in the business of investment and financial services. The assessee filed its return of income for AY 2018-19 on 29.09.2018 by declaring a loss of Rs. 83,38,096/-. The case was selected for scrutiny and the assessment was completed under section 143(3) of the Act, accepting the income returned by the assessee. Subsequently on perusal of assessment records the PCIT notice that the assessee has debited finance cost of Rs. 1,72,62,194/- and that the auditors in the financial statements have made the following observations:

*"the company has been claiming interest paid upto FY 2015-16 as revenue expenditure and as per legal opinion taken by the company the interest component relating to current investments has to be capitalized from 2016-17 "*

3. The PCIT was of the view that the AO has not examined the issue of allowability of interest expenditure in the light of the auditor's observations that the interest expenditure towards current investments is a capital expenditure. To this extent the PCIT held that the order of the AO is erroneous and prejudicial to the interest of the Revenue and accordingly issued a show-cause notice to the assessee initiating revision proceedings under section 263. The assessee furnished a detailed reply stating that the details pertaining to the interest expenses along with the

break-up between capital and revenue were submitted before the AO and that the AO after going through the details has applied its mind accepting the income returned by the assessee. The assessee also submitted that the Auditor's comments are not qualification but the observation that the assessee has started capitalizing the interest cost based on legal opinion. The assessee therefore, submitted that the order of the AO is not erroneous or prejudicial to the interest of the revenue.

4. The PCIT however did not accept the submissions of the assessee and pass the order under section 263 setting aside the order of the AO. Relevant observations of the PCIT are extracted below:

*"10. Assessee's submissions in this regard have been carefully examined. The assessee is objecting to the proceedings u/s 263 on the ground that the order passed by the AO is not erroneous. The observations/objections raised by the assessee have been considered, however, the same are not found to be acceptable. Explanation-2 under sub-section (1) of section 263 (inserted by the Finance Act 2015 w.e.f. 01.06.2015) is very clear on this issue. The relevant provisions are reproduced hereunder for better understanding -*

*"Explanation-2-For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner;*

*(a) the order is passed without making inquiries or verification which should have been made;*

*(b) the order is passed allowing any relief without Inquiring into the claim;*

*(c) the order has not been made in accordance with any order/direction or instruction issued by the Board under section 119; or*

*(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person."*

*11. The Assessing Officer needs to verify entire interest expenditure in view of the remarks made by the auditors in the audit report. The same has not been done by the Assessing Officer before allowing the claim of expenditure made by the assessee. Considering the facts and circumstances of the case, I hold that the assessment order passed u/s 143(3) of the Act dated 15.04.2021 by Assessing Officer is erroneous and prejudicial to the interest of Revenue, within the meaning of section 263 of the IT Act, 1961. I therefore, set aside the assessment order passed u/s 143(3) of the Act dated 15.04.2021 so passed with a direction to complete the assessment order de novo afresh after conducting necessary enquiries on the above mentioned points and after affording proper opportunity to the assessee.”*

5. The ld. AR submitted that the AO during the course of assessment has raised specific queries with regard to the interest expenses and the assessee had filed all the relevant details along with the break-up of capital and revenue expenses. In this regard the ld. AR drew our attention to the notice under section 142(1) issued by the AO the specific queries with regard to the interest expenditure. The ld. AR also drew our attention to the details submitted before the AO wherein the assessee has given clear break-up of interest expenditure i.e. capitalized and also charged to P & L A/c. The ld. AR submitted that during under consideration the assessee has capitalized interest expenditure of Rs. 12,99,41,592/- and has claimed Rs. 1,72,62,194/- as revenue expenditure and that the auditor have merely stated this fact in the Notes to Accounts which cannot be regarded as a negative finding given by the Auditor. The ld. AR also submitted that the AO after examining the details furnished by the assessee has taken conscious decision to accept the income returned by the assessee after applying his mind. Therefore, there is no error in the order of the AO that is prejudicial to the interest of the revenue.

6. The ld. DR on the other hand submitted that the order of the AO is brief and does not support the claim of the assessee that the AO has verified the details and has taken the conscious decision by applying his mind to accept the income

returned by the assessee. The ld. DR further submitted that the PCIT has invoked explanation (2) to section 263 for lack of inquiry and therefore supported the order of the PCIT setting aside the order of the AO.

7. We heard the parties and perused the material on record. Before proceeding further it is apposite now to take note of the relevant extract of section 263 and the Explanation (2) to section 263 of the Act, which read as under :-

**“Revision of orders prejudicial to revenue.**

263. (1) *The [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner] or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, [including,—*

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*Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner,—*

*(a) the order is passed without making inquiries or verification which should have been made;*

*(b) the order is passed allowing any relief without inquiring into the claim;*

*(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or*

*(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.”*

8. Thus, from close scrutiny of the provisions of section 263, it is evident that twin conditions are required to be satisfied for exercise of revisional jurisdiction under section 263 of the Act i.e., firstly, the order of the Assessing Officer is erroneous; and secondly, it is prejudicial to the interests of the revenue on account of error in the order of assessment. There is no dispute that u/s. 263 of the Act, the PCIT does have the power to set aside the assessment order and send the matter for a fresh assessment if he is satisfied that further enquiry is necessary and the assessment order is prejudicial to the interests of the Revenue. However, in doing so, the PCIT must have some material which would enable to form a *prima facie* opinion that the order passed by the AO is erroneous, insofar as it is prejudicial to the interests of the Revenue. The Commissioner can exercise powers under section 263 of the Act only after examining 'the record of any proceedings under the Act'. The expression 'record' has also been defined in clause (b) of the Explanation so as to include all records relating to any proceedings available at the time of examination by the Commissioner. Thus, it is not only the assessment order but the entire record which has to be examined before arriving at a conclusion as to whether the Assessing Officer had examined any issue or not. In assessee's case the PCIT has invoked the provisions of section 263 for the reason that the AO has not examined the allowability of interest expenditure as revenue expenditure whereas the auditors have categorized the interest expenditure between capital and revenue. The PCIT has held the order of the AO to be erroneous to the extent that finance cost debited by the assessee in the P& L A/c should not have been allowed as revenue expenditure since the auditors have commented that the interest expenditure that relates to current investments should be capitalized. In this regard we notice that the AO vide notice dated 20.11.2021 under section 142(1) has called for specific details pertaining to the amount of loan taken by the assessee and the

interest paid thereon (query no. 2,3,5 page 2 & 3 of PB). We also notice that the AO vide notice dated 22.01.2021 has raised further query with regard to the loan taken by the assessee and interest paid thereon (query no.6 page 6 of PB). We further notice that the assessee has filed details of the loan taken along with interest details and that the assessee had also provided the breakup of interest capitalized and charged to P&L A/c. Therefore, it cannot be stated that the AO has not made enquiry into the issue of allowability of interest claimed as expenditure and the amount of interest capitalized. The assessee has no control over the way an assessment order is drafted and generally, the issues which are accepted do not find mention in the assessment order and only such points are taken note of on which the assessee's explanations are rejected and additions/ disallowances are made. In the given case the PCIT has not brought anything on record to show that the interest claimed by the assessee has been erroneously claimed under the law or any material to show that there been an error in the order that is prejudicial to the interest of the revenue. Therefore, the PCIT in our opinion is not the right in exercising revisionary powers u/s. 263 of Act, as the error envisaged by Section 263 of the Act is not one that depends on possibility as a guess work, but it should be actually an error either of fact or of law.

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

*Order pronounced in the open court on 01-08-2024.*

*Sd/-*  
**(RAHUL CHAUDHARY)**  
**Judicial Member**

*Sd/-*  
**(PADMAVATHY S)**  
**Accountant Member**

*\*SK, Sr. PS*

**Copy of the Order forwarded to :**

1. The Assessee
2. The Respondent

3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**