

आयकर अपीलीय अधिकरण  
दिल्ली पीठ "ए", दिल्ली  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री नवीन चंद्र, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A", DELHI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

आअसं . 1208/दिल्ली/2024 (नि . व. 2013-14)  
ITA No.1208/DEL/2024 (A.Y.2013-14)

Aarna Infrazone Pvt. Ltd.,  
F-20, Sector-18 Noida,  
Uttar Pradesh , 201301  
PAN: AAKCA-4767-H

..... अपीलार्थी / Appellant

बनाम Vs.

Principal Commissioner of Income Tax,  
Aayakar Bhawan, A-2D, Secot-24,  
Gautam Budh Nagar, Uttar Pradesh 201301

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा / Appellant by : S/Shri S Krishnan, and  
V. Rajkumar, Advocates

प्रतिवादीद्वारा / Respondent by : Ms. Neha Chaudhary, CIT-DR

सुनवाई की तिथि / Date of hearing : 06/08/2024

घोषणा की तिथि / Date of pronouncement : 20/08/2024

आदेश / ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the order of Principal Commissioner of Income Tax, Noida [in short 'the PCIT'] passed u/s. 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 29.02.2024, for Assessment Year 2013-14.

2. Shri S. Krishnan, appearing on behalf of assessee narrating facts of the case submitted that the assessment for AY 2013-14 in the case of assessee was reopened based on the information received from Investigation Department. A search & survey operation u/s. 132 of the Act was conducted on M/s. Celebration City Projects P. Ltd., Ghaziabad on 02.11.2017. During the course of search & survey operation some incriminating documents were found and seized. One such document was Annexure-A8. On the basis of said seized document it was alleged that the assessee has paid cash amounting to Rs. 75,52,000/- in Financial Year 2012-13 to M/s. Celebration City Projects P. Ltd., for purchase of units/shops/space etc. in Red Mall, Ghaziabad. The said information was forwarded to the assessee's Assessing Officer (AO). Based on said information the AO recorded reasons to believe and reopened assessment for AY 2013-14. The reasons for reopening assessment u/s. 147/148 of the Act, as communicated to the assessee are reproduced in assessee's reply to notice u/s. 142(1) of the Act at page 13 of the paper book. During the course of re-assessment proceedings, the assessee categorically pointed that copy of Annexure-A8/master sheet has not been made available to the assessee nor has it been made part of satisfaction note which lists the reasons for reopening. The said master sheet was crucial and tangible material for recording reasons to believe for reopening of assessment. Nevertheless, the assessee furnished all the relevant material to substantiate that the payments made to celebrations were from bank account of the assessee and no payments were made by the assessee in cash for purchase of shop in Red Mall, Ghaziabad.

2.1. The Id. Counsel for the assessee submitted that AO after examining the reply of assessee and documents furnished along with reply including the bank statement was

satisfied that the payment made by the assessee Rs. 87,62,802/- to Celebration City for purchase of shop was through the banking channel and source of funds for such payments were also explained. The assessee to fund the consideration had taken advances from Savithri Fashion Crafts on two occasions i.e. on 01.01.2013 Rs. 50,00,000/- and on 07.01.2013 Rs. 36,00,000/-. The said advances were received through bank. The assessee furnished statement of Vijaya Bank wherein amounts were received from Savithri Fashion Crafts before the AO and also before the PCIT.

2.2. The Id. AR of the assessee submitted that extract of Annexure-A8, the so called incriminating document on the basis of which assessment for AY 2013-14 was reopened has been made part of the impugned order. A perusal of the same would show that it gives the details of the area/shop purchase by the assessee. The total consideration for the purchase of the shop, the amount received from the assessee, the balance amount to be received, etc. Nowhere in the said Annexure-A8 there is any column which reflects payment of cash by the assessee as alleged by the department. There is no document on record to substantiate that the assessee has paid cash over and above the total consideration agreed between the parties. The PCIT has failed to appreciate the fact that the assessee had made payment for purchase of shop through banking transaction. The assessment was reopened to examine the mode of payment by the assessee and the AO after examining the bank statements of the assessee was satisfied that the payments have been made to M/s. Celebration City through banking channel and sources of funds also stands explained. Thus, the AO accepted the returned income.

3. Per contra, the Id. DR vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id. DR submitted that the AO failed to examine and investigate cash component paid by assessee to M/s. Celebration City for purchase of shop. The Id. DR after conclusion of hearing submitted written submissions, the relevant extract of the same is reproduced herein below:

*"I. Since the whole matter is based on the investigation report of the ADIT (Inv.), Unit-13, New Delhi, the same should be called for and placed for perusal of the Hon'ble Bench and the CIT(DR), ITAT, Delhi. It is clear on perusal of the notices issued by the Faceless Assessment Officer (FAO) that nowhere has he/she enquired regarding Annexure 'A-8' of the seized material or the alleged monies received as advances from M/s Savitri Fashion Crafts.*

*II. Secondly, it should also be seen as to how the Investigation Wing reached the conclusion that cash has exchanged hands between the appellant and M/s Celebration City Projects Pvt Ltd especially in light of that fact that apparently no enquiries have been made either at the level of reopening of the case or at the time of the re-assessment.*

*Therefore, in view of above, a report needs to be called for from the jurisdiction Assessing Officer including the said ADIT(Inv.) report which will emphasize the fact that no enquiries were then conducted and that the impugned order u/s 263 of the Act dated 29.02.2024 should be upheld."*

4. We have heard the submissions made by rival sides and have examined the orders of authorities below. The PCIT has exercised revisional jurisdiction u/s. 263 of the Act, as according to him the AO failed to conduct inquiry and proper verification on the issue for which assessment of the assessee for AY 2013-14 was reopened.

5. Before proceeding further it would be imperative to refer to the reasons recorded for reopening assessment in the case of assessee. The relevant extract of the reasons as communicated to the assessee for reopening of assessment u/s. 147 of the Act are as under:-

*“From the record available in this office, it has been gathered that the assessee has filed its income Tax, Return (ITR) in form ITR-6 for AY 2013-14 declaring total taxable income of Rs. 2,16,950/- under the head profits and Gains from business or profession. The company is working under Service Sector activity.*

*2. In this case, information containing investigation report was passed and received through data flagged by the Directorate of Systems uploaded by office of the Assistant Director of Income Tax (Investigation), Unit-1 (3), New Delhi that during the course of Search & Survey operation u/s 132 of the IT Act, 1961 conducted on M/s Celebration City Projects Pvt. Ltd. (hereinafter referred as CCPPL) at its business premise: Red Mall, G.T.Road, Ghaziabad on 02.11.2017, some incriminating documents were found and seized. On perusal of the Annexure: A-8, from Page nos. 33 to 48 of the 'Master Document" in excel sheets, it has been noticed that M/s Aarna Infrazone Pvt. Ltd, has paid cash amounting to Rs. 75,52,000/- to M/s CCPPL during the F.Y. 2012-13 in respect of purchase of units / shops / space etc. in Red Mall, Ghaziabad.*

*3. On perusal of ITR filed by the assessee for A.Y. 2013-14, it was noticed that the assessee had taxable income of Rs. 2,16,950/- during the year under consideration. The ITR has been verified & it has been found that the assessee was incorporated on 24.4.2012. The BS&PL also seen and it is observed that assessee has not carried out any business activity. It has shown income from interest & commission. It means the assessee does not have capacity and creditworthiness to invest such a huge amount in cash as per its income. Therefore, source of cash fund invested to purchase the aforesaid units/shops / space etc, in Red Mall, Ghaziabad amounting to Rs. 75,52,000/- in cash remained unexplained.*

*4. Considering the above referred credible information, I have reasons to believe that income of Rs. 75,52,000/- has escaped assessment for the A.Y. 2013-14 (on account of undisclosed source of fund invested to purchase the aforesaid property) due to the failure of the assessee to disclose truly & fully these material facts necessary for her assessment.”*

A bare perusal of above reasons would show that Assessing Officer was *inter alia* required to examine cash component amounting to Rs. 75,52,000/- paid by the assessee to Celebration City Projects Pvt. Ltd. for purchase of shop during financial year 2012-13 as reflected in Annexure A-8 seized during the course of search from the premises of Celebration City Projects P. Ltd. and also the source of said cash.

6. The assessee in submissions made before the Assessing Officer during assessment proceedings denied payment of any cash to Celebration City Projects Pvt. Ltd. The assessee furnished the details of payments made by the assessee through banking transactions for purchase of shop in Red Mall, Ghaziabad to Celebration City Projects P. Ltd. A bare reading of assessment order shows that the AO accepted the submissions of the assessee with regard to payments made to Celebration City Projects P. Ltd., for purchase of shop through banking channel. However, no questionnaire or any notice inquiring about cash component which was the key reason for reopening the assessment was issued by the AO. The payment made by the assessee through banking channel was not the subject matter of reasons to believe for reopening the assessment. The AO was primarily required to investigate and examine the alleged payment of cash by the assessee to Celebration City Projects P. Ltd. for the purchase of shop and the source of said cash. In addition the AO could have examined the payments made by the assessee for purchase of shop through banking channel.

7. The show cause notice u/s. 263 of the Act issued to the assessee, reads as under:-

*"The case of the assessee was re-opened u/s 147 of the I.T. Act, 1961 for the A. Y. 2013-14. As per the information on records during the course of Search & Survey operation u/s 132 of the I.T. Act, 1961 conducted on M/s Celebration City Projects Pvt. Ltd. some incriminating documents were found and seized. During the investigation of the seized documents, it was found that the assessee company had paid cash amounting to Rs. 75,52,000/- to the above mentioned searched company during F.Y. 2012-13 for purchase of units/shops/space etc in Red Mall Ghaziabad and the case was re-opened on the basis of reason to believe that the assessee did not have capacity and creditworthiness to invest such a huge amount in cash as per its income leaving the invested cash amount of Rs. 75,52,000/- unexplained. During assessment proceedings, the assessee company claimed that the assessee had purchased property for Rs. 90,33,571/-not through the cash payment but from the*

advances of Rs. 86,00,000/- obtained from Savitri Fashion Crafts. Subsequently, the assessee's submission was considered and assessment was completed on return income.

From the perusal of assessment record for the year under consideration, it has been observed that the assessing officer of Faceless Assessment Unit has accepted the return income without properly verifying the aforesaid claims of the assessee w.r.t the advances received from M/s Savitri Fashion Crafts amounting Rs. 86,00,000/- vis- a- vis information contained in seized document i.e. Annexure A-8. Moreover, **the Assessing Officer has not examined the matter in the light of master document in excel sheet i.e, Annexure- A-8 wherein it has been mentioned that the assessee had purchased the space by paying cash of Rs. 75,52,000/-**

The faceless Assessing Officer has accepted the returned income without making proper enquiries to verify the assessee's claim, the assessment order sO passed on 28.03.2022 is erroneous in so far as it is prejudicial to the interest of revenue.

In view of the above, please show cause as to why the assessment order dated 28.03.2022 passed by the Faceless Assessment office should not be cancelled or modified by invoking the provisions of section 263 of Income Tax Act, 1961."

[Emphasized by us]

A perusal of above show cause notice shows that the PCIT exercised revisional powers primarily for the reason that the Assessing Officer failed to examine the matter in light of the seized document i.e. Annexure A-8 that leads to the allegation of payment of cash of Rs. 75,52,000/- by assessee to Celebration City Projects P. Ltd.

8. The PCIT in the impugned order has reproduced the relevant extract of Annexure A-8. For the sake of completeness the same is extracted here in below:-

S.No	Name of customer	Booked by CCPL/RED	Deal Date	Broker	Brokerage	Shop No.	Floor	Sold Area	Actual Area of Shop	Area Available Excess Sold
20	Aarna Infrazone Pvt. Ltd.	RED	04.09.2012	Invest Mart	5%	A-28	GF	1153	1112	(41)

Total Consideration	Amount Received	Balance Received	Adjustment against ROI etc	Net to Received	Tally balance	Difference	S. TAX	TDS	ROI	Rent/P.M
9,224,000	8,762,802	461,198	417,965	43,233	8,762,802	A-28	GF	1153	1112	172,950

ROI star From	Month Due	ROI Due upto 30.06.2016	Remarks (ROI)	CX Value	CX Received	CX to be received	Remarks
09.01.2013	8	1,383,600	417,965	7,552.00	7,552.00	-	

A perusal of above table shows that it gives the details of the shop purchased by the assessee viz. shop no., floor, area of shop, total consideration amount received, balance to be received etc. It is interesting to note that apart from the details of total consideration amount received, balance received there are three columns which refer to CX Value, CX Received and CX to be received. All the columns in the table are self explanatory except the columns mentioned herein above. The AO has made no inquiry whatsoever from the assessee with regard to said Annexure A-8. Thus, the AO failed to conduct enquiry for which assessment was reopened.

9. We are of considered view that the PCIT has rightly exercised jurisdiction u/s. 263 read with Explanation 2 of the Act, as the Assessing Officer failed to make inquiries or verifications which should have been made. This makes the assessment order erroneous and prejudicial to the interest of Revenue. The twin conditions sine qua non for invoking the provisions of section 263 of the Act, i.e. the order passed by AO is erroneous and prejudicial to the interest of Revenue are satisfied.

10. In the result, the impugned order is upheld and appeal of the assessee is dismissed.

Order pronounced in the open court on Tuesday the 20<sup>th</sup> day of August, 2024.

Sd/-

(NAVEEN CHANDRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 20/08/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**NV/-**

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि. , दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI