

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G", NEW DELHI  
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,  
AND  
SHRI SUDHIR PAREEK, JUDICIAL MEMBER

	ITA NO. 1951/Del/2020	
	A.YR. : 2014-15	
M/S T & T MOTORS LTD., GA-02, B-1 EXTENSION, MOHAN COOPERATIVE ESTATE, TUGHLAKABAD, NEW DELHI – 110 044 (PAN: AA ACT5980F)	VS.	DCIT, CIRCLE 25(2), NEW DELHI – 110 002
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by : Shri Praveen Kumar, CA & Shri V.K. Garg, Adv.  
Respondent by : Shri Dharm Veer Singh, CIT(DR)  
Date of hearing : 03.09.2024  
Date of pronouncement : 05.09.2024

**ORDER**

**PER SHAMIM YAHYA, AM :**

The Assessee has filed the Appeal against the Order of the Ld. CIT(Appeal-36), Delhi dated 22.09.2020, relating to assessment year 2014-15. Although the assessee has raised several grounds, but at the time of hearing, Ld. AR has only pressed the following 02 legal grounds:-

- i) The Ld. CIT(A) has grossly erred on facts as well as in law in holding that the appeal is infructuous.
- ii) The Ld. CIT(A) has grossly erred on facts as well as in law in holding that the appeal is infructuous on the ground that the Ld.

PCIT has set aside the assessment order by ignoring the fact that the assessment order was set aside on the two issues only which were considered by the AO in the revised assessment order u/s. 143(3)/263.

2. Briefly stated facts are that assessee is an authorized dealer for Mercedes Cars in Delhi, Rajasthan and Haryana. Assessee filed its return on 30.09.2014 declaring a loss of Rs. 2,35,54,037/- which was assessed at a loss of Rs. 2,23,22,572/- u/s. 143(3) of the Act by making the disallowance of Rs. 12,20,579/- on account of lease hold repair and maintenance expenses by capitalizing the same and after allowing depreciation @10%. The AO also disallowed Rs. 10,886/- u/s. 14A read with Rule 8D(2)(iii). Against the aforesaid action of the AO, assessee preferred the appeal before the Ld. CIT(A). Subsequently, the revision order u/s. 263 was passed by the Ld. PCIT vide order dated 5.2.2018, wherein the assessment order dated 27.10.2016 was set aside and the AO was directed to make the assessment on the 02 issues for which in the opinion of the PCIT the AO failed to make enquiry. Thereafter consequential assessment order u/s. 143(3) r.w.s. 263 was passed by the AO vide order dated 26.12.2018 as per the directions of the Ld. PCIT. The assessee also preferred an appeal before Ld. CIT(A) against the assessment order u/s. 143(3) r.w.s. 263. Ld. CIT(A) vide its order dated 22.9.2020 dismissed the appeal against original order as infructuous since the same was set-aside vide order u/s 263 of the Act.

3. Aggrieved with the above order of the Ld. CIT(A), Assessee is in appeal before us.

4. We have heard both the parties and perused the records. It is noted that AO has made several additions upon which only 02 counts the Ld. PCIT has exercised his jurisdiction u/s. 263 of the Act. The concluding portion of the Ld. PCIT's order passed u/s. 263 read as under:-

*“11. Considering the facts discussed above, it is apparent that the assessee has paid professional charges to the two associate concerns which are not allowable under the I.T. Act u/s. 37 of the I.T. Act. Further, the assessee also spent unreasonable / excessive amount on the construction of the Gurgaon workshop (considering the comparable cases) so the amount of the depreciation claimed by the assessee on this excess amount has also to be disallowed.*

*12. From the perusal of records, it is apparent that during the assessment proceedings, the AO did not examine these two issues in required details and in the opinion of the undersigned he (The AO) has failed to make inquiries / verification which he should have made. On these issues explanation 2 to sec. 263(1) is referred “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 interest 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” which is operative w.e.f. 1<sup>st</sup> June, 2015. Accordingly, the assessment order passed by the AO on the two issues vide order dated 27.10.2016 is set aside as the same is erroneous so far as it is prejudicial to the interest of revenue. Accordingly, the AO is directed to do the assessment order fresh after allowing proper*

*opportunities of being heard to the assessee. The AO is also advised to refer the issue of capital cost incurred on construction of Gurgaon workshop to the valuation cell, if after making appropriate inquiries, he is of the opinion that it is a fit case for referring the issue to the valuation cell.”*

4.1 From the above, it is quite apparent that Ld. PCIT had set aside only two issues and the other issues are surviving, hence, Ld. PCIT erred in treating the appeal as infructuous. It is noted that Ld. CIT(A) has wrongly interpreted the order u/s. 263 as if the original assessment order was completely set aside for fresh assessment whereas in reality it was set aside for fresh assessment only on two issues identified by him which are different from and unconnected with the issues for addition already made u/s. 143(3) assessment. Accordingly, Ld. CIT(A) wrongly decided the appeal against the original assessment order as infructuous. Both the Counsels, fairly agreed to the aforesaid proposition. Accordingly, in the interest of justice, we remit the issues to the file of the Ld. CIT(A) to decide the same afresh and pass a speaking order on the grounds raised before him.

5. In the result, the Assessee's appeal is allowed for statistical purposes.

Order pronounced on 05/09/2024.

**Sd/-**  
**(SUDHIR PAREEK)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

SRB

**Copy forwarded to:-**

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

Assistant Registrar