

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRIGIRISH AGRAWAL, ACCOUNTANT MEMBER

I.T.A No.2318/Mum/2024
(Assessment Year: 2018-19)

Ten Construction (India) Private Limited, 204, Vardhaman Apartment, 60, Hanuman Road, Vile Parle (East), Mumbai-400 057 PAN : AABCE1303J	vs	Principal Commissioner of Income-tax-6, Mumbai Room No.501, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
APPELLANT		RESPONDENT

Assessee by : Shri R.B. Popat
Respondent by : Shri Biswanath Das - CIT SRDR

Date of hearing : 05/09/2024
Date of pronouncement : 10/09/2024

ORDER

PER ANIKESH BANERJEE, J.M:

The instant appeal of the assessee was filed against the order of the Learned Principal Commissioner of Income-tax, Mumbai-6 (hereinafter called, 'Ld.PCIT'), passed under section 263 of the Income-tax Act, 1961 (in short, 'the Act') for A.Y. 2018-19, dt. of order 04/03/2024. The impugned order was emanated from the order of the Ld.National Faceless Assessment Centre, Delhi (in

short, 'the Ld.AO') passed under section 143(3) read with section 144B, date of order 21/09/2021.

2. The assessee has taken the following grounds:-

"1. On the fact and circumstances of the case and in law, Ld. Pr. CIT-6, Mumbai erred in issuing Show cause Notice under section 263 of the ITA, 1961 on sole flawed premises or sole flawed understanding of the facts on records or non application of mind by PCIT-6 Mumbai or without making any enquiries that your appellant has not filed Loan confirmations letters, ITR copies, PAN Number, Bank statements of all Unsecured loan providers to your appellant before Ld. AO which is contrary to facts on records of the revenue itself. The assumption of jurisdiction by Commissioner under section 263 to fix the addition at 100% of USL, that too, on ad hoc basis ignoring the evidence on record of evidences filed by your appellant and that too without any tangible evidence cannot be done by PCIT, and we pray for quashing the order of PCIT.

2. On the fact and circumstances of the case and in law, Ld. Pr. CIT-6, Mumbai erred in passing order u/s 263 without application of mind or without making required enquiries/investigations himself as all documents as per GOA no.1 were filed during assessment proceedings and also before PCIT-6, Mumbai against show cause notice issued by him.

3. On the fact and circumstances of the case and in law, The appellant submits that the Principal Commissioner of Income-tax ought not to have invoked provisions of section 263 on the very same point on which the Assessing Officer had made inquiry and taken position.

4. On the fact and circumstances of the case and in law, The Principal Commissioner of Income-tax was not Justified assuming Jurisdiction u/s.263 without satisfying twin conditions merely for better estimation of estimated addition of USL from 10% to 100% is contrary to the pre-requisites provided in the provisions of section 263 of the Act. in

5. On the fact and circumstances of the case and in law, Ld. PCIT-6, Mumbai under wrong and incorrect premise passed order u/s 263 of the ITA, 1961 (as per ground no.1). "The nature of unsecured loans borrowed by your appellant were not of trading liability but on account of capital account cannot be added to

income of appellant once your appellant discharges primary onus casted under the Act".

7. The Ld. PCIT-6, Mumbai has erred in law and on facts in passing the order u/s. 263 of the Act by holding in Para No. 3 on Page 2 read with Para No. 7 on page No. 5 that the assessment order u/s. 143(3) of the Act dated 21.09.2021 passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of revenue in accordance with the Explanation 2(a) below section 263(1) of the Act without referring Section 263(2a) in his Show cause notice dated Accordingly the impugned assessment order is set aside with a direction to the Assessing Officer to make requisite inquiries and proper verification with regard to the issue of unsecured loans borrowed by your appellant and redo the assessment de-novo after due consideration of the facts and law in this regard".

8. On the fact and circumstances of the case and in law, The Principal Commissioner of Income-tax further erred in assuming jurisdiction particularly in the matter for which 263 proceedings were initiated was pending before the CIT(A) and that on the same issue, jurisdiction of the CIT(A) and the Principal Commissioner of Income-tax cannot co-exist."

3. The brief fact of the case is that the assessment was completed under section 143(3) with the addition under different heads. By invoking section 263 of the Act, the Ld.PCIT issued the notice under section 263 for verification of unsecured loans amount to Rs.15,49,26,364/-. By assuming the charge of revision, the Id.PCIT issued the show cause notice for hearing and asked to explain that the unsecured loan received by the assessee was not duly verified by the Ld.AO. During the assessment proceedings, the Ld.AO only disallowed 10% of the unsecured loan of Rs.15,49,26,364/- which works out to R.1,54,92,636/- and the balance amount was unverified, amount to Rs.13,94,33,728/-. The Id.PCIT also mentioned that assessee has not filed relevant documents in relation to the verification of unsecured loan. The assessee made the reply to the Id. PCIT filing all the relevant documents in pursuing notice U/s 263 of the Act. Finally, the

Id.PCIT, by assuming charge of revision, held the impugned assessment order as erroneous and prejudicial to the interest of the revenue and set aside the same for further verification and framing the assessment afresh. Being aggrieved on the revisionary order, the assessee filed an appeal before us.

4. We heard rival submission and considered the documents available in the record. The Ld.AR filed paper books which are kept in record (in short 'APB'). The Ld.AR during the hearing before the bench mentioned that the assessee submitted all the relevant documents during the assessment proceedings. The e-filing receipts are duly annexed in APB-2, E-1 & E-2, J-1 & J-2. It is further mentioned that the issue was duly considered by the Id.AO in para 5.1 of the impugned assessment order. The relevant part of the paragraph 5.1 of impugned assessment order is reproduced as below: -

"5.1 In view of the above, 10% of the unsecured loans received during the year i.e. amount of Rs.1,54,92,636/- is being disallowed and added back to the taxable income of the assessee as per the provisions of Section 68 of the I.T. Act, 1961 for the year under consideration and charged to tax as per provisions of section 115BBE of the I.T. Act, 1961 @ 60% thereof. Along with penalty proceedings u/s 271AAC of the I.T. Act, 1961 are being initiated separately against the assessee for failing to furnish explanation regarding the cash deposits/credits which are being added back u/s 68 as deemed income of the assessee as above."

5. The Ld.AR relied on the assessment order and was unable to submit any such evidence which relates verification of the impugned unsecured loan. Only 10% of the unsecured loan amount to Rs.1,54,92,636/- is added back to the total income of the assessee as per section 68 r.w.s. 115BBE of the Act. The addition was challenged before the Id.CIT(A). Finally, by invoking provisions of section 263,

the Id.PCIT issued notice to assessee. The assessee submitted all the relevant papers before the Id. PCIT on 05/02/2024 and further mentioned that the matter is pending before the Id. CIT(A). The Ld.AR relied on the order of the co-ordinate bench, ITAT, Ahmedabad Bench in the case of **Accumax Lab Devices Pvt Ltd vs PCIT (2024) 160 taxmann.com 240 (Ahd)**, where the assessee has submitted all the relevant documents before the Ld.AO and the Assessing Officer had inquired into all probable aspects of valuation of intangible assets and consequent claim of depreciation thereon by assessee and moreover assessee's basis of valuation of intangible assets was as per that prescribed by AS-26. So, the invoking of section 263 was bad in law.

6. The Id.DR vehemently argued and stated that no verification was done by the Id.AO which caused the assessment order erroneous and prejudicial to the interest of the revenue.

7. In our considered view, we find that Id.AO only added back 10% of the unsecured loan. The addition of @10% unsecured loan has no basis; even there is no application of mind for imposing Section 68 of the Act. The assessee was unable to submit the documents which are convergent with the verification of unsecured loan creditors. The Id. AR respectfully relied on the order of **Accumax Lab Devices Pvt Ltd**(supra) is distinguishable in fact. In impugned assessment there is no verification from the part of the Id. AO. The Id. AR took the plea that the issue is pending before the appellate authority. But the issue was challenged only the 10% of addition U/s 68 of the Act. The revisional order pertains to balance "unsecure loan" creditors amount to Rs. 13,94,33,728/-. Here the Id.AO was fully ignorant about the verification of unsecured loan creditors which caused

the impugned assessment order as erroneous and prejudicial to the interest of the revenue. Mere submission of the documents will not serve the purpose of section 263, followed by Explanation-2 which is reproduced as below: -

“263

[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 made¹⁰;

(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.]”

We find that the Id.PCIT rightly assumed jurisdiction under section 263 of the Act. We upheld the impugned revisional order. Accordingly, the appeal of the assessee is dismissed.

8. In the result, the appeal of the assessee bearing **ITA No.2318/Mum/2024** is dismissed.

Order pronounced in the open court on 10th day of September, 2024.

Sd/-

(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 10/09/2024

Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai