

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"D' BENCH, MUMBAI**

**MS. PADMAVATHY S, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1797/MUM/2023  
(Assessment Year: 2015-16)**

**M/s. Rameshwar Enterprises,**  
401, Rangoli Time Complex,  
Dr. Ambedkar Road,  
Parel (E), Mumbai – 400 012.  
Maharashtra.  
[PAN:AAHFR2612N]

..... **Appellant**

Vs

**Principal Commissioner of  
Income Tax – 20, Mumbai**  
Room No.418, 4<sup>th</sup> Floor, Piramal Chamber,  
Lal Baug, Parel, Mumbai – 400 012,  
Maharashtra.

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Shri Piyush Chajjed  
For the Respondent/Department : Ms. Sanyogita Nagpal

**Date**

Conclusion of hearing : 22.07.2024  
Pronouncement of order : 09.10.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. The present appeal preferred by the Assessee is directed against the order, dated 30/03/2023, passed by the Learned Principal Commissioner of Income Tax, [hereinafter referred to as 'the **PCIT**'] under Section 263 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Assessment Order, dated 29/12/2017, passed under Section 143(3) of the Act for the Assessment Year 2015-16 has been set aside holding the same to be erroneous in so far as judicial to the interest of Revenue.

2. The Appellant has raised following grounds of appeal :

1. *On the facts and in the circumstances of the case, the Learned Principal Commissioner of Income Tax – 20, ought to have appreciated that the Assessment Order passed for A.Y. 2015-16 did not fall under the Provisions of Explanation 2 to Section 263 of the Income Tax Act and therefore the Order passed u/s.263 is beyond jurisdiction.*
2. *On the facts and circumstances of the case, the Learned Principal Commissioner of Income Tax erred in initiating proceedings with a view to start the fishing and roving enquiries in order which is already concluded and the same is not permitted as held by Hon Supreme Court in case of Parashuram Pottery Works Co. Ltd., 106 ITR 1 and by the Bombay High Court in case of Gabriel India Ltd, 203 ITR 108.*
3. *On the facts and circumstances of the case, the Learned Principal Commissioner of Income Tax erred in passing the order under section 263 merely been change of opinion. The order under section 143(3) passed by the Ld. AO was not erroneous and neither prejudicial to the interest of revenue."*

3. The relevant facts in brief are that the Appellant filed return of income for Assessment Year 2015-16 on 30/09/2015 declaring total income of INR 7,10,710/- which was processed under section 143(1) of the Act. Subsequently, the case of the Appellant was selected for scrutiny under Computer Assisted Scrutiny Selection (CASS). During the Assessment proceedings, the Assessing Officer noted that the Appellant is a firm engaged in the business of development and construction of building under Slum Redevelopment Projects [for short 'SRA Projects']. On perusal of the Profit and Loss account, the Assessing Officer noted that the Appellant had debited interest of INR 1,33,54,288/- against loan from various parties. Therefore, the Assessee was asked to furnish details of unsecured loan alongwith interest paid on the same. In response, the Appellant filed reply vide letter dated 26/12/2017 (placed at page 6 of the paper-book) stating as under:

*"In current year, we have taken unsecured loans amounting to Rs.18.30 Crores for the purpose of the said project. However the same could not be materialized and got delayed due to occurrence of legal issue in the High Court as claimed made by third party about the*

*ownership of the land. Hence the management decided not to keep the money idle and give it to Partner Sanghvi Premises for utilization and they will bring the said money as and when required. The money has been repaid in the Previous Year 2015-16. Interest has not been charged as average balance in the year 2014-15 is credit Rs.10.27 Crores."*

4. After take the above reply/documents filed by the Appellant, the Assessing Officer made the addition of INR 2,14,219/- in the hands of the Appellant, being the difference in the interest has debited to the Profit and Loss Account amounting to INR 1,33,54,288/- and the aggregate amount of interest of INR 1,31,40,069/- in respect of which details were furnished by the Appellant. The Assessing Officer completed the Assessment under Section 143(3) of the Act vide, Assessment Order, dated 29/12/2017, making, inter alia, aforesaid addition of INR 2,14,219/- under section 36(1)(iii) of the Act. The relevant extract of the Assessment Order reads as under:

*"On perusal of profit and loss account, it has been noted that the assessee has debited interest of Rs.1,33,54,288/- paid against loan from various parties. During the course of the assessment proceedings, the assessee was asked for furnish details of unsecured loan alongwith interest payment. In this regard, vide letter dated 26/12/2017, the assessee has made submissions in respect of details of unsecured loan alongwith interest payment of Rs.1,31,40,069/-. The difference of interest of Rs.2,14,219/- is disallowed and added to total income of the assessee."*

5. Subsequently, on perusal of record, the Ld. PCIT formed a view that the Appellant had utilized interest bearing funds to give advance to M/s. Sanghvi Premises Private Limited, a partner in the Appellant firm. According, to the PCIT, the Assessing Officer should have made proportionate disallowance on interest paid of INR 1,23,30,282/- while framing the assessment. Therefore, notice, dated 05/02/2021 and 11/02/2021, were issued to the Appellant. Since no response were received from the Appellant to the aforesaid notices the Appellant was proceed ex-parte; and order, dated 01/03/2021, was passed under Section 263 of the Act.

6. In appeal against the aforesaid order passed under Section 263 of the Act, the Tribunal granted relief to the Appellant vide order, dated 20/01/2022, passed in ITA No.522/Mum/2021. The PCIT set aside the aforesaid order passed under Section 263 of the Act on dated 01/03/2021 and directed the Ld. PCIT to pass order under Section 263 afresh.
  
7. In the set-aside proceedings opportunity of being heard was granted to the Appellant vide notice dated 14/03/2023. In response, the Appellant filed submissions before the Ld. PCIT contending that all the relevant details were furnished before the Assessing Officer and only after duly appreciating the same, the Assessing Officer had made disallowance under Section 36(1)(iii) of the Act. It was contended that the amount of interest to be disallowed cannot be computed on the basis of closing balance and the debit/credit balance of the concerned account on a daily basis needs to be taken considered for computing amount of interest. In support of the contention the Appellant filed copy of ledger account. It was contended that as per partnership deed the partners were not entitled to receive interest on funds granted to the partnership and therefore, the partners were also not liable to pay interest to the firm on funds received from the firm. In case the notional interest on amount outstanding to the partner on a daily basis is taken into consideration and netted against the interest not charged, the amount of addition gets reduced substantially. In support of the aforesaid contention a statement showing computation of notional interest was filed by the Appellant. The aforesaid submissions, did not find favour with the PCIT and therefore, the Assessment Order, dated 29/12/2017, was set aside by the PCIT under Section 263 of the Act. The PCIT held that the Assessing Officer had failed to carry out relevant inquiry/verification in the present case and therefore, relying upon the provisions contained in Explanation 2 to Section 263(1) of the Act, the PCIT concluded that the Assessment Order would be

deemed to be erroneous in so far as prejudicial to the interest of Revenue. The PCIT noted that during the assessment proceedings, vide notice dated 02/11/2017, issued under section 142(1) of the Act, the Assessing Officer had called for details of outstanding debit balance against the partners and chargeability of interest. However, the Appellant failed to provide necessary details. Further, the Appellant had also failed to provide details regarding netting of interest and also failed to provide copy of partnership deed. Further, the fund flow statement regarding unsecured loan on which interest of INR.1,33,54,288/- was paid by the Appellant was also not brought on record. According to the PCIT the Appellant had borrowed capital for the purpose of business and therefore, interest paid on borrowed capital was allowable as deduction unless when the funds were utilised for business purpose. The Assessee had failed to prove the commercial expediency in apportioning interest bearing funds to partner's Current Account and to show that interest bearing funds were not utilized for the purpose of granting funds to partners of the Appellant-firm. The PCIT further noted that the Assessment Order did not even call for interest on withdrawals of the partners which clearly shows lack of proper enquiry and non-application of mind. According to PCIT, the Assessing Office should have charged interest @ 12% in respect of debited balance of the partners of the Assessee-firm and therefore, the order passed by the Assessing Officer was erroneous as well as pre-judicial to the interest of Revenue. Thus, the PCIT set aside the Assessment Order, dated 29/12/2017, passed under section 143(3) of the Act.

8. Being aggrieved the Appellant has preferred the present Appeal before the Tribunal challenging the order passed under Section 263 of the Act on the grounds reproduced at paragraph 2 above.
9. Both the sides reiterated the stand taken before the authorities below.

After giving thoughtful consideration to the rival submission and on perusal of record, we find that during the assessment proceedings the Assessing Officer had failed to carry out inquiry/verification that was necessary given the facts and circumstances of the present case. The response given by the Appellant to the query raised by the Assessing Officer vide notice dated 09/08/2017 issued under Section 143(2) of the Act has been reproduced in paragraph 3 above. After taking the same into consideration, we concur with the PCIT that the Appellant had failed to provide necessary details/submission to support the claim of deduction of interest expenses of INR 1,31,40,069/- [INR.1,33,54,288/- Less INR.2,14,219/- disallowed] allowed by the Assessing Officer. On perusal of the Assessment Order, we find that the Assessing Officer had merely made addition taking into account the difference in the amount debited to the Profit & Loss Account and the amount stated in the reply letter dated 26/12/2017. While it was contended on behalf of the Appellant that all documents and details were filed before CIT(A), we find that there is nothing on record which adds credence to the aforesaid submission. The documents in support of the primary facts such the partnership deed were neither called for by the Assessing Officer nor provided by the Appellant during the assessment proceedings. The Assessing Officer had failed to inquire/verify whether the Appellant-firm was under required to recover interest from the partners as per the partnership deed. Therefore, we uphold the action of the Ld. PCIT of invoking the deeming fiction contained in Explanation 2 to Section 263 of the Act to set aside the Assessment Order dated 29/12/2017 holding the same to be erroneous in so far as prejudicial to the interest of Revenue. The judicial precedents mentioned in the grounds of appeal do not come to the aid of the Appellant given the factual matrix of the present case. Further, the same were rendered in the context of Section 263 of the Act as applicable prior to the introduction of Explanation 2 to Section

263 of the Act. However, as regards directions issued by the PCIT to disallow interest are concerned, we find merit in the contentions advanced in behalf of the Appellant that quantum of disallowance cannot be made based upon the closing balance of the partner current account. In our view, the amount of disallowance has to be determined keeping in view the interest cost incurred by the Appellant on the interest bearing funds utilized for granting interest free funds to the partner (i.e. M/s. Sanghvi Premises Private Limited). Thus, to this extent we modify the directions issued by the Ld. PCIT and direct the Assessing Officer to decide the issue of disallowance of interest expenses under Section 36(1)(iii) of the Act afresh while framing the assessment pursuant to the order, dated 30/03/2023, passed by the Ld. PCIT under Section 263 of the Act. The Appellant would be at liberty to place before the Assessing Officer such documents, details, fund flow statements and interest computation statement as the Appellant may deem fit to support his case. In terms of the aforesaid, Ground No. 1 & 2 raised by the Appellant is dismissed while Ground No. 3 is treated as partly allowed for statistical purposes.

9. In result, in terms of paragraph 8 above, the present appeal preferred by the Assessee is treated as partly allowed for statistical purposes.

Order pronounced on 09.10.2024.

**Sd/-**  
**(Ms Padmavathy S)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated :09.10.2024

**आदेश की प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai