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**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad**

**BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

□.□□□.□□ /ITA No.403/Hyd/2024

(□□□□□□□□ □□□□/Assessment Year:2018-19)

SLV Royal Estate, Nellore. PAN:ADIFS5011N	Vs.	Income Tax Officer, Ward-1, Nellore.
(Appellant)		(Respondent)
□□□□□□□□□□ □□□□□□/Assessee by:	Shri GVN Hari, Advocate	
□□□□□□ □□□□□□/Revenue by::	Shri P. Dhivahar, CIT-DR	
□□□□□□ □□ □□□□□□/Date of hearing:	14/10/2024	
□□□□□□ □□ □□□□□□/ Pronouncement:	21/10/2024	

□□□□/ORDER

PER MADHUSUDAN SAWDIA, A.M. :

This appeal is filed by SLV Royal Estate, Nellore (“the assessee”), feeling aggrieved by the order passed by the Learned Principal Commissioner of Income Tax, Tirupati (“Ld. PCIT”), dated 30.03.2023 for the A.Y. 2018-19.

2. At the outset, it is seen that, there is a delay of 325 days in filing of this appeal for which the assessee has filed a condonation petition along with affidavit explaining the reasons for such delay.

2.1 The Learned Authorised Representative (“Ld. AR”) submitted that the assessee was under impression that the appeal was required to be filed after the consequential order passed by the Learned Assessing Officer (“Ld. AO”) u/s. 143(3) r.w.s. 263 of the Income Tax Act, 1961 (“the Act”). However, when the assessee consulted his counsel after the consequential order u/s.143(3), the assessee was advised that separate appeal with regard to order u/s.263 is also required to be filed. Therefore there occurs the delay in filing the appeal before the ITAT. In this regard, the Ld. AR brought to our notice the decision of Hon’ble jurisdictional High Court in the case of Thunuguntla Jagan Mohan Rao Vs. DCIT, Central Circle-2(1), Hyderabad in Appeal No.20 of 2020 dated 13/08/2020 in which under the similar circumstances, the Hon’ble jurisdictional High Court has condoned the delay. Relying on the decision of Hon’ble jurisdictional High Court (supra), we condone the delay in filing the appeal of the assessee and proceed to adjudicate the appeal on merits.

3. The brief facts of the case are that the assessee is a partnership firm engaged in the business of developing and subdividing real estate into plots, filed its return of income for the

A.Y. 2018-19 on 31.10.2018 by declaring total income of Rs.3,04,720/-. The case of the assessee was selected for scrutiny under CASS to verify introduction of large capital during the year under consideration. Accordingly notice u/s.143(2) was issued and the assessment was completed by Ld. AO u/s.143(3) r.w.s. 143(3A) & 143(3B) of the Act vide order dated 5.2.2021 accepting the returned income of the assessee. Later on the case of the assessee was taken up for revision u/s.263 of the Act by Ld.PCIT due to the reason as mentioned in para No.3 of his order dated 30.03.2023 which is to the following effect :

“ 3. Nevertheless, on examination of records, it is seen that the assessment was completed without carrying out necessary and relevant enquiries with regard to the following:-

(a) The Capital Account or the capital of the Partnership Firm stands at Rs. 12,64,31,931/-. The assessee submitted that sources for the Capital as follows:

(i) Partners together introduced land of site worth of Rs.5,06,08,495/- and

(ii) Land Development Expenses of Rs.8,03,24,128/- before the start of the Partnership Firm.

However, the basis for the value of land at Rs.5.06 Crores and the details of land development cost of Rs.8.03 Crores are not on record.

(b) Further the Partners have not offered capital gains u/s 45(3) of IT Act, 1961 consequent to the sale of immovable assets converted to stock in trade.”

4. Aggrieved with the order of Ld. PCIT, the assessee is in appeal before us. The Ld. AR submitted that the solitary ground in this appeal is against the validity of the invocation of section 263 of the Act by Ld. PCIT. The Ld. AR submitted that partnership firm was constituted w.e.f. 1.4.2017 with the object of dealing in real estate. Before the constitution of the firm, the partners had obtained some land and also had done some development activity on the said land. At the time of the constitution of the partnership firm, the partners brought into those developed lands as their capital contribution. The amount agreed to be payable to partners for the cost of the land was debited to the land account by giving simultaneous credit to the partners capital account. Likewise, the amount payable on account of development charges were debited to the land development expenses by giving corresponding credit to partners' capital account. The Ld. AR further submitted that the case of the assessee was selected for scrutiny with the sole purpose to verify introduction of the capital by the partners' and during the assessment proceedings the Ld. AO had already verified the same, which can be evidenced from the notice issued by Ld. AO

u/s.142(1) of the Act dated 24.1.2020. The relevant para of which is extracted as under :

“1. Capital Introduction : The details were called for in respect of source of funds for the capital introduced during the year with documentary evidences i.e. Copy of return of income of all partners along with its enclosures for A.Y. 2018-19, copy of bank account statement reflecting said transactions of partners, etc.

However, it is seen from the details furnished in this regard, that you have stated that you are enclosing copies of acknowledgements of return of income of all partners. However, same is also not furnished / uploaded.

Hence, you are hereby afforded another opportunity to furnish / upload all above stated documentary evidences to substantiate your claim of capital introduction.”

Therefore the Ld. AR submitted that the issue regarding verification of introduction of land and development expenditure had been already verified by the Ld. AO. Therefore, the invocation of section 263 of the Act by the Ld. PCIT on the same ground is not as per law. The Ld. AR further submitted that as per section 45(3) of the Act, the amount recorded in the books of the firm is treated as full value of the consideration received in the hands of the partners and therefore there cannot be any dispute or deviation as far as the amount recorded in the books of the firm in lieu of the introduction of land and development expenses are concerned. The Ld. AR submitted that there cannot be any

escapement of income in the hands of the partnership firm as far as this issue is concerned. Therefore the Ld. AR submitted that as far as the order of the Ld. AO is concerned, the order is neither erroneous nor prejudicial to the interest of revenue. Therefore the invocation section 263 by the Ld. PCIT is bad in law.

5. As far as the objection of the Ld. PCIT regarding non-offering of capital gain by the partner is concerned, the Ld. AR submitted that, if any capital gain has not been offered by the partner in their respective return of income then there will be escapement of income in the hands of the partner and not in the hand of the partnership firm. Therefore, if partners have not shown the capital gain in their return of income, it cannot be considered that the order of the Ld. AO in the case of the assessee is erroneous or prejudicial to the interest of revenue. Therefore under such circumstances also the Ld. PCIT cannot invoke section 263 for the purpose of revision. The Ld. AR further submitted that, the notices u/s.148 has been issued in the case of four partners out of total five partners of the assessee. He also submitted that, as the cases of the partners has been taken for the reassessment proceedings u/s.147 of the Act, there cannot be any addition in the hands of the assessee and

therefore the invocation of section 263 of the Act in the hands of the assessee is bad in law.

6. Per contra, the Ld. DR relied on the orders of Ld. PCIT and reiterated that the invocation of section 263 in the case of the assessee is as per law.

7. We have heard the rival contention and gone through the records in the light of the submissions made on either side. So far as the findings of the Ld. PCIT with regard to not carrying out of necessary and relevant enquiries with regard to the introduction of capital by partners is concerned, we have gone through the notice issued u/s. 142(1) of the Act dated 24.12.2020 by Ld. AO (page No.46 & 47 of paper book) and found that the Ld. AO has verified the introduction of capital by partners. Otherwise also as per the provisions of section 45(3) of the Act, the amount recorded in the books of the firm is to be treated as full value of the consideration received in the hands of the partners and therefore there cannot be any dispute or deviation as far as the amount recorded in the books of the firm in lieu of the introduction of land and development expenses are concerned. Therefore we did not find any merits on this objection

of the Ld. PCIT. So far as this objection of the Ld. PCIT is concerned the order of Ld. AO is neither erroneous nor prejudicial to the interest of revenue. Therefore in our view the invocation section 263 by the Ld. PCIT is bad in law.

8. So far as the objection of Ld. PCIT with regard to non-offering of capital gain by the partner in their income tax return is concerned, if any capital gain has not been offered by the partner in their respective return of income, then there will be escapement of income in the hands of the partner and not in the hand of the assessee. Therefore, if partners have not shown the capital gain in their return of income, it cannot be considered that the order of the Ld. AO is erroneous or prejudicial to the interest of revenue. Therefore, in our view under such circumstances also the Ld. PCIT cannot invoke section 263 for the purpose of revision. Further, as submitted by the Ld. AR that the notice u/s.148 has been issued in the case of four partners out of total five partners of the assessee. Therefore in our view once the case of the partners has been taken for the reassessment proceedings u/s.147 of the Act, there cannot be any addition in the hands of the assessee and therefore the

invocation of section 263 of the Act in the hands of the partnership firm is bad in law on this count also.

9. In view of our observation under para No.8 & 9 above, we hold that the invocation of section 263 by Ld. PCIT is bad in law. Therefore we quash the order of Ld. PCIT passed u/s.263 of the Act.

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

Order pronounced in the open Court on 21st Oct., 2024.

Sd/-

(K. NARAIMHA CHARY)
JUDICIAL MEMBER

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Hyderabad.

Dated: 21.10.2024.

* Reddy gp

Copy of the Order forwarded to :

1.	SLV Royal Estate, S.no.54, Gudipallipadu, Near Narukuru Centre, Nellore-524002 A.P.
2.	The ITO, Ward-1, Nellore.
3.	Pr.CIT, Tirupathi.
4.	DR, ITAT, Hyderabad.
5.	Guard file.

BY ORDER,