

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'B' Bench, Hyderabad**

**Before Shri Manjunatha, G. Accountant Member**  
**and**  
**Shri K. Narasimha Chary, Judicial Member**

आ.अपी.सं / **ITA No.494/Hyd/2019**  
(निर्धारण वर्ष / Assessment Year: 2014-15)

Bhagwanram Chimnaramji Prajapat Hyderabad [PAN :AKBPP6841R]	Vs.	Income Tax Officer Ward-11(3) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri P.Murali Mohan Rao, AR	
राजस्व द्वारा / Revenue by::	Shri K.Meghnath Chowhan, CIT, DR	
सुनवाई की तारीख / Date of hearing:	14/11/2024	
घोषणा की तारीख / Date of Pronouncement:	20/11/2024	

**आदेश / ORDER**

**PER. MANJUNATHA G., A.M:**

This appeal filed by the assessee is directed against the order passed by the Principal Commissioner of Income Tax (Ld.PCIT)-5, Hyderabad u/s 263 of the Income tax Act, 1961 ("the Act") for the A.Y.2014-15 on the following grounds :

- 1. The order u/s 263 of the Income Of the Income tax Act, 1961 passed by the Ld.Pr.CIT is bad both in law and on facts.*
- 2. The Ld.Pr.CIT erred in initiating proceedings u/s 263 of the Act by holding that the assessment order passed by the AO u/s 143(3) dated 22.07.2016 is erroneous and*

*prejudicial to the interest of revenue, which makes the order u/s 263 as 'void abinitio'.*

3. *The Ld.Pr.CIT erred in passing the order u/s 263 of the Act directing the AO to pass the assessment order afresh without considering the facts and circumstances submitted by the assessee.*
4. *The Ld.Pr.CIT ought to have appreciated the fact that the assessee's case has been selected for limited scrutiny under CASS and the AO was satisfied by the explanations provided by assessee, as such the assessment was completed u/s 143(3) of the IT Act, 1961 without making any disallowances / additions.*
5. *The Ld.Pr.CIT ought to have appreciated the fact that on the request of Assessing Officer, the assessee has submitted the confirmation letters from creditors which forms the basic evidence.*
6. *The Ld.Pr.CIT ought to have appreciated that the assessee has furnished the ledger copies of sundry creditors which was accepted as a result order passed by the Pr.CIT u/s 263 of the Income Of the Income tax Act, 1961 ("the Act") 1961 is invalid.*
7. *The Ld.Pr.CIT ought to have appreciated that no higher forum can create satisfaction on AO to impose on an assessee even when he is satisfied and came to conclusion that it is not a fit case for disallowance on the ground of large number of creditors.*
8. *The appellant may add, alter or modify any other points to the grounds of appeal at any time before or at the time of hearing of the appeal.*

2. Brief facts of the case are that the assessee, an individual filed his return of income for the A.Y.2014-15 on 26/11/2014, admitting income of Rs.4,05,550/-. The case was selected for scrutiny under CASS to verify large amount of sundry creditors. During the course of assessment proceedings u/s 143(3) of the Act, the Assessing Officer (Ld.AO) called upon the assessee to produce confirmation letters from sundry creditors, for which the assessee has produced confirmation letters along with ledger

extract. The Ld.AO after verification of details filed by the assessee, completed the assessment accepting the income declared by the assessee.

3. The case has been subsequently taken up for revision proceedings by the Ld.PCIT and show cause notice u/s 263 of the Act dated 08/15/2017 was issued and served on the assessee and called upon to explain as to why the assessment order passed by the Ld.AO shall not be revised. In the said show cause notice, the Ld.PCIT observed that the assessment order passed by the Ld.AO is erroneous insofar as it is prejudicial to the Revenue, because the Ld.AO has failed to verify the issue of sundry creditors, although there are various anomalies in sundry creditors shown in the balance sheet which rendered the assessment order erroneous insofar as it is prejudicial to the interest of the Revenue. In response, the assessee vide letter dated 12/11/2018 and 16/11/2018 submitted that the sole purpose of the case selected for scrutiny is to verify large amount of sundry creditors and during the course of assessment proceedings, the assessee has filed confirmation letters from creditors as requested by the Ld.AO and after verification of relevant details, the Ld.AO has taken a plausible view and completed the assessment, therefore, it cannot be said the assessment order passed by the Ld.AO is erroneous insofar as it is prejudicial to the interest of the Revenue.

4. The Ld.PCIT, after considering the submissions of the assessee and also taking note of certain judicial precedents, observed that the assessment order passed by the Ld.AO is erroneous insofar as it is prejudicial to the interest of the Revenue,

insofar of the issue of sundry creditors shown in the books of accounts, which is evident from the facts on record, where the Ld.AO has simply accepted the confirmation letters furnished by the assessee, even though the said confirmation letters are not supported by evidences like, transport bill, delivery challans, copy of invoices raised, VAT payment proof etc. The Ld.PCIT further noted that in few cases the appellant has paid cash in excess of Rs.20,000/- to sundry creditors in contravention of provisions of section 40A(3A) of the Act. The Ld.AO without considering relevant facts, simply completed the assessment, which renders the assessment order erroneous insofar as it is prejudicial to the interest of the Revenue. Therefore, set aside the assessment order passed by the Ld.AO u/s 143(3) of the Act dated 22/07/2016 and directed the Ld.AO to redo the assessment as per discussion, after verifying the genuineness of sundry creditors backed by evidences, keeping in view all the provisions of section 41(1) and 40A(3A) of the Act.

5. Aggrieved by the order of the Ld.PCIT, assessee is in appeal before us.

6. Ld.Counsel for the assessee submitted that the Ld.PCIT erred in initiating proceedings u/s 263 of the Act by holding that the assessment order passed by the Ld.AO u/s 143(3) of the Act is erroneous and prejudicial to the interest of the Revenue, without appreciating the fact that the sole purpose of taking up the case for assessment is to verify the large amount of sundry creditors and the same has been thoroughly examined by the Ld.AO in light of confirmation letters filed by the assessee. Ld.Counsel for the

assessee further submitted that the Ld.PCIT without making out a case of erroneous order passed by the Ld.AO, which caused prejudice to the interest of the Revenue, simply set aside the order for the purpose of further verification of sundry creditors, even though as per Explanation to section 263 of the Act, there is no power to the PCIT to set aside the order on the ground of inadequate enquiry or insufficient enquiry. In this regard, he relied upon the decision of Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd Vs. Commissioner of Income Tax [2000] 109 Taxman 66 (SC) and the decision of Hon'ble High Court of Bombay in the case of Commissioner of Income Tax Vs.Development Credit Bank Ltd. [2010] 323 ITR 206 (Bombay).

7. The Ld.DR on the other hand, supporting the order of the Ld.PCIT submitted that the assessment order passed by the Ld.AO is erroneous insofar as prejudicial to the interest of the Revenue, which is evident from the facts analysed by the Ld.PCIT in the order passed u/s 263 of the Act, where, the Ld.PCIT brought out anomalies in sundry creditors shown in the books of accounts. Despite so many suspicious features in sundry creditors shown in the books of accounts, the Ld.AO simply completed the assessment by accepting the explanation of the assessee in light of confirmation letters filed by various sundry creditors, even though the said confirmation letters are not backed by further evidences. The Ld.PCIT after considering relevant facts has rightly set aside the assessment order passed by the Ld.AO u/s 143(3) of the Act by exercising powers u/s 263 of the Act and thus, the order of the Ld.PCIT should be upheld.

8. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. We have also carefully considered the relevant reasons given by the Ld.PCIT to set aside the order passed by the Ld.AO u/s 143(3) dated 22/07/2016 in terms of provisions of section 263 of the Act. The sole basis for the scrutiny assessment in the present case is to verify large amount of sundry creditors. During the course of assessment proceedings, the Ld.AO called upon the assessee to submit necessary evidences including confirmations from the parties to prove the genuineness of sundry creditors. In response, the assessee has filed confirmation letters from all parties. The Ld.AO after considering relevant confirmation letters filed by the assessee has accepted the explanation with regard to genuineness of sundry creditors and completed the assessment u/s 143(3) of the Act. If we go by the reasons mentioned by the Ld.PCIT to set aside the assessment order u/s 263 of the Act in light of the material available on record, we find that the assessee has filed all evidences in respect of sundry creditors in response to a specific notice from the Ld.AO u/s 142(1) dated 09/05/2016 and 10/06/2016 and proved the creditors with relevant evidences. Therefore, the Ld.PCIT having noticed the fact that the sole basis for the Ld.AO to take up the case for scrutiny to verify sundry creditors and further the Ld.AO has carried out relevant enquiries in light of confirmation letters filed by the assessee, in our considered view, the Ld.PCIT ought not to have invoked his jurisdiction u/s 263 of the Act to set aside the assessment order on the ground that the order passed by the Ld.AO is erroneous and prejudicial to the interest of the Revenue. A reading of the order passed by the Ld.PCIT would show the main objection which

the revisional authority expressed against the order of the Ld.AO was the alleged failure of the Ld.AO to examine the genuineness of the sundry creditors claimed by the assessee. From the material on record, it was evident that the assessee in response to a specific query from the Ld.AO supplied the details of sundry creditors and the explanation of the assessee in that connection was accepted by the Ld.AO and came to a conclusion that the sundry creditors shown in the books of accounts is genuine which are supported by necessary evidences. Therefore, in our considered view, there was no basis or justification for the Ld.PCIT to invoke the provisions of section 263 of the Act, unless he makes out a case that the assessment order passed by the Ld.AO is erroneous insofar as it is prejudicial to the interest of the Revenue.

9. In the present case, the Ld.PCIT invoked jurisdiction u/s 263 of the Act, without pointing out any defects in the assessment order passed by the Ld.AO and further how sundry creditors shown in the books of accounts is not genuine. Rather, the Ld.PCIT simply discussed the issue in light of purchases and closing sundry creditor balance shown for the relevant assessment year without considering the opening balance of sundry creditors brought forward from earlier year. From the discussion of the Ld.PCIT, we find that the Ld.PCIT assumed jurisdiction without pointing out any error in the order passed by the Ld.AO and to make further enquiries on the issue of sundry creditors. In our considered view, the provision of section 263 cannot be invoked, unless the order passed by the Ld.AO is erroneous and prejudicial to the interest of the Revenue. Therefore, we are of the considered view that the order passed by the Ld.PCIT in terms of 263 of the

Act and setting aside the assessment order passed by the Ld.AO u/s 143(3) of the Act dated 22/07/2016 is incorrect and cannot be upheld.

10. The assessee has relied upon the decision of Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd Vs. Commissioner of Income Tax (supra). The Hon'ble Supreme Court in light of provisions of 263 of the Act held as under :

*“A bare reading of section 263(1) makes it clear that the pre-requisite to exercise the jurisdiction by the Commissioner suo motu under it, is that the order of the ITO is erroneous insofar as it is prejudicial to the interests of the revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the revenue. If one of them is absent – if the order of the ITO is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue- recourse cannot be had to section 263(1).*

*There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer. It is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind.*

*The phrase ‘prejudicial to the interests of the revenue’ is not an expression of art and is not defined in the Act. Understood in its ordinary meaning, it is of wide import and is not confined to loss of tax. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the revenue. If due to an erroneous order of the ITO, the revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of revenue.*

*The phrase ‘prejudicial to the interests of the revenue’ has to be read in conjunction with an erroneous order passed by*

*the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an ITO adopts one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law. It has been held by the Supreme Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue.*

*In the instant case, the Commissioner noted that the ITO passed the order of nil assessment without application of mind. Indeed, the High Court recorded the finding that the ITO failed to apply his mind to the case in all perspective and the order passed by him was erroneous. It appeared that the resolution passed by the board of the appellant-company was not placed before the Assessing Officer. Thus, there was no material to support the claim of the appellant that the said amount represented compensation for loss of agricultural income. He accepted the entry in the statement of the account filed by the appellant in the absence of any supporting material and without making any inquiry. On these facts the conclusion that the order of the ITO was erroneous was irresistible. Therefore, the High Court had rightly held that the exercise of the jurisdiction by the Commissioner under section 263(1) was justified.*

*It was not shown at any stage of the proceedings that the amount in question was fixed or quantified as loss of agricultural income and admittedly, it was not so found by the Tribunal. The further question whether it would be agricultural income within the meaning of section 2(1A) did not arise for consideration. It was evident from the order of the High Court that the findings recorded by the Tribunal that the appellant stopped agricultural operation in November 1982 and the receipt under consideration did not relate to any agricultural operation carried on by the appellant, were not questioned before it. Though the High Court was not correct in holding that the amount was paid for breach of contract as indeed it was paid in modification / relaxation of the terms of the contract, it was to be held*

*that the High Court was justified in concluding that the said amount was a taxable receipt under the head 'Income from other sources.'*

11. The assessee had also relied upon the decision of Hon'ble High Court of Bombay in the case of CIT Vs. Development Credit Bank Ltd. (supra). Hon'ble High Court of Bombay has considered identical issue in light of revisionary powers of the Commissioner u/s 263 of the Act and held as under :

*“A reading of the order passed by the Commissioner would show that the principal objection which the revisional authority expressed against the order of the Assessing Officer was an alleged failure of the Assessing Officer to examine: firstly, whether the capital gain had been earned by the assessee on transactions relating to investments 'held to maturity'; and secondly, whether the depreciation was claimed on investments which were held as stock-in-trade. From the material on record, it was evident that the assessee, in response to a specific query of the Assessing Officer, supplied details of the long-term investments held for a period in excess of one year which the assessee treated as investments held to maturity. The profit on those investments was computed at Rs.1.26 crores. Insofar as the aspect of depreciation on investments held as stock-in-trade was concerned, the assessee had similarly supplied details of the current investments in response to the query of the Assessing Officer. The explanation of the assessee in that connection was accepted and the Assessing Officer came to the conclusion that depreciation had been claimed towards investments held and classified as stock-in-trade. There was no basis or justification for the Commissioner to invoke the provisions of section 263. In the order of the assessment, the Assessing Officer had after making an enquiry and eliciting a response from the assessee, came to the conclusion that the assessee was entitled to depreciation on the value of securities held in the trading account. In the absence of any tangible material to the contrary, the Commissioner could not have treated that finding to be erroneous or to be prejudicial to the interest of the revenue. The observation of the Commissioner that the Assessing Officer had arrived at his findings without conducting an enquiry was erroneous, since an enquiry was specifically held with reference to which a*

*disclosure of details was called for by the Assessing Officer and made by the assessee.*

*In those circumstances, the Tribunal was justified in coming to the conclusion that recourse to the powers under section 263 was not warranted in the facts and circumstances of the case.[Para 8]”*

12. In view of this matter, considering the facts of the case and also by relying on the ratios of case laws discussed herein above, we are of the considered view that the assessment order passed by the Ld.AO u/s 143(3) of the Act dated 22/07/2016 is neither erroneous nor prejudicial to the interest of the Revenue. Ld.PCIT without appreciating relevant facts, set aside the assessment order passed by the Ld.AO by exercising powers u/s 263 of the Act. Therefore, we set aside the order passed by the Ld.PCIT under section 263 of the Act and restore the assessment order passed by the Ld.AO u/s 143(3) of the Act dated 22/07/2016.

13. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 20<sup>th</sup> November, 2024.

Sd/-

Sd/-

<b>(K. NARASIMHA CHARY) JUDICIAL MEMBER</b>	<b>(MANJUNATHA, G.) ACCOUNTANT MEMBER</b>
---	---

Hyderabad, dated 20<sup>th</sup> November, 2024

**L.Rama, SPS**

Copy to:

S.No	Addresses
1	Shri Bhagwanram Chimnaramji Prajapat, C/o P.Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad
2	The ITO, Ward-11(3), Hyderabad
3	Pr. CIT – Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*