

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

**BEFORE SHRI.B.R. BASKARAN, ACCOUNTANT MEMBER AND
ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A No.4864/Mum/2024
(Assessment Year:2020-21)**

Incorp Advisory Services Private Limited, 2 nd Floor, Gita Building, Near HP Petrol Pump, Sion Circle, Sion (East)-400 022 PAN: AAFCI3309E	vs	Pr.Commissioner of Income Tax-6, Mumbai, Room No.501, 5 th Floor, Aaykar Bhavan, M.K. Road, Mumbai-400 020
APPLICANT		RESPONDENT

Assessee by : ShriMargav Shukla & Shri Shubham
Shah
Respondent by : Shri R.A. Dhyani, CIT DR
Date of hearing : 05/12/2024
Date of pronouncement : 09/12/2024

ORDER

PER ANIKESH BANERJEE, JM:

The Instant appeal of the assessee was filed against the order of the Learned Principal Commissioner of Income-tax, Mumbai-6, (in short, the Ld. PCIT) passed under section 263 of the Income-tax Act, 1961 (in short, 'the Act') for A.Y. 2020-21, date of order 02/08/2024. The impugned order was emanated from the

order of the Learned Assessment Unit, Income-tax Department, passed under section 143(3) read with section 144B of the Act, date of order 06/09/2022.

2. The assessee has taken the following grounds of appeal:-

“1. On given facts, circumstances and judicial pronouncements Ld. Pr. CIT-6 erred in concluding that the assessment order passed by the Ld. AO is erroneous and pre-judicial to the interest of the Revenue. Therefore, the order u/s 263 is liable to be quashed.

2 On given facts, circumstances and judicial pronouncements Ld. Pr. CIT-6 erred in concluding that the assessment order was passed without making specific inquiries thereby setting aside the assessment order and directing the Assessing Officer to reassess the income of the assessee. Such order u/s 263 is erroneous in facts and bad in law and liable to be quashed.

3. Without prejudice to the above, on given facts, circumstances and judicial pronouncements Ld. Pr. CIT-6 erred in invoking the jurisdiction u/s 263 for an issue which was not covered within the scope for which case was selected for Scrutiny. Such order u/s 263 is bad in law and liable to be quashed.

4. On given facts, circumstances and judicial pronouncements Ld. Pr. CIT-6 error in concluding that the intangible assets were individually valued in a transaction of slump sale vide Business Transfer Agreement, thereby concluding that the assessee is ineligible to claim depreciation on Intangible Assets acquired and directing the Assessing Officer to reassess the income of the assessee. Such order u/s 263 is erroneous in facts and hence, it is liable to be quashed.

5. On given facts, circumstances and judicial pronouncements Hon. Pr. CIT-6 erred in passing the order u/s 263 without giving any specific direction to the Assessing Officer as to whether the depreciation claimed by the assessee on the Intangible Assets acquired is to be disallowed or not. Such order without any specific direction is bad in law and liable to be quashed.”

6. The appellant craves leave to add, amend, alter or delete all or any of the previously mentioned grounds of appeal.”

3. The brief facts of the case are that the assessment in this case was completed under Section 143(3) read with Section 144B of the Act. The case was selected under the Computer-Assisted Scrutiny Selection (CASS) system to verify substantial additions or the introduction of intangible assets during the relevant financial year, as disclosed in the Income Tax Return filed by the assessee. Specifically, it was to be examined whether the assessee had reported the actual value of the intangible assets or inflated their value to claim higher depreciation. Verification of the source of investment in these intangible assets was also mandated. The assessee acquired three units through a slump sale during the impugned assessment year. Upon examination of the computation of income and the Tax Audit Report (TAR), it was noted that the assessee had claimed an excess depreciation of Rs. 7,67,69,973 on intangible assets. Despite this, the assessment order ultimately accepted the claimed depreciation. Subsequently, the Ld. PCIT, upon reviewing the assessment records, found that the claim of excess depreciation amounting to Rs. 7,67,69,973 had not been duly verified by the Ld. AO during the limited scrutiny assessment. The Ld. PCIT observed that while the Ld. AO had examined the issue of "investment in intangible assets" by requesting details regarding their acquisition and valuation leading to a detailed submission from the assessee. There was no specific query raised regarding the excessive depreciation claimed on these assets. Invoking the provisions of Explanation 2(a) to Section 263 of the Act, the Ld. PCIT deemed the assessment order as erroneous and prejudicial to the interests of the revenue. Consequently, the assessment order was set aside under Section 263 of the Act. Aggrieved by the revisional order passed under Section 263, the assessee has filed the present appeal before us.

4. The Ld.AR in argument stated that the appeal is related to two issues. First, whether the depreciation on the intangible assets i.e. goodwill is an allowable expense or not by provisions of sub section 3(b) to section 32(1) of the Act and the second issue related to whether the Ld.PCIT has assumed the jurisdiction related to setting aside the assessment order under the limited scrutiny where the Ld.AO had not directed to verify the issue during the limited scrutiny matter. In argument, it is placed that the Ld.AO had properly completed the assessment after verification as directed in the limited scrutiny and after taking the entire verification of investment in intangible asset, the assessment order was passed with no demand. The reliance was placed in the order of Hon'ble Supreme Court in the case of **CIT, Kolkata vs Smifs Securities Limited (2012) 24 taxman.com 222 (SC)** where the goodwill is treated as an asset and under Explanation 3(b) to section 32(1), the depreciation on the goodwill is eligible expense. In this case, the Ld.PCIT has taken the issue which is already covered by the order of the Hon'ble Apex Court.

In further argument, the Ld.AR argued on the second issue related to the verification was conducted as per the reasons recorded in limited scrutiny. There was no direction for verification of impugned depreciation. Whether the Id. PCIT has jurisdiction beyond the observation drawn in limited scrutiny assessment. He respectfully relied on the order of the **co-ordinate Bench-B of ITAT, Kolkata** in the case of **Mind Sports League Pvt Ltd vs PCIT (2023) 157 taxmann.com 815(Kol Trib)**. The relevant paragraphs 6.1 & 6.2 are reproduced as below: -

"6.1. Before delving on the issue, we take note of the CBDT Instruction referred by the Ld. Counsel. Combined reading of instructions issued by CBDT and

particularly, the CBDT Instruction NO.20/2015 dated 29-12- 2015, sub-clause (b) of Clause (3) categorically states that questionnaire issued u's. 142(1) of the Act, in a limited scrutiny case, shall remain confine only to the specific reasons/issues for which case has been picked up for scrutiny. Further, the scope of enquiry shall be restricted to the limited scrutiny issues. Sub clause (d) of Clause-3 further reads the expansion of the scope of limited scrutiny and there are certain conditionality. The conditionality are that during the course of assessment proceedings, in a limited scrutiny case, if it comes to notice to the AO that there is a potential escapement of income exceeding Rs.5 lakhs for normal CIT charge and for metro CIT charge, monetary limit shall be Rs.10 lakhs requiring substantial verification on any other issue, then the case may be taken up for complete scrutiny with the prior approval of the PCIT/CCIT concerned. The another condition put forth by the CBDT is that such approval thereof accorded by the PCIT in writing after being satisfied about imports of the issues necessitating complete scrutiny in that particular case. Further condition that such cases shall be monitored by the Range Head and procedure indicated in Sub- clauses (a) (b) (c) above no longer be remain pending in such cases, which means and reading together clause (b) and (d) itself clarified that in case, the limited scrutiny cases are picked up for scrutiny assessment, the AO shall remain confine to the only reasons/issues for which case has been picked up for scrutiny and the scope of enquiry be restricted to the limited scrutiny issues only. The expansion of scope of scrutiny from limited scrutiny to complete scrutiny is that during the course of assessment proceedings, which comes to the notice of the AO that the potential escapement of income exceeding Rs.5 lakhs for normal CIT charge and exceeding Rs.10 lakhs for monetary limits for metro CIT charge. The case can be taken up for complete scrutiny with the approval of the PCIT/CCIT concerned, which means that the AO is empowered to enlarge the scope of

limited scrutiny case to the complete scrutiny assessment in view of the above condition only and that also through quasi-judicial powers.

6.2. In view of the above discussion, considering the CBDT Instruction and judicial precedents stated above and the uncontroverted facts relating to limited scrutiny assessment on the sole issue of business expenses, we are of the view that once the AO cannot examine any other issue except the issue as selected for limited scrutiny assessment, the Ld. Pr CIT can examine only that issue which was before the Ld. AO during the course of scrutiny assessment and not any other issue which has not been subject matter of the assessment in a limited scrutiny assessment. Hence, we quash the revisionary order and allow the appeal of the assessee.”

5. We find that the Ld.AO has verified the investments as per the reason recorded during initiation of the scrutiny assessment in CASS. He framed the assessment under the limited boundary. It is a fact that there is no direction related the verification of the impugned depreciation claimed under section 32 of the Act. The relevant paragraph-2 of the impugned assessment order, related page 3 is reproduced as below: -

“2. Addition of intangible assets: The assessee vide their submissions explained the intangible assets acquired during the financial year 2019-20, in which the company has been incorporated. Intangible assets include assets acquired as a part of business acquisition process. Incidental costs incurred by the Company in relation to intangible assets like professional fees paid to obtain valuation reports, stamp duty for business transfer agreements/consultancy agreements/share subscription agreement/share certificates are also capitalized by the Company. The required supporting evidences were also furnished by the assessee, the same were examined and found to be in order. Hence no variation

on this ground is proposed. Accordingly, assessment is concluded u/s 143(3) r.w.s 144B of Income Tax Act, 1961.”

6. The Ld.DR vehemently argued and fully relied on the revisional order of the Ld.PCIT but was unable to rebut the submissions of the Ld.AR with any contrary judgement.

7. We have heard the submissions of both parties and carefully considered the documents available on record. We find that the assessee complied with the scrutiny assessment proceedings conducted by the Ld. AO, furnishing all supporting documents related to investments in asset additions. The value of the intangible assets and the corresponding investments was duly verified during the assessment proceedings and accepted within the scope of the limited scrutiny framework. Following a comprehensive verification process, the Ld. AO did not find it necessary to expand the scope of the scrutiny assessment from limited to full-fledged scrutiny.

It is well established that the jurisdiction of the Ld. PCIT is also confined to the boundaries set by the assessment order. The co-ordinate bench of the ITAT, Kolkata Bench-B, in the case of **Mind Sports League Pvt Ltd** (supra), held that the Ld. PCIT cannot invoke Section 263 to re-examine issues already considered by the Ld. AO during the course of scrutiny assessment. No new issues can be introduced for examination under Section 263. This position was reaffirmed by the Hon'ble High Court of Calcutta in **PCIT vs. Naga Dhunseri Group Ltd[2023] 146 taxmann.com 424 (Calcutta)**, which reiterated that the powers under Section 263 cannot be used to revisit matters which was not the issue under limited scrutiny assessment.

Furthermore, we note that the issue addressed by the Ld. PCIT pertaining to depreciation on intangible assets is squarely covered by the decision of the Hon'ble **Supreme Court** in **Smif Securities Limited**(supra), where the Hon'ble Apex Court upheld the eligibility of the claimed depreciation. The Ld. AR also placed reliance on the decision of the **ITAT, Mumbai Bench-E, in Metallurgical Services Private Limited vs. Principal Commissioner of Income-tax-6, ITA No. 835/Mum/2021**, pronouncement dated **13/09/2022**. In that case, the Ld. PCIT had invoked Section 263 on the grounds of inadequate verification of depreciation claims related to intangible assets, but the coordinate Bench relied on the order of the Hon'ble Supreme Court and set aside the revisional order.

In the present case, the Ld. DR could not provide any contrary precedent or substantive argument against the submissions of the Ld. AR. In our considered view, for a revision under Section 263 to stand, the Ld. PCIT must satisfy two conditions: (i) the assessment order sought to be revised is erroneous, and (ii) it is prejudicial to the interest of the Revenue. In the impugned revisional order, neither of these conditions has been fulfilled.

Accordingly, the revisional order passed under Section 263 is set aside and quashed.

8. In the result, the appeal of the assessee bearing **ITA No.4864/Mum/2024** is allowed.

Order pronounced in the open court on 09th day of December, 2024.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 09/12/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

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BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**