

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

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER

&

SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.2277/MUM/2021

(A.Y. 2015-16)

Maharashtra State Electricity Distribution Co. Ltd., Plot No. G-9, Prakashgad, Anant Kanekar Marg, Bandra (East) Mumbai 400051, Maharashtra	v/s. बनाम	The Deputy Commissioner of Income Tax, Circle 14(1)(1)- Mumbai, Aaykar Bhavan, Maharishi Karve Road, Mumbai - 400020, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAECM2933K		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Ketan Ved
Respondent by :	Ms. Sanyogita Nagpal (CIT - DR)

Date of Hearing	06.01.2025
Date of Pronouncement	07.01.2025

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal emanating from the Revision order u/s 263 of Income Tax Act, 1961 is filed by the assessee against the order passed by the Pr. Commissioner of Income-tax, [hereinafter referred to as PCIT] dated 30.03.2021 for the Assessment Year [A.Y.] 2015-16.



2. The grounds of appeal are as under:

1:0 **Re.: Violation of principles of natural justice:**

1:1 *The Principal Commissioner of Income-tax has erred in passing the impugned Order without serving the relevant Notice u/s. 263 of the Income-tax Act, 1961 on the Appellant and in thereby not giving the Appellant an opportunity of being heard which is against the accepted principles of natural justice and in complete contravention to the provisions of sub-section (1) of section 263 of the Income- tax Act, 1961.*

1:2 *The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the said Order has been passed without serving the Notice to the Appellant, thereby giving it no opportunity of being heard and thus the impugned Order passed by the Principal Commissioner of Income-tax is bad in law and hence should be struck down as such.*

2:0 Re.:Validity of Order u/s. 263:

2:1 *The Principal Commissioner of Income-tax has erred in passing an Order u/s. 263 of the Income-tax Act, 1961.*

2:2 *The Principal Commissioner of Income-tax failed to appreciate that the conditions precedent to passing an Order under the said section were not satisfied and hence the Order u/s. 263 of the Income-tax Act, 1961 is ultra vires and void.*

2:3 *The Principal Commissioner of Income-tax has erred in holding that the Assessment Order dated 20 December 2017 passed by the Assessing Officer was erroneous and prejudicial to the interests of revenue and in passing an Order u/s. 263 of the Income-tax Act in respect of the same.*

2:4 *The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the assessment framed by the Assessing Officer was after due consideration of facts and law by the Assessing Officer and hence the setting aside of the same by the Principal Commissioner of Income-tax u/s. 263 of the Income-tax Act, 1961 is erroneous, in excess of jurisdiction and bad in law.*

2:5 *The Appellant submits that the impugned Order u/s. 263 of the Principal Commissioner of Income-tax be struck down.*

Without prejudice to the above:

2:6 *The Appellant submits that the **revisions vis-à-vis the below mentioned additions/disallowances do not pertain to the Appellant and pertains to the sister concern viz., Maharashtra***



State Electricity Transmission Co. Ltd.' and hence even on this count the Order u/s. 263 of the Income-tax Act, 1961 is erroneous, and bad in law since it has been passed without any application of mind whatsoever:

- Disallowance of Rs. 23,72,48,000/- being prior period expenditure;
(para 2.4 of the impugned order)
- Addition of Rs. 1,06,00,000/- on account of understatement of income;
(para 2.5(a) of the impugned order)
- Addition of Rs. 12,09,00,000/- on account of overstatement of non-current liabilities;
(para 2.5(b) of the impugned order)
- Addition of Rs. 1,70,00,000/- on account of understatement of assets;
(para 2.5(c) of the impugned order)

3. In the course of hearing before us, the ld. Authorised Representative of the assessee has drawn attention to **para 3 on page-3** of the revision order stating that the ld.PCT has referred to **two notices dated 16.3.2021 and 22.3.2021** with the observation that there was no compliance by the assessee. Accordingly, he proceeded to pass the order cancelling the assessment order u/s 263 of the Act. **It is stated that none of these alleged notices were ever served on the assessee. Even the order u/s 263 was not received by the assessee and was suo moto downloaded only on 12.10.2021.** It is contented that no opportunity of hearing was allowed to the assessee in complete contravention to the provisions of section 263(1) of the Act. The order passed without serving notice on the assessee needs to



be quashed. It is further stated that even the additions and disallowances being the subject matter of revision order were pertaining to the sister concern as reproduced in the grounds of appeal.

4. The Id. Departmental Representative has placed reliance on the revision order while the learned Authorised Representative of the assessee has vehemently supported the grounds of appeal, claiming the order needs to be quashed both on merits and due to violation of principles of natural justice.

5. We have carefully perused the record, relevant orders and have also taken note of the rival arguments. It is prima facie case where the revision order by the Id. PCIT suffers from innumerable errors, omissions and incorrect application of law and also gross violation of rules of natural justice both on merits and in law. He did not allow the assessee adequate time for making its submissions. The Id.AR has drawn attention to **pages 329 and 330 of the Paper book** submitted claiming that the alleged show-cause notices issued by the PCIT were never available on Income Tax portal and even on date, they are available. Therefore, the said notices were never issued or served on the assessee. Hence, the basic principles of natural justice have been grossly violated making the order vitiated on this



count itself. The ld.CIT(DR) could not rebut the observation in any manner during the hearing of the case before us.

5.1 Moreover, even more glaring mistake committed by the ld.PCIT is taking into account consideration incorrect amounts in cancelling the assessment order u/s 263 of the Act as they do not pertain to the assessee itself as rightly pointed out by the learned AR of the assessee rather pertain to the sister concern. In the **grounds of appeal no.2.6** as also in course of hearing before us, the ld.AR has specifically demonstrated such blatant mistake on part of the ld.PCIT in no uncertain terms. It is submitted that the ld.PCIT has incorrectly adopted figures relating to the sister concern of the assessee i.e. **Maharashtra State Electricity Transmission Company Ltd(in short 'MSETCL')**.A copy of the 10th Annual report of the above named company for the FY 2014-15 has been placed on record during hearing which shows para wise comments of the Comptroller And Auditor General of India u/s 143(6)(b) of the Companies Act.,2013 on the Financial Statement of 'MSETCL for the year ending 31st March 2015 and also the parawise reply given by the company to CAG. The ld.AR has specifically pointed out the figures of **Lease rent of Rs 1.06 cr, Trade receivable of Rs 2,982.94 cr. as also Short Excess Provision for Depreciation for**



prior period of Rs 2,227.33 cr. pertain to this 'MSETCL while the Pr.CIT has adopted these figures to justify invoking the provisions of section 263 of the Act. The Id.CIT(DR) of the department could not controvert the arguments of the assessee in any manner whatsoever.

6. Based on the discussion in the preceding paras, we are of the considered view that the revision order has been passed on incorrect appreciation of facts and without any application of mind as also against the cardinal principal of natural justice and fairplay. The Id. Pr. CIT has utterly failed to make out a case of assessment order being erroneous and prejudicial to the interest of the revenue in terms of section 263 of the Act.He has incorrectly assumed jurisdiction over the case and cancelled the assessment order. Two pre-requisites must be present before the Commissioner can exercise the revisional jurisdiction conferred on him. First is that the order passed by the ITO must be erroneous. Second is that the error must be such that it is prejudicial to the interests of the revenue. If the order is erroneous but it is not prejudicial to the interests of the revenue, the Commissioner cannot exercise the revisional jurisdiction under section 263(1). The Id.PCIT has utterly failed to make out case for invoking provisions of section 263 of the Act.



6.1 Moreover, it is a fundamental principle of natural justice that no judge or any other Power having been conferred judicial powers can come to judicial or quasi judicial decision without hearing all the parties who are affected by the decision. If such rules of natural justice are not followed, any such proceeding would be vitiated. Natural justice requires that persons liable to be directly affected by proposed administrative act, decision or proceedings be given adequate notice of what is proposed so that they may be in a position to make representation on their own behalf or to appear at a hearing or enquiry and effectively prepare their own case and to answer the case, if any, they have to meet. From the facts of the case as borne from the order, it is quite evident that the Id.PCIT has not allowed even minimal time to the assessee to respond to the show cause notice. Even, the contention of the assessee that no SCN was served on it has not been rebutted by the Departmental Representative as well.

6.2 Considering the totality of facts and circumstances of the case as discussed in the foregoing paras, we have no hesitation in quashing the revision order passed by the Id. PCIT passed u/s 263 of the Act.



7. In the result, the appeal of the assessee is **allowed**.

Order pronounced in the open court on 07/01/2025.

Sd/-

BEENA PILLAI

(न्यायिकसदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकारसदस्य / ACCOUNTANT MEMBER)

Place: मुंबई / Mumbai

दिनांक / Date 07.01.2025

Lubhna Shaikh / Steno

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

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

सत्यापित प्रति // True Copy //

आदेशानुसार / BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

**आयकर अपीलीय अधिकरण / ITAT,
Bench, Mumbai.**

