

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "F" BENCH : MUMBAI

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

ITA No. 1606/Mum/2024
Assessment Year : 2017-18

Me N Moms Private Limited, 2 Amar CHS, 8 th Road, Khar (W), Mumbai PAN : AAECM6253C	vs.	Pr. Commissioner of Income Tax-4, 6 th Floor, Aayakar Bhavan, M.K.Road, Mumbai
(Appellant)		(Respondent)

For Assessee :	Shri Rushabh Mehta
For Revenue :	Shri Ashish Heliwal, CIT-DR
Date of Hearing :	19-12-2024
Date of Pronouncement :	22-01-2025

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the revision order dated 07-03-2024 passed by the Ld.PCIT-4, Mumbai and it relates to the Assessment Year (AY.) 2017-18. The assessee is challenging the validity of revision order passed u/s 263 of the Income Tax Act, 1961 ('the Act').

2. The original assessment of the assessee for the year under consideration was completed by the AO u/s 143(3) of the Act on 27-12-2019. It is pertinent to note that a survey operation was conducted in the hands of the assessee on 23-09-2016 u/s 133A of the Act. During

the course of survey operations, it was found that the assessee has taken unsecured loans from Kolkata based companies. Further certain loose papers relating to the sales were also found. Accordingly, the AO completed the original assessment assessing Rs.5.90 crores u/s 68 of the Act and making addition of Rs.8.37 crores on account of understatement of sales. The assessee challenged both the additions by filing appeal before the Ld.CIT(A).

3. Subsequently, the AO received information that the assessee has availed accommodation entries in the form of bogus unsecured loans from two companies named M/s Agnikal Vyapar Pvt. Ltd., and M/s Warner Metallic Pvt. Ltd. Hence, the AO reopened the assessment by issuing notice u/s 148 of the Act on 31-03-2021. The AO noticed that the amounts received from both the above said persons have already been assessed in the original assessment proceedings. He also noticed that the loans were converted into share capital with high share premium. Since the entire amount received as loan has already been assessed to tax in the original assessment proceedings, the AO completed the reassessment without making any addition, i.e., reiterating the very same income that was determined in the original assessment proceedings.

4. The Ld.PCIT examined the assessment records and took the view that the reassessment order passed by the AO is erroneous and prejudicial to the interests of the Revenue. Accordingly, he initiated revision proceedings u/s 263 of the Act. However, the assessee did not respond to the notices issued by the Ld.PCIT. Hence, the Ld.PCIT passed the following order ex-parte:-

“6.1 As the assessee has failed to comply with the notices issued by this office the proceedings under section 263 of the Act are completed on the basis of material available on records. It is seen from the records that out of the amount of Rs.5,94,07,963/- which were converted in share capital

includes the share premium of Rs.5,90,10,053/- and face value of Rs.3,97,910/-, the face value of Rs.3,97,910/- has not been added to the total income during the assessment proceedings as well as during the re-assessment proceedings as discussed in Para 5.4 above.

6.2 Further, assessee's adjustment of interest of Rs.29, 14,362/- and repayment of loan of Rs.60,500/- against the loan amount received from Agnikal Vyapar Pvt. Ltd and Warner Metallic Pvt. Ltd have to be disallowed and added back to the total income of the assessee u/s. 68 of the Act as discussed in Para 5.5 above.

7. The failure of the Assessing Officer to make enquiries which were warranted under the facts and circumstances of the case and under the provisions of law have rendered the Assessment Order u/s. 147 r.w.s 144B of the Act dated 29.03.2022 erroneous in so far as it is prejudicial to the interests of the revenue.

8. In view of the above, the Assessment Order passed u/s. 147 r.w.s 144B of the Act dated 29.03.2022 is set aside and restored to the file of the Assessing Officer. The AO is directed to make due enquiries and verification on the issue discussed hereinabove and pass a fresh assessment order as per the provisions of the Income Tax Act, 1961 after giving sufficient opportunity to assessee.

Order u/s. 263 of the Act, 1961 is passed accordingly.”

The assessee is aggrieved.

5. The main contention of the assessee is that the alleged errors pointed out by the Ld.PCIT arises out of the original assessment order and hence he could not have passed the revision order in respect of reassessment order, i.e., all the issues pointed out by the Ld.PCIT cannot be said to be arising out of reassessment order.

6. On the contrary, the Ld DR submitted that the AO has reopened the assessment on the basis of information that the assessee has availed accommodation entries in the form of loans/share capital. Having come to such a conclusion in the reassessment proceedings, the AO did not make addition of loan/share capital amounts, since the very same addition had been made in the original assessment proceedings. Further, he has failed to disallow related interest expenses, share premium amount and

repayment of loans etc. All these aspects would show that the AO did not conduct proper enquiries and did not properly apply his mind on the above said issues. The non-application of mind by the AO and non-examination of above said issues would make the impugned reassessment order erroneous and prejudicial to the interests of Revenue.

7. We heard the parties and perused the record. First of all, we notice that the assessee did not appear before the Ld.PCIT and hence he was constrained to pass the impugned revision order ex-parte, without hearing the assessee. Rival contentions would show that arguments of both the parties require proper consideration. Since the view expressed by the Ld. PCIT is without hearing the assessee, we are of the view that, in the interests of natural justice, the assessee may be provided with one more opportunity to present its case properly before him.

8. Accordingly, we set aside the order passed by the Ld.PCIT and restore all the issues to his file for passing the revision order afresh, after providing adequate opportunity of being heard to the assessee. We also direct the assessee to fully co-operate with the Ld.PCIT for expeditious completion of the restored proceedings.

9. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 22-01-2025

Sd/-
[ANIKESH BANERJEE]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai, Dated: 22-01-2025

TNMM

Copy to :

1.	The Appellant
2.	The Respondent
3.	The Pr.CIT concerned
4.	The D.R. ITAT, Mumbai
5.	Guard File.

//By Order//

//True Copy //

Dy./Asst. Registrar,
ITAT, Mumbai