

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"F" BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.2546/MUM/2024**

**Assessment Year : 2013-14**

**Vishwa Glass and Ceramics Pvt. Ltd.,**

Shop No.1502, The Capital Opp. Hetarth Party

Plot, Science City Road, Ahmedabad.

Gujarat - 380060

PAN: AAACV2447D

..... Appellant

v/s

**DCIT, Circle-3(3)(1)**

609, 6<sup>th</sup> Floor,

Aayakar Bhavan, Maharishi Karve Road,

Mumbai – 400020

..... Respondent

Assessee by : Shri K.C. Thacker

Revenue by : Shri Sunil Umap, CIT-DR

Date of Hearing – 05/11/2024

Date of Order – 31/01/2025

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The assessee has filed the present appeal against the impugned order dated 30.03.2024, passed under section 263 of the Income Tax Act, 1961 (*"the Act"*) by the Principal Commissioner of Income Tax–3, Mumbai, [*"learned PCIT"*], for the Assessment Year 2013-14.

2. In this appeal, the assessee has raised the following grounds: -

*"1. The learned Pr. CIT, Mumbai-3, has erred in law and on facts passing order u/s.263 of the Act without valid jurisdiction.*

*2. The learned Pr. CIT, Mumbai-3, has further erred in law and on facts in unlawfully re-assuming jurisdiction after having passed order u/s. 127(2) dt.16-03-2024, accepting lack of jurisdiction, and transferring the PAN to the charge of Pr. CIT, Vadodara-1 (who transferred the PAN to the charge of Pr. CIT, Ahmedabad-3, who again passed order dt. 22-03-2024 returning the PAN to Pr. CIT, Mumbai-3, none giving notice to the appellant), and then resuming the process at his end and in passing order u/s.263 of the Act without valid reasons.*

*3. The learned Pr. CIT, Mumbai-3, has also erred in law and on facts in passing order u/s. 263 of the Act, disregarding the written submission dt.02-03-2024, without meeting with appellant's specific contentions raised before him, and in setting aside the assessment on the basis of presumed and unsubstantiated issues, and ignoring the fact that the assessment was settled under the Vivad Se Vishwas Scheme.*

*4. On the facts and in the circumstances of the case and in law the learned Pr. CIT ought not to have passed the order u/s.263 of the Act and ought not to have set aside the assessment.*

*5. It is therefore prayed that the order u/s.263 of the Act passed by the Pr. CIT, Mumbai-3, may be cancelled."*

3. The brief facts of the case are that the assessee is engaged in the business of manufacturing frits and ceramics glare mixture. For the year under consideration, the assessee filed its return of income on 17.09.2013, declaring a total income of Rs.1,21,19,426/-. Subsequently, assessment proceedings in its case were completed vide order dated 17.12.2019 passed under section 143(3) r.w.s. 147 of the Act, assessing the total income at Rs.2,29,76,930/- after making an addition of Rs.1,08,63,000/-. Subsequently, on the basis of information that during the year under consideration, the assessee has paid Rs.28,17,120/- as commission for accommodation entries and also availed term loans to the tune of Rs.3,69,30,611/-, genuineness of which was doubted, notice under section 148 was issued on 26.03.2021 and proceedings under section 147 of the Act were initiated. In response to the notice issued under section 148 of the Act, the assessee filed its return of income on 29.04.2021 declaring a total income of Rs.1,21,19,426/-. After considering

the details and submissions filed by the assessee in response to the statutory notices, the Assessing Officer ("AO") vide order dated 29.03.2022 passed under section 147 r.w.s 144B of the Act assessed the total income of the assessee at Rs.2,29,76,930/-, as computed in the first assessment order passed on 17.12.2019.

4. Subsequently, the learned PCIT issued a notice dated 01.03.2024 under section 263 of the Act, observing as follows: -

*"2. In the subject case the return of Income for A.Y. 2013-14 was filed on 17/09/2013, on total income of Rs. 1,21,19,426/- under normal provision and book profit of Rs.83,74,366/-.*

*3. Subsequently, in this case information received from Investigation Wing Ahmedabad that the assessee company is a recipient of fictitious loan of Rs 5,12,63,950/- through Mahendra Shantilal Patel (MSP) Group in various financial year which included Rs.20 lakh in financial year 2012-13. Accordingly, the case was reopened /s 147 of the Act and assessment was completed u/s 147 on 29.03.2022 assessing total income of Rs.2,29,76,930/- of the Act making addition of Rs. 1,08,63,000/- on account of bogus purchases from two parties of MSP Group.*

*4. However, it was seen that the Assessing Officer has not considered the fact that the such bogus accommodation bills were purchased on payment of commission to the entry provider. In view of the same, the A.O. should have added commission paid to MSP Group which also forms part of bogus purchases. Generally commission rate varies from 2% to 6%. Hence, the A.O. should have added Rs.2,17,260/- being 2% of Rs.1,08.63,000/- on account of commission to MSP.*

*5. It is also observed that during the year, the assessee company has paid donation of Rs. 11,000/-. In the absence of donation receipt, the said claim of Rs. 11,000/- should have been disallowed and added to the total income of the assessee company.*

*6. On verification of the case records, it is seen that during the year, the assessee company has shown Rs.48,96,099/- as other investment. In this regard, there is no confirmation and documentary evidence available on records for justification of other investment. In the absence of the documentary evidence, the same should have been treated as unexplained in the hands of the assessee company.*

*7. Since the assessment order u/s 147 r.w.s. 144B of the Act on 29.03.2022 for the A.Y. 2013-14 is passed in this case by the AO without making any inquires or verification which should have been made and to make*

*corresponding additions/disallowances after making such inquiries which ought to have been made, the same is deemed to be erroneous in so far as it is prejudicial to the interest of Revenue.*

*8. In view of the aforesaid reasons, it is proposed to revise the assessment order u/s u/s 147 r.w.s. 144B of the Act on 29.03.2022 under section 263 of the Income Tax Act, 1961, being erroneous in so far as it is prejudicial to the interest of Revenue."*

5. Thus, vide notice issued under section 263 of the Act, the learned PCIT alleged that the AO should have added Rs.2,17,260/- being 2% of Rs.1,08,63,000/- on account of commission to Mahindra Shantilal Patel Group. Further, the learned PCIT alleged that the AO should have made an addition of Rs.11,000/- as the assessee could not produce any documentary evidence to prove the payment of the donation. The learned PCIT also alleged that the assessee has shown Rs.48,96,099/- as '*other investment*', however, there is no confirmation and documentary evidence for justification of the '*other investment*' and accordingly, the same should have been added to the total income of the assessee. Accordingly, it was alleged that since the AO while passing the assessment order under section 147 r.w.s. 144B of the Act on 29.03.2022 did not make any inquiries or verification, which should have been made on the aforesaid aspects, the assessment order is erroneous insofar as it is prejudicial to the interest of the Revenue.

6. In response to the notice issued under section 263 of the Act, the assessee submitted that during the first assessment proceedings, which culminated in an order passed on 17.12.2019, the AO after considering the details filed by the assessee made an addition regarding bogus/unexplained purchases from Mahindra Shantilal Patel Group amounting to Rs.1,08,63,000/-. Thereafter, the assessee filed the appeal before the learned

CIT(A). Subsequently, the assessee applied for settlement of its tax dispute under the Vivad Se Vishwas Scheme, 2020 ("VSV Scheme, 2020") and discharged the entire disputed tax liability. The assessee further submitted once again notice under section 148 of the Act was issued on 26.03.2021 and the assessment order was passed on 29.03.2022 making a similar addition and assessing the total income of the assessee at Rs.2,29,76,390/-. Thus, the assessee submitted that the issue raised vide notice issued under section 263 of the Act were already settled under the VSV Scheme, 2020, and therefore, they cannot be subjected to revisionary proceedings under section 263 of the Act.

7. The learned PCIT, vide impugned order, held that since the PAN of the assessee is currently lying in its jurisdiction, the revisionary proceedings under section 263 of the Act are being completed by his office. As regards the disallowance in respect of commission paid to Mahindra Shantilal Patel Group, the learned PCIT agreed with the submissions of the assessee and held that since the commission on bogus accommodation entries is directly connected to the issue which has attained finality under the VSV Scheme, 2020, the assessment order cannot be considered as erroneous. Further as regards the issue of the donation of Rs.11,000/-, the learned PCIT dropped the revisionary proceedings on the basis that the said amount has already been added by the assessee in its return of income. Insofar as the issue of '*other investment*' of Rs.48,96,099/- is concerned, since no detail was called for or examined by the AO during the re-assessment proceedings, the learned PCIT held that the AO has failed to make any inquiry regarding the issue of other investment by

the assessee and therefore, to this extent the order passed under section 147 r.w.s. 144B of the Act on 29.03.2022 is erroneous and insofar as it is prejudicial to the interest of the Revenue. Accordingly, the learned PCIT set aside the aforesaid assessment order and directed the AO to verify the '*other investment*' of Rs.48,96,099/- as shown in the accounts of the assessee and pass the assessment order after giving the opportunity of hearing to the assessee. Being aggrieved, the assessee is in appeal before us.

8. During the hearing, the learned Authorized Representative ("*learned AR*") reiterated the submissions made before the learned PCIT and submitted that the issues, on which the assessment order passed under section 147 r.w.s. 144B of the Act has been set aside by the learned PCIT under section 263 of the Act, have already been settled under the VSV Scheme, 2020 and have attained finality, therefore, these issues cannot be raised under section 263 of the Act. By referring to the orders passed by the concerned authority under section 127(2) of the Act, the learned AR submitted that the learned PCIT, who has passed the impugned order, was divested of its jurisdiction vide order passed on 16.03.2024, as the jurisdiction was transferred to PCIT Vadodara. Therefore, the learned PCIT is not justified in re-assuming jurisdiction and passing the impugned order.

9. On the other, the learned Departmental Representative vehemently relied upon the impugned order and submitted that at the time of passing of the order under section 263 of the Act, the learned PCIT was having charged over the assessee as the assessee's PAN was lying in its jurisdiction, therefore, the order under 263 of the Act was rightly passed by the concerned learned

PCIT. As regards the two issues on which the learned PCIT invoked the jurisdiction under section 263 of the Act, i.e., (i) addition on account of bogus accommodation entries and; (ii) payment of donation, were already dropped by the learned PCIT vide its order passed under section 263 of the Act considering the submission of the assessee. Thus, it was submitted that the revisional order passed under section 263 was rightly confined to the issue of '*other investment*' amounting to Rs.48,96,099/-, which is not covered under the VSV Scheme, 2020.

10. We have considered the submissions of both sides and perused the material available on record. On the perusal of the record, we find that on the basis of the information received from DCIT, Central Circle-1(3), Ahmedabad vide letter dated 11.10.2018 that search and seizure action was carried out in the case of Shri Mahendra Shantilal Patel and his group on 06.02.2017 and during the said proceedings, it was found that the assessee is a beneficiary of accommodation entry transactions, notice under section 148 of the Act was issued to the assessee on 29.03.2019 and proceedings under section 147 of the Act were initiated against the assessee. In response to the notice, the assessee filed its return of income declaring similar income as originally returned. Subsequently, in response to the statutory notices issued under section 143(2) and section 142(1) of the Act, the assessee filed its submissions along with other supporting documents. In the absence of any documentary evidence to support the genuineness of the transaction, the AO vide order dated 17.12.2019 passed under section 143(3) r.w.s. 147 of the Act computed the total income of the assessee at Rs.2,29,76,930/- after

making an addition of Rs.1,08,63,000/- on account of unexplained purchases. We find that while its appeal was pending before the learned CIT(A) against the aforesaid assessment order, the assessee applied under the VSV Scheme 2020 seeking settlement of its tax dispute. From the documents forming part of the paper book, we find that the assessee paid the tax arrears as determined under the Vivad Se Vishwas Act, 2020 r.w. Vivad Se Vishwas Rules, 2020 and Form 5 was also issued by the concerned authority.

11. We find that again on the basis that the assessee was a beneficiary of an accommodation entry transaction through Mahendra Shantilal Patel Group, re-assessment proceedings notice under section 148 of the Act was issued on 26.03.2021 and proceedings under section 147 of the Act was initiated. After considering the submissions of the assessee, in response to the statutory notices, the AO vide order dated 29.03.2022 passed under section 147 r.w.s. 144B of the Act accepted the income at Rs.2,29,76,930/- as assessed under section 143(3) r.w.s. 147 of the Act vide order dated 17.12.2019.

12. Thus, from the perusal of the two assessment orders, as noted in the foregoing paragraphs, it is noticed that the AO made a similar addition on account of the accommodation entry transaction entered by the assessee through Mahendra Shantilal Patel Group in the year under consideration. In the present case, there is no dispute regarding the fact that the subject matter of addition under the aforesaid two assessment orders was settled by the assessee under the VSV Scheme, 2020 and the disputed tax arrears were also paid by the assessee. Therefore, we find that the learned PCIT rightly dropped the revisionary proceedings initiated under section 263 of the Act in respect

of the transaction of the assessee with Mahendra Shantilal Patel Group. It is also evident from the record that as regards the donation of Rs.11,000, the learned PCIT dropped the revisionary proceedings on the basis that the assessee has added the amount to its return of income. Thus, the only issue on which the learned PCIT treated the assessment order dated 29.03.2022 passed under section 147 r.w.s. 144B of the Act as erroneous insofar as prejudicial to the interest of the Revenue pertains to the issue of '*other investment*' of Rs.48,96,099/- appearing in the books of the assessee. As per the learned PCIT neither any details were called for nor any examination was made by the AO regarding the aforesaid issue while passing the assessment order under section 147 r.w.s. 144B of the Act.

13. As noted in the foregoing paragraphs, the only issue on which re-assessment proceedings were initiated under section 147 of the Act pertains to the accommodation entry transaction entered into by the assessee through Mahendra Shantilal Patel Group, and accordingly, addition vide both assessment orders, i.e., dated 17.12.2019 and 29.03.2022, was only *qua* the aforesaid issue. Therefore, it is evident from the record that the issue, i.e. consideration of '*other investment*' of Rs.48,96,099/- was neither examined at any stage of the re-assessment proceedings nor any details furnished by the assessee. During the hearing, the learned AR apart from vehemently relying upon the settlement of the tax dispute under section VSV Scheme, 2020, which as noted above only covers the dispute pertaining to the accommodation entry transaction with Mahendra Shantilal Patel Group, did not bring any material on record to show that issue of '*other investment*' was

considered/examined by the AO during any of the re-assessment proceedings. Further, no document was placed on record that establish beyond doubt that the assessee furnished the details during the re-assessment proceedings regarding the issue on which proceedings under section 263 of the Act were sustained by the learned PCIT. As regards the decision of the Hon'ble Gujarat High Court relied upon by the learned AR in the case of PCIT v/s Swatiben Biharilal Parekh, reported in (2024) 463 ITR 759 (Guj.), we find that the proceedings under section 263 of the Act were initiated on an issue which was already settled under the VSV Scheme and thus the Hon'ble High Court upheld the Tribunal's order quashing the revision order passed under section 263 of the Act. However, as noted in the foregoing paragraphs, such are not the facts of the present case and therefore, the decision relied upon by the learned AR also does not support the case of the assessee. Therefore, having considered the facts and circumstances of the present case and material available on record, we find no infirmity in the order passed by the learned PCIT under section 263 of the Act in sustaining the proceedings under section 263 of the Act in respect of the issue of '*other investment*' amounting to Rs.48,96,099/- as appearing in the books of the assessee.

14. As regards the contention of the assessee that the learned PCIT passed the impugned order under section 263 of the Act without having proper territorial jurisdiction, we find that even though on 16.03.2024, the learned PCIT, Mumbai, migrated the PAN of the assessee from its charge to DCIT-2(1)(1), Vadodara, which was subsequently migrated to the charge of DCIT Circle-4(1)(1), Ahmedabad, and ultimately, vide order dated 22.03.2024

passed by the learned PCIT-3, Ahmedabad, the PAN of the assessee was transferred to the jurisdiction of the learned PCIT, Mumbai, however, it is pertinent to note that as on the date of passing of the impugned order under section 263 of the Act on 30.03.2024, the PAN of the assessee was lying in charge of the learned PCIT, Mumbai. The assessee did not bring any material on record to show that the transfer order passed by the learned PCIT, Ahmedabad, transferring the jurisdiction to the learned PCIT, Mumbai, has been set aside by any higher Court. Thus, it is ostensible that on the date of passing the impugned order on 30.03.2024, the learned PCIT, Mumbai, had jurisdiction over the assessee and has accordingly passed the impugned order. Further, as per the provisions of section 127(4) of the Act, it is not necessary to re-issue any notice which was already issued. Thus, we find no merits in the submissions of the assessee.

15. In view of the aforesaid findings, the impugned order passed under section 263 of the Act is upheld and the grounds raised by the assessee are dismissed.

16. In the result, the appeal by the assessee is dismissed.

Order pronounced in the open Court on 31/01/2025

**Sd/-**

**OM PRAKASH KANT  
ACCOUNTANT MEMBER**

**MUMBAI, DATED: 31/01/2025**  
*Prabhat*

**Sd/-**

**SANDEEP SINGH KARHAIL  
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar  
ITAT, Mumbai