आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.939/Ahd/2024
Assessment Year : 2017-18

Dilipkumar Bababhai Zaveri 9/11/116 Khejda Ni Pole Soni Wado Patan, Gujarat. PAN : AABPZ 1214 C	Vs	The Ld.Pr.CIT-3 Ahmedabad.
(Applicant)		**(Responent)**

Assessee by	:	Shri Raj Kumar, AR
Revenue by	:	Shri Prathvi Raj Meena, CIT-DR

सुनवाई की तारीख/**Date of Hearing : 09/01/2025**
घोषणा की तारीख /**Date of Pronouncement: 07/03/2025**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

The above appeal has been filed by the assessee against order passed by the Ld.Pr.Commissioner of Income Tax-3, Ahmedabad [hereinafter referred to as "ld.Pr.CIT] dated 8.3.2024 in exercise of jurisdiction under section 263 of the Income Tax Act, 1961 ("the Act" for short) vide which the ld.Pr.CIT set aside the assessment order passed by the Assessing Officer under section 147 of the Act for the assessment year 2017-18 for *de novo* assessment.

2. The grounds raised in the appeal read as under:

1. That under the facts and circumstances Ld. PCIT erred in law as well as on merits in invoking the provisions of Sec.263 and in setting aside the case for denovo fresh asstt.

2. That in the absence of proper and legally valid service of SCN by not communicating the uploading of SCN on specified email and consequently no knowledge and no information to assessee of issuance and uploading of any such notice on ITBA (website), resulting into no opportunity of hearing at all, makes the complete proceedings U/s.263 including impugned order U/s.263 Dtd.08.03.24 as null and void and unsustainable in law.

3. That **without prejudice**, under the facts and circumstances, even on presuming any alleged on money payment for booking of flat as per alleged excel sheet found in search on builder, this alleged payment should be taken as paid either in A.Y.12-13, when the first cheque payment was made on 14.07.11 or alternatively in A.Y.13-14, when the initial booking agreement Dtd.12.06.12 (A.Y.13-14) was entered into with the builder as well as as per the details on excel sheet, hence in the absence of any evidence for alleged on money payment in A.Y.17-18, the impugned proceedings for such alleged payments in A.Y.17-18 are unsustainable in law which also shows total non-application of mind by the PCIT while initiating the proceedings for a wrong asstt. year, hence liable to be quashed.

4. That in view of the relevant order U/s.147 r.w.s. 144B Dtd.31.03.22, unsustainable in law, including for approval U/s.151 being mechanical, without application of mind and on borrowed satisfaction, no proceedings U/s.263 could had been initiated on such illegal and unsustainable order U/s.147 r.w.s. 144B.

5. That **without prejudice,** the order U/s.263 since passed without application of mind and without taking into consideration the fact of assessee share in the property only 1/3rd and by wrongly assuming the assessee as the sole owner, makes the impugned order U/s.263 unsustainable in law.

6. That**without prejudice** since proper and reasonable enquiries have been done on the issue under consideration by the A.O. during the course of asstt. proceedings U/s.147 r.w.s. 144B, the provisions of Sec.263 could not had been invoked.

3. Before going into the issue involved in the present case on merits, we shall be dealing with the ground no.2 raised by the assessee wherein he has raised a contention that the order passed under section 263 of the Act was bad in law, since it was passed without any service of notice under section 263 of the Act.

4. His contention was that the ld.Pr.CIT had issued two notices under section 263 of the Act and both of them remained unserved. He pointed out that both the notices was served electronically by email and though they were reflected in the income-tax portal of the

assessee they were not served on the email address of the assessee at all. He referred to the decision of Hon'ble Punjab & Haryana High Court in the case of Munjal BCU Centre of Innovation & Entrepreneurship Vs. CIT (Exemp), (2024) 160 taxmann.com 629 (P&H) for the proposition that when the notice was not sent to the assessee by email or otherwise, and was reflected in the e-portal of the Department, there was no service of notice in terms of provisions of section 282 of the Act and Rules made thereunder. Copy of the order was placed before us.

5. The ld.counsel for the assessee further contended that the impugned order passed under section 263 of the Act was without giving any notice to the assessee, the same could not be restored back to the ld.Pr.CIT for giving opportunity of hearing. In this regard, reliance was placed on the decision of the Hon'ble Allahbad High Court in the case of M.L. Chains Vs. [2023] 154 taxmann.com 508 (Allahabad).

To support his contention, the ld.counsel for the assessee drew our attention to screen-shot of the income-tax portal of the assessee, reflecting therein email-id given by the assessee as contact details for future communication being "valmikzaveri@gmail.com", primary email id, and "apsca1964@yahoo.com" , as secondary email-id.

6. The ld.DR countered by saying that the screen shot furnished by the assessee was taken on 29.8.2024 while the notices for the impugned proceedings before the ld.Pr.CIT, were issued to the assessee on 8.2.2024 and 28.2.2024. His contention was that these email addresses may have been furnished in the portal of the assessee subsequent to the passing of the order by the ld.Pr.CIT. The ld.DR contended that the notice issued by the department are system

generated which are sent both on the email-id furnished by the assessee and are also reflected on the portal of the assessee. That there is no human intervention involved in the same. That there is no possibility of notices not being served on the email id furnished by the assessee when the same is reflected in the income-tax portal of the assessee.

7. To this, the ld.counsel for the assessee drew our attention to the ITBA service report of the show cause notice issued under section 263 of the Act placed at PB page no.18-19, pointing out therefrom that the notices did not mention any email-id to which they were served. The communication address portion of the notice being left blank mentioning neither the primary email id nor "CC" address. The ld.counsel for the assessee also pointed out that in the year 2022, reassessment proceedings had been initiated on the assessee for framing assessment u/s 147 of the Act, wherein notice under section 142(1) of the Act was served on the email-id of the assessee "apsca1964@yahoo.com" . Our attention was drawn to the copy of the said notice which was placed before us at P.B 132-133. He pointed out that this was the same email-id reflected in the portal of the assessee even as on 2024. His contention, therefore, was that this email-id was available with the Department since 2022 and despite so there was no service of notice u/s 263 of the Act on this email-id of the assessee. He stated therefore that it was clear that no notice u/s 263 of the Act had been served on the assessee.

The Ld.DR countered by stating that the assessee may have in the intervening period changed its email-id and furnished incorrect email-id to which the notices may have remained unserved.

Both the parties were directed to produce evidences before us regarding the email-id of the assessee at the time of proceedings being carried under section 263 of the Act. There was no response.

8. Having heard contention of both the parties, we shall now proceed to adjudicate the ground raised by the assessee.

The assessee has raised the issue of order passed under section 263 being bad in law for notices of the proceedings not being served on the assessee. It is fact on record that the notices were issued electronically. The relevant section dealing with the service of notice is contained in section 282 of the Act and the same provides that the Board may make rules providing for the addresses , , to which the communication should be delivered or transmitted to the person named therein electronically. The relevant provisions of section 282(1) and 282(2) are reproduced hereunder for clarity.

282. (1) The service of a notice or summon or requisition or order or any other communication under this Act (hereafter in this section referred to as "communication") may be made by delivering or transmitting a copy thereof, to the person therein named,—

(a) by post or by such courier services as may be approved by the Board; or

(b) in such manner as provided under the Code of Civil Procedure, 1908 (5 of 1908) for the purposes of service of summons; or

(c) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000 (21 of 2000); or

(d) by any other means of transmission of documents as provided by rules made by the Board in this behalf.

(2) ***The Board may make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which the communication referred to in sub-section (1) may be delivered or transmitted to the person therein named.***

Explanation.—For the purposes of this section, the expressions "electronic mail" and "electronic mail message" shall have the meanings as assigned to them in Explanation to section 66A of the Information Technology Act, 2000 (21 of 2000).

9. The relevant rules framed by the Board in this regard are Rule 127 of the Income Tax Rules, 1962,and the same in relation to service of notice by electronic mode, is detailed brought out in sub-rule (2)(b) of tRule 127 as under:

> *127. (1) For the purposes of sub-section (1) of section 282, the addresses (including the address for electronic mail or electronic mail message) to which a notice or summons or requisition or order or any other communication under the Act (hereafter in this rule referred to as "communication") may be delivered or transmitted shall be as per sub-rule (2).*
>
> *(2) The addresses referred to in sub-rule (1) shall be—*
>
> *(a) for communications delivered or transmitted in the manner provided in clause (a) or clause (b) of sub-section (1) of section 282—*
>
> *(i) the address available in the PAN database of the addressee; or*
>
> *(ii) the address available in the income-tax return to which the communication relates; or*
>
> *(iii) the address available in the last income-tax return furnished by the addressee; or*
>
> *(iv) in the case of addressee being a company, address of registered office as available on the website of Ministry of Corporate Affairs:*
>
> *Provided that the communication shall not be delivered or transmitted to the address mentioned in items (i) to (iv) where the addressee furnishes in writing any other address for the purposes of communication to the income-tax authority or any person authorised by such authority issuing the communication:*
>
> *… …. …. ….*
>
> *[Provided further that where the communication cannot be delivered or transmitted to the address mentioned in items (i) to (iv) or any other address furnished by the addressee as referred to in first proviso, the communication shall be delivered or transmitted to the following address:—*
>
> *… …. …. ….*
>
> ***(b) for communications delivered or transmitted electronically—***
>
> ***(i) email address available in the income-tax return furnished by the addressee to which the communication relates; or***
>
> ***(ii) the email address available in the last income-tax return furnished by the addressee; or***
>
> ***(iii) in the case of addressee being a company, email address of the company as available on the website of Ministry of Corporate Affairs; or***
>
> ***(iv) any email address made available by the addressee to the income-tax authority or any person authorised by such income-tax authority.***

10. As is evident from the above, the communication to be delivered electronically is to be on the email address available in the last income tax return furnished by the assessee or the email address available with the website of the Ministry of Corporate Affairs, or any email address made available by the addressee to the income tax authority or any such person authorized by the income-tax authority.

11. Before us, the ld.counsel for the assessee has not furnished the email address as per any of the criteria as stated in the Rules. What he has furnished was that available in the year 2022 i.e. prior to the initiation of the proceedings under section 263 of the Act in February, 2024. He has also furnished email address available with the Department, subsequent to the conclusion of the proceeding's under section 263 of the Act in August, 2024. Despite repeated directions to the assessee to furnish email address available with the Department at the time of initiation of 263-proceedings, the assessee has not furnished any such details to us.

12. Since it is the assesses claim that notices u/s 263 of the Act remained unserved , the onus was on the assessee to prove the same. The assessee was required to prove the availability of email address with the department on which the notice was to be served as prescribed under the relevant Rules. Having failed to do so, the assessee cannot take a stand before us that there was no service of notice. There can be any number of reasons for the same, the assessee may have furnished incorrect email address to the department when the proceedings u/s 263 of the Act were initiated and therefore the mail remained unserved. Until the assessee demonstrates the fact of availability of proper email address with the department, its claim of

non-service of notice, we hold, is completely baseless and is therefore rejected.

13. We see no reason to disbelieve the contentions of the ld.DR that the notice issued by the Department are system generated and automatically issued both to the assessee and displayed on the portal of the assessee also. Therefore, in the facts of the present case, where the notices were clearly displayed on the portal of the assessee, the possibility of the same not being served on the availability of email address of the assessee is ruled out. Unless it is established as a fact on record that the correct email address was furnished to the Department, and the same remained unserved therein.

In the light of the same, we are not inclined to entertain this ground raised by the assessee, and we disagree with the ld.counsel for the assessee in the absence of service of notice under section 263 of the Act the order passed by the ld.Pr.CIT needs to be quashed.

Ground of appeal No.2 of the assessee is therefore dismissed.

14. On the merits of the case, the ld.counsel for the assessee pointed out that the ld.Pr.CIT found the assessment order passed by the AO under section 147 of the Act to be erroneous for having made no inquiry on the issue for which the reopening was resorted to. That the AO had wrongly accepted the explanation furnished by the assessee during the reassessment proceedings without making any inquiry on the information available with him.

15. The ld.counsel for the assessee pointed out that reassessment proceedings was resorted to in the case of the assessee for the reason that the AO was in possession of the information that the assessee

had paid on-money in cash for purchase of property/unit in a project developed by M/s.Navratna Organizers & Developers P.Ltd. ("NODPL" for short) named Kalhaar Blues and Greens ("KBG" for short). The quantum of on-money paid as per the information available with the AO was that of Rs.1,47,11,500/- and on the belief that income-tax on the same had escaped assessment in the absence of non-disclosure of the same by the assessee, the case of the assessee was reopened for reassessment.

16. The contention of the ld.counsel for the assessee against the finding of the ld.Pr.CIT of the assessment order being erroneous was that necessary inquiry was conducted by the AO during the re-assessment proceedings, and thereafter finding merit in the contention of the assessee, the AO had accepted the assessee's plea of no on-money paid for the impugned transaction of purchase of unit in "KBG".

17. The ld.DR, on the other hand, pointed out from the copies of the notices issued under section 142(1) of the Act by the AO and the reply filed by the assessee thereto during reassessment proceedings ,placed in PB filed by the assessee itself at page no.6 to 7 and 8 to 11 respectively, that the assessee had merely denied having paid no on-money on the purchase of the unit in "KBG" and had contended that the re-assessment proceedings was based merely on excel-sheet information contained therein about the on-money and there was no statement recorded about the on-money payment. That the assessee has also not been provided opportunity for cross-examination. Our attention was drawn to submissions of the assessee in nutshell in his letter filed to the AO placed at page no.10 of the PB as under:

" **3.2 <u>In Nutshell</u>**

"(i) Residential property under consideration is jointly held by me along-with my Sons and We all are equal owners of the same;

(ii) We had made payment towards the cost of the land at the time of its Booking in the Financial year 2012-13 through banking channels.

(iii) All the payments made during the financial year under consideration were also through banking channels;

(iv) We had not made any on-money payment at any time and allegations are solely based on assumptions without any substance;
(v) Entire re-assessment proceeding is based on so called excel sheet, containing information about on-money payment, found from residence of a person associated with Navratna Group which had developed the residential scheme under consideration;

(vi) There is no statement recorded about on-money payment nor brought to our notice, if recorded, about on-money payment;

(vii) We have not been provided the so-called evidence, in the form of contents in the excel sheet, for cross-examination. Accordingly, it not an evidence at all as per settled legal propositions.

4. Considering the above you are requested to finalize the assessment by accepting the returned income as such without making any additions."

18. The ld.DR contended thereafter that the AO passed the order under section 147 accepting the averments of the assessee that no on-money was paid ,without making any inquiry with regard to the issue despite being in possession of the information, recorded in his reasons for reopening the case placed before us at PB page no.125 that during search conducted on "NODPL" an excel-sheet was found containing details of units sold in "KBG" which included on-money received on the sale of these units, and the details of which corroborated with the details furnished by the "NODPL" in post-search inquiry conducted ,with respect to the different parties to whom the units were sold at the agreed amount. The ld.DR contended that despite this clear cut information being in possession of the AO, the AO made no further inquiry with regard to the same. He also pointed out that the ld.Pr.CIT had also noted the fact that "NODPL" had offered the entire on-money received by it to the Settlement

Commission and had referred to the same in her order also. To this, the ld.counsel for the assessee countered by saying that this was a subsequent development ,after passing of the assessment order, and for which the order passed by the AO could not be faulted as being in error.

19. We have heard rival contentions and we do not find any merit in the contents of the ld.counsel for the assessee that the ld.Pr.CIT had erred in finding the assessment order passed in the case being erroneous causing prejudice to the Revenue.

20. Undoubtedly, the ld.Pr.CIT has found the assessment order erroneous on account of no inquiry was being conducted on the issue, for which the reopening of the assessee was resorted to in the case of the assessee.

21. We have gone through the proceedings conducted during the reassessment proceedings, which were placed by the ld.counsel for the assessee before us in support of his arguments that due inquiry was conducted by the AO, and we agree with the ld.DR that there was absolutely no inquiry conducted by the AO on the information that he had in his possession about the assessee having paid on-money in cash for purchase of unit in "KBG". As pointed out by the ld.DR as per the reasons recorded by the AO himself for reopening the case of the assessee, he was in possession of the information that during the search conducted on "NODPL" which floated the project "Kalhaar Blues and Greens" ("KBG") an excel sheet was found reflecting details of units sold including on-money paid by the buyers with respect to the same. This detail contained name of the assessee also, and reflected on-money paid by the assessee of Rs.1,47,11,500/-. Clearly, the AO has not conducted any inquiry with respect to this issue

during reassessment proceedings. He has merely accepted whatever the assessee stated before him, which was nothing but denying having paid any on-money. The AO was duty bound to have conducted further inquiry on the information available with him, confronting the excel-sheet data and all other adverse material in his possession. That was exactly the purpose for which reopening was resorted so as to verify the correctness of the information in the possession of the AO after confronting it to the assessee. Mere acceptance of the denial by the assessee of not having paid any on money, is nothing but a waste of the duty and power which the AO was required to exercise.

22. There is no iota of doubt, we hold, that in the reassessment proceedings, the AO conducted no inquiry on the information available with him, and we, therefore, agree with the ld.Pr.CIT that in terms of *Explanation (2)* to sub-clause (a) to section 263 which deems the order passed without making inquiries or verification which should have been made, to be erroneous. The ld.Pr.CIT, we hold, has rightly held the assessment order to be erroneous causing prejudice to the Revenue.

23. We do not find any substance in the arguments of the ld.counsel for the assessee that the ld.Pr.CIT had acted on information which came on record subsequent to the passing of the order, that is the order of the Settlement Commission accepting the income surrendered by the "NODPL" on account of on-money received on sale of unit in "KBG". Section 263 of the Act itself clearly states that revisionary jurisdiction is to be exercised if on examination of the records of any proceedings, the order passed by the AO is found to be erroneous causing prejudice to the Revenue, and the "records" have been explained in *Explanation-1* to the section to pertain to all

records relating to any proceedings under this Act **available at the time of examination by the Pr.Chief Commissioner, Chief Commissioner or Pr.Commissioner or Commissioner.** For the sake of clarity section 263 along with *Explanation-1*(b) is reproduced hereunder:

> *263. (1) The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer 81a[or the Transfer Pricing Officer, as the case may be,] is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, 81b[including,—*
>
> *… …. ….*
>
> *Explanation 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—*
>
> *(b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner;*
>
> *… …. ….*

24. Therefore, there is no merit in the contentions of the ld.counsel for the assessee that information subsequently come in the possession of the ld.Pr.CIT after passing of the order cannot be formed the “record” for the purpose of section 263 of the Act.

25. All other contentions of the Ld.Counsel for the assessee on the merits of the issue that the information with the AO did not relate to the impugned year and so the AO could not be said to be erroneous for making no addition, merits no consideration since the case of the assessee , as noted above clearly falls in *Explanation* 2(a) to section 263 on account of no inquiry conducted by the AO on the concerned issue. All contentions on the merits of the issue, the assessee is free to take up before the AO in restored proceedings.

26. In view of the above, we do not find any merit in the arguments raised by the ld.counsel for the assessee on the merits of the case, and accordingly, confirm the order of the ld.Pr.CIT passed under section 263 of the Act.

27. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Court on 7TH March, 2025 at Ahmedabad.

Sd/-	**Sd/-**
(T.R. SENTHIL KUMAR)	**(ANNAPURNA GUPTA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad,dated 07/03/2025