

**IN THE INCOME-TAX APPELLATE TRIBUNAL “B” BENCH,
MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No. 2284/MUM/2016
(निर्धारण वर्ष / Assessment Year :2011-12)**

M/s. Mumbai Port Trust Port Bhavan, Shoorji Vallabhdas Marg, Ballard Pier, Mumbai-400001	v/s. बनाम	CIT (Exemptions) 617, Piramal Chamber, Lalbaug, Mumbai-400012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAATM5001D		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

निर्धारिती की ओर से /Assessee by:	Shri Madhur Agarwal
राजस्व की ओर से /Revenue by:	Shri Manish Sareen

सुनवाई की तारीख / Date of Hearing	26.03.2025
घोषणा की तारीख/Date of Pronouncement	30.05.2025

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Exemptions), Mumbai [hereinafter referred to as “CIT(E)”] dated 28.03.2016 passed u/s. 263 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2011-12.

2. The assessee has raised the following grounds of appeal:

“1. On the facts and circumstances of the case and in law the Commissioner of Income Tax (hereinafter referred to as 'Commissioner') erred in passing the impugned order U/s. 263 of the Income Tax Act, 1961 ('the Act').

2. *The Appellant submits that the order U/s. 263 of the Act made by the Commissioner is bad in law, erroneous, invalid, void, in excess of and / or in want of jurisdiction and otherwise illegal.*

3. *On the facts and circumstances of the case and in law the Commissioner erred in holding that the assessment order passed by the Assessing Officer u/s. 143(3) of the Act was erroneous and / or prejudicial to the interests of the revenue within the meaning of the provisions of section 263 to the extent AO's action of allowing the claim of donations & contributions of Rs.97,00,000/- as per the ground/s contained in the order or otherwise.*

4. *On the facts and circumstances of the case and in law the Commissioner erred in holding that the assessment order passed by the Assessing Officer u/s. 143(3) of the Act was erroneous and / or prejudicial to the interests of the revenue within the meaning of the provisions of section 263 to the extent AO's action of allowing excess depreciation @ 15% on docks, sea walls and piers amounting to Rs.5,02,07,669/-, as per the ground/s contained in the order or otherwise.*

5. *On the facts and circumstances of the case and in law the Commissioner erred in holding that the assessment order passed by the Assessing Officer u/s. 143(3) of the Act was erroneous and / or prejudicial to the interests of the revenue within the meaning of the provisions of section 263 to the extent AO's action of not taxing an amount of Rs.114.04 Crs. on account of estate rentals as per the ground/s contained in the order or otherwise.*

6. *The Appellant craves leaves to add, to amend, alter, modify and / or withdraw any or all of the above grounds of appeal, each of which are without prejudice to one another."*

3. Brief facts of the case are that the assessee filed its return declaring a loss of Rs. 44,37,34,845/- on 30.09.2011 for AY 2011-12. The case was selected for scrutiny and assessment was completed u/s 143(3) vide order dated 17.02.2014 at an income of Rs. – 36,50,64,163/- after making addition on account of excess claim of depreciation disallowed (Rs. 83,88,430/-) and short deduction of TDS u/s 40a(ia) of Rs. 7,02,72,252/-.

4. Subsequently, Ld. CIT(E) issued a show cause notice to the assessee on 11.03.2016 for revision of the assessment order u/s 263 of the Act for the following issues:

- i. Donation and contribution amounting to Rs. 97,00,000/-
- ii. Excess depreciation claim of docks, walls and piers



iii. Estate Rentals of Rs. 114.04 crore on an annual basis

5. After considering the assessee's reply to the show cause notice, the Ld. CIT(E) observed that no verification with regard to the genuineness of the claim of donation and contribution amounting to Rs. 97,00,000/- had been carried out by the Ld. AO. Similarly, the claim of depreciation had been allowed at @15% instead of @10% allowable case of civil structures without analysing the assessee's claim. Lastly, with respect to estate rental, he held that the assessee should have offered the entire rental income of Rs. 208.66 cr. for taxation on the accrual basis, whereas only the actual rent received of Rs. 94.62 crore was offered to tax. Ld. AO simply accepted the income offered by the assessee without examining whether the balance rentals were collectable or not.

6. Further, Ld. CIT(A) relied on the explanation (2) of section 263 to hold that non-application of mind to relevant material would satisfy the requirement of the order being erroneous. He, therefore, held that the order of 17.02.2014 passed by the Ld. AO was erroneous and prejudicial to the interest of the revenue, and accordingly, directed the Ld. AO to examine the aforesaid issues afresh and pass the assessment order after making necessary verification and inquiries.

7. Aggrieved with the order of Ld. CIT(E), the assessee preferred an appeal before the Tribunal. Before us, Ld. AR argued that there was no error in the order of Ld. AO and most of the issues are recurring issues with regard to the



treatment of the issues in preceding and subsequent years. Ld. AR has furnished written submissions including an explanatory chart as under:

A.Y.	Section and date of order passed	Issues of additions/disallowance	Remarks
2009-10	Order passed u/s 143(3) dated 20/12/2011 (Annexure -1)	a. Disallowance of depreciation claimed on application of assets in AY 2008-09 b. Disallowance u/s 40(a)(ia)	No disallowance made on issues involved in order u/s 263
2009-10	Order passed u/s 147 r.w.s 143(3) dated 23/03/2015 (Annexure -2)	a. Disallowance of Leave encashment b. Addition of estate rental c. Disallowance of depreciation on docks,	Similar disallowance made on issues involved in order u/s 263

		sea walls, piers and r ways and rolling stock /locomotive d. Disallowance of donations and contribution e. Addition of income from Amnesty Scheme f. Disallowance of capital expenditure debited in P & L g. Disallowance u/s 40(a)(ia)	
2010-11	Order passed u/s 143(3) dated 06/02/2013 (Annexure -3)	a. Disallowance of depreciation claimed on application of assets in AY 2008-09 b. Disallowance u/s 40(a)(ia)	No disallowance made on issues involved in order u/s 263
2010-11	Order passed u/s 147 r.w.s 143(3) dated 11/11/2016 (Annexure -4)	a. Disallowance of donations and contribution b. Disallowance of deprecation on docks, sea walls, piers and r ways and rolling stock /locomotive c. Addition of estate rental d. Disallowance of payment to leave encashment fund	Similar disallowance made on issues involved in order u/s 263
2012-13	Order passed u/s 143(3) dated 30/03/2015 (Annexure -5)	a. Addition of estate rental b. Disallowance of depreciation claimed on application of assets in AY 2008-09 c. Disallowance of deprecation on r ways and rolling stock /locomotive d. Disallowance of deprecation on non reduction of capital receipts from block of assets e. Addition of income from Amnesty Scheme f. Addition of Interest on inter port loan g. Disallowance of CSR	Only addition made on account of estate rental; no addition on account of depreciation on docks, sea walls and piers; no addition on account of donation and contributions

		expense h. Disallowance u/s 40(a)(ia)	
2013-14	Order passed u/s 143(3) dated 23/03/2016 (Annexure -6)	a. Addition of estate rental b. Disallowance of depreciation claimed on application of assets in AY 2008-09 c. Disallowance of depreciation on r ways and rolling stock /locomotive d. Addition of Interest on inter port loan e. Disallowance of CSR expense	Only addition made on account of estate rental; no addition on account of depreciation on docks, sea walls and piers; no addition on account of donation and contributions

The assessment order for the above years are enclosed herewith at Annexure 1 -6.

In view of the above, it is submitted that the issues raised by the Id. CIT (E) in the order passed u/s 263 have not been in the earlier assessment orders passed u/s 143(3) for AY 2009-10 and 2010-11. Further, in the subsequent assessment years i.e. 2012-13 and 2013-14, the issues relating to donation & contribution and Deprecation on docks, sea walls and piers have been accepted and no addition/disallowance has been made by the Id. AO

In view of above, Ld. AR has argued that the order of Ld. CIT(E) was without any basis, and therefore, liable to be quashed.

8. On the other hand, Ld. DR has vehemently argued that all three issues pointed out by the Ld. CIT(E) were such that proper inquiry should have been made by Ld. AO. Further, a perusal of the assessment order shows that the requisite verification in respect of all these claims has not been made.



Accordingly, Ld. CIT(E) was justified in invoking the provisions of section 263 in this case, especially in view of Explanation 2, which reads as under:

“Section 263

.....

.....

.....

.....

[Explanation 2.-For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner,-

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.] “

9. We have heard the rival submissions and perused the material placed before us. Ld. AR has claimed that no disallowance was made for AY 2009-10 and 2010-11 by the Ld. AO on these issues. Similarly, for AYs 2012-13 and 2013-14, except for the addition on account of estate rental, no additions for the remaining two issues had been made u/s 143(3). We note that merely because no additions in earlier or subsequent years have been made on these issues, it does not imply that Ld. CIT(E) is precluded from invoking the jurisdiction of Section 263 of the Act for the year under consideration. Only conditions relevant for invoking Section 263 are whether the order is erroneous insofar as it is prejudicial to the interest of the revenue. Explanation 2 further explain the circumstances under which an order can be deemed to be erroneous. As per



clause (a) of the Explanation 2, any order passed without making inquiries or verification which should have been made is deemed to be erroneous insofar as it is prejudicial to the interest of the revenue.

10. Under these facts and circumstances, we are of the considered opinion that the requisite verification with regard to the three issues mentioned hereinbefore was not made by the Ld. AO and accordingly Ld. CIT(E) was justified in initiating the revision proceedings u/s 263 of the Act. Further, vide impugned order, Ld. CIT(E) has merely directed the Ld. AO to carry out the requisite verifications and pass a fresh order. Hence, the assessee would be given full opportunity to explain the issues on merits before the Ld. AO. We, therefore, find no infirmity in the order of ld. CIT(E), which is hereby upheld.

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

Order pronounced in the open court on 30.05.2025.

Sd/-

SANDEEP GOSAIN

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 30.05.2025

अनिकेत सिंह राजपूत/ स्टेनो

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,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

