

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

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| ITA Nos. 772 & 773/Bang/2023 & ITA Nos. 306 & 307/Bang/2025 |
| Assessment Year: 2015-16 |

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| Bandigadi Chandrappashetty Rajashekara, Hampi Viriupaksheshwara Nilaya, Near CMC Hall, Sharavathinagar, Shivamogga – 577 204. | Vs. | The Income Tax Officer, Ward- 4, Shimoga. . |
| PAN – AFCPR 3109 N | | |
| APPELLANT | | RESPONDENT |

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| Assessee by | : | Shri Ravishankar S.V Advocate |
| Revenue by | : | Shri Shivanand Kalakeri, CIT (DR) |

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| Date of hearing | : | 08.07.2025 |
| Date of Pronouncement | : | 23.07.2025 |

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

These are the appeals filed by the assessee against the order passed by the NFAC, New Delhi vide order dated 18/01/2022, 09/09/2024 and 13/06/2024 for the assessment year 2015-16.

2. At the outset, we note that there is a delay in filing all the appeals by the assessee for 1249 days. The assessee has filed an Affidavit explaining the reasons for the delay in filing the appeal before the Tribunal. In the Affidavit, it was submitted that part of the delay is attributable to the COVID 19, which requires to be condoned in view of the judgment of Hon'ble Supreme Court in the case of *In Re: Cognizance for Extension of Limitation* (Miscellaneous Application No. 665/2021 in SMW(C) No. 3/2020), wherein a blanket extension of limitation periods for all judicial, quasi-judicial, and administrative proceedings due to COVID-19 was provided. The Hon'ble Court ruled that the limitation period from March 15, 2020, to February 28, 2022, shall be excluded for all legal proceedings.

3. In the balance delay on 499 days, the assessee in the Affidavit submitted that the email id of Tax Practitioner was furnished in the Income-tax Return. Therefore, all the notices issued by the Id. CIT u/s 263 of the Act were unnoticed. Consequentially, the order u/s 263 of the Act was framed by the Id. CIT ex-parte to the assessee. The assessee became aware of having passed the order by the Id. CIT u/s 263 upon receiving the message on the mobile in August 2023 intimating the outstanding demand in consequence to the asst. order passed u/s 143(3) r.w. sec 263 of the Act dated 27/09/2021. Immediately, thereafter the appeal was preferred. However, in this process, the delay of 1249 days has occurred out of which, part of the delay for 750 days pertains or attributable to the COVID-19 and the remaining period of 499 days is on account of non-co-operation of the Tax Practitioner.

4. It was also submitted by the Id. AR that the assessee during the relevant period has also changed the residence and, therefore, the assessee was not updated about the proceeding u/s 263 of the Act. In view of the above, the Id. AR prayed for condonation of the delay and proceed to hear the matter on merit.

5. On the other hand, the Id. DR submitted that the delay in filing the appeal by the assessee is inordinate and, therefore, the same should not be condoned.

6. We have heard both parties and carefully gone through the materials on record. As far as the delay attributable to the COVID-19 period, we condone the same in view of the judgment of Hon'ble Supreme Court in the case of *In Re: Cognizance for Extension of Limitation* (Miscellaneous Application No. 665/2021 in SMW(C) No. 3/2020). For the remaining period of delay for 499 days, we find that the assessee was not aware of the proceeding-initiated u/s 263 of the Act. It was for the reason that the email id of the Tax Practitioner was furnished in the Income Tax Return. Accordingly, we find that the reason for the delay in filing the appeal was not mala-fide on the part of the assessee and, therefore, the same deserves to be condoned. Accordingly, we condone the delay and proceed to adjudicate the matter on merit.

6.1 On merit of the case, the Id. AR before us submitted that the proceedings u/s 263 of the Act were initiated at the behest of the AO, which is contrary to the provisions of sec. 263 of the Act. In this regard,

the Id. AR vehemently relied on the order of the Tribunal in the case of Alfa Laval Lund AB Vs. CIT, Pune in 1287/PUN/2017 for the assessment year 2012-13 vide order dated 02/11/2021. Accordingly, the Id. AR contended to quash the proceedings under section 263 of the Act.

7. On the other hand, the Id. DR vehemently supported the order of the authorities below.

8. We have heard both parties and carefully gone through the materials on record. At the outset, we note that the issue on hand is identical to the order of the Pune Tribunal in the case of Alfa Laval Lund AB (cited Supra), wherein the identical issue was decided in favour of the assessee. The relevant extract is reproduced as under:

"3. We have heard both the sides through Virtual Court and gone through the relevant material on record. It can be seen from para 4 of the Id. CIT's order that: "A proposal for revision u/s 263 of the IT Act, 1961 was received from DCIT(IT)-1, Pune through the Jt.CIT(IT), Pune vide letter No. Pn/Jt.CIT(IT)/263/2016-17/61 dated 23.05.2016". It is thus manifest that the edifice of the revision in the extant case has been laid on the bedrock of receipt of the proposal from the AO. At this stage, it would be worthwhile to have a glance at sub-section (1) of section 263 of the Act, which runs as under:-

"The 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 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, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."

4. Sub-section (1) of section 263 of the Act is an enabling provision which confers jurisdiction on the CIT to revise an assessment order which he considers erroneous and prejudicial to the interests of revenue. The process of revision u/s 263 of the Act initiates only when

the CIT calls for and examines the record of any proceeding under this Act and considers that any order passed by the AO is erroneous and prejudicial to the interests of the revenue. The twin conditions of – (i) the CIT calling for and examining the record; succeeded by (ii) his considering the assessment order as erroneous etc. – are sine qua non for the exercise of power under this section. The use of the word ‘and’ between the expression ‘call for and examine the record ...’ and the expression ‘if he considers that any order ... is erroneous ...’ abundantly demonstrates that both these conditions must be cumulatively fulfilled by the CIT and in the same order, that is, the first followed by the second. In other words, the kicking in point for invoking jurisdiction u/s 263 is calling for and examining the record of any proceedings under the Act by the CIT leading him to consider the assessment order erroneous etc. A communication from the AO is not ‘the record of any proceedings under this Act’. To put it simply, the consideration that the assessment order is erroneous and prejudicial to the interests of the revenue should flow from and be the consequence of his examination of the record of proceedings. If such a consideration is not preceded by the examination of record of the proceedings under the Act, the condition for revision does not get magnetized.

5. It is trite that a power which vests exclusively in one authority, can’t be invoked or cause to be invoked by another, either directly or indirectly. Section 263 of the Act confers power on the CIT to revise an assessment order, subject to certain conditions. Instantly, we are confronted with a situation in which the revision was initiated on the basis of the AO sending a proposal to the CIT and not on the CIT suo motu calling for and examining the record of the assessment proceedings and thereafter considering the assessment order erroneous and prejudicial to the interests of the revenue. The AO recommending a revision to the CIT has no statutory sanction and is a course of action unknown to the law. If AO, after passing an assessment order, finds something amiss in it to the detriment of the Revenue, he has ample power to either reassess the earlier assessment in terms of section 147 or carry out rectification u/s 154 of the Act. He can’t usurp the power of the CIT and recommend a revision. No overlapping of powers of the authorities under the Act can be permitted. As the revision proceedings in this case have triggered with the AO sending a proposal to the Id. CIT and then the latter passing the order u/s 263 of the Act on the basis of such a proposal, we hold that it became a case of jurisdiction deficit resulting into vitiating the impugned order. Without going into the merits of the case, we quash the impugned order on this legal issue itself.

6. In the result, the appeal is allowed.”

8.1 In the present case also, the proceedings were initiated under section 263 of the Act by the Id. CIT on the recommendation of the AO. This fact can be verified by the order of the Id. CIT under section 263 of the Act. The relevant extract of the order passed by the Id. CIT under section 263 of the Act is reproduced as under:

"The Assessing Officer, Income Tax Officer, Ward-4, Shivamogaa, has submitted the proposal seeking for revision of assessment u/s. 263 of the I.T.Act, dated 24.04.2019 in the case of Sri B.C. Rajashekara, Ior the A.Y. 2015-16."

8.2 In view of the above discussion, there remains no ambiguity that the facts in the present case are identical to the facts of the case discussed in the case of Pune Tribunal cited above. Accordingly, and respectfully following the case cited above, we set aside the order passed by the Id. CIT u/s 263 of the Act on the ground that the impugned order is not maintainable. Hence, the ground of appeal of the assessee is hereby allowed.

9. As the issue has been decided in favour of the assessee on technical ground, we do not find any reason to deal with the grounds raised by the assessee on merit of the case. As such, other issues raised by the assessee on merit become infructuous.

9.1 It is also pertinent to note that there were issues raised by the assessee pertaining to DIN. The Id. AR, at the time of hearing submitted that these issues will become academic and the same do not require to be adjudicated upon succeeding the case before the Tribunal on technical ground. Hence, we are not inclined to deal with the issue related to the DIN. Accordingly, we dismiss the same as infructuous.

10. In the result, the appeal of the assessee is partly allowed.

Now coming to ITA No. 772/Bang/2025

11. The facts of the case on hand are identical to the facts of the case discussed above, therefore, respectfully following the same, we set aside the order passed by the Id. CIT u/s 263 of the Act on the ground that the impugned order is not maintainable. Hence, the grounds of appeal of the assessee is hereby partly allowed.

12. In the result, the appeal of the assessee is partly allowed.

Now coming to ITA Nos. 306 & 307/Bang/2025 for the asst. year 2015-16

13. At the outset, we note that the impugned appeals are arising out of the direction issued by the Id. CIT u/s 263 of the Act. The orders passed u/s 263 of the Act have been held as non-maintainable by us vide paragraph Nos. 8 to 8.2 of the order. Accordingly, we hold that these appeals being consequential to the direction of the Id. CIT u/s 263 of the Act and do not require any separate adjudication. Hence, we dismiss the same as infructuous.

14. In the result, the appeals of the assessee are dismissed as infructuous.

15. In the combined result, the appeals bearing Nos. 772-773/Bang/2023 of the assessee are partly allowed whereas the ITA Nos. 306-307/Bag/2025 are dismiss the same as infructuous.

Order pronounced in court on 23rd day of July, 2025

Sd/-

(KESHAV DUBEY)
Judicial Member

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 23rd July, 2025

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore