

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**  
[Before Shri P.M. Jagtap, V.P (KZ) & Shri A. T. Varkey, JM ]

<b>I.TA No. 1227/Kol/2018</b> <b>A.Y 2008-09</b>		
M/s. Shyam Steel Manufacturing Ltd. (formerly known as SOVA Ispat Ltd) PAN: AAHCS 4673H	Vs.	D.C.I.T, Cir-3(1), Kolkata
Appellant		Respondent

Date of Hearing	27.11.2019
Date of Pronouncement	03 .01.2020

For the Appellant	Shri A.K. Tulsyan, CA, ld.AR
For the Respondent	Dr. (Shri) A.K. Nayak, CIT, ld. Sr.DR

**ORDER**

**PER SHRI A.T. VARKEY, JM**

This appeal is preferred by the assessee against the order of Ld. Pr. CIT-1, Kolkata dated 29/03/2018 for the assessment year 2008-09 passed u/s. 263 of the Income-tax Act, 1961 (hereinafter in short ‘the Act’).

2. At the outset itself, Shri A.K. Tulsyan, CA, drew our attention to the grounds of appeal raised by the assessee, which are as under:-

*1(a) That the notice issued u/s 263 of the Act is barred by limitation u/s 263(2) of the Act, on the issues raised by the Ld. PCIT in the notice issued u/s 263 of the Act. The said deductions were originally allowed in the order passed u/s 143(3) of the Act dated 20.04.2009 and were not the subject matter of the order passed u/s 147/143(3) of the Act dated 28.03.2016 .As such, the notice issued u/s 263 of the Act dt. 14.03.2018 is barred by limitation as the issue relating to deduction is allowed in order passed u/s 143(3) of the Act dt. 20.04.2009. Thus, the notice as well as the order so passed u/s 263 of the Act is barred by limitation and bad in law and needs to be quashed.*

*1(b) That the Ld. PCIT Kolkata -1 has taken the limitation period from the date of passing the order u/s 147/143(3) of the Act dt. 28.03.2016. The said proceedings u/s 147 was open in some other context i.e. Unaccounted Cash Credits. As such, the 263 can be done only limited to that issue for which 147 proceedings was taken and not to the issue which was not the subject matter of 147 proceedings for the purpose of limitation. The Ld. PCIT took the date of the order u/s 147/143(1) of the Act on the*

*issue of the impugned deductions claimed by the assessee which were already adjudicated u/s 143(3) of the Act dt. 20.04.2009. Hence, the jurisdiction exercised by the Ld. PCIT, Kolkata-1 on the order 147/143(1) is completely wrong. Thus, the order so passed u/s 263 of the Act itself bad in law and need to be quashed.*

3. According to him ground no. 1 is a legal issue challenging the impugned order, which is barred by limitation. According to the Id.AR, the assessee has filed its R.O.I (Return of Income) for the A.Y 2008-09 under section 139 of the Act on 27-09-2008. Thereafter, the AO passed assessment order u/s. 143(3) of the Act on 20-04-2009 (hereinafter 'the original assessment'). This original assessment was later reopened and reassessment order under section 147/143(3) of the Act was passed on 28-03-2016. It was brought to our notice that the re-assessment was made by making an addition of Rs. 20 lacs u/s. 68 of the Act. Thereafter, show cause notice (SCN) of the Id. PCIT dt. 14-03-2018 was issued to assessee proposing to exercise his revisional jurisdiction u/s. 263 of the Act in respect of AO's reassessment order dated 28.03.2016. However, according to assessee, the Id. Pr. CIT though mentions in the SCN about his intention to revise the AO's reassessment order dated 28.03.2016, however, actually he expressed his desire through the SCN to revise original assessment order passed u/s. 143(3) of the Act dated as early as 20-04-2009, which is clearly barred by limitation; and even if he had to legally exercise his revisional jurisdiction in respect of original assessment order dated 20-04-2009 then the Pr CIT ought to have done it on or before 31-03-2012 and not after 31.03.2012. Thus, according to Ld. AR, since the Ld. Pr. CIT in his Show Cause Notice (SCN) dated 14.03.2018 proposed his desire to revise on an issue which pertains to original assessment order passed by the AO u/s. 143(3) of the Act dt. 20-04-2009, consequently, the same is barred by limitation and the order is *non est* in the eye of law. The Ld. AR cited the decision of the Hon'ble Supreme Court in the case of CIT V/s. Alagendran Finance Ltd reported in 293 ITR 1 (SC), wherein it was held that where that part of order of assessment was found to be prejudicial to interest of revenue which had nothing to do with the reassessment proceedings and never a subject-matter of the reassessment proceedings, the doctrine of merger would not apply and the period of limitation provided for in section 263(2) of the Act would

begin to run from date of order of the original assessment and not from order of reassessment. The relevant part of the said order is reproduced as under :

*"15. We, therefore, are clearly of the opinion that keeping in view the facts and circumstances of this case and, in particular, having regard to the fact that the Commissioner of Income-tax exercising its revisional jurisdiction reopened the order of assessment only in relation to lease equalization fund which being not the subject of the reassessment proceedings, the period of limitation provided for under sub-section (2) of section 263 of the Act would begin to run from the date of the order of assessment and not from the order of reassessment. The revisional jurisdiction having, thus, been invoked Commissioner of Income-tax beyond the period of limitation, it was wholly without jurisdiction rendering the entire proceeding a nullity. "*

*(emphasis supplied)*

4. Further, the Hon'ble Jurisdictional High Court at Calcutta in the case of Success Tours & Travels (P). Ltd vs. ITO [394 ITR 37 (Calcutta)], had discussed the above-mentioned ruling of the Hon'ble Apex Court and observed as under-

*"In the case of Alagendran Finance Ltd. (supra), [he revisional power of the Commissioner was in issue before the Supreme Court, but it was in relation to the question of limitation. In that case also, reassessment was made under certain specific heads. The Commissioner thereafter exercised his revisional jurisdiction in relation to part of the assessment order involving certain other items not involved in the reassessment proceeding. These items did not form the basis of reassessment proceedings. The jurisdiction of the Commissioner to invoke his revisional power was questioned on the ground of limitation, as provided for in sub-section (2) of Section 263 of the 1961 Act. In the factual context of that case, the Commissioner's power to exercise his revisional jurisdiction could be retained if the date of reassessment was treated to be the starting point for computing the period of limitation. But such revisional power became incapable of being exercised because of limitation provisions if the date of initial assessment under Section 143(3) of the Act was taken to be the starting point. The Supreme Court's opinion in that case was that if revisional power was sought to be exercised in relation to items which did not form the basis of reassessment proceeding, then the Commissioner's jurisdiction could not be exercised because of the limitation provision contained in Section 263 (2) of the 1961 Act."*

5. Thus, according to Ld. AR, the issues on which the Ld. Pr. CIT proposed to exercise his revisional jurisdiction u/s. 263 of the Act, was not a subject-matter of the reassessment order dated 28.03.2016 and the same is arising out of the original assessment order dated 20.04.2009 is clearly barred by limitation on 31.03.2012 and, therefore, the SCN dated 14.03.2018 issued by Ld. Pr. CIT conveying his desire to revise the order of AO is barred by limitation.

6. Per contra, the Ld. CIT, DR supported the action of Ld. Pr. CIT and does not want us to interfere in the order of Ld. Pr. CIT and according to him, the original assessment order dated 20.04.2009 has merged with the reassessment order dated 28.03.2016 passed u/s. 147/143(3) of the Act and, therefore, does not want us to interfere.

7. Having heard both the parties and after perusal of the records, we note that for the assessment year under consideration i.e. AY 2008-09, the assessee company had filed its return of income on 27.09.2008 declaring a total income of Rs.2,17,27,550/-. Thereafter, the case of the company was subjected to regular scrutiny assessment proceedings and order u/s. 143(3) of the Act dated 20.04.2009 was passed by the AO (hereinafter the original assessment order). In the said original assessment order, the AO assessed the total income of the company at the returned income of Rs.2,17,27,549/- and determining an amount of Rs.8,35,320/- as refundable to the company.

8. Subsequently, notice u/s. 148 dated 27.03.2015 was issued to assessee to reopen the assessment and initiated reassessment proceedings on the company for the AY under consideration. Pursuant to the reassessment proceedings, reassessment order u/s. 147/143(3) of the Act dated 28.03.2016 was passed enhancing the assessed income by Rs 20 Lakhs to Rs.2,37,27,550/-. From a perusal of the reassessment order dated 28.03.2016 passed under section 147/143(3) of the Act, we note that the reassessment proceedings was on the limited issue of cash deposits and not any other matters were subjected to the reassessment proceedings.

9. Thereafter, the Ld. Pr. CIT had issued show-cause notice u/s. 263 of the Act dated 14.03.2018 finding fault with the AO while framing the reassessment order dated 28.03.2016 on the following issues:

- a) Contingent liability debited to the profit and loss account,
- b) Claim of depreciation at the rate of 100% of a few items and,

- c) Loss on sale/scrapping of fixed assets debited to the profit and loss account.

10. And after hearing the assessee, the Ld. Pr. CIT has set aside the order of AO dated 28.03.2016 with a direction to AO to pass fresh assessment order on the observation he had made in the impugned order in respect of the three faults stated above at para 9.

11. Aggrieved by the aforesaid order of Ld. Pr. CIT, the assessee has raised the legal issue that the Ld. Pr. CIT lacks jurisdiction to exercise revisional jurisdiction u/s. 263 of the Act, since the three faults referred to in his SCN dated 14.03.2018 emanates from the original assessment order dated 20.04.2009 and subsequent impugned order was barred by limitation as on 31.03.2013 and the three (3) faults on which the Ld Pr CIT directed the AO to frame fresh assessment order does not emanate from re-assessment order dated 28.03.2016 as erroneously stated in his SCN dated 14.03.2018.

12. We note that three faults raised by the Ld. Pr. CIT vide his SCN dated 14.03.2018 does not pertain to reassessment order dated 28.03.2016. Thus, we note that error, if any, committed by the AO, as mentioned in the show cause notice dated 14.03.2018 proposing action u/s. 263 of the Act, relates to the regular/original assessment order passed u/s. 143(3) of the Act, dated 20.04.2009 and not related to reassessment proceedings u/s. 147/143(3) of the Act, which culminated on 28.03.2016 and, therefore, 'doctrine of merger' as pleaded by Revenue is not attracted. The provisions of section 263 of the Act is reproduced as under:

*“Revision of orders prejudicial to revenue.*

*263(1) the 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 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.*

*2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.”*

13. Thus, we note that to revise any order of AO u/s. 263 of the Act, the following twin conditions must be satisfied then only the Ld. Pr. CIT can exercise his revisional jurisdiction.

- (i) the order passed by the Assessing Officer must be an erroneous one and
- (ii) the order must be prejudicial to the interests of the Revenue.

Further, any order u/s. 263 of the Act must be passed within a period of two years from the end of the financial year in which the order sought to be revised was passed.

14. In view of the above stated position of law, we note that since the issues on which show cause notice was issued u/s. 263 of the Act and which culminated in the impugned order, was never a subject-matter of the reassessment order passed u/s. 147 of the Act dated 28th March, 2016, cannot be said to be erroneous in so far as it relates to issues not subject matter of the reassessment proceedings.

15. Thus, we are of the opinion that even if there is an error in respect of the three (3) issues mentioned in the show cause notice issued u/s. 263 of the Act, the said errors could be said to be fall out of the original assessment order dated 20th April, 2009 passed u/s. 143(3) of the Act and not emanating out of the order dated 28th March, 2016 u/s. 147/143(3) of the Act. Since, the order u/s. 143(3) of the Act was passed on 20th April, 2009, no order of revision u/s. 263 (1) of the Act could be passed now [ in the year 2018] as the same is barred by limitation under the provisions of section 263(2) of the Act as on 31.03.2012 and therefore, the SCN issued by the Ld. Pr. CIT dated 14.03.2018 and the impugned order dated 28.03.2018 was barred by limitation and for coming to the conclusion, we rely on the decision of the Hon'ble Supreme Court of India in the case of CIT vs. Alagendran Finance Ltd. [293 ITR 1 (SC)], wherein the Hon'ble Apex Court has held that where that part of order of assessment was found to be prejudicial to interest of revenue which had nothing to do with the

reassessment proceedings and never a subject-matter of the reassessment proceedings, the doctrine of merger would not apply and the period of limitation provided for in section 263(2) of the Act would begin to run from date of order of the Original assessment and not from the order of reassessment. Thus, we find that the revisional jurisdiction having thus been invoked by the Ld. Pr. CIT being beyond the period of limitation was wholly without jurisdiction rendering the entire proceeding a nullity.

16. We also rely on the decision of the Hon'ble jurisdictional High court at Calcutta in the case of Success Tours & Travels (P) Ltd. Vs. ITO 394 ITR 37 (Cal) (supra) to come to this conclusion and so we quash the impugned order of the Ld. Pr. CIT dated 29.03.2018.

17. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 03 January, 2020

Sd/-  
P.M. Jagtap  
Vice-President

Sd/-  
A.T. Varkey  
Judicial Member

Dated 03 January, 2020

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Assessee: M/s. Shyam Steel Manufacturing Ltd (formerly known as Sova Ispat Limited) EN-32, Shyam Tower, Salt Lake City, Sector-V, Kolkata-91.
2. Respondent/Revenue: The DCIT, Circle-3(1), Aaykar Bhawan, P-7 Chowringhee Sq., Kolkata-69.
3. CIT,
4. CIT(A), Kolkata.
5. DR, Kolkata Benches, Kolkata

\*\*PP/SPS True Copy By By Order Assistant Registrar  
ITAT Kolkata