

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'A': NEW DELHI**

(Through Video Conferencing)

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.2181 /DEL/2017
[Assessment Year: 2012-13]**

Ashish Dham, C-1/2, Safdarjung Development Area, New Delhi-110016	Pr. Commissioner of Income Tax Room No.315, B Block, Civic Centre, Shyama Prasad Mukherjee Marg, New Delhi-110002
PAN-AABCG3985C	
Assessee	Revenue

Assessee by	None
Revenue by	Sh. Satpal Gulati, CIT DR

Date of Hearing	12.10.2021
Date of Pronouncement	25.10.2021

ORDER

PER KUL BHARAT, JM,

This appeal filed by the assessee is directed against the order of the learned Pr. Commissioner of Income Tax-22, New Delhi, dated 27.03.2017 passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to 'the Act') relating to Assessment Year 2012-13, thereby revising the assessment completed u/s 143(3) of the Act vide order dated 18.03.2015.

2. The assessee has raised following grounds of appeal:

1. *"That on law and facts and circumstances of the case, the learned CIT has erred in invoking the provision of section 263*

without appreciating the fact that the order passed by learned Assessing Officer is neither erroneous nor prejudicial to the interest of the revenue as on issue of revision, a specific query was raised and replied by appellant and considered by Id assessing officer.

2 Without prejudice to ground of appeal no. 1. Ld CIT is not justified in law and facts and circumstances of the case in invoking the provision of section 263 on the proposal of Id assessing officer.

3. Without prejudice to ground of appeal no. 1 and 2, the learned CIT without appreciating the correct facts of the case and examining the submissions of the appellant company during 263 proceedings is not justified on law and facts and circumstances of the case in setting aside the issue to Id assessing officer for further investigating the issue under the circumstances that as per provision of section 263 only Id Commissioner has the powers to investigate on the issue for which provision of section 263 is invoked..

3. The facts giving rise to the present appeal are that the assessee had filed his return of income on 30.03.2013, pertaining to the AY 2012-13, declaring income of Rs.21,42,580/-. The case was selected for scrutiny. The assessment u/s 143(3) of the Income Tax Act, 1961 ("the Act") was made, thereby the income as disclosed by the assessee was accepted. Thereafter, on the basis of audit objection, the Assessing Officer initiated rectification proceedings u/s 154 of the Act however, same was dropped instead the Assessing Officer ("AO") made proposal for revising the assessment u/s 263 of the Act made to the Ld.Pr.CIT.

4. The Ld. Pr. CIT observed that during the audit scrutiny of the case, it was noticed by the audit party that the

assessee had claimed rental income of Rs.6 lacs and claimed deduction u/s 24B of the Act of Rs.23,92,809/- as interest paid for home loan against the property bearing No.C-207, Sarvodaya Enclave, New Delhi-110017. The loan certificate and proof of letting out of the property, on which interest of home loan was paid, were not available in the records. The rent agreement of the property, on which rental income was received, was also not on the records. The reason for the acceptance of claim of interest against the said property of Rs.23,92,809/- was not recorded by the Assessing Officer. It was further observed that after verifying the records, the Assessing Officer accepted the observation of the audit party and agreed qua the observation made by them that the copy of the rent agreement against the said property was not in the records and there was no documentary evidence to suggest payment of interest of Rs.23,92,809/- against home loan related to the property. Hence, the Assessing Officer made proposal for setting aside the assessment order u/s 263 of the Act. Therefore, a notice u/s 263 of the Act dated 22.11.2016 was issued to the assessee. In response to first notice, none appeared on behalf of the assessee. Another notice was issued; in response thereto the Ld. Authorized Representative of the assessee attended the proceedings. The Ld. Pr. CIT recorded

that the Ld. AR of the assessee requested that the written submission filed by the assessee may be considered. The Ld. Pr. CIT, thereafter, considering the material available on record passed the impugned order, thereby holding that the order passed by the Assessing Officer was erroneous and prejudicial to the interest of the Revenue. Hence, the order was set-aside with a direction to investigate the issue and pass a speaking order.

5. Aggrieved against this, the assessee is in appeal before this Tribunal.

6. At the time of hearing, no one appeared on behalf of the assessee, however, Sh. Satpal Gulati, Ld. CIT-DR appeared on behalf of the Revenue and submitted that the order of the Ld. Pr. CIT is in accordance with law and same may be upheld.

7. We have heard the Ld. CIT DR and perused the material available on record. We find that the Ld. Pr.CIT has revised the order by observing as under:-

“3. I have considered the assessment order, written submission filed by the Ld. A.R. of the assessee. Ld. A. R. of the assessee has not filed any explanation about the non filing of rent agreement and loan taken against the property C-207, Sarvodaya Enclave, New Delhi-110007, against which interest of Rs. 23,92,809/- has been claimed. From the records, it is very clear that the AO has not investigated the case properly and also not applied his mind on the documents filed by the Ld. A.R. of the assessee at the time of assessment proceedings. Instead of filing any explanation on this issue,

Ld. A.R. of the assessee is raising the issue that notice u/s 154 was issued and also raising the issue that on the basis of audit observations, action u/s 263 cannot be taken. I have considered this issue and observed that it is true that this mistake was initially raised by the audit party, however, Ld. AO has applied his mind and observed that the AO, at the time of passing the assessment order, has not made any enquiry and also not applied his mind on documents filed by the Ld. A.R. Since AO was of the opinion that the order was erroneous and prejudicial to the interest of the revenue, he submitted the proposal for proceedings u/s 263 of the I.T.Act. If the order is erroneous and prejudicial to the interest of the revenue, 263 proceedings will attract, whether it was pointed out by the Audit or not, is immaterial. AO, at the time of sending the proposal, was satisfied that order passed by his predecessors was erroneous and prejudicial to the interest of the revenue. Ld. A.R. of the assessee has further raised the issue that order is non-est because it was not passed by the officer having the correct jurisdiction. I have considered this also and observed that the jurisdictional issue was not raised at the time of assessment proceeding, it cannot be raised during the time of proceeding u/s 263 of the I.T.Act. Even if we presume, but not accepting, that the order was passed by the officer who was not having jurisdiction, that order is erroneous and prejudicial to the interest of the revenue.

After considering all the issues, I am of the opinion that the AO has not properly investigated the case, documents filed by the Ld. A.R. at the time of assessment proceedings and also has not perused the earlier year's assessment record i.e. for AY 2011-12. AO was duty-bound to investigate the facts of the issue. He has not investigated the issue and also not applied his mind on the documents filed by the Ld. A.R. After considering these facts, I am of the opinion that the order passed by the AO is erroneous and prejudicial to the interest of the revenue. Accordingly, order is set aside with directions to the AO to investigate this issue only and pass a speaking order after giving adequate opportunity to the assessee."

(underlined for emphasis by us)

8. It is seen from the records that the assessee had taken various objections before the Ld. Pr. CIT. It is noticed that the objections of the assessee were not duly considered by the Ld. Pr. CIT before passing the impugned order. It was categorically stated before the Ld. Pr. CIT that the assessment

order that was being sought to be revised was non-est in the eyes of law as the officer who passed the assessment order was not having the requisite jurisdiction. However, it was also stated that all supporting evidences were furnished before the Assessing Officer. It was also submitted that the Assessing Officer had initiated rectification proceedings u/s 154 of the Act, at the instance of audit party and after making necessary enquiry, he dropped the proceedings. Therefore, there was no justification for initiating proceedings u/s 263 of the Act.

8.1. In the present case as can be seen from the underlined portion of the order of the Commissioner, the proceedings u/s 263 of the Act were initiated on the basis of the opinion of the Assessing Officer which is contrary to the requirements of section 263 of the Act which mandate the concerned Ld.Pr.CIT has to be of the opinion that the assessment order is erroneous so far prejudicial to the interest of the Revenue. For the sake of effective adjudication, section 263 of the Act 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 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.

Explanation 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

- (a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include—*
 - (i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;*
 - (ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under section 120;*
- (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 ⁶⁸[Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner;*
- (c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the ** Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.*

Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer 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 ⁶⁹[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.

(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.

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, ²⁰[National Tax Tribunal], the High Court or the Supreme Court.

Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.”

9. As per the above provisions, the Ld. Pr. CIT is empowered to call for and examine the record of any proceeding under the 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. From the order of the Ld. Pr. CIT, it is clear that he set-aside the assessment order and directed the Assessing Officer to investigate the issue and pass a speaking order. In our considered view, this approach of the Ld. Pr. CIT is erroneous as the law is clear that the Ld. Pr.

CIT either he can make enquiry himself or cause such enquiry to be made but such exercise is to be made before passing the order u/s 263 of the Act. It is not disputed by the Revenue that proceedings u/s 154 of the Act were dropped by the same Assessing Officer who had requested for exercising powers u/s 263 of the Act by the Ld. Pr. CIT. It is also not disputed that the revision by the Ld. Pr. CIT is based upon the audit objections. Further, the Ld. Pr. CIT did not dispose of the objections of the assessee that assessment order passed by the Assessing Officer was without jurisdiction. Under these undisputed facts, we are of the view that the exercise of power u/s 263 of the Act by the Ld. Pr. CIT is not accordance with law. Therefore, the same deserves to be quashed. We, therefore, hereby quash the impugned order being unjust and contrary to the settled law. The grounds raised in this appeal by the assessee are allowed.

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

Order was pronounced in the open court on 25th October. 2021.

Sd/-

Sd/-

**[G.S. PANNU]
PRESIDENT**

**[KUL BHARAT]
JUDICIAL MEMBER**

Delhi; Dated: 25/10/2021.

Shekhar / Amit Kumar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi