IN THE INCOME TAX APPELLATE TRIBUNAL

"F" BENCH, MUMBAI

BEFORE Ms. PADMAVATHY S., ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 2919/MUM/2024

(Assessment Year: 2016–17)

United Brothers Multiplast LLP
(Successor to M/s. United Brothers)
301, Heritage Plazza, A Wing,
R.S. Maharaj Marg, Teli Gali,
Cross Lane, Andheri (E), ……. Appellant
Mumbai, Maharashtra – 400069
PAN: AAAFU0314K

v/s

Pr. Commissioner of Income Tax-17 ……. Respondent
Mumbai - 400051

Assessee by : Shri V.G. Ginde
Shri Kumar Kale
Revenue by : Shri Ankush Kapoor, CIT (DR)

Date of Hearing – 28/08/2024	Date of Order - 25/11/2024

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal challenging the impugned order dated 26/03/2024, passed under section 263 of the Income Tax Act, 1961 ("*the Act*") by the learned Principal Commissioner of Income Tax, Mumbai - 17 ["*learned PCIT*"], for the Assessment Year ("*A.Y.*") 2016-17.

2. In this appeal, the assessee has raised the following grounds: –

"Being aggrieved by the order u/s. 263 of the Income-tax Act, 1961 ("Act"), dated 26.03.2024 ("impugned order") passed by the learned Pr. Commissioner of Income Tax - 17, Mumbai ["Ld. CIT(A)"] your appellant

prefers this appeal, among others, on the following grounds of appeal, each of which is without prejudice to, and independent of, the other:

1. On the facts and in the circumstances of the case, and also in law, the Ld. Pr. CIT erred in passing the impugned order u/s. 263 of the Act, setting aside the assessment order u/s. 147 r. w. s. 144B of the Act, dated 15.03.2022 by invoking provisions of clause (a) of Explanation-2 to Section 263 of the Act, even though the appellant's case does not fall within the ambit of the said provisions. Your appellant, therefore, prays that the impugned order u/s. 263 be quashed."

3. The solitary grievance of the assessee, in the present appeal, is against the invocation of revisionary proceedings under section 263 of the Act by the learned PCIT.

4. The brief facts of the case as emanating from the record are: The assessee was a partnership firm and was converted into a Limited Liability Partnership under the name of United Brothers Multiplast LLP ("*the LLP*") w.e.f. 18.02.2015. Since the income/receipts were offered to tax in the hands of the LLP by filing the return of income for the year under consideration, no return of income was filed by the partnership firm. On the basis of information available on the Actionable Information Monitoring System of AIMS Module that TDS has been deducted in the name of the partnership firm, notice under section 148 of the Act was issued on 26.03.2021 and proceedings under section 147 of the Act were initiated. As per the aforesaid information, the partnership firm has taxable income/receipt to the tune of Rs.1,58,47,560/- during the year under consideration and since the assessee did not file any return of income, the aforesaid income remained unexplained and has escaped the assessment. In response to the notice issued under section 148 of the Act, the partnership firm filed its return of income on 25.04.2021 declaring an income of Rs.Nil.

During the re-assessment proceedings, statutory notices under section 143(2) and section 142(1) along with questionnaire were issued and served on the assessee. After considering the response of the partnership firm, the Assessing Officer ("*AO*") vide order dated 15.03.2022 passed under section 147 r.w.s. 144B of the Act accepted the returned income of the partnership firm.

5. Subsequently, vide notice dated 29.01.2023, issued under section 263 of the Act, revisionary proceedings were initiated in the case of the partnership firm on the basis that vide assessment order dated 15.03.2022 passed under section 147 r.w.s. 144B of the Act TDS credit of Rs.15,84,582/- was granted to the partnership firm even though no income has been offered to tax by the partnership firm in its return of income filed on 25.04.2021. Further, it was noticed that apart from the aforesaid credit, interest of Rs.5,70,420/- was also granted to the assessee resulting in a refund of Rs.21,55,002/-. Accordingly, the learned PCIT alleged that in this case assessment was reopened under section 148 of the Act, however, the same has resulted in a refund being issued to the partnership firm even though no income was offered by the partnership firm for the A.Y. 2016-17 due to failure on the part of the AO to make due verification which was expected to be made under the facts and circumstances of the case. Accordingly, the ld. PCIT alleged that the assessment order is erroneous insofar as it is prejudicial to the interest of the Revenue within the meaning of Explanation-2 to Section 263(1) of the Act.

6. In response to the notice issued under section 263 of the Act, the partnership firm filed its submission on 09.02.2024 and submitted that the AO passed the assessment order under section 147 r.w.s. 144B of the Act after considering the submissions of the partnership firm. It was further submitted that certain parties were required to deduct TDS under sections 194H and 194A of the Act in the hands of the newly converted LLP but erroneously deducted the TDS in the hands of the erstwhile partnership firm. It was further submitted that despite repeated requests to such parties they have not revised the TDS return pertaining to the assessment year under consideration. It was further submitted that the LLP has duly accounted for such transaction and offered profits thereon in its hand and paid income thereon without claiming TDS deducted in the name of the erstwhile partnership firm. Thus, it was submitted that the income is duly credited by the newly formed/converted LLP and therefore, these transactions were part of the books of account regularly maintained and duly audited under the LLP Act and under section 44AB of the Act. The PCIT thereafter issued another show cause notice on 08.03.2024 under section 263 of the Act to the partnership firm, which was duly responded to by the partnership firm vide its submission dated 20.03.2024.

7. The PCIT, vide impugned order, did not agree with the submission of the assessee and held that the partnership firm had not submitted the details at the time of assessment proceedings, therefore, due inquiry has not been conducted by the AO. Accordingly, the PCIT, vide impugned order, after referring to Explanation 2(a) to section 263 set aside the assessment

order dated 15.03.2022 and directed the AO to pass a fresh order as per law. Being aggrieved the assessee is in appeal before us.

8. We have considered the submissions of both sides and perused the material available on record. In the present case, it is undisputed that United Brothers (partnership firm) was converted into LLP on 18.02.2015 under the name of United Brothers Multiplast LLP. Thus, on the date of conversion of the partnership firm, the partnership firm was dissolved and a new entity was created as LLP. Accordingly, the income earned after the date of conversion was recorded in the hands of the LLP and not the dissolved partnership firm. Therefore, during the year under consideration, since no income was earned by the dissolved partnership firm, no return of income was filed by it. However, the LLP duly accounted for all the transactions, offered to tax all the income credited to its account and filed its return of income for the year under consideration. As per the partnership firm, it has requested all the deductors to issue new TDS certificates in the name of LLP after the dissolution of the partnership firm so that the LLP can claim the TDS credit. However, certain deductors still issued the TDS certificate in the name of the erstwhile partnership firm. Since the TDS was reflected in the name of the erstwhile partnership firm, notice under section 148 of the Act was issued to the partnership firm on the basis that taxable income/receipt to the tune of Rs.1,58,47,560/- has not been offered to tax by the erstwhile partnership firm. It is further undisputed that in response to the aforesaid notice, the partnership firm filed its return of income declaring income of Rs.Nil. From the paper book filed by the assessee, we find that during the

reassessment proceedings, statutory notices under section 143(2) and section 142(1) were issued and served on the partnership firm which was duly responded to by it. From its reply filed on 21.12.2021, forming part of the paper book pages 34-35, we find that the partnership firm clarified to the AO that no income was earned by it and therefore, no return was filed for the year under consideration. It was further clarified that the income earned belongs to the LLP and has been shown in the return of income filed by the LLP. The partnership firm further submitted that certain deductors have been issued the TDS certificate in the name of the partnership firm. We further find that the AO issued notices under section 142(1) on 21.12.2021 and 07.09.2022 which were duly responded to by the partnership firm and information as sought was furnished. Thus, it is evident that only after considering the submissions of the partnership firm, the AO vide its order dated 15.03.2022 passed under section 147 r.w.s. 144B of the Act completed the assessment at the returned income without making any additions in the hands of the partnership firm. Thus, we find no basis in the findings of the learned PCIT that due verification was not made by the AO as is expected to be made under the facts and circumstances of the present case.

9. From the perusal of the submission dated 09.02.2024 filed in its reply to the notice issued under section 263, forming part of the paper book from pages 2-7, we find that the partnership firm specifically submitted that the LLP has duly accounted for all the transaction in its name and offered to tax income received by it and paid the income tax thereon without claiming TDS

deducted in the name of the erstwhile partnership firm. However, from the perusal of the impugned order passed under section 263 of the Act, we find that the learned PCIT completely ignored the aforesaid submissions made by the partnership firm. Further, from the intimation dated 11.12.2016 issued under section 143(1) of the Act in the case of the LLP, placed on record during the hearing, we find that TDS to the tune of Rs.21,12,614/- was claimed in the return of income filed by the LLP on 17.10.2016 for the A.Y. 2016-17. However, vide aforesaid intimation, the TDS only to an extent of Rs.5,28,032/- was granted to the LLP for the A.Y. 2016-17. Thus, it is evident that the TDS amounting to Rs.15,84,582/- which was appearing in the name of the partnership firm was not granted to the LLP. It is evident that in the present case, the credit of TDS of Rs.15,84,582/- was granted only to one entity, i.e., the partnership firm and there is no double grant of TDS credit. Therefore, we are of the considered view that no prejudice is caused to the Revenue in the present case. During the hearing, the learned AR placed reliance upon the decision of the Hon'ble Delhi High Court in CIT vs. Relcom, reported in (2015) 62 tamann.com 190 (Delhi). In the aforesaid decision, the Hon'ble High Court held that where due to an inadvertent mistake, TDS related to the assessee's sister concern was credited to the assessee's TDS account, the assessee can claim credit of such TDS, provided its sister concern had not availed the benefit of such TDS certificate. The relevant findings of the Hon'ble Delhi High Court, in the aforesaid decision, are reproduced as follows: -

> *"6. Having heard the submissions made on behalf of the revenue and after a perusal the orders passed by the CIT(A) and the ITAT, we are of opinion that*

the said orders do not call for any interference and were warranted and justified in the facts and circumstances of the case. Before we proceed to elaborate on our reasons for the same, a perusal of Section 199 of the Act is necessary. Section 199 reads as follows:

> *"199. Credit for tax deducted.*
>
> *(1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.*
> *(2) Any sum referred to in sub-section (IA) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made.*
>
> *(3) The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (I) and sub-section (2) and also the assessment year for which such credit may be given."*

7. The revenue relies on the phrase "shall be treated as a payment of tax on behalf of the person from whose income the deduction was made" to contend that the assessee's TDS claim cannot be based on the receipts of M/s REPL. However, the assessee fairly admitted throughout the proceedings for its TDS claim of Rs. 1,20,73,097/- that the benefit of such claim has not been availed by M/s. REPL. Therefore, the revenue, having assessed M/s REPL's income in respect to such TDS claim cannot now deny the assessee's claim on the mere technical ground that the income in respect of the said TDS claim was not that of the assessee, given that M/s Relcom (the assessee) and M/s REPL are sister conces and M/s REPL has not raised any objection with regard to the assessee's TDS claim of Rs. 1,20,73,097/-.

8. This Court's reasoning is supported by a ruling of the Division Bench of the Andhra Pradesh High Court in CIT v. Bhooratnam & Co. [2013] 357 ITR 396/216 Taxman 6/29 taxmann.com 275 where the Court noted as follows:

> *"In our view, the CIT (Appeals) and the Tribunal have rightly held that the assessee is entitled to the credit of the TDS mentioned in the TDS certificates issued by the contractor, whether the said certificate is issued in the name of the Joint Venture or in the name of a Director of the assessee company. They have considered the terms of the agreement dated 12-03-2003 among the parties to the joint venture and held that credit for TDS certificates cannot be denied to the assessee while assessing the contract receipts mentioned in the said certificates as income of the assessee. The income shown in the TDS certificates has either to be taxed in the hands of the joint venture or in the hands of the individual co-joint venturer. As the joint venture has not filed return of income and claimed credit for TDS certificates and the TDS certificates have not been doubted, credit has to be granted to the TDS mentioned therein for the assessee.*

** ** **

The Revenue cannot be allowed to retain tax deducted at source without credit being available to anybody. If credit of tax is not allowed to the assessee, and the joint venture has not filed a return of income, then credit of the TDS cannot be taken by anybody. This is not the spirit and intention of law."(Emphasis Supplied)

9. At this stage, it is also relevant to note the provisions of Rule 37BA of the Income Tax Rules, 1962, which envisions grant of TDS credit to entities other than the deductee (herein, M/s REPL). We must clarify that we are not oblivious of the fact that Rule 37BA is not directly applicable in the facts of this case. The reliance placed on Rule 37BA is merely to demonstrate that in not all circumstances is TDS credit given to the deductee.

10. This Court relies upon the well-settled dictum that procedure is the handmaid of justice, and it cannot be used to hamper the cause of justice Sardar Amarjit Singh Kalra v. Pramod Gupta, [2003] 3 SCC 272. Therefore, the revenue's contention that the assessee, instead of claiming the entire TDS amount, ought to have sought a correction of the vendor's mistake, would unnecessarily prolong the entire process of seeking refund based on TDS credit.

11. In light of the aforesaid reasons, the question of law framed is answered against the revenue and the appeal is accordingly dismissed."

10. In the present case, as noted above, since the TDS of Rs.15,84,582/ as appearing in the name of the partnership firm was only allowed to the partnership firm and not to the LLP, despite the fact that the corresponding income was offered to tax by the LLP, we are of the considered view that no prejudice has been caused to the Revenue in the present case. The Hon'ble Supreme Court in Malabar Industrial Co. Ltd. vs. CIT, reported in (2000) 243 ITR 83 (SC) held that in order to invoke the provisions of section 263 of the Act, the assessment order must be erroneous and also prejudicial to the interest of the Revenue, and if one of the limbs is absent, i.e., if the order of the Income-tax Officer is erroneous but is not prejudicial to Revenue or if it is not erroneous but is prejudicial to Revenue, recourse cannot be had to section 263 of the Act. Since both the conditions for invoking section 263 of the Act are not satisfied in the present case, therefore, the impugned order

passed by the learned PCIT under section 263 of the Act is quashed. Accordingly, the grounds raised by the assessee are allowed.

11. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 25/11/2024

Sd/-	**Sd/-**
PADMAVATHY S. **ACCOUNTANT MEMBER**	**SANDEEP SINGH KARHAIL** **JUDICIAL MEMBER**

MUMBAI, DATED: 25/11/2024
Prabhat

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai