

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"C" BENCH, AHMEDABAD**  
*(Conducted through Virtual Court)*  
**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT**  
**AND**  
**SHRI AMARJIT SINH, ACCOUNTANT MEMBER**

**ITA No.667/Ahd/2019**  
निर्धारण वर्ष/ Asstt.Year : 2014-15

Kaushikbhai P. Patel 43, GIDC Estate Naroda,Ahmedabad. PAN : AAVPP 9887 F	Vs.	Pr.Commissioner of IT-7 Ahmedabad.
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(Applicant)	(Responent)
Assessee by :	Shri Mahesh Chhajed, AR
Revenue by :	Shri O.P. Sharma, CIT-DR

सुनवाई की तारीख/Date of Hearing : 11/05/2021  
घोषणा की तारीख /Date of Pronouncement: 13/05/2021

**आदेश/ORDER**

**PER RAJPAL YADAV, VICE-PRESIDENT:**

Assessee is in appeal before the Tribunal against order of the Id.Pr.CIT-7, Ahmedabad dated 30.3.2019 passed under section 263 of the Income Tax Act, 1961 for the Asstt.Year 2014-15.

2. Sole grievance of the assessee is that the Id.Pr.CIT has erred in taking cognizance under section 263 of the Act and thereby setting aside the assessment order dated 27.12.2016 passed under section 143(3) of the Act. The Id.Pr.CIT has erred in directing the AO to pass a fresh assessment.

3. Brief facts of the case are that the assessee has filed its return of income on 24.11.2014 declaring total income at Rs.10,71,190/-. The

case of the assessee was selected for scrutiny assessment and assessment order was passed on 27.12.2016 whereby income of the assessee was determined at Rs.11,96,180/-. The Id.Commissioner perused the assessment record and formed an opinion that the assessment order is erroneous as well as prejudicial to the interest of Revenue because according to him, the Id.AO has not conducted a proper inquiry with regard to the land development expenditure. Therefore, he issued a show cause notice under section 263 of the Act; copy of such notice is available at page no.6 of the paper book, which reads as under:

*“Pr.CIT-7/ABD/Tech/Revisionu/s.263/KPP/2018-19 Date: 14/03/2019*

*To,*

*Shri Kaushikbhai P. Patel,  
43, GIDC State, Naroda,  
Ahmedabad.*

*PAN: AAAAVPP9887F*

***Sub; Show cause notice u/s. 263 of the Income Tax Axt, 1961 for the AY. 2014-15-Reg.***

*Ref: Proposal u/s 563 of the Income Tax Act, 1961 submitted by the ITO, Ward-7(2)(2),Ahmedabad vide letter No.ITO/Ward-7(2)(2)/263/KPP/2018-19 dated 30/07/2018*

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*Kindly refer to the above.*

*On perusal of your case records, it is observed that return of income for the above mentioned assessment year was filed u/s 139(1) of the Income Tax Act, 1961 on 24/ 11/2014 declaring total income at Rs.10,71,190/-. Upon scrutiny u/s 143(3) of the Act, the then AO i.e. DCIT, Central-1(4), Ahmedabad inter-alia added an amount of Rs.1,24,993/- by disallowing the claim of interest expenditure. Subsequently, it was observed that you have incurred the expenditure in Profit & Loss Account towards Development expenses of Rs.21,46,500/- and a questionnaire was also issued on 1/2016 by the*

*A.O. in this regard, In spite of the fact that you had failed to respond same, The A.O. (in his order passed u/s 143(3) of the Income Tax Act, 1961) allowed this claim of expenditure of Rs.21,46,500/- on account of development expenses without making proper enquiries or verification which should have been made.*

*3. In view of the above facts, it appears that the order passed by the A. O., u/s 143(3) of the Income Tax Act, 1961 for the assessment year 2014-15 seems to be erroneous in so far as it is prejudicial to the interests of the Revenue. You are therefore requested to please show-cause as to why not an order enhancing the income or set-aside the order passed u/d 143(3) of the Act dated 27/12/2016 should be passed in your case in exercise of powers conferred to me under the provisions of section 263 of the Income Tax Act, 1961. For this purpose, you may appear before the undersigned either in person or through your Authorized Representative on 19/03/2019-at 03,30 P.M; in my office at the above mentioned address. If you do not wish to appear either in person or through your Authorized Representative, you may make your submission in writing so as to reach the undersigned on or before the appointment date, which shall be considered before passing the order.*

Sd/-

(RAJKUMAR LACHHIRAMAKA

Pr. Commissioner of Income Tax - 7, Ahmedabad

4. In response to the show cause notice, the assessee has filed detailed written submissions. Copy has been placed on page no.8 to 13 of the paper book. The Id.Commissioner was not satisfied with the explanation of the assessee, and he set aside the assessment order. Brief finding recorded by him in para-5 & 6 reads as under:

*“5. During the course of the hearing on 29/03/2019 (for 263 proceedings), the assessee has submitted copies of agreements and also the details of payments made to different persons concerning this expenditure of Rs.21,46,5007-. Since these details were not available with the Assessing Officer at the time of the assessment proceedings, it would be in the fitness of things that the said order of the A.O. is set aside to this limited issue and he is directed to make necessary enquiries regarding the genuineness of such expenses. In this regard, the A.O. may also summon these persons (who have allegedly received the payment) and ask them to produce evidences as to their living in that property and also as to why different members of the same family have been paid compensation by the*

*assessee. The A.O. will also inquire if recipients have offered such receipts as income in their returns of income.*

*6. In view of the fact that. In this view of the matter, the aforesaid assessment order is set aside to the file of A.O. with a direction to examine the issue afresh, in light of the discussion above and finalize the assessment as per the Income Tax Act, 1961. The AO shall grant adequate and effective opportunity of being heard to the assessee before finalizing the assessment as per Income Tax Act, 1961.”*

5. While impugning order of the Id.Commissioner, the Id.counsel for the assessee drew our attention towards page no.4 of the paper book whereby copy of profit & loss account has been placed. He pointed out that the assessee has shown land development expenditure at Rs.21,46,500/-. Further he has shown the land purchase at Acher at Rs.67,80,381/-. On the asset side in the closing stock, the assessee has shown work-in-progress Acher land at Rs.89,26,881/-. This amount is total of land development expenditure as well as land purchase. Thus, the assessee has not claimed any expenditure in the P&L account in the shape of land development expenditure. There is no loss to the Revenue. This plea has specifically been made by the assessee in the written submissions. The assessee has placed reliance upon the decision of the Tribunal in the case of Amira Foods P.Ltd. Vs. Pr.CIT, 63 ITR (Tri) 355 (Del). On the strength of this decision, it was contended by the Id.counsel for the assessee before the Id.Pr.commissioner that when the assessee has not claimed any deduction of expenses during the year, the question of under assessment or loss of revenue does not arise. Similarly, he put reliance upon the judgment of Hon'ble Bombay High Court in the case of CIT Vs. Gabriel India Ltd., 203 ITR 108. On the other hand, the Id.CIT-DR relied upon the order of the Pr.Commissioner.

6. We have duly considered rival submissions and gone through the record carefully. Section 263 of the Income Tax Act has direct bearing on the controversy, therefore, it is pertinent to take note of this section. It reads as under:

“263(1) 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 interest 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.- 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 1<sup>st</sup> 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 Chief Commissioner or Director General or Commissioner authorized 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 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 1<sup>st</sup> day

of June, 1988, the powers of the 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.

(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, 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.”

7. On a bare perusal of the sub section-1 would reveal that powers of revision granted by section 263 to the learned Commissioner have four compartments. In the first place, the learned Commissioner may call for and examine the records of any proceedings under this Act. For calling of the record and examination, the learned Commissioner was not required to show any reason. It is a part of his administrative control to call for the records and examine them. The second feature would come when he will judge an order passed by an Assessing Officer on culmination of any proceedings or during the pendency of those proceedings. On an analysis of the record and of the order passed by the Assessing Officer, he formed an opinion that such an order is erroneous in so far as it is prejudicial to the interests of the

Revenue. By this stage the learned Commissioner was not required the assistance of the assessee. Thereafter the third stage would come. The learned Commissioner would issue a show cause notice pointing out the reasons for the formation of his belief that action u/s 263 is required on a particular order of the Assessing Officer. At this stage the opportunity to the assessee would be given. The learned Commissioner has to conduct an inquiry as he may deem fit. After hearing the assessee, he will pass the order. This is the 4th compartment of this section. The learned Commissioner may annul the order of the Assessing Officer. He may enhance the assessed income by modifying the order. At this stage, before considering the multi-fold contentions of the Id. Representatives, we deem it pertinent to take note of the fundamental tests propounded in various judgments relevant for judging the action of the CIT taken u/s 263. The ITAT in the case of Mrs. Khatiza S. Oomerbhoy Vs. ITO, Mumbai, 101 TTJ 1095, analyzed in detail various authoritative pronouncements including the decision of Hon'ble Supreme Court in the case of Malabar Industries 243 ITR 83 and has propounded the following broader principle to judge the action of CIT taken under section 263.

- (i) The CIT must record satisfaction that the order of the AO is erroneous and prejudicial to the interest of the Revenue. Both the conditions must be fulfilled.
- (ii) Sec. 263 cannot be invoked to correct each and every type of mistake or error committed by the AO and it was only when an order is erroneous that the section will be attracted.
- (iii) An incorrect assumption of facts or an incorrect application of law will suffice the requirement of order being erroneous.

- (iv) If the order is passed without application of mind, such order will fall under the category of erroneous order.
- (v) Every loss of revenue cannot be treated as prejudicial to the interests of the Revenue and if the AO has adopted one of the courses permissible under law or where two views are possible and the AO has taken one view with which the CIT does not agree. If cannot be treated as an erroneous order, unless the view taken by the AO is unsustainable under law
- (vi) If while making the assessment, the AO examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determine the income, the CIT, while exercising his power under s 263 is not permitted to substitute his estimate of income in place of the income estimated by the AO.
- (vii) The AO exercises quasi-judicial power vested in his and if he exercises such power in accordance with law and arrive at a conclusion, such conclusion cannot be termed to be erroneous simply because the CIT does not fee stratified with the conclusion.
- (viii) The CIT, before exercising his jurisdiction under s. 263 must have material on record to arrive at a satisfaction.
- (ix) If the AO has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the AO allows the claim on being satisfied with the explanation of the assessee, the decision of the AO cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard.

8. Action under section 263 could be taken if twin conditions viz. impugned order should be erroneous, and it should be prejudicial to the interest of the Revenue. In the present case, when the assessee has

not claimed any expenditure, then where is the prejudice to the Revenue; where is the loss to the Revenue. Veracity of such expenditure taken to the work-in-progress could be examined in the year when sales will be made. This plea has been specifically raised by the assessee before the Id.CIT, but the Id.CIT did not record any finding, even did not consider it. Hence, order of the Id.Pr.Commissioner is not sustainable, it deserves to be quashed. Accordingly, appeal of the assessee is allowed and we quash the impugned order.

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

**Order pronounced in the Court on 13<sup>th</sup> May, 2021 at Ahmedabad.**

**Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER**

**Sd/-  
(RAJPAL YADAV)  
VICE-PRESIDENT**

Ahmedabad; Dated 13/05/2021