

IN THE INCOME TAX APPELLATE TRIBUNAL, JODHPUR BENCH, JODHPUR

BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

ITA. No. 36/JODH/2021
Assessment Years : 2015-16

M/s Deepak & Company Infra Pvt. Ltd. H. No. 450, Aggarsain Nagar, Sri Ganganagar	Vs.	ITO, Ward -1, Sri Ganganagar
PAN/GIR No.: AAECD7124R		
Appellant		Respondent

Assessee by : Sh. Rajendra Jain (Adv.) &
Sh. Mohit Soni (CA)

Revenue by : Smt. Sanchita Kumar (CIT)

Date of Hearing : 12/08/2021

Date of Pronouncement : 07/09/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. Pr. CIT-1, Jodhpur passed u/s 263 of the Act dated 11.03.2021 for A.Y 2015-16.

2. During the course of hearing, the Id. AR submitted that the assessee company derives income from execution of contract work and is also engaged in the business of construction of roads, highways on BOT agreement. The assessee had filed its return of income on 29/09/2015 and subsequently on 24.06.2016 had filed revised return of income. The case of assessee was selected under limited scrutiny to examine following issues:-

- a] Depreciation claimed at higher rate/higher additional depreciation claimed.
- b] Mismatch in sales turnover reported in audit report & ITR.
- c] Mismatch in amount paid to related person u/s 40A(2)(b) reported in audit report & ITR.

3. During the assessment proceedings, the AO had raised the queries in respect of issues for which the case of assessee was selected for scrutiny. The assessee had furnished the explanation and documentary evidences as required by the AO and the AO after due verification of issues from the documentary evidences and supporting judgments and CBDT circulars had passed the assessment order in a judicial manner.

4. It was submitted that the Id PCIT thereafter had issued a notice u/s 263 of the Act on two issues namely, deduction claim u/s 80IA and excess claim of depreciation on construction of road (As per BOT agreement). During the revision proceedings, the assessee had explained that its case was selected for limited scrutiny on the issues as mentioned above. Therefore the issue of deduction claimed u/s 80IA of the Act is beyond the jurisdiction of PCIT u/s 263 of the Act. Further the depreciation (amortization) claimed on road construction as per the CBDT circular No. 9/2014 dated 23/04/2014 and these facts were duly verified by the Id AO during the assessment proceedings. The Id PCIT in the impugned order u/s 263 of the Act however held that the assessment order passed by the Id AO was erroneous and prejudicial to the interest of the Revenue.

5. It was submitted that the order passed by the Id PCIT is not only contrary to the provisions of the law but also contrary to the decision of various Courts. It was submitted that as regards to the claim of deduction u/s 80IA, the issue raised by the PCIT is beyond the scope of limited scrutiny and therefore the said reason on which the Id PCIT had issued the notice u/s 263 and acquired the jurisdiction is not only illegal but also against the circular issued by the CBDT and in support, reliance was placed on decisions of Jaipur Bench in the case of Mahendra Singh Dhankhar (HUF) vs ACIT reported in (2021) 35 NYPTTJ 458 (Jp) and Pune Bench in the case of M/s Storewell Construction & Engineers, V/s Pr. CIT in ITA No. 768/PUN/2019 dated 05.12.2019. It was accordingly submitted that consequent direction issued by the Id PCIT is beyond his jurisdiction and as such same may kindly be quashed.

6. As regards claim of depreciation (amortization) on road, it was submitted that the assessee had constructed the roads under BOT agreement and therefore claimed amortization on the basis of remaining period prescribed under such agreement in the return of income. It was submitted that the circular No. 09/2014 issued by CBDT specifically provides the treatment of expenditure incurred for development of roads/ highways in BOT agreements under Income Tax Act. It was submitted that the letter of acceptance for BOT projects and the return of income, audit report etc. wherein the assessee had claimed amortization on the road expenses are available on record. Further the amortization of assets claimed by the assessee was within the purview of circular no. 9/2014 issued by CBDT which specifically provides that the amortization allowable may be computed at the rate which ensures that the whole of the cost incurred in creation of

infrastructural facility of road/highway is amortized evenly over the period of concessionaire agreement after excluding the time taken for creation of such facility.

7. It was submitted that during the year under consideration, the assessee has claimed amortization for two roads (i.e. Laxmangarh - Salasar Road and Sriganganagar - Padampur Road) and as required by the Bench, the reconciliation statement of the claim of amortization on construction of roads under BOT agreements in the audit report and in the reply filed before Id AO is as follows:

	As per reply dated 27/11/2017 before Id. AO		4,01,84,929
	As per Audit report:		
1.	Laxmangarh- Salasar Road	1,39,79,176	
2.	Sriganganagar- Padampur Road	2,62,05,753	4,01,84,929

8. It was submitted that the assessee in response to the notice issued by Id AO u/s 142(1) had brought on record that the assessee company was incorporated on 12/06/2013 i.e. in AY 2014-15 and the assessee has claimed amortization in AY 2014-15 & AY 2015-16 as per the CBDT circular No. 9/2014 dated 23/04/2014. It was submitted that the claim made by the assessee was duly certified by C.A. and was in accordance with the circular and decisions of Honorable Court. It was accordingly submitted that the observations of Id PCIT that "As per CBDT circular No. 09/2014 dated 23.04.2014, depreciation is to be allowed to the assessee engaged in developing of road and highways in BOT agreements on the basis of provisions of section 32(1)(ii) of the Act." is clearly arbitrary and contrary to the CBDT circular.

9. It was submitted that the AO after due consideration the circular issued by the CBDT and the submission of the assessee had reached the judicial decision which cannot be branded as erroneous. Further, on the similar issues, the various Hon'ble Courts and Tribunals had considered the circular and allowed the claim. In light of above, the direction issued by the PCIT is not only contrary to the principle of law but also against the principle of natural justice. Therefore the order passed by the Id PCIT may kindly be quashed.

10. Per contra, the Id. CIT/DR submitted that during the year under consideration, the assessee has shown gross receipts of Rs.5,73,49,487/- from contractorship business, toll collection of Rs.4,12,69,020/- from Shriganganagar-Padampur Road and Rs.3,72,66,473/- from Laxmangarh-Salasar Road. Apart from these receipts, the assessee has also shown other receipts of Rs.8,73,575/-. On the gross receipts of Rs.13,67,58,558/-, gross profit of Rs.62,15,997/- was shown and after claiming deduction of Rs.35,92,846/- u/s 80IA, the assessee has shown taxable income of Rs.26,23,150/-.

11. It was submitted that as per provisions of Section 80IA(6) of the Act and Rule 18BBE of the Income-tax Rules, deduction is available on the profit of housing or other activities, which are integral part of a highway project and for claiming deduction, the assessee has to maintain separate accounts for the said activities and submit a report for each undertaking or enterprise accompanied by profit and loss account and balance sheet of the undertaking or enterprise. Further, as per Rule 18BBB of the Income-tax Rules, in case of an enterprise carrying on the business of developing or operating and maintaining or developing,

operating and maintaining an infrastructure facility, the form shall be accompanied by a copy of the agreement of the enterprise with the Central or State Government or the local authority for carrying on business of developing or operating and maintaining or developing, operating and maintaining an infrastructure facility.

12. It was submitted that in the instant case, no separate books of account, profit & loss account, balance sheet as per Rule 18BBB was maintained by the assessee for which separate Form 10CCB was required to be filed. The assessee has filed a single Form 10CCB for its entire business. Apart from this, in column No. 13 of the Form 10CCB, the assessee has claimed to have attached agreement as required under Rule 18BBB, but no such agreement was filed during the course of assessment proceedings or called for by the AO. The AO has failed to verify the claim of the assessee viz-a-viz the conditions laid down in Income-tax Act and in Income-tax Rules as mentioned above. The AO was therefore rightly directed by Id PCIT to examine the claim of the assessee as per the conditions laid down u/s 80IA read with Rule 18BBB and Rule 18BBE of the Income-tax Rules.

13. It was submitted that as per depreciation and amortization chart of the audit report, the assessee has claimed the value of Padampur Toll road at Rs. 15,32,47,295/- as on 05.09.2012, written down value of which was shown at Rs. 15,20,30,334/- on 31.03.2014. The assessee has claimed depreciation and amortization at the rate of 9.12% on this Toll Road which comes to Rs. 1,39,79,176/- in the P & L account,. Similarly, the assessee has shown the value of Salasar Toll Road at Rs. 10,68,69,665/- as on 09.08.2012, WDV of which as on 31.03.2014 was shown at Rs. 8,58,54,355/-. In the year under reference, the assessee

has claimed depreciation and amortization of Rs. 2,62,05,753/- at the rate of 24.52% on this Toll Road. As per Note 20 given for depreciation and amortization expenses, the assessee has claimed an amount of Rs. 4,16,44,363/- under this head.

14. It was submitted that as per the CBDT Circular No. 09/2014 dated 23.04.2014, depreciation is to be allowed to the assessee engaged in developing of road and highways in BOT agreements on the basis of provisions of Section 32(1)(ii) of the Act. But in the instant case, the assessee has claimed depreciation and amortization at higher rate. In respect of such claim no detail/explanation was offered by the assessee during the course of the assessment proceedings. The AO also did not verify the claim of depreciation as per the provisions of Section 32(1)(ii) and allowed the same as claimed by the assessee. The AO was therefore rightly directed by Id PCIT to verify the claim of depreciation and amortization expenses of the assessee as per provisions of section 32(1)(ii) of the Act after seeking relevant details and documents from the assessee. Further, reliance was placed on explanation (2) to section 263(1) of the Act. It was submitted that the assessment order passed u/s 143(3) has been rightly held to be erroneous in so far as it is prejudicial to the interest of the Revenue. It was accordingly submitted that there is no infirmity in the order so passed by the Id. Pr. CIT and the same should be confirmed and appeal of the assessee be dismissed.

15. We have heard the rival contentions and perused the material available on record. Broadly, two issues have been raised by the Id. Pr. CIT while issuing the show cause u/s 263 of the Act. The first issue relates to claim of deduction of Rs 35,92,846/- u/s 80IA of the Act in respect of which no separate books of accounts have been

maintained by the assessee as required u/s 80IA(6) r/w Rule 18BBB, no separate Form 10CCB has been filed and the AO has failed to verify the said claim of the assessee. In this regard, the limited contention which has been raised before us is that the case of the assessee was selected for limited scrutiny and matter relating to claim of deduction u/s 80IA was not subject matter of limited scrutiny and therefore, the show-cause by the Id PCIT u/s 263 on such a matter is beyond the scope of his jurisdiction u/s 263 of the Act. We had an occasion to examine the jurisdiction of the Id PCIT u/s 263 in case of matters initially selected for limited scrutiny in case of M/s Mahendra Singh Dhankhar, HUF vs. ACIT (supra) and it would be relevant to reproduce our findings therein as the same are equally relevant in the context of the contentions advanced by the Id AR in the present case. In the said case, we have held as under:

"17. There is no dispute that scope of enquiry in case of limited scrutiny is only to the extent of the issues for which case was selected for scrutiny under CASS. The CBDT has issued instructions from time to time in this respect and has specifically instructed the taxing authorities that scope of enquiry should be limited to verification of all the particulars for which limited scrutiny was taken up under CASS. However, in case during the assessment proceeding if the AO is of the view that substantial verification of other issue is also required then the case may be taken up for comprehensive scrutiny with the approval of the Pr.CIT/DIT concerned. It is also instructed that such an approval shall be accorded by the Pr.CIT/DIT in writing after being satisfied about the merits of the issue(s) necessitating wider and detailed scrutiny in the case. In the latest Instruction No. 5/ 2016

dated 14-07-2016, CBDT has again instructed the taxing authorities in para 2 to 4 as under:-

"2. In order to ensure that maximum objectivity is maintained in converting a case falling under 'Limited Scrutiny' into a 'Complete Scrutiny' case, the matter has been further examined and in partial modification to Para 3(d) of the earlier order dated 29.12.2015, Board hereby lays down that while proposing to take up 'Complete Scrutiny' in a case which was originally earmarked for 'Limited Scrutiny', the Assessing Officer ('AO') shall be required to form a reasonable view that there is possibility of under assessment of income if the case is not examined under 'Complete Scrutiny'. In this regard, the monetary limits and requirement of administrative approval from Pr. CIT/CIT/Pr. DIT/DIT, as prescribed in Para 3(d) of earlier Instruction dated 29.12.2015, shall continue to remain applicable.

3. Further, while forming the reasonable view, the Assessing Officer would ensure that:

a. there exists credible material or information available on record for forming such view;

b. this reasonable view should not be based on mere suspicion, conjecture or unreliable source; and

c. there must be a direct nexus between the available material and formation of such view.

4. It is further clarified that in cases under 'Limited Scrutiny', the scrutiny assessment proceedings would initially be confined only to issues under 'Limited Scrutiny'

and questionnaires, enquiry, investigation etc. would be restricted to such issues. Only upon conversion of case to 'Complete Scrutiny' after following the procedure outlined above, the AO may examine the additional issues besides the issue(s) involved in 'Limited Scrutiny'. The AO shall also expeditiously concerned regarding conducting 'Complete Scrutiny' in such cases."

18. Thus the AO is duty bound to follow the instructions in case limited scrutiny assessment proceeding are proposed to be converted into complete scrutiny and without following said procedure and necessary approval of the competent authority conducting an enquiry on the issue which is outside the limited scrutiny would be beyond the jurisdiction of the AO. As a necessary corollary, the Pr. CIT u/s 263 cannot be permitted to traverse beyond the jurisdiction that was vested with the A.O while framing the assessment as what cannot be done directly cannot be done indirectly. Therefore, where the matter was selected for limited scrutiny, revisional jurisdiction cannot be exercised for broadening the scope of jurisdiction that was originally vested with the A.O while framing the assessment as also held consistently by various Benches of the Tribunal as referred supra.

19. A contention which has been raised by the Id CIT/DR is that where there is a potential escapement of income, the AO is required to convert the limited scrutiny case into a comprehensive scrutiny case after taking the prior approval of Id. PCIT and if the

AO does not get the limited scrutiny case converted to comprehensive scrutiny case even though there are material on record, the assessment order becomes erroneous as it is prejudicial to the interest of Revenue and provisions of section 263 of the Act are applicable. For the purposes of converting limited scrutiny to complete scrutiny, what is relevant is that there must be some credible material or information on face of the record and basis review thereof during the assessment proceedings, the AO is required to form a reasonable view that there is possibility of under assessment of income if the case is not examined under 'Complete Scrutiny' and after seeking approval from the competent authority, the case can be converted into complete scrutiny and that too, during the currency of assessment proceedings. Therefore, what is essential is the existence of credible material and basis examination thereof and formation of belief by the AO at first place during the course of assessment proceedings that there is a case of under assessment or escapement of income which is similar to provisions of section 147 of the Act. In the instant case, we find that the assessee, being in business of real estate development has followed percentage completion method of accounting and has accounted for actual costs incurred though after the end of the financial year as the project was substantially completed and revenues have been recognized. Therefore, we find that there is no infirmity in assessee following the accepted method of accounting and basis thereof, determination of income which is offered to tax and thus, we find that there was no tangible material or information available during the course of assessment

proceedings basis which reasonable belief can be formed of escapement or under assessment of income and which could have led the AO to seek permission to convert limited scrutiny into complete scrutiny. Therefore, the AO not seeking permission to convert limited scrutiny to complete scrutiny is not borne out of facts on record. Even for sake of arguments, if we were to assume that there is material on record pointing towards potential escapement of income and which has escaped the attention of the AO during limited scrutiny assessment proceedings and no action has been taken by him, it is not that the Revenue doesn't have any recourse and correct course of action would have been for AO to record his satisfaction and invoke jurisdiction u/s 147 of the Act subject of course to satisfaction of conditions specified therein rather than the Id PCIT invoking jurisdiction u/s 263 of the Act. As we have discussed earlier, the revisional jurisdiction u/s 263 cannot be exercised for broadening the scope of jurisdiction that was originally vested with the A.O while framing the assessment and enlarging his scope of enquiry."

16. In the aforesaid decision, we have held that the scope of enquiry in case of limited scrutiny is only to the extent of the issues for which case was selected for scrutiny under CASS. The CBDT has issued instructions from time to time in this respect and has specifically instructed the taxing authorities that scope of enquiry should be limited to verification of all the particulars for which limited scrutiny was taken up under CASS and the AO is duty bound to follow the said instructions. It was further held in the said case that the Pr. CIT u/s 263 cannot be permitted to traverse beyond the jurisdiction that was vested with the

A.O while framing the assessment as what cannot be done directly cannot be done indirectly. Therefore, where the matter was selected for limited scrutiny, revisional jurisdiction cannot be exercised for broadening the scope of jurisdiction that was originally vested with the A.O while framing the assessment as also held consistently by various Benches of the Tribunal. Further, we have held in the said case that where there is material on record pointing towards potential escapement of income and which has escaped the attention of the AO during limited scrutiny assessment proceedings and no action has been taken by him, it is not that the Revenue doesn't have any recourse and correct course of action would have been for AO to record his satisfaction and invoke jurisdiction u/s 147 of the Act subject of course to satisfaction of conditions specified therein rather than the Id PCIT invoking jurisdiction u/s 263 of the Act.

17. The aforesaid findings applies equally in the instant case where it is an undisputed fact that the case of the assessee was selected for limited scrutiny for examining claim of depreciation at higher rate/higher additional depreciation, mismatch in sales turnover reported in audit report & ITR and mismatch in amount paid to related person u/s 40A(2)(b) reported in audit report & ITR. Thus, the claim of the deduction u/s 80IA was clearly not the subject matter of limited scrutiny and where the AO has failed to examine and verify the said claim of the assessee, the order so passed by the AO cannot be held as erroneous as the same was not within the scope of limited scrutiny at first place and the AO is duty bound to restrict himself to the reasons recorded for which the case was selected for limited scrutiny. We, therefore, agree with the contentions advanced by the Id

AR that on this matter, revisional jurisdiction u/s 263 cannot be exercised by the Id PCIT as the same would tantamount to broadening the scope of jurisdiction that was originally vested with the A.O while framing the assessment u/s 143(3) of the Act in case of limited scrutiny case.

18. Now, coming to the second issue for which the show-cause was issued by the Id PCIT. It relates to claim of depreciation/amortization relating to two roads/highway stretches namely, Sriganganagar – Padampur Road and Laxmangarh – Salasar Road constructed by the assessee company under BOT agreement. As per Id PCIT, the AO has failed to carry out the necessary examination and verification of said claim of depreciation/amortization inspite of the fact that one of the reasons for which the matter was selected for limited scrutiny was to verify the claim of depreciation at higher rates/additional depreciation. As per Id PCIT, as per the CBDT Circular No. 09/2014 dated 23.04.2014, depreciation is to be allowed to the assessee engaged in developing of road and highways in BOT agreements on the basis of provisions of Section 32(1)(ii) of the Act. But in the instant case, the assessee has claimed depreciation and amortization at higher rate. In respect of such claim, no detail/explanation was offered by the assessee during the course of the assessment proceedings and the AO also did not verify the claim of depreciation as per the provisions of Section 32(1)(ii) and allowed the same as claimed by the assessee. Per contra, the contention advanced by the assessee is that it has claimed amortization of the cost incurred in construction/development of these two stretches of the highways evenly over the period of concessionaire agreement in

accordance with the CBDT circular no. 9/2014 dated 23.04.2014 and the matter was enquired and duly examined by the Assessing officer.

19. We therefore find that contentions advanced by both the parties as to the claim of amortization is guided by CBDT circular no. 9/2014 dated 23.04.2014 and it would therefore be appropriate to refer to the contents of the said circular as under:

"It has come to the notice of the Board that disputes have arisen as to whether the expenditure incurred on development and construction of infrastructural facilities like roads/highways on Build-Operate-Transfer ('BOT') basis with right to collect toll is entitled for depreciation under section 32(1)(ii) of the Act or the same can be amortized by treating it as an allowable business expenditure under the relevant provisions of the Income-tax Act, 1961 ('Act').

2. In such projects, the developer (hereinafter referred to as 'assessee'), in terms of concessionaire agreement with Government or its agencies is required to construct, develop and maintain the infrastructural facility of roads/highways which, inter-alia, includes laying of road, bridges, highways, approach roads, culverts, public amenities etc. at its own cost and its utilization thereof for a specified period. In lieu of consideration of the expenditure incurred on construction, operation and maintenance of the infrastructure facility covered by the period of the agreement, the assessee is accorded a right to collect toll from users of such facility. The expenditure incurred by such assessee on development and construction of such infrastructural facility are capitalized in the accounts. It is seen that in returns-of-income, assessees are generally claiming depreciation on such capitalized expenditure treating it as an 'intangible asset' in terms

of section 32(1)(ii) of the Act while in assessments, such claims are being disallowed by the Assessing Officer on the grounds that such infrastructural facility is not owned, wholly or partly, by the taxpayer which is an essential condition for claiming depreciation and further right to collect toll does not fall in any of the categories of 'intangible assets' specified in sub-clause(ii) of sub-section (1) of section 32 of the Act.

3. In BOT arrangements for development of roads/highways, as a matter of general practice, possession of land is handed over to the assessee by the Government/notified authority for the purposes of construction of the project without any actual transfer of ownership and such assessee has only a right to develop and maintain such asset. It also enjoys the benefits arising from use of asset through collection of Toll for a specified period without having actual ownership over such asset. Therefore, the rights in the land remain vested with the Government or its agencies. Thus, as assessee does not hold any rights in the project except recovery of toll free to recoup the expenditure incurred, it cannot therefore be treated as an owner of the property, either wholly or partly, for purposes of allowability of depreciation under section 32(1)(ii) of the Act. Thus present provisions of the Act do not allow claim of depreciation on Toll ways due to non fulfillment of ownership criteria in such cases.

4. There is no doubt that where the assessee incurs expenditure on a project for development of roads/highways, he is entitled to recover cost incurred by him towards development of such facility (comprising of construction cost and other pre-operative expenses) during the construction period. Further, expenditure incurred by the assessee on such BOT projects brings to it an enduring benefit in the form of right to collect the toll during the period of the agreement. Hon'ble Supreme

Court in the case of Madras Industrial Investment Corp Ltd 225 ITR 802 (SC) allowed spreading over of liability over a number of years on the ground that there was continuing benefit to the company over a period. Therefore, analogously, expenditure incurred on an infrastructure project for development of roads/highways under BOT agreement may be treated as having been made/incurred for the purposes of business or profession of the assessee and same may be allowed to be spread during the tenure of concessionaire agreement.

5. In view of above, Central Board of Direct Taxes, in exercise of the powers conferred under section 119 of the Act hereby clarifies that the cost of construction on development of infrastructure facility of roads/highways under BOT projects may be amortized and claimed as allowable business expenditure under the Act.

6. The amortization allowable may be computed at the rate which ensures that the whole of the cost incurred in creation of infrastructural facility of road/highway is amortized evenly over the period of concessionaire agreement after excluding the time take for creation of such facility."

20. On perusal of the aforesaid CBDT Circular, we find that the CBDT appreciating the disputes and controversies around claim of depreciation under section 32(1)(ii) vis-à-vis amortization has come out with a clarification regarding treatment of expenditure incurred for development of roads/highways in BOT agreements and has held that the cost of construction on development of infrastructure facility of roads/highways under BOT projects may be amortized and claimed as allowable business expenditure under the Act and such amortization may be computed at the rate which ensures that the whole of the cost

incurred in creation of infrastructural facility of road/highway is amortized evenly over the period of concessionaire agreement after excluding the time take for creation of such facility. Therefore, in the instant case, where there is no dispute that two roads/highway stretches have been constructed/developed by the assessee under the BOT agreements, the assessee shall be eligible to claim amortization of the whole of the cost incurred in creation of infrastructural facility of road/highway evenly over the period of concessionaire agreement after excluding the time take for creation of such facility rather than the rate of depreciation as prescribed under section 32(1)(ii) of the Act.

21. During the course of assessment proceedings, it is noted that on enquiry by the Assessing officer, the assessee has submitted that this is the second year of claim of amortization wherein it has claimed amortization of Rs 4,01,84,929 for a period of 365 days as against amortization of Rs 3,22,32,261 for a period of 293 days claimed in the previous assessment year 2014-15 and detail statement as part of the audit report was also submitted in respect of both the road/highway stretches disclosing respective cost of construction/development, the period of concessionaire agreement and the amount of amortization determined for the year under consideration. The same was duly examined by the Assessing officer and no adverse finding has been recorded by him. We therefore find that where the assessee is eligible for claim of amortization as per CBDT circular no. 9/2014 dated 23.04.2014 and the same has accordingly been claimed and allowed by the Assessing officer after due verification and examination, the order so passed by the Assessing officer cannot be held as erroneous in so far as prejudicial to the interest of the Revenue.

22. In light of aforesaid discussions and in the entirety of facts and circumstances of the case, we are of the considered view that the necessary enquiries and examination as reasonably expected have been carried out by the Assessing officer and he has taken a prudent, judicious and reasonable view after considering the entire material available on record and the order so passed u/s 143(3) cannot be held as erroneous in so far as prejudicial to the interest of Revenue. The impugned order passed by the Id PCIT u/s 263 is accordingly set aside and the order of the Assessing officer is sustained.

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

Order pronounced in the open Court on 07/09/2021.

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Vikram Singh Yadav)
Accountant Member

Jodhpur

Dated:- 07/09/2021.

*Ganesh Kumar

Copy of the order forwarded to:

1. The Appellant- M/s Deepak & Company Infra Pvt. Ltd., Sri Ganganagar
2. The Respondent- ITO, Ward-1, Sri Ganganagar
3. CIT
4. CIT(A)
5. DR, ITAT, Jodhpur.
6. Guard File { ITA No. 36/Jodh/2021 }

By order,

Asst. Registrar