

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "ए" अहमदाबाद।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, AHMEDABAD**

*(through web-based video conferencing platform)*

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT**  
**AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA Nos. 140, 141 & 142/Ahd/2021**  
**Assessment Years : 2013-14, 2014-15 & 2015-16**

M/s. Venus Infrastructure & Developers (P) Ltd., 1101, Venus Amadeus, Jodhpur Cross Road, Satellite, Ahmedabad-380015 PAN : AAHCS 6254 J	Vs	The PCIT (Central), Ahmedabad
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Shri Tushar Hemani, Sr. Advocate Shri Parimalsinh B Parmar, AR & Shri Vijay Govani, AR
Revenue by :		Shri Virendra Ojha, CIT-DR

सुनवाई की तारीख/Date of Hearing : 28/07/2021  
घोषणा की तारीख /Date of Pronouncement: 09/09/2021

**आदेश/ORDER**

**PER RAJPAL YADAV, VICE PRESIDENT :**

The present three appeals are directed at the instance of the assessee against separate orders of even dated 31.03.2021 passed by the learned Principal Commissioner of Income Tax (Central), Ahmedabad under Section 263 of the Income Tax Act, 1961 (in short "the Act") for Assessment Years 2013-14, 2014-15 & 2015-16. The assessee has taken 11 grounds of appeal in each year. The grounds are verbatim same; therefore, for the facility of reference, we take note of the grounds from Assessment Year 2013-14, which read as under:-

*"1. The Ld. PCIT (Central), Ahmedabad ("the PCIT") has grossly erred on facts and in law in invoking jurisdiction u/s 263 of the Act and has further*

*erred in directing the AO to pass a fresh assessment order in accordance with law and facts of the case.*

*2. The Ld. PCIT has grossly erred on facts and in law in passing order u/s 263 of the Income Tax Act, 1961 ignoring the fact that the assessment sought to be reviewed in the case of the of the appellant was already quashed by the Hon'ble Income Tax Appellate Tribunal, Ahmedabad.*

*3. The Ld. PCIT has grossly erred on facts and in law in failing to appreciate that the invocation of jurisdiction by the AO under section 153A of the Act was bad in law and in gross disregard of the settled law that the additions in the assessment u/s 153A are required to be made only on the basis of incriminating documents found and seized during the course of the search.*

*4. The Ld. PCIT has erred on facts and in law in passing order u/s 263 of the Income Tax Act, 1961 in the case of the appellant without appreciating and dealing with various case laws submitted in support of appellant's contentions with regard to the scope of assessment u/s 153A & non maintainability of action u/s 263 of the Income Tax Act, 1961.*

*5. The Ld. PCIT has erred on facts and in law in passing order u/s 263 of the Income Tax Act, 1961 in the case of the appellant mechanically following the old and stale findings recorded in the assessment for the A.Y. 2012-13, without citing any fresh material relevant to the year under consideration, ignoring the fact that the said findings were found incorrect by the CIT(A) and the deduction u/s 80IB(10) was allowed after examining all the relevant facts and circumstances of the matter in great details.*

*6. The Ld. PCIT has erred on facts and in law in passing order u/s 263 of the Income Tax Act, 1961 in the case of the appellant by mechanically following the audit objection without examining specific and compelling facts made available on records regarding valid claim of deduction u/s 80IB(10) and has further erred in passing order u/s without recording any finding after examining the relevant documents as to why the appellant was not entitled to deduction u/s 80IB(10).*

*7. The Ld. PCIT has erred on facts and in law in passing order u/s 263 of the Income Tax Act, 1961 in the case of the appellant ignoring the considered position taken by the AO with regard to completion of the project by the appellant by taxing notional income form house property from unsold housing stock.*

*8. The Ld. PCIT has erred on facts and in law in passing order u/s 263 of the Income Tax Act, 1961 in the case of the appellant contradicting himself with*

*his own assertion made in the appeal filed before the Hon'ble ITAT in the appeals filed in the case of the appellant against the order of Ld. CIT (A).*

*9. The Ld. PCIT has erred on facts and in law in passing order u/s 263 of the Income Tax Act, 1961 in the case of the appellant in holding that the appellant has violated 80IB(10)(e)/(f) of the Act citing facts much prior to A.Y. 2012-13, which the AO had considered the same irrelevant even while denying 80IB(10) for AY 2012-13, ignoring undisputed fact that no two residential units were allotted/sold to one individual/relative of relative.*

*10. The Ld. PCIT has erred on facts and in law in passing order u/s 263 of the Income Tax Act, 1961 in the case of the appellant without pointing out anything wrong with regards to reply filed by the appellant about the Minimum Alternate Tax payable by the appellant.*

*11. The aforesaid grounds are without prejudice to each other and appellant craves for liberty to add fresh ground(s) of appeal and also to amend, alter, modify any of the grounds of appeal."*

2. The learned Counsel for the assessee, at the very outset, submitted in brief that the assessee has been challenging the action taken under Section 263 of the Act by the learned Commissioner in these three assessment years. At the outset, he submitted that a search and seizure operation was carried out at the premises of the assessee on 10.03.2015. The assessment orders have been passed under Section 153A of the Income Tax Act on 29.12.2017. The validity of these assessment orders were challenged before the learned CIT(A) and ultimately the issue travelled up to the Hon'ble Tribunal and the Tribunal vide its order dated 12.11.2020 has quashed the assessment orders on the ground that these are not passed within the time period provided in the Act. Since the assessment orders have already been quashed in all these three assessment years, there cannot be any subsequent proceedings against the assessee even under Section 263 of the Act. He further submitted that this aspect was brought to the notice of the learned Commissioner who took cognizance of this fact; but, instead of dropping the proceedings, passed the impugned orders by keeping in mind the

Department wants to keep the issue alive. He placed on record copy of the order passed by the Tribunal in the case of the assessee on quantum.

3. On the other hand, learned Departmental Representative relied upon the impugned orders and submitted that the learned Commissioner has rightly taken cognizance under Section 263 of the Act and has rightly decided the issue.

4. We have duly considered the rival contentions and gone through the record carefully. The learned Commissioner has initiated the proceedings under Section 263 in all these three assessment years by issuance of notice under Section 263 of the Act on 12.02.2020. The show-cause notice issued by him reads as under:-

*"4. Accordingly, a notice u/s.263 of the I.T. Act, 1961 dated 12/02/2020 was issued to the assessee. The relevant part of notice is reproduced herein below:*

*3. On perusal of the case records, it is seen that the Assessing Officer had allowed the deduction claimed by you u/s 80IB(10) of the Act, for non-completed project till 31/03/2012. Moreover, the Sr. Town Planner, AUDA vide letter dated 21/01/2014 stated that BU permission has been granted to 480 units (out of 860) only as remaining blocks were incomplete with respect to GDCR. Thus, you violated the condition no.(a)(iii) of Section 80IB(10) of the Act.*

*3.1. Further, it is also noticed that Shri Naresh T Khanchandani made block booking of 5 flats by depositing Rs.1,00,00,000/- in F.Y.2007-08 which was returned back without any interest on 22.12.2011. It is also noticed that you had received an advance of Rs.20,33,855/- for Flat No.303 and Rs.19,66,105/- for Flat No.304 from Shri Ramesh Gidwani. Thus, you violated the condition No.(f) of Section 80IB(10) of the Act.*

*3.2. Further, you had received an advance of Rs.51,000/- for Flat No.D-406 and Rs.51,000/- for Flat No.408 from Shri Sunderdas Minmohal HUF. Thus, you violated the condition No.(e) of Section 80IB(10) of the Act.*

3.3. *The Assessing Officer had disallowed the deduction claimed by you u/s 80IB(10) of the Act during scrutiny for A.Y.2012-13 for non-completion of project till 31.03.2012. When the project was not completed till 31.03.2012, then there is no question of allowing deduction u/s 80IB(10) for subsequent years.*

4. *Further, on perusal of P&L Account, computation of income and assessment order, it is noticed that the assessee had net profit of Rs.51,43,31,107/- after debit of Rs.14,36,96,811/- of current income tax and Rs.85,593/- of deferred tax. Further, it was also seen from computation of income that while calculating regular income the assessee had added Rs.52,75,510/- on account of interest on Income Tax. However, in computing its book profit u/s 115JB of the Act, assessee added only debited amount of deferred tax of Rs.85,593/- and current income tax of Rs.14,36,96,811/-. The amount debited interest on Income Tax of Rs.52,75,510/- was not added back while determining book profit u/s 115JB of the Act. The same was accepted by the Assessing Officer. However, in view of clause (a) of Explanation I, the amount of debited interest on income tax of Rs.52,75,510/- required to be added for determining book profit u/s 115JB of the Act*

5. *In view of the above, the assessment order u/s.143(3) r.w.s 153A of the Act dated 29/12/2017 passed by the Assessing Officer is prima facie both erroneous as also prejudicial to the interest of the revenue and therefore, I intend to revise the said order u/s.263 of the I.T. Act."*

5. During the course of hearing before the learned Commissioner, the assessee brought to his notice that these proceedings has no legs to stand because proceedings under Section 263 of the Act can only be initiated if same validity proceedings are pending before the Assessing Officer. The assessment order, which has been based by the learned Commissioner to construe the error crept in the proceedings which has caused prejudice to the interest of the Revenue, has already been quashed by the Tribunal. The learned Commissioner took cognizance of this fact and recorded the following findings:-

*"The assessee, vide letter dated 12.1.2021 has further stated that the order under question has been quashed by the Hon'ble ITAT vide order dated*

12.11.2020. Therefore, it is stated that proceedings u/s 263 is not maintainable.

6. The contention of the assessee that since the ITAT has quashed the assessment order therefore the proposed notice and assessment u/s 263 of the Act is bad in law is not correct. The basic features of sec. 263 are that the Pr. Commissioner may revise any order of assessment provided it is erroneous and prejudicial to the interests of the revenue, that the revision order can be passed within two years from the end of the financial year in which the order sought to be revised was passed and the assessee must be given an opportunity of being heard before any proceedings under the section are taken. The pre-conditions for assessment under section 263 have been satisfied. Moreover, the Department has not accepted the order of the IT AT and contemplating to file Miscellaneous Application before the Hon'ble ITAT in this regard. The order under revision is challenged on account of validity of order u/s 153A, whereas this order is for non-application of provisions of Section 80ID(10) of the Act. Therefore issues are different. Even though these issues are interlinked, but to keep the issue alive and in the interest of revenue, this proceedings are completed.

6.1 The assessee has also stated that in the case of the assessee the assessment was not abated and as such no additions which are not based on the incriminating documents found during the search proceedings can be made in the case of the assessee. However, on verification it is found that in the case of the assessee assessment is abated and therefore the Assessing Officer is at full liberty in verifying all the issues without limiting it to the incriminating documents found during the search. This argument of the assessee is not found true and is rejected.

6.2 Regarding the argument about the doctrine of merger, it is to be pointed out that it is well settled law that the principle of res judicata has no application to Income-tax matter and an assessment for a particular year is final and conclusive in relation to that year and the decisions given in assessment in earlier year are not binding either on the assessee or the Department in a subsequent year."

6. With the assistance of the learned Representatives, we have gone through the record carefully. A perusal of Section 263 of the Act would reveal that it contemplates that the Principal Commissioner or learned 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 insofar as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after conducting an 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. It is pertinent to observe that for instituting a valid proceeding under Section 263 of the Act, there should be a valid legal proceeding before the Assessing Officer. Once the assessment order was quashed on the ground that it was passed after limitation provided in the Act for passing such order, then it is to be construed that no assessment order is available on which learned Commissioner could form an opinion as to whether any error is available in such order or not. Section 263 of the Act specifically contemplates that there should be an error either in the proceedings or in the assessment order which has caused prejudice to the interests of the Revenue. Now, in the present appeals, the assessment orders have already been cancelled - meaning thereby it has extinguished, and therefore, no subsequent further proceedings can be initiated. For the completeness of the facts, we take note of the operating part of the order of the Tribunal in IT(SS)A No. 106, 107 and 108/Ahd/2019 for Assessment Years 2013-14, 2014-15 and 2015-16, wherein the Tribunal, after an elaborate discussion, has quashed the assessment orders. The operating part of the order reads as under:-

*"64. In fact we are of the view that the conditions imposed under Section 132(3) of the Act for passing the prohibitory orders were not complied with. Accordingly, these orders passed under Section 132(3) of the Act have no validity in the eyes of law.*

*65. Once the prohibitory orders in the case on hand has been held as invalid then the search concluded in the month of March 2015 shall be taken as the base for calculating the period of passing the assessment order as provided*

*under Section 153B of the Act. In other words the time limit in the case on hand expires for passing the order as on 31 March 2017. Therefore, in the present case the orders have been framed beyond the time prescribed under the provisions of law.*

*66. Before parting we also note that the bank lockers with respect to which prohibitory orders were passed under Section 132(3) of the Act were belonging to the other parties who are the income tax assessee. On this count only the prohibitory orders passed by the authorised officer in the name of the assessee in connection with the lockers held by other parties, though related to the assessee cannot be used for extending the time for the assessment provided under Section 153B of the Act. As we have held that assessment orders has been framed beyond the time provided under the statute which has no validity in the eyes of law, accordingly we quash the same.*

*67. As we have decided the technical ground in favour of the assessee as r discussed above, we are not inclined to refer the issue on merit. Accordingly we dismiss the grounds of appeal raised by the assessee on merit as infructuous."*

7. In view of the above discussions, we are of the considered view that the learned Commissioner has committed an error by holding that "since the Revenue wants to keep the issue alive, it is necessary to pass such order". Therefore, in view of the above discussions, the impugned orders are not sustainable in these assessment years. Accordingly, we quash the assessment orders in all these three assessment years and allow the appeals of the assessee.

8. In the result, all three appeals of the assessee are allowed.

Order pronounced in the Court on 9<sup>th</sup> September 2021 at Ahmedabad.

Sd/-

Sd/-

**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

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

Ahmedabad, Dated 09/09/2021

9

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण  
ITAT, Ahmedabad