

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

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 8398/DEL/2019(A.Y 2013-14)

(THROUGH VIDEO CONFERENCING)

Ravindera Hire Purchase & Vs Finance E-1/58, Sector-11, Faridabad Haryana PAN: AAECR1509A (APPELLANT)	Vs	ITO Ward-2(2) Faridabad Haryana (RESPONDENT)
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Appellant by	Mrs. Rano Jain, Adv
Respondent by	Mrs. Aashna Paul, CIT

Date of Hearing	07.01.2021
Date of Pronouncement	14 .01.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against order dated 24/3/2017 passed by Principal Commissioner of Income Tax, Sector-11 Faridabad, for assessment year 2013-14.

2. The grounds of appeal are as under:-

1. *On the facts and circumstances of the case, the order passed by the learned Principal Commissioner of Income Tax (Pr. CIT) under Section 263 of the Act is bad, both in the eyes of law and on facts.*
2. *On the facts and circumstances of the case, the order passed by the learned Pr. CIT under Section 263 of the Act is bad, both in the eyes of law and on facts, having been passed without giving assessee an opportunity of being heard in violation of principle of natural justice.*
3. *On the facts and circumstances of the case, the learned Pr.CIT has erred*

both on facts and in law assuming jurisdiction under section 263 in the absence of twin conditions of the order passed by the A.O. being erroneous as well as prejudicial to the interest of the Revenue, being satisfied.

4. On the facts and circumstances of the case, the order passed by the learned Pr.CIT assuming jurisdiction under section 263 is bad in law having been initiated at the instance of audit objection only.

5(i) On the facts and circumstances of the case, the learned Pr.CIT has erred both on facts and in law in ignoring the fact that the issue raised by her in notice under Section 263 was before the A.O. and as such the jurisdiction on this issue under Section 263 cannot be assumed by her.

(ii) On the facts and circumstances of the case, the learned Pr.CIT has erred both on facts and in law in ignoring the fact that the proceeding under Section 263 cannot be used for substituting opinion of the A.O. by that of the CIT.

6. On the facts and circumstances of the case, the order passed by Pr. CIT under section 263 of the Income Tax Act is unsustainable as power to revise can be invoked in the case of lack of enquiry, not in the case of inadequate enquiry.

7. On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in setting aside the matter to the file of the AO without giving a finding as to the error and prejudice caused to the revenue by the assessment order, and as such the order passed is bad in law and liable to be quashed.

8. On the facts and circumstances of the case, Pr CIT has erred both on facts and in law in setting aside the issue of share application of Rs.1,90,50,000/- to the file of the Ld AO without properly appreciating the explanation of assessee given during the assessment proceedings brought on record to prove identity and creditworthiness of the shareholders as well as the genuineness of the transactions.

3. The assessee is engaged in the business of Finance. Return declaring an income of Rs.2,06,380/- was filed by the assessee on 30.09.2013. The

Assessing Officer completed the assessment u/s 143(3) of the Income Tax Act, 1961 on 21.03.2016 at total income of Rs. 2,76,380/-. Thereafter the proceedings u/s 263 of the Act was initiated and show cause notice was issued on 21.02.2017 for compliance on 02.03.2017. The Pr. CIT passed the order under Section 263 of the Act on 24.03.2017 thereby setting aside the assessment order and directing the Assessing Officer to frame afresh order after following the procedure laid down in law.

4. Being aggrieved by the order dated 24.03.2017 passed by the Pr. CIT u/s 263 of the Act, the assessee had filed the present appeal before us.

5. The Ld. AR submitted that the Pr. CIT has set aside the issue of share application of Rs. 1,90,50,000/- to the file of the Assessing Officer without properly appreciating the explanation of assessee given during the assessment proceedings brought on record to prove identity and creditworthiness of the shareholders as well as the genuineness of transaction. The Ld. AR submitted that the order u/s 263 and consequential order passed u/s 144/263 has been passed without giving assessee an opportunity of being heard and in violation of principal of natural justice. This is so because none of the notices were served to the assessee and neither of the orders were received. The assessee only came to know about the same when the demand notice was served to the directors. The Principal office of the assessee is at H. No. SCF-24, Sector-11D, Faridabad, even the original order u/s 143(3) was issued and served at this address only. In Section 263 proceeding, the Pr.CIT issued notice as well as the assessment order at E-1/58, Sector-11, Faridabad, which is not assessee's address. The assessee company further on receipt of demand notices issued to the directors, came to know about all the developments and got the certified true copies of all the orders, in order to file the respective appeals. Since the assessee got to know about the said proceedings only on the receipt of demand notice therefore could not produce the relevant documents and explanations before the revenue. In view of the above, the Ld. AR therefore prayed that the

matter may be remanded back to the file of the Pr. CIT, to give assessee an opportunity of being heard. The Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of K.V. Finlease Pvt. Ltd. Vs. Pr.CIT, ITA No. 817/2017 order dated 09.07.2019 (ITAT proceeding details ITA No. 4578/Del/2016). The Ld. AR further pointed out the papers/documents filed by the Ld. DR during the hearing, thereby specifically pointing out notice dated 09.03.2017 issued by the department wherein it is clearly mentioned by the Inspector while serving the notices that the concerned assessee was not found and has not talked to the assessee or his representative but got information of one Rajesh Chaudhary of M/s SRC Developers which is not concerned assessee. The second notice dated 21.02.2017 also mentioned some person name Rajesh Chaudhary which is not at all concerned to the present assessee. Thus, the Ld. AR submitted that the notice was not at all served to the assessee, therefore, the assessee could not make any representation before the Pr. CIT. Hence, the order under challenge is not just and proper and violates principles of natural justice. Therefore, the Ld. AR prayed that the matter may be remanded back to the file of the Pr. CIT for deciding the same afresh after giving opportunity of hearing to the assessee.

6. The Ld. DR submitted that the Pr. CIT has mentioned in the order that the assessee was given notice, but could not controvert the records which were submitted before us.

7. We have heard both the parties and perused all the relevant material available on record. From the perusal of the records and the documents produced before us by the Ld. DR, it is pertinent to note that the assessee only came to know about the order under Section 263 of the Act when the demand notice was served to the directors. The Principal office of the assessee is at H. No. SCF-24, Sector-11D, Faridabad, and the original assessment order u/s 143(3) was issued and served at this address only. This fact was not contradicted by the Ld. DR. In Section 263 proceeding, the Pr.CIT issued notice as well as the consequential assessment order at E-1/58, Sector-11,

Faridabad, which is not assessee's address. It is pertinent to note that the notice u/s 263 was not properly served to the assessee and the facts mentioned in the order of the Pr. CIT were not proper about the service of notice to the assessee. Thus, the order u/s 263 and consequential order passed u/s 144/263 has been passed without giving assessee an opportunity of being heard and in violation of principal of natural justice. This is so because none of the notices were served to the assessee. The Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of K. V. Finlease Pvt. Ltd. (supra) wherein the Hon'ble High Court has confirmed the ITAT order wherein the remand to the Pr. CIT in Sec. 263 was directed as the notice preceding the order u/s 263 was sent to the assessee at the wrong address and sufficient opportunity was not granted to the assessee to oppose the notice u/s 263 of the Act. Thus, in the present case, the assessee was not giving sufficient opportunity to oppose the notice u/s 263 and plead for the case. Therefore, the matter is remanded back to the file of the Pr. CIT for deciding the issue afresh. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Hence, the appeal of the assessee is partly allowed for statistical purpose.

8. In result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on this 14th Day of JANUARY, 2021

Sd/-

**(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 14/01/2021

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI