

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No.816/Bang/2024
Assessment Year: 2019-20

Harisha No.217, A Block, 7 <sup>th</sup> Main Vijayanagar Mysore 570 017  <b>PAN NO : ABCPH3177L</b>	<b>Vs.</b>	Principal Commissioner of Income Tax (Central), Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri S.V. Ravishankar, A.R.
<b>Respondent by</b>	:	Shri Kiran D., D.R.

<b>Date of Hearing</b>	:	01.08.2024
<b>Date of Pronouncement</b>	:	16.08.2024

**O R D E R**

**PER SOUNDARARAJAN K., JUDICIAL MEMBER:**

This is an appeal filed by the assessee challenging the order of PCIT (Central), Bangalore passed u/s 263 of the Income Tax Act, 1961 (in short “The Act”) for the assessment year 2019-20.

**2.** The brief facts of the case are that the assessee is in the hotel business and he filed the return of income u/s 139(4) of the Act declaring a loss of Rs.48,74,500/-. Based on the survey conducted u/s 133A of the Act, the case of the assessee was selected for scrutiny and during the assessment proceedings, the ld. AO sent a requisition to the District Valuation Officer, Bangalore seeking the report about the cost of construction of Hotel Silver Oak International. The ld. AO has not received any valuation report from the DVO and therefore, he has completed the assessment u/s 143(3) of the Act on 27.3.2022. In the above said order, the ld. AO

also mentioned that necessary rectification order would be issued on receipt of the valuation report from the DVO. After passing the order the DVO sent a letter on 15.7.2022 and informed that they were not able to carry out the valuation process and was forced to return the reference u/s 142A of the Act. The DVO further stated that the assessee had not cooperated with them and therefore, the valuation could not be done by them.

**2.1.** Thereafter, the Id. PCIT issued a notice u/s 263 of the Act in order to adopt correct and fair value of the cost of construction of the new hotel complex since the Id. AO passed the assessment without getting the report from the DVO. The Id. PCIT concluded that since the same is erroneous and prejudicial to the interest of revenue, he proposed to invoke the powers vested with him u/s 263 of the Act. The assessee filed his detailed reply to the show cause notice but the Id. PCIT had rejected the contentions with the following findings:

*“4. In view of the above discussions, it is clear that the assessment order has been passed without the benefit of valuation report by DVO and thus the unaccounted cost of construction chargeable to tax u/ss 69 has escaped taxation. In these facts and circumstances, the assessment is erroneous in so far as it is prejudicial to the interest of the revenue. Accordingly, the impugned assessment order u/s 143(3) dated 27.03.2022 for A.Y. 2019-20 is hereby set aside with a direction to the AO to complete the assessment proceedings afresh after making fresh reference to DVO u/s 142A and obtain and adopt the valuation by the DVO in the assessment order.”*

**2.2.** As against the above said order of the Id. PCIT, the assessee is before the Tribunal and raised the following grounds of appeal:

1. The order passed by the learned Principal Commissioner of Income Tax [Central], Bengaluru, passed under section 263 of the Act in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.
2. The notice issued for initiation of proceedings under section 263 of the Act is bad in law.
3. The learned PCIT is not justified in law in invoking the jurisdiction under section 263 of the Act and setting aside the order of the learned assessing officer as being "erroneous and prejudicial to the interest of the revenue", without appreciating that the order of assessment is a reasoned order, on the facts and circumstances of the case.
4. The learned PCIT is not justified in providing fresh opportunity to the assessing officer to gather new evidence by exercising the powers conferred under section 263 of the Act on the facts and circumstances of the case.
5. The learned PCIT is not justified in law in holding that the order passed by the assessing officer is bad in law, without appreciating that there was no error in the orders passed, much less prejudicial to the interest of revenue, on the facts and circumstances of the case.
6. The learned PCIT failed to appreciate that the provisions of section 263 of the Act shall be attracted only when the order is both erroneous and prejudicial to

the interest of revenue and since the order passed under section 143(3) of the Act was not erroneous, much less prejudicial, the invoking of section 263 was not warranted on the facts and circumstances of the case.

7. The appellant craves to add, alter, amend, substitute, change and delete any of the grounds of appeal.
8. For the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and justice rendered.

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**3.** At the time of argument, the ld. A.R. submitted that the assessment passed by the ld. AO u/s 143(3) of the Act is not erroneous and prejudicial to the interest of revenue since at the time of passing the assessment order, he has not received the DVO report. In fact, till date, the DVO has not forwarded their report about the cost of construction of the new hotel complex. Therefore, the ld. A.R. contended that the order of the ld. AO is a correct one and requires no interference by the ld. PCIT u/s 263 of the Act. The ld. A.R. further contended that if the DVO had submitted their valuation report before the ld. AO and the ld. AO has failed to look into the same while passing the order u/s 143(3) of the Act, then there is a case for revision u/s 263 of the Act. The ld. A.R. also argued about the other grounds on merits and also filed a paper book and also relied on the order of this Tribunal in ITA Nos.6 & 7/Bang/2021 dated 21.9.2022 for the AY 2013-14 in the case of Bashir Ahmed Abdurrahman Matte Vs. PCIT.

**4.** The ld. D.R. relied on the order of ld. PCIT and prayed to dismiss the appeal of the assessee.

**5.** We heard the arguments of both sides and perused the materials available on record. On going through the records and the order passed u/s 263 of the Act by the ld. PCIT, it is evident that the ld. AO had issued a request for valuation report from the District Valuation Officer in respect of the cost of construction of the new Hotel Silver Oak International constructed by the assessee during the financial year 2018-19. The DVO also pursuant to the request had taken steps by issuing notices to the assessee on 24.9.2021 and 18.11.2021. The assessee had not responded to the notices issued by the DVO and therefore, the DVO without following the procedures contemplated u/s 142A of the Act, had sent a communication to the AO that they are unable to carry out the

valuation process and was forced to return the reference u/s 142A of the Act due to non-cooperation of the assessee. Before going into the facts of the case, let us have a look on the provision 142A of the Act, which deals with the procedure for ascertaining the value of assets by the valuation officer.

**“Section 142A of the I.T. Act, 1961:**

*(1) The Assessing Officer may, for the purposes of assessment or reassessment, make a reference to a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit a copy of report to him.*

*(2) The Assessing Officer may make a reference to the Valuation Officer under sub-section (1) whether or not he is satisfied about the correctness or completeness of the accounts of the assessee.*

*(3) The Valuation Officer, on a reference made under sub-section (1), shall, for the purpose of estimating the value of the asset, property or investment, have all the powers that he has under section-38A of the Wealth-tax Act, 1957 (27 of 1957).*

*(4) The Valuation Officer shall, estimate the value of the asset, property or investment after taking into account such evidence as the assessee may produce and any other evidence in his possession gathered, after giving an opportunity of being heard to the assessee.*

*(5) The Valuation Officer may estimate the value of the asset, property or investment to the best of his judgment, if the assessee does not co-operate or comply with his directions.*

*(6) The Valuation Officer shall send a copy of the report of the estimate made under sub-section (4) or sub-section (5), as the case may be, to the Assessing Officer and the assessee, within a period of six months from the end of the month in which a reference is made under sub-section (1).*

*(7) The Assessing Officer may, on receipt of the report from the Valuation Officer, and after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.*

*Explanation.—In this section, "Valuation Officer" has the same meaning as in clause (r) of [section-2](#) of the Wealth-tax Act, 1957 (27 of 1957).]*

**5.1** As seen from the provision, the statute is very clear that the valuation officer is having all the powers that he has u/s 38A of the Wealth Tax Act, 1957 for the purpose of estimating the value of the assets, property or investment. Similarly, sub-section (5) of section 142A of the Act also gave the power to the valuation officer to estimate the value of asset, property or investment to the best of their judgement if the assessee does not cooperate or comply with

his directions. Therefore, the statute gives powers to the valuation officer to get details from the assessee in order to ascertain the value of the property and if the assessee had not cooperated with the valuation officer, by furnishing the required details, then the valuation officer has every power to estimate the value to his best judgement assessment. Therefore, even though assessee has not cooperated with the valuation officer he can make an estimation on his own and it can be sent to the ld. AO for making further proceedings. Therefore, the non-adhering to the procedures contemplated under the provisions of the Act is not a reason for ld. PCIT to invoke the provisions of section 263 of the Act. For the mistake committed by the valuation officer by not sending the valuation report to the ld. AO, we do not find that the ld. PCIT has powers to revise the assessment u/s 263 of the Act on the ground that the assessment is erroneous and prejudicial to the interest of revenue. The assessment order is not an erroneous one since on the date of passing the assessment order, the ld. AO considered all the details and in fact he had sent a reference to the DVO u/s 142A of the Act to send their report in order to make the assessment, which the DVO failed to execute the same. If the ld. AO has the valuation report before him at the time of passing the assessment order or after the assessment has been made, then the ld. PCIT can invoke the powers to revise the assessment u/s 263 of the Act. In the present case, even at the time of issuing the notice u/s 263 of the Act, there is no DVO report available and therefore, we are of the opinion that the ld. PCIT cannot invoke the provisions of section 263 of the Act to get a fresh DVO report and thereafter make the assessment. The findings of the ld. PCIT, as extracted above, is not within the powers vested with him since there is no error in the assessment order and the ld. PCIT also cannot extend the time for getting the report u/s 142A of the Act when the DVO had failed to invoke sub-clause (5) of section 142A of the Act. When there is

ample power vested with the DVO, the DVO ought to have sent a report based on his estimation, which they failed to do so. Therefore, the present order by the Id. PCIT directing the Id. AO to get fresh report from the DVO u/s 142A of the Act and thereafter adopt the value in the assessment order is nothing but a perverse finding and also without jurisdiction. By passing this order the PCIT had indirectly extended the period of limitation which the AO does not have and therefore we are of the view that the provision 263 of the Act could not be pressed into service. We further held that the direction to the AO to get a fresh DVO report once again and pass a fresh assessment order is without jurisdiction. We are of the view that the Id PCIT in order to save the limitation prescribed u/s153 of the Act had invoked the provision 263 of the Act, therefore the order of the PCIT is not sustainable.

**5.2** We therefore, set aside the order passed by the Id. PCIT u/s 263 of the Act since the same is not within the purview of section 263 of the Act and also on the ground that the assessment order is not an erroneous one and also prejudicial to the interest of revenue when the revenue had not utilized their powers vested u/s 142A of the Act in the first instance.

**5.3** The other grounds raised by the assessee are not required for adjudication since we are setting aside the order of the Id. PCIT passed u/s 263 of the Act.

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

Order pronounced in the open court on 16<sup>th</sup> Aug, 2024

**Sd/-**  
**(Chandra Poojari)**  
**Judicial Member**

**Sd/-**  
**(Soundararajan K.)**  
**Judicial Member**

Bangalore,  
Dated 16<sup>th</sup> Aug, 2024.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,  
ITAT, Bangalore.**