

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

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.2218/Bang/2018
AssessmentYear: 2014-15

M/s. Mag India Industrial Automation Systems Pvt. Ltd. No.67, 1 <sup>st</sup> Main, 2 <sup>nd</sup> Stage Industrial Suburb, Yeshwanthpur Bengaluru-560 022  <b>PAN NO :AAECM9067F</b>	<b>Vs.</b>	Principal Commissioner of Income-tax Bengaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Smt. K. Soumya, A.R.
<b>Respondent by</b>	:	Shri Muzaffar Hussain, D.R.

<b>Date of Hearing</b>	:	20.10.2020
<b>Date of Pronouncement</b>	:	20.10.2020

**O R D E R**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The assessee has filed this appeal challenging the revision order passed by Ld. Principal CIT-4, Bengaluru for assessment year 2014-15 u/s 263 of the Income-tax Act,1961 [‘the Act’ for short]. The assessee is challenging the validity of revision order passed by the Pr. CIT.

2. We heard the parties and perused the record. The assessee is engaged in the business of marketing of industrial machinery and also providing software services to industrial machinery. The

Page 2 of 5

assessment in this case was completed by the A.O. u/s 143(3) of the Act on 21.11.2016. The A.O. accepted the total income returned by the assessee.

3. The Ld. Principal CIT called for assessment record and noticed that the assessee has claimed a sum of Rs.1,75,81,254/- as deduction towards “provision for warranty expenses”. The Ld. Principal CIT noticed that the A.O. did not make any enquiry with regard to the above said claim. Since the AO has failed to examine this issue, the Ld PCIT held that the assessment order is rendered erroneous and prejudicial to the interest of the revenue. Hence, he initiated revision proceedings u/s 263 of the Act.

4. Before Ld. Principal CIT, the assessee made detailed submission as to how the provision for warranty is created in the books of accounts. Since the A.O. has not carried out any verification of the above said issue, and further since Ld. CIT also noticed certain errors in the details furnished by the assessee, the Ld. Principal CIT took the view that the assessment order is required to be set aside as it is erroneous and prejudicial to the interest of the revenue. Accordingly, he set aside the assessment order and restored all the issues to the file of the A.O. with the direction to examine them and re-do the assessment afresh. The assessee is aggrieved by the decision of Ld. Principal CIT.

5. Before going into the merits of the issue, we would like to discuss about the legal position with regard to the power of Learned CIT to invoke revision proceedings under section 263 of the Act. The scope of revision proceedings initiated under section 263 of the Act was considered by Hon'ble Bombay High Court, in the case of Grasim Industries Ltd. V CIT (321 ITR 92) by taking into account the law laid down by the Hon'ble Supreme Court in the case of

Malabar Industrial Co Ltd (243 ITR 80). The relevant observations made by Hon'ble Bombay High Court are extracted below:

“Section 263 of the Income-tax Act, 1961 empowers the Commissioner to call for and examine the record of any proceedings under the 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 interests of the Revenue, to pass an order upon hearing the assessee and after an enquiry as is necessary, enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment. The key words that are used by section 263 are that the order must be considered by the Commissioner to be “erroneous in so far as it is prejudicial to the interests of the Revenue”. This provision has been interpreted by the Supreme Court in several judgments to which it is now necessary to turn. In *Malabar Industrial Co. Ltd. v. CIT* [2000] 243 ITR 83, the Supreme Court held that the provision “cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer” and “it is only when an order is erroneous that the section will be attracted”. The Supreme Court held that an incorrect assumption of fact or an incorrect application of law, will satisfy the requirement of the order being erroneous. **An order passed in violation of the principles of natural justice or without application of mind, would be an order falling in that category.** The expression “prejudicial to the interests of the Revenue”, the Supreme Court held, it is of wide import and is not confined to a loss of tax. What is prejudicial to the interest of the Revenue is explained in the judgment of the Supreme Court (headnote) :

“The phrase ‘prejudicial to the interests of the Revenue’ has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law.”

Page 4 of 5

The principle which has been laid down in Malabar Industrial Co. Ltd. [2000] 243 ITR 83 (SC) has been followed and explained in a subsequent judgment of the Supreme Court in CIT v. Max India Ltd. [2007] 295 ITR 282.”

6. The Hon'ble Supreme Court has held that the existence of twin conditions, viz., the assessment order should be erroneous and it should be prejudicial to the interests of revenue, should be shown in the revision order passed u/s 263 of the Act. The Hon'ble Apex Court has further held that non-application of mind on the part of the Income-tax Officer would make the assessment order erroneous. In the instant case, we notice that the assessing officer did not conduct any enquiry at all with regard to the claim of "Provision for warranty expenses" made by the assessee. The Ld A.R also could not demonstrate that the AO did conduct enquiry and has taken a possible view.

7. Hence, we are of the view that the AO has passed the order without making any enquiry on this issue and the same would render the order erroneous and in view of its tax implications, the same would cause prejudice to the interests of revenue. Before us, the Ld A.R submitted that the assessment order cannot be considered to be prejudicial to the interests of revenue as the claim of the assessee is supported by the decision rendered by Hon'ble Supreme Court in the case of Rotork Controls India (P) Ltd vs. CIT (2009)(180 Taxman 422)(SC). However, the fact remains that the AO has not made any enquiry with the regard to the impugned claim and hence Explanation 2 to sec.263(1) shall apply to the facts of the present case. There should not be any doubt that, unless the facts relating to the claim are examined, the

Page 5 of 5

question of application of the decision rendered by Hon'ble Supreme Court cannot be examined.

8. In view of the foregoing discussions, we are of the view that there is no infirmity in the revision order passed by Ld Pr. CIT. Accordingly we uphold the same.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 20<sup>th</sup> Oct, 2020

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 20<sup>th</sup> Oct, 2020.  
VG/SPS

Copy to:

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

By order

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