

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER  
(THROUGH VIDEO CONFERENCING)**

ITA No.2040/DEL/2015  
Assessment Year: 2010-11

<b>Yash Dev Mahajan &amp; Sons (HUF) B-492, New Friends Colony New Delhi -110065 PAN No. AAAHY3243D</b>	<b>Vs</b>	<b>Pr. CIT Delhi-10 New Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Ashok Malik, Advocate
Respondent by	Sh. Satpal Gulati, CIT DR

Date of hearing:	01/02/2021
Date of Pronouncement:	03/02/2021

**ORDER**

**PER N. K. BILLAIYA, AM:**

With this appeal the appellant has challenged the assumption of jurisdiction u/s. 263 of the Act, 1961 by the Pr. CIT-10, New Delhi.

2. The assessee contends that the assessment order dated 31.03.2010 framed u/s. 143 (3) of the Act, is neither erroneous nor prejudicial to the interest of the Revenue.

3. Briefly stated, the facts of the case are that during the course of the scrutiny assessment proceedings the AO noticed that the assessee has completed construction of property No.B-493, New Friends Colony, New Delhi. The AO further observed that the assessee has shown construction expenses incurred from 14.09.2007 to 31.03.2010 at Rs.12382385/-.

4. The AO found a valuation dated 15.12.2012 wherein the valuer has valued the cost of construction in F.Y.2009-10 at Rs.18243000/-.

5. Subsequently the assessee filed another valuation report valuing the property at Rs.12373168/-.

6. The reason for filing the second valuation report is that the first valuation report has erroneously made the valuation on 15.12.2012 whereas the second valuation report valued the property correctly as on 31.03.2010 which year is under consideration.

7. The Assessing Officer was convinced with the correctness of the second valuation report and accepted the cost of construction at Rs.12382385/-.

8. Assuming the jurisdiction u/s.263 of the Act the Pr. CIT observed as under :-

*“On perusal of the assessment records, prima facie, it is noticed that the Assessing Officer, while completing assessment for the A.Y. 2010-11, has adopted the quantum of investment made in the construction of property No. B-493, New Friends Colony, New Delhi, during the Financial Year 2009-10, at Rs. 1,23,82,385/-. Further, it was also noticed that as per the valuation report for building cost of immovable property dated 15<sup>th</sup> December, 2012 of the registered valuer, filed by assessee on 18.12.2012, the fair market value of Building cost has been determined at Rs. 1,82,43,000/-, which was exclusive of Additional Expenses of Rs.21,11,458/- for Architect Fee & MCI) Sanction Plan Fee. Therefore, it was observed that the assessment order, passed by the/Assessing Officer, is erroneous in so far as it is prejudicial to the interest of the revenue.”*

9. Accordingly a show cause notice was issued on the following reasons :-

**Office Of The  
The Commissioner of Income Tax, Delhi-VIII,  
Room No, 1202, 12th Floor, E-II Block, Dr. S.P, M. Mukherji  
Civic Centre, J.L.Nehru Road, New Delhi-110002**

F.No.CIT-VIH/u /s-263-YDM/2014-15/

Dated: 25.08.2014

To,  
Yash Dev Mahajan & Sons HUF  
B-492, New Friends Colony,  
New Delhi-110065  
Sir/Madam,

Sub: Your assessment for A.Y. 2010-11 -Initiation of Revision Proceedings u/s 263 of the Income Tax Act, 1961- Notice of hearing-reg. (PAN:AAAHY3243D)

Please refer to the above.

2. The assessment in your case for the A.Y. 2010-11 was completed u/s 143(3) of the Income-tax Act, 1961 on 26.03.2013. On examination of the records, it is prima-facie seen that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the revenue for the reason mentioned below:

On going through the case records, it has been noted that during the assessment proceedings, you have submitted different values in respect of cost of construction of the property B-493, New Friends Colony, New Delhi-110065 on various dates. On 18.12.2012, the valuation report of a Registered Valuer dated 15.12.2012 was filed in respect of building cost of immovable property at Rs.1,82,43,000/- which was exclusive of additional expenses i.e. Architect Fee & MOD Sanction Plan Fee amounting to Rs.21,11,458/-. On 11.02.2013, another valuation report of a registered valuer dated 15.12.2013 was filed and in this report the fair market value of building cost was shown at Rs. 1,02,61,710/- which was exclusive of above mentioned additional expenses. Further, on 06.03.2013, it was submitted by you that the total cost of construction inclusive of additional expenses is Rs. 1,23,82,385/-.

The AO put his reliance on the valuation report filed by you on 11.02.2013 and your last submission dated 06.03.2013 and took the quantum of investment made in the cost of construction of the

*above mentioned property at Rs.1,23,82,385/-, which was inclusive of additional expenses of Rs.21,11,458/-. Thus, the AO has taken the value of construction at Rs. 1,02,70,927/- (1,23,82,385-Rs.21,11,458), excluding of additional expenses of Rs.31,11,458/-.*

*It is clear from the above that valuation adopted by the AO is lower by Rs. 79,72,073/ - (Rs. 1,82,43, 000-Rs. 1,02,70,927) and hence, the order passed by him is erroneous in so far as it is prejudicial to the interest of the revenue to the extent of income of Rs.79,72,073/-*

*3. In view of above mentioned facts, it is evident that the assessment has been completed without due application of mind and requisite enquiry which renders it erroneous in so far it is prejudicial to the interest of the revenue. Therefore, the proceedings u/s 263 of the Income-tax Act, 1961 are hereby initiated.*

*4. Accordingly, you are allowed an opportunity of being heard and to attend the office of the undersigned either personally or through authorized representative with all necessary facts and details related to your case on 05/09/2014 at 3.00 AM/PM failing which the proceedings may be decided on merits without further reference to you.*

*Yours faithfully*

*(Rashmi Saxena Sahni)  
Commissioner of Income Tax,  
Delhi-VIII, New Delhi*

10. During the proceedings u/s.263 of the Act the assessee once again explained the reason for filing the second valuation report as the said report has considered the valuation as on 31.03.2010 which is year under consideration.

11. The Pr. CIT completed the proceedings by observing as under :-

*“10. To sum up, in the present case, the Assessing Officer did not apply his mind so as to properly verify and examine the two valuation reports submitted by the assessee during the course of assessment proceedings and passed the assessment order relying upon the valuation report in which the fair market value of the building cost of the property is shown at Rs. 1,02,61,710/-. Thus, the order of Assessing Officer as he has not recorded reasons for accepting the claims of the assessee is erroneous and prejudicial to the interest of revenue.*

*11. The Assessing Officer has completed the assessment without making requisite enquiry and also without due application of mind. Thus the impugned assessment order is erroneous in so far it is prejudicial to the interest of revenue and is liable to be set-aside. Accordingly, in the exercise of revisionary powers u/s 263 of Income Tax Act, 1961, the assessment of A. Y. 2010-11 completed u/s 143(3) on 26.03.2013 is hereby set-aside to the Assessing Officer to make assessment de-novo after examining the correctness of various claims made and income shown by the assessee, after affording reasonable opportunity of being heard to the assessee.”*

12. Before us the counsel for the assessee reiterated what was stated before the AO. It is the say of the counsel that the AO has accepted the second valuation report as the same valued the property correctly and, therefore, the order is neither erroneous nor prejudicial to the interest of the revenue.

13. Per contra the DR strongly supported the order of the Pr. CIT. It is say of the DR that as per the assessment record the assessee on his own did not clarify the reason for filing the

second valuation report and for not considering the first valuation report filed on 18.12.2012. The DR further stated that from the perusal of the assessment record it is seen that the AO also did not ask the assessee to clarify as to why the first valuation report submitted on 18.12.2012 should be ignored while framing the assessment in this case. The DR vehemently stated that the assessment record does not show that the AO made any query to the assessee to explain the difference in two valuation reports with documentary evidence relied upon in this regard. Reliance was placed on two decisions firstly in the case Toyota Motor Corporation 306 ITR 52 Hon'ble Supreme Court and secondly in the case of Shri Bhram Dev Gupta in ITA No.907/2017 C. M. APPL 38787/2017.

14. We have given a thoughtful consideration to the orders of the authorities below. It is a settled position of law that powers u/s 263 of the Act can be exercised by the Commissioner on satisfaction of twin conditions, i.e., the assessment order should be erroneous and prejudicial to the interest of the Revenue. By 'erroneous' is meant contrary to law. Thus, this power cannot be exercised unless the Commissioner is able to establish that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Thus, where there are two possible views and the Assessing Officer has taken one of the possible views, no action to exercise powers of revision can arise, nor can revisional power be exercised for directing a fuller enquiry to find out if the

view taken is erroneous. This power of revision can be exercised only where no enquiry, as required under the law, is done. It is not open to enquire in case of inadequate inquiry. Our view is fortified by the decision of Hon'ble High Court of Bombay in the case of CIT vs. Nirav Modi, [2016] 71 taxmann.com 272 (Bombay).

15. This view is further supported by the decision of the Hon'ble Gujarat High Court in the case of Shri Prakash Bhagchand Khatri in Tax Appeal No. 177 with Tax Appeal No.178 of 2016, wherein the Hon'ble Gujarat High Court was seized with the following *substantial question of law*:-

*"Whether the Tribunal is right in law and on facts in upholding the order passed by the CIT under [section 263](#) of the Act on merits and still storing the issue of allowability of deduction under [section 54](#) of the Act to the file of Assessing Officer even though the working of allowability of deduction under [section 54F](#) is available in the order under [section 263](#) which is not disputed by the assessee before ITAT."*

16. And the Hon'ble High Court, after considering the facts, held as under:-

*"6. It can thus be seen that though final order of assessment was silent on this aspect, the Assessing Officer had carried out inquiries about the nature of sale of land and about the validity of the assessee's claim of deduction under [section 54F](#) of the Act. Learned counsel for the Revenue however submitted that these inquiries were confined to the claim of*



deduction under [section 54F](#) of the Act in the context of fulfilling conditions contained therein and may possibly have no relevance to the question whether the sale of land gave rise to a long term capital gain. Looking to the tenor of queries by the Assessing Office and details . A.Y. 2009-10 supplied by the assessee, we are unable to accept such a condition. In that view of the matter, the observation of the Tribunal that the Assessing Officer having made inquiries and when two views are possible, revisional powers could not be exercised, called for no interference. Since with respect to computation and assertions of other aspects of deduction under [section 54F of the](#) Act, the Tribunal has remanded the proceedings, nothing stated in this order would affect either side in considerations of such claim.

7. No question of law arises. Tax Appeals are dismissed."

17. We find the Hon'ble Delhi High Court in the case of CIT Vs. Anil Kumar reported in 335 ITR 83 has held that where it was discernible from record that the A.O has applied his mind to the issue in question, the ld. CIT cannot invoke section 263 of the Act merely because he has different opinion. Relevant observation of the High Court reads as under:

*"63. We find the Hon'ble Delhi High Court in the case of Vikas Polymer reported in 341 ITR 537 has held as under:*

*“We are thus of the opinion that the provisions of s. 263 of the Act, when read as a composite whole make it incumbent upon the CIT before exercising revisional powers to : (i) call for and examine the record, and (ii) give the assessee an opportunity of being heard and thereafter to make or cause to be made such enquiry as he deems necessary. It is only on fulfilment of these twin conditions that the CIT may pass an order exercising his power of revision. Minutely examined, the provisions of the section envisage that the CIT may call for the records and if he prima facie considers that any order passed therein by the AO is erroneous insofar as it is prejudicial to the interest of the Revenue, he may after giving the assessee an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify. The twin requirements of the section are manifestly for a purpose. Merely because the CIT considers on examination of the record that the order has been erroneously passed so as to prejudice the interest of the Revenue will not suffice. The assessee must be called, his explanation sought for and examined by the CIT and thereafter if the CIT still feels that the order is erroneous and prejudicial to the interest of the Revenue, the CIT may pass revisional orders. If, on the other hand, the CIT is satisfied, after hearing the assessee, that the orders are not erroneous and prejudicial to the interest of the Revenue, he may choose not to exercise his power of revision. This is for the reason that if a query is raised during the course of scrutiny by the AO, which was answered to the satisfaction of the AO, but neither*

*the query nor the answer were reflected in the assessment order, this would not by itself lead to the conclusion that the order of the AO called for interference and revision. In the instant case, for example, the CIT has observed in the order passed by him that the assessee has not filed certain documents on the record at the time of assessment. Assuming it to be so, in our opinion, this does not justify the conclusion arrived at by the CIT that the AO had shirked his responsibility of examining and investigating the case. More so, in view of the fact that the assessee explained that the capital investment made by the partners, which had been called into question by the CIT was duly reflected in the respective assessments of the partners who were I.T. assessees and the unsecured loan taken from M/s Stutee Chit & Finance (P) Ltd. was duly reflected in the assessment order of the said chit fund which was also an assessee.”*

64. *Since in the instant case the A.O after considering the various submissions made by the assessee from time to time and has taken a possible view, therefore, merely because the DIT does not agree with the opinion of the A.O, he cannot invoke the provisions of section 263 to substitute his own opinion. It has further been held in several decisions that when the A.O has made enquiry to his satisfaction and it is not a case of no enquiry and the DIT/CIT wants that the case could have been investigated/ probed in a particular manner, he cannot assume jurisdiction u/s 263 of the Act. In view of the above discussion, we hold that the assumption of jurisdiction*

*by the DIT u/s 263 of the Act is not in accordance with law. We, therefore, quash the same and grounds raised by the assessee are allowed.”*

18. In the light of the aforementioned judicial decisions we have carefully perused the valuation report placed on record in the form of paper book. Undoubtedly the valuation report dated 15.12.2012 has valued the property as on 15.12.2012 whereas the assessment year under consideration is A.Y.2010-11 relevant to F.Y.2009-10. As the construction had completed on 31.03.2010 the assessee correctly got the second valuation report dated 15.12.2012 valuing the property as on 31.03.2010.

19. These facts were very much available during the course of the scrutiny assessment proceedings itself and also before the Pr. CIT for proceedings u/s.263 of the Act. We find that the AO has correctly accepted the correct valuation report and completed the assessment.

20. It can be seen from the assessment order that the AO had made enquiries in respect of the cost of construction and it cannot be said that no query was raised by the AO in respect of the cost of construction. In our considered opinion it is not open to enquire in case of inadequate enquiry. Infact in the case in hand the facts clearly show that adequate enquiries were made by the AO which were duly replied by the assessee.

21. We find that the AO has taken one of the plausible view and the Pr. CIT cannot substitute his view with that of the AO.

22. Considering the facts of the case in totality in light of judicial decisions discussed here in above we set aside the order of the Pr.CIT dated 31.03.2015 and restore that of the Assessing Officer dated 31.03.2010 framed u/s. 143 (3) of the Act.

23. Resultantly, the appeal is allowed.

Order pronounced in the open court on 03.02.2021.

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

\*NEHA\*

Date:-03.02.2021

Copy forwarded to:

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

**Sd/-**  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	01.02.2021
Date on which the typed draft is placed before the dictating Member	01.02.2021
Date on which the typed draft is placed before the Other member	03.02.2021
Date on which the approved draft comes to the Sr.PS/PS	03.02.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	03.02.2021
Date on which the fair order comes back to the Sr. PS/ PS	03.02.2021
Date on which the final order is uploaded on the website of ITAT	03.02.2021
Date on which the file goes to the Bench Clerk	03.02.2021
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	