



\$~69

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ ITA 286/2024  
PR. COMMISSIONER OF INCOME TAX, DELHI - 1

..... Appellant

Through: Mr. Vipul Agrawal, Sr. SC  
alongwith Mr. Gibran Naushad  
and Ms. Sakashi Shairwal,  
Advocates

versus

M/S ELLORA INFRATECH PVT. LTD. .... Respondent

Through: None.

**CORAM:**  
**HON'BLE MR. JUSTICE YASHWANT VARMA**  
**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR**  
**KAURAV**

**ORDER**  
**15.05.2024**

%

**CM APPL 29011/2024 (Delay in re-filing)**

Bearing in the mind the disclosures made, the delay of 30 days in re-filing the appeal is condoned.

The application shall stand disposed of.

**ITA 286/2024**

1. Although the respondent is stated to have been placed on advance notice, none has appeared on its behalf when the matter was called.
2. Consequently, let the appellant take steps for service through all permissible modes including via approved courier service.
3. Prima facie and on hearing Mr. Agarwal, learned counsel we take note of the following conclusions which have come to be recorded by the Income Tax Appellate Tribunal ["ITAT"].



“14.1 Pertinently, the supervisory jurisdiction conferred under s. 263 has been invoked by the Pr. CIT to set aside the assessment order passed by the AO under s. 143(3) of the Act for AY 2013-14 based on SCN dated 21.03.2018. No other opportunity other than SCN was provided to the assessee. The adequacy of opportunity to meet the SCN is one of the foremost bone of contention. As repeatedly contended, a solitary opportunity was given to the assessee for the proposed revision at a very fag end of limitation for closure of revisional proceedings. A SCN dated 21.03.2018 (Wednesday) was served for compliance on 22.03.2018 (Thursday). The working day thus available for retrieving the facts is only 23.03.2018. Intriguingly, the hearing for response to SCN was fixed on 26.03.2018 at 12 am i.e. Sunday midnight. Nevertheless, the assessee, however on its part, swung into action swiftly and responded to the SCN by filing its objection to initiations of proceedings on the point of bar of limitation. The Pr. CIT disposed the objections against the assessee but however no further opportunity was provided to respond on correctness of allegations in the SCN on facts.

XXXX

XXXX

XXXX

14.3 The facts in the present case also resonate with the facts available in Kamlesh Jain's case (supra) and hence warrant a similar treatment. As noted in the preceding paragraphs, the Pr. CIT in the instant case has resorted to an empty and illusory formality of opportunity of one working day to defend the SCN. We are indeed baffled by such ostensibly iniquitous approach. The impugned revisional order passed without giving any demonstrable opportunity is a nullity in view of express enactment embodied in s. 263 of the Act. The revisional order passed without opportunity deserves to merge in void. The lack of opportunity has vitiated the revisional order on a standalone basis without any thing more.

XXXX

XXXX

XXXX

15.1 As noted, the substituted incumbent of the office of the AO moved a proposal to Pr.CIT for exercise of powers under s. 263 vide communication dated 20/03/2018. The Pr. CIT issued SCN on the very next day i.e. 21/03/2018. On reading the contents of the SCN in conjunction with aforesaid proposal, it is seen that the line of reasonings in the proposal is reproduced in *verbatim* in the SCN. Interestingly, the AO in its proposal made reference to 'then AO' twice to disown the alleged mistake of predecessor AO, which is quite understandable. What is not understandable is the use of similar expression of '*then AO*' copied in the SCN too. The action of the Pr. CIT is overtly on dotted line and a mere copy paste. The SCN ex-facie reflects gross lack of application of mind by the Pr.



CIT. It can be safely inferred that the proposal was made by the AO at the behest of Pr. CIT indeed which was thus copied in the SCN without change of even a coma. As a result, the generalized and extraneous observations of AO [viz. summons under s:131 ought to have been issued in addition to enquiry carried out under s. 133(6); reliance on report of investigation wing of deptt. much prior to the FY 2012-13 and thus wholly irrelevant for subsequent loans in question; reference to findings vis a vis AY 2005-06; SFIO report in relation to period prior to transactional year FY 2012-13 etc.] has crept in the SCN. Adoption of such vague and irrelevant observations of AO by the Pr. CIT vindicates the contention of the Assessee that the powers have been exercised without any application of mind. It is also not known whether the Pr. CIT was privy to 'case records' at the time of hurried issuance of SCN at the instance of AO. The contents of proposal and in turn, that of SCN on allegations towards contents of investigation etc. are also delightfully vague and non descript. It is classic case of exercising the supervisory powers of drastic nature at the instance of AO without showing any independent indulgence.

XXXX

XXXX

XXXX

15.3 As observed, it is apparently discernible that the exercise of powers under s. 263 to dislodge a completed assessment is founded on view expressed by the AO without any independent ascertainment of observations. Such act offends the basic principles governing exercise of powers under s. 263 and thus is not sustainable in law either. The revisional order fails on this count too.

XXXX

XXXX

XXXX

16.4 On facts, the Pr. CIT has referred to investigation pursuant to search on 19.04.2010 on Jain brothers which was not allegedly taken cognizance of by the AO. Without going into merits, where the search itself occurred in the case of third party prior the loan transactions, it is difficult to visualize any lapse on the part of Assessing Officer with regard to transactions occurred after search. Same is the case for references made to the observations arising from assessment order of Jain brother relating to AY 2005-06. The SFIO report prepared in March 2016 was naturally not available to AO at the time of passing assessment order. Be that as it may, the report was prepared based on observations in search proceedings, carried in earlier point of time. Besides, the contents of report was never confronted to the Assessee. Being a fresh material, it was incumbent upon the Pr. CIT to confront the same to Assessee before taking any adverse view. No opportunity on this score has been provided either. We thus concur with the plea on behalf of the



assessee that S.263 proceedings cannot be inflicted upon the assessee in these circumstances.”

4. It is in the aforesaid context that Mr. Agarwal submits that even if the ITAT had come to the conclusion that the Principal Commissioner had failed to afford adequate opportunity to the assessee, the matter would have at best merited a remand.
5. Let the appeal be called again on 02.09.2024.

**YASHWANT VARMA, J.**

**PURUSHAINDRA KUMAR KAURAV, J.**

**MAY 15, 2024**

*p'ma*