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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 26.05.2023

+ **ITA 308/2023**

PRINCIPAL COMMISSIONER OF INCOME TAX
CENTRAL 3 DELHI

..... Appellant

Through: Mr Abhishek Maratha, Sr Standing
Counsel with Mr Akshat Singh,
Standing Counsel.

versus

M/S H.T.L LTD

..... Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM Appl.28780/2023 [*Application filed on behalf of the appellant/revenue seeking condonation of delay of 63 days in re-filing the appeal.*]

1. This is an application moved on behalf of the appellant/revenue, seeking condonation of delay in re-filing the appeal.
2. According to Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of the appellant/revenue, there is a delay of 63 days.



3. For the reasons given in the application, the delay is condoned.

4. The application is disposed of, in the aforesaid terms.

CM Appl.28781/2023 [*Application filed on behalf of the appellant/revenue seeking condonation of delay of 8 days in filing the appeal.*]

5. This is an application moved on behalf of the appellant/revenue, seeking condonation of delay in filing the appeal.

6. According to Mr Maratha, there is a delay of 08 days.

7. For the reasons given in the application, the delay is condoned.

8. The application is disposed of, in the aforesaid terms.

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9. This appeal concerns Assessment Year (AY) 2014-15.

10. The appellant/revenue seeks to assail the order dated 06.07.2022 passed by the the Income Tax Appellate Tribunal [in short, "Tribunal"].

11. In order to adjudicate the dispute, the following broad facts are required to be noticed:

11.1 The respondent/assessee had filed its return on 26.11.2014. Via the return, the respondent/assessee declared an income amounting to Rs.6,24,10,490/-. This return was processed under Section 143(1) of the Income Tax Act, 1961 [in short, "Act"].

11.2 It transpires that the return filed by the respondent/assessee was picked up for scrutiny. After scrutiny, the Assessing Officer (AO) framed the assessment order on 08.12.2016 under Section 143(3) of the ct.



11.3 The record also discloses that the Principal Commissioner of Income Tax [in short, “PCIT”] invoked the provisions of Section 263 of the Act and accordingly, issued a show cause notice to the respondent/assessee on 19.03.2019.

11.4 The PCIT’s concern, as reflected in the show cause notice dated 19.03.2019, was with regard to the sale of the subject land, admeasuring 10.162 acres, to an entity going by the name, VGN Developer Pvt. Ltd. [in short, “VGN”]. This entity was located, it appears, in Chennai.

11.5 According to the PCIT, the subject land had been sold below the value adopted by the concerned authority for levy of stamp duty and therefore, the assessment made was contrary to the provisions of Section 50C of the Act, as this aspect had not been inquired into.

12. It is not disputed that the stamp duty value of the subject land was pegged at Rs.387,64,76,000/-, whereas the value which was taken into account was Rs.272,29,08,000/-. Thus, according to the PCIT, there had been under-assessment of income to the extent of the differential amount i.e., Rs.115,35,68,000/-.

12.1 It is in this context that the PCIT *via* order dated 30.03.2019 concluded that the assessment order dated 08.12.2016 passed under Section 143(3) of the Act was both erroneous and prejudicial to the interest of revenue. Accordingly, the assessment order was set aside by the PCIT *via* the order dated 30.03.2019.

13. Being aggrieved, the respondent/assessee preferred an appeal with the Tribunal. The Tribunal ruled in favour of the respondent/assessee *via* order dated 06.07.2022, which is the order assailed before this court by the



appellant/revenue.

14. A perusal of the record has thrown up the following facts, which are not disputed by Mr Maratha:

- (i) The respondent/assessee had run into rough weather, whereby its net worth was eroded. Consequently, a Reference was filed by the respondent/assessee with the Board of Industrial and Financial Reconstruction [in short, “BIFR”] under the relevant provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 [in short, “SICA”].
- (ii) While Reference was pending before the BIFR, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short, “SARFAESI Act”] came to be enacted. Consequently, proceedings before the BIFR stood abated on 13.10.2010.
- (iii) State Bank of India [SBI], which was one of the secured lenders of the respondent/assessee, took steps on behalf of the consortium of lenders for recovering the dues, by seeking to auction the subject land. The record shows that the SBI attempted e-auction on four occasions, i.e., 17.02.2011, 09.03.2011, 05.11.2012 and 23.01.2013. Since the SBI was unable to auction the subject land, at a meeting held concerning the consortium of lenders, a decision was taken to fix the reserve price of the subject land at Rs.250 crores. It is in this context, that the SBI finally effected sale of the subject land in favour of VGN for an amount equivalent to Rs.272,29,08,000/-.

14. The record also discloses that the AO, while framing the scrutiny assessment had, in fact, issued a notice dated 22.02.2016, wherein queries were raised with regard to the sale of the subject land. This aspect of the



matter has been recorded by the Tribunal in paragraph 15 of the impugned order.

15. As would be evident, the PCIT concluded that there was under-assessment by virtue of the fact that the valuation that had been placed by the concerned authority for affixation of stamp duty was higher. As noted above, the value for the purpose of stamping was pegged at Rs.387,64,76,000/-

16. The record, thus, reveals that it was not the respondent/assessee who effectuated the sale of the subject land. The subject land was sold by the secured lenders to recover from dues owed by the respondent/assessee. It is in these circumstances, that the Tribunal concluded that the PCIT had failed to notice the underlying facts, while invoking his powers under Section 263 of the Act.

17. In our view, the Tribunal correctly appreciated the law on the subject, which is that for invoking powers under Section 263 of the Act, two conditions have to be met, i.e., not only the order should be erroneous, but it should also be prejudicial to the interest of the revenue.

18. In our view, twin conditions were not met. The Tribunal has correctly interdicted the view taken by the PCIT.

19. Given the facts obtaining in the instant case, we are in agreement with the Tribunal, that the power under Section 263 of the Act was wrongly exercised by the PCIT.

20. Therefore, in our view, no substantial question of law arises for our consideration.



21. The appeal is, accordingly, disposed of.
22. Pending applications will stand closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 26, 2023/pmc

