

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B': NEW DELHI  
BEFORE,  
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.277/Del/2021  
(ASSESSMENT YEAR 2012-13)**

**ITA No.531/Del/2021  
(ASSESSMENT YEAR 2012-13)**

Late, Dipankar Mohan Ghosh [Through legal heir Mrs. Sagarika Ghosh] C/o R.N. Marwah & Co.LLP 4/80, Janpath New Delhi-110 001 PAN-AMRPG 9569K	Vs.	CIT(IT)-I, International Taxation New Delhi-110 002
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Mr. Salil Kapoor, Mr. Sumit Lalchandani and Mr. Praveen Geol, Advocates
Respondent by	Mr. T.James Singson, CIT-DR

Date of Hearing	19/04/2023
Date of Pronouncement	28/06/2023

**ORDER**

**PER M. BALAGANESH, AM:**

The appeal of the assessee in ITA No.277/Del/2021 is against the order passed by the Learned Principal Commissioner of Income Tax ["Ld. PCIT(A)", for short] in DIN No. ITBA/COM/F/17/2019-

20/1026866696(1) dated 23/03/2020 for Asst. Year 2012-13 and ITA No.531/Del/2021 is against the revision order passed by the Ld. PCIT in DIN No. ITBA/REV/F/REV5/2020-21/1031948078(1) dated 30/03/2021 for Asst. Year 2012-13.

2. The assessee has raised the following grounds in both appeals:

ITA No.277/Del/2021

*"1. That on facts and in Law the Learned Commissioner of Income Tax, International-1 New Delhi erred in purportedly passing order u/s263 dated: 23.03.2020 which is prima facie Non-Est, void ab-initio, bad in law for the following reasons:*

*a) That the order passed and uploaded in portal on 23 March 2020 Le.. During Lock Down while offices were closed, without attaching any signature, either manually or digitally, in contravention of the provision of section 282A of the Act has no legal validity and cannot be said to be in substance and effect an Order" in conformity with or according to the intent and purpose of the Act.*

*b) That the impugned order passed without appreciating or considering the Orders of the Hon'ble High Court of Delhi pursuant to Departmental appeal against order of AAR. c) That the order passed mentions wrong address which resulted in non-service of the said order physically at address for communication.*

*2.1 That the Ld. CIT erred in assuming jurisdiction u/s. 263 of the Act and holding that the order u/s147/143(3) dated 26.02.2018 passed by AO pursuant to directions of AAR was erroneous and prejudicial to interest of Revenue.*

*2.2 That the Learned CIT while holding that the impugned order is erroneous has erred in concluding that AO failed to enquire/ examine the correctness of the computation of Capital gains with respect to valuation, Sale consideration, claims of Expenses and Investment in new property in London, despite the fact that all evidence necessary was duly filed during*

*assessment proceedings and AO being satisfied accepted the Computation of Capital Gains.*

*2.3 That the Ld. CIT failed to appreciate that u/s 263 of the Act, an order of assessment cannot be set-aside merely to withhold refund and granting second innings to Ld. AO to make further enquiries and as such, impugned order is contrary to law and hence, unsustainable.*

*3. That the Ld. CIT has erred in holding that impugned order was erroneous and prejudicial to interest of revenue without conducting any independent enquiry or application of mind.*

*4. That the Ld. CIT while holding that impugned order is erroneous and prejudicial to interest of Revenue erred in concluding that Appellant not entitled to refund of Income Tax u/s239 of the Act as return filed pursuant to notice u/s147 and rejected the contention of the Appellant that the refund was in fact due u/s240 of the Act as determined pursuant to order u/s154 Dated 28.03.2018, wrongly stated by CIT as Draft Order.*

*5. That the assessee craves leave to alter, amend or withdraw all or any objections herein or add any further grounds as may be considered necessary either before or during the hearing.”*

### ITA No.531/Del/2021

*“1.1 That on facts and in Law the Learned Commissioner of Income Tax, International Tax -1 New Delhi erred in purportedly passing a 2 order u/s 263 dated: 30.03.2021 which is prima facie Non-East void ab-initio, bad in law for the following reasons:*

*(i) That the assessment order passed u/s. 147/143(3) dated 26.02.2018 sought to be set aside, already ceased to exist having already been set aside by the predecessor CIT, International Taxation-1, New Delhi pursuant to his order u/s. 263 of the Act dated 23.03.2020 passed after initiation of the proceedings vide Notice dated 02.08.2019 served thru portal and the impugned order could not have been passed thereafter;*

*(ii) That the Notices dated: 9.03.2021, 17.03.2021 & 23.03.2021 issued in continuation of the earlier proceedings u/s. 263 of the Act initiated vide Notice dated 2.08.2019 are invalid as no proceedings u/s 263 of the Act was pending on date of aforesaid notices;*

*(iii) That the impugned order passed u/s. 263 of the Act setting aside the assessment order dated 26.02.2018 was passed ignoring*

*the fact that the Appellant had already intimated the filing of appeal before ITAT against the order dated 23.03.2020 passed u/s. 263 of the Act by predecessor CIT who too had set aside the same assessment order dated 26.02.2018;*

*1.2 That the Ld. CIT International -1, New Delhi erred in law in exercising powers of a judicial/ appellate authority by holding and recording a finding that the Order u/s. 263 of the Act dated 23.03.2020 passed by her predecessor setting aside the assessment order u/s 147/143(3) of the Act dated 26.02.2018 has no legal validity.*

**Without Prejudice to the above Ground of Appeal:**

*2. That the Ld CIT erred on facts and in Law in assuming jurisdiction u/s 263 of the Act and holding that the order u/s147/143(3) of the Act dated 26.02.2018 passed by d AO pursuant to binding directions of AAR was erroneous and prejudicial to interest of Revenue.*

*3. That the Ld. CIT erred in holding that the impugned order is erroneous and prejudicial for the reason that the Ld. AD failed to enquire / examine the correctness of the computation of Capital Gains with respect to valuation, Sale consideration, claims of Expenses and Investment in new property in London, despite the fact that all evidence necessary was duly filed during assessment proceedings and td AD after examination and enquiry being satisfied accepted the Computation of Capital Gains.*

*4. That the Ld CIT has wrongly and illegally held that the order passed by the Ld. AO is erroneous and prejudicial to the interest when no independent enquiry has been made by her. Hence the notice issued u/s 263 of the Act and the order passed u/s 263 of the Act is illegal and bad in law.*

*5. That the Ld CIT while holding that impugned order is erroneous and prejudicial to interest of Revenue erred in concluding that Appellant not entitled to refund of Income Tax by virtue of Section 239 of the Act despite the fact that refund was determined vide order u/s 154 of the Act dated 28.03.2018 served upon Appellant, rejecting the contention of the Appellant that the same was covered by provisions of Section 240. In any case the Appellant is also entitled to refund u/s 237 of the Act.*

*6. That the assessee craves leave to alter, amend or withdraw all or any objections herein or add any further grounds as may be considered necessary either before or during the hearing”*

3. We have heard the rival submissions and perused the materials available on record. Ground No.1 raised by the assessee in ITA No.277/Del/2021 was stated to be not pressed by the Ld. AR. The same is reckoned as statement made from the Bar. Accordingly, Ground No.1 in ITA No.277/Del/2021 is hereby dismissed as not pressed.

4. With regard to the other ground raised in both the appeals, the undisputed facts are as under:-

(a) The first revision order passed u/s 263 of the Act dated 23/03/2020 by the Ld. PCIT was not signed by the Ld. PCIT either manually or through digital signature. Page-1 of the order of the Ld. PCIT u/s 263 of the Act dated 23/03/2020 contains a foot note specifically mentioning as under:

NOTE:- If digitally signed, date of digital signature made be taken as date of document.

As stated earlier, this order was neither signed manually nor digitally signed by the Ld. PCIT.

(b) This order dated 23/03/2020 was served on the assessee through email on 25/03/2020 and uploaded in the portal of the Income Tax Department.

(c) Thereafter, second order was passed by the Ld. PCIT u/s 263 of the Act digitally signing the same on 30/03/2021. This order also was uploaded in the portal of the Income Tax Department.

5. The Ld. Authorized Representative of the assessee ("Ld. AR" for short) before us argued on the validity of the first revision order passed u/s 263 of the Act by placing reliance on Rule 127A of the Income Tax Rules. The Ld. DR filed written submissions before us stating that since the first revision order passed u/s 263 of the Act dated 23/03/2020 was not signed by the Ld. PCIT, it becomes unsigned document, *non est*, null and void *ab initio*. Accordingly, the Ld. CIT-DR submitted that no course of action arises from such unsigned, *non est* revision order dated 23/03/2020 and prayed for dismissal of the appeal of the assessee as infructuous. In our considered opinion, the aforesaid contentions of both assessee as well as Revenue need not be gone into, pursuant to the adjudication of the issue in dispute on merits herein below.

6. On merits, we find that assessment was completed u/s 143(3) r.w.s 147 of the Act for A.Y.2012-13 in the case of assessee, being a non - resident, on 26/02/2018 determining total income of Rs.55,48,95,950/-. The assessee vide letter dated 23.03.2018 pointed out that tax credit was given in the assessment order only for Rs.11,42,39,474/- as against the claim made in the return for Rs.16,58,02,551/-. Accordingly, the Ld. AO passed a rectification order u/s 154 of the Act on 28.03.2018 granting the differential tax credit of Rs.5,15,63,077/- to the assessee. This order u/s 154 of the Act dated 28/03/2018 is enclosed in page 268 of the Paper Book. The Ld. AO passed another rectification order u/s 154 of the Act dated 27/09/2018 withdrawing the grant of additional TDS credit of Rs.5,15,63,077/-. The assessee preferred an appeal against this order before the Ld. CIT(A) which was disposed of by the Ld. PCIT-42, New Delhi in Appeal No.104/2018-19/CIT(A)-42 dated 08.05.2019 allowing the appeal of the assessee for statistical purpose and holding that rectification order was passed by the Ld. AO without granting opportunity to the assessee. Accordingly, the Ld. AO was directed to allow opportunity to the assessee and decide the rectification application preferred by the assessee. Against this

order, the assessee preferred an appeal before the Tribunal which was disposed of in ITA No.6674/Del/2019 dated 26/07/2022 allowing the appeal of the assessee.

7. We find that the assessee filed a grievance petition through his AR on 08.07.2019 before the Ld. PCIT(IT)-1, New Delhi seeking for refund of taxes. Based on this, the Ld. PCIT initiated revision proceedings u/s 263 by issuing show cause notice dated 02/08/2019 by treating the order passed by the Ld. AO u/s 143(3) r.w.s 147 dated 26/02/2018 as erroneous and prejudicial to the interest of the Revenue. The assessee furnished the detailed reply narrating the entire facts and chronology of events which are enclosed in pages 299 to 323 at the Paper Book. We find that as far as the issue in dispute on merits in the first revision order passed u/s 263 of the Act by the Ld. PCIT dated 23/03/2020, the said issue was already decided by the Ld. CIT(A) vide order dated 08/05/2019. Hence, on the date of initiation of section 263 proceedings on 02/08/2019, the Ld. CIT(A) had already disposed of the appeal on 08/05/2019 by adjudicating the issue on merits. Hence, this issue of grant additional TDS credit of Rs.



5,15,63,077/- was already considered and decided by the Ld. CIT(A) by his order dated 08.05.2019. Hence, for adjudication of very same issue, the Ld. PCIT cannot invoke revision proceedings u/s 263 of the Act in view of the provisions of Explanation-1(c) to section 263(1) of the Act. On this limited issue itself, we could conclusively hold that revision order passed by the Ld. PCIT u/s 263 of the Act be it on 23/03/2020 or on 13/03/2021 are against the provisions of the Act and deserves to be quashed. Accordingly, both the revision orders passed by the Ld. PCIT are hereby quashed as void *ab initio*. Accordingly, other grounds raised by the assessee are allowed.

8. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 28<sup>th</sup> June, 2023.

Sd/-  
**(CHANDRA MOHAN GARG)**  
**JUDICIAL MEMBER**

Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 28/06/2023

*Pk/sps*

Copy forwarded to:

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

*ITA No.277 & 531/Del/2021*  
*Dipankar Mohan Ghosh vs. CIT*

ASSISTANT REGISTRAR  
ITAT, NEW DELHI