

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D " MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2716/MUM/2014
Assessment Year: 2009-10**

M/s Rajhans Metal Pvt. Ltd.,
3, Shifley Industrial Estate,
Off. S.V. Road,
Goregaon (west),
Mumbai-400062

Vs. The CIT-9,
Room No. 315, 3rd Floor,
Aayakar Bhawan, M.K.Road,
Mumbai

(Appellant)

(Respondent)

Assessee by: Shri K.K. Ved, AR
Revenue by: Shri K. Krishna Murthy, DR

Date of Hearing : 06/12/2016
Date of pronouncement: 16/12/2016

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2009-10. The appeal is directed against the order u/s 263 of the Income Tax Act 1961, (The 'Act') of the Id. Commissioner of Income Tax (CIT)-9, Mumbai .

2. The grounds of appeal filed by the assessee read as under:-

1. The order u/s 263 is bad in law.
2. The Ld. CIT has erred in law as well as on facts in holding that the assessment order passed by the A.O. u/s 143(3) dated 28.12.2011 is erroneous and prejudicial to the interest of Revenue.
3. The Ld. CIT has erred in holding that there is nothing on records showing justification of the appellant for fall in gross profit and that the A.O. has also failed to verify the same.

4. The Ld. CIT has failed to appreciate that –

4.1 the appellant had furnished complete details supported by documentary evidence in justification for fall in gross profit vide submission dated 8.11.2011 & 14.11.2011 in response to the specific queries raised by the A.O. vide notices u/s 142(1) / 143(32) dated 18.8.2010, 10.1.2011, 16.06.2011 & 08.11.2011 during the course of assessment proceedings.

4.2 The assessment order u/s 143(3) was passed by the A.O. after taking into consideration and verification of the very issue or point relating to fall in gross profit, on which the revision was proposed;

4.3 the assessment order u/s 143(3) cannot be said to be erroneous and prejudicial to the interest of Revenue where it was passed by the A.O. after thorough verification of the necessary details / explanations called for on the issue under revision and after application of mind.

5. The Ld. CIT has not followed principle of natural justice by issuing notice u/s 263 on 24.3.2014 which was served to the appellant on 25.3.2014 requiring its compliance on 26.3.2014.

3. Briefly stated the facts are that the assessee filed its return of income for the A.Y. 2009-10 on 23.9.2009 declaring total loss of Rs. 6,80,53,770/-. The assessee is a private limited company engaged in the business of manufacturing of extruded brass rods and sections, job work, trading of scrap and wind power generation. The Assessing Officer (AO) completed the assessment u/s 143(3) of the Act on 28.12.2011 accepting the returned loss of Rs. 6,80,53,770/-. Thereafter, the ld. CIT issued a show cause notice u/s 263 on 24.03.2014 to the assessee proposing revision of the aforesaid assessment order dated 28.12.2011 on the following ground:-

“On perusal of the records, it is seen that you have shown gross profit at 1.91% on a turnover of Rs. 140.34 crore whereas the gross profit shown by you for Assessment Year 2007-08 and 2008-09 was 7.43% and 8.58% respectively. No concrete evidence is brought on record by the A.O. in his assessment order for accepting the profit shown by you at 1.91%. Therefore, in view of the above facts, the order passed by the A.O. u/s

143(3) r.w.s. 147 of the Act, dated 28.10.2011 is erroneous in so far it is prejudicial to the interest of revenue.”

In response to the above, the assessee filed a reply dated 28.3.2014 strongly objecting to the proposed revision of order which the Id.CIT has extracted at page 2 - 8 of his order.

3.1 The said submission of the assessee was not acceptable to the Id.CIT for the reason that though a notice u/s 142(1) dated 16.6.2011 was issued to the assessee by the AO calling for a detailed note and comparative gross profit analysis, on perusal, there was nothing on record wherein the assessee had justified the huge fall in the gross profit in the A.Y. 2009-10. The only reason mentioned by the Id.CIT is that the AO failed to verify the huge fall in gross profit and therefore, he held the order of the AO erroneous and prejudicial to the interest of revenue. Therefore, the Id.CIT set aside the order dated 28.12.2011 passed by the A.O. u/s 143(3) of the Act for the A.Y. 2009-10 with the direction to consider the facts along with issues mentioned in his order and pass a fresh order.

4. The Id. counsel of the assessee submits that during the course of assessment proceedings before the AO the assessee had furnished all the relevant and required details along with justification for fall in gross profit which were fully verifiable and supported by documentary evidence. It was specifically stated that during the course of assessment proceedings the AO had raised the issue relating to downfall in GP as compared to earlier years and had taken the same into consideration while passing order u/s 143(3). Reliance was placed by him on the decision in the case of *CIT vs. Gabriel India Ltd.* (1993) 203 ITR 108 (Bom.) Thus, it was

submitted that the CIT failed to appreciate the above submission of the assessee in proper perspective .

5. The ld. DR supports the order of the CIT. He relies on the decision in the case of *CIT vs. Infosys Technologies Ltd.* (2012) 17 taxmann.com 203 (Kar.) and the order of the ITAT Mumbai Bench in the case of *Pancard Clubs Ltd. vs. DCIT* 46 SOT 87 (Mumbai)(URO).

6. We have heard the rival submissions and perused the relevant material on records. We begin with the decisions relied on by the Ld. DR. In the case of *Infosys Technologies Ltd. (supra)* the Hon'ble Karnataka High Court held that revision was justified where the AO had given tax relief to the assessee in accordance with relevant articles of DTAAs, without giving any indication of nature and extent of entitlement with reference to the enabling provisions. This is not the case in the instant appeal as narrated here-in-above. In the case of *Pancard Clubs Ltd. (supra)*, the ld.CIT held the order to be erroneous and prejudicial to the interest of revenue holding *inter alia* that the assessment order was passed prior to the date of final hearing, hence, the same is erroneous and prejudicial to the interest of revenue. This is not so in the instant case.

6.1 We find that the only ground on which the ld.CIT has passed the order u/s 263 setting aside the assessment passed by the AO is that there was a huge fall in the gross profit of the assessee in impugned assessment year. We find that the assessee, in response to the query raised by the A.O., had submitted the requisite information / detail along with explanation vide its submissions dated 8.11.2011 and 14.11.2011. We find that the instant case is covered by the decision of the Hon'ble Bombay High Court in the case of *Gabrial India Ltd.(supra)*. In that case, for the A.Y. 1973-74, the assessee had

claimed a sum of Rs. 99,326/- described "as plant relay out expenses" as revenue expenditure and the AO after making inquiries in regard to nature of said expenditure and considering the explanation furnished by the assessee in that regard, allowed assessee's claim. Subsequently, the Commissioner, exercising powers u/s 263, cancelled the order of the AO observing that the said order did not contain discussion in regard to allowability of claim for deduction which indicated non-application of mind and that claim of the assessee required examination as to whether expenditure in question was revenue or capital expenditure and directed the AO to make a fresh assessment on lines indicated by him. The Hon'ble High Court held that u/s 263 substitution of the judgement of the Commissioner for that of the AO is not permissible. Also it was held that the AO's order could not be held to be erroneous simply because in his order he did not make an elaborate discussion.

7. Respectfully following the decision of the Hon'ble Bombay High Court in *Gabrial India Ltd.(supra)*, we set aside the impugned order passes by the Id. CIT u/s 263 of the Act and restore the order of the AO.

8. In the result, the appeal is allowed.

Order pronounced in the open court on 16/12/2016

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Mumbai;

Dated: 16/12/2016

nkk

Sd/-

(N.K. PRADHAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai