



IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA no.3530/Mum./2017
(Assessment Year : 2012-13)

Gehna Jewellers P. Ltd.
5, Kakkad Palace, Turnover Road
Bandra (West), Mumbai 400 050
PAN – AADCG8796M

..... Appellant

v/s

Principal Commissioner of Income Tax
Circle-12, Mumbai

..... Respondent

Assessee by : Shri B.V. Jhaveri
Revenue by : Shri Abhijit Patankar

Date of Hearing – 12.09.2017

Date of Order – 22.11.2017

ORDER

PER SAKTIJIT DEY, J.M.

Captioned appeal by the assessee is against order dated 24th March 2017, passed under section 263 of the Income-tax Act, 1961 (for short "*the Act*") by the learned Principal Commissioner of Income-tax-12 (for short "*the learned PCIT*"), Mumbai, for the assessment year 2012-13.

2. Brief facts are, the assessee a company is engaged in manufacture and trading of jewellery. For the assessment year under

dispute, the assessee filed its return of income on 29th September 2012, declaring total income of ₹ 3,04,68,563. The return of income filed by the assessee was selected for scrutiny and in the course of assessment proceedings, the Assessing Officer after calling for and examining the books of account and other information completed the assessment under section 143(3) vide order dated 9th March 2015, determining the total income at ₹ 3,05,52,122. While doing so, the Assessing Officer disallowed an amount of ₹ 83,559 under section 14A. The learned PCIT, in exercise of power under section 263 of the Act called for the assessment records of the assessee for the impugned assessment year and after verifying the same he found the following facts.

1. From the audit report in Form no.3CB, it appears that no TDS has been made on labour charges paid;
2. No details have been filed along with the audit report regarding the manufacture of jewellery of 18 carat and 20 carat and no details are available in respect of sale of jewellery of various denominator such as 18 carat and 20 carat gold and diamond jewellery;

3. Loan standing in the name of Shri Prabodh B. Thakkar, amounting to ₹ 55 lakh was not supported by any confirmation letter;
4. The assessee made payment of ₹ 12.71 crore of Anmol Jewellery which attracts the provisions of section 40A(2)(b) of the Act; and
5. No enquiry relating to payment of ₹ 16 crore to old trade creditors has been made.

3. The learned PCIT observed, the Assessing Officer while completing the assessment has neither made any enquiry nor looked into the aforesaid issues which make the assessment order erroneous and prejudicial to the interests of Revenue. Accordingly, he issued a notice under section 263 of the Act calling upon the assessee to explain why the assessment order should not be revised. Though, the assessee through elaborate submissions made before the learned PCIT objected to the initiation of proceedings under section 263 of the Act, however, the learned PCIT, except with regard to couple of issues did not find merit in the submissions of the assessee. Accordingly, while dropping the revisional proceedings in respect of 1st and 5th issue, he held that the revisional proceedings against the other issues are valid. As far as the issue relating to sale of gold and diamond jewellery of

various denominations, the learned PCIT held that the Assessing Officer neither called for nor the assessee furnished details of carat-wise gold and diamond jewellery manufactured and sold. Therefore, according to him, the Assessing Officer has not made proper enquiry which renders the assessment order erroneous and prejudicial to the interests of Revenue, as, on the basis of opening stock and closing stock manufacturing and sale of jewellery cannot be computed.

4. As far as the second issue relating to loan of ₹ 55 lakh received from Shri Prabodh B. Thakkar, the learned PCIT held that the Assessing Officer without making necessary enquiry or calling for the details has accepted the loan which makes the assessment order erroneous and prejudicial to the interests of Revenue. As far as third issue relating to payment made to Shri Anmol Jewellery is concerned, the learned PCIT observed, the Assessing Officer without enquiring into the reasonableness of such payment under section 40A(2)(b) of the Act has allowed assessee's claim. Thus, on the aforesaid premises, the learned PCIT held the assessment order passed under section 143(3) of the Act to be erroneous and prejudicial to the interests of Revenue and set it aside with a direction to pass a fresh assessment order after examination of the issues pointed out by him.

5. Learned Authorised Representative submitted, in the course of assessment proceedings, the Assessing Officer has thoroughly

enquired into all the issues on which the learned PCIT has initiated proceedings under section 263 of the Act. Therefore, the allegation of the learned PCIT that the Assessing Officer failed to look into the issues pointed out by him in the revisional order or he failed to make enquiry in respect of them is totally unfounded and contrary to the material on record. As far as the first issue relating to non-furnishing of carat-wise details of gold and diamond jewellery manufactured and sold is concerned, the learned Authorised Representative drawing our attention to the tax audit report filed in Form no.3CA, a copy of which is at Page-67 of the paper book submitted, it clearly mentioned quantitative details of gold and diamond jewellery manufactured and sold. He submitted, besides the fact that all informations relating to manufacture and sale of gold and diamond jewellery were furnished in the tax audit report, the Assessing Officer in the course of assessment proceeding has issued notice under section 142(1) of the Act on 24th January 2015, wherein, he specifically enquired into the manufacture and sale of gold and diamond jewellery by calling for month-wise details of opening and closing inventory both in terms of value and quantity. He submitted, in response to the query raised in the notice issued under section 142(1) of the Act, the assessee furnished month-wise quantitative details of gold and diamond jewellery manufactured and sold. He submitted, not only the assessee had furnished carat-wise details of gold and diamond jewellery manufactured and sold,

but, the Assessing Officer has also made a detailed enquiry in this regard and completed the assessment accepting the sales effected by the assessee. He submitted, when all informations regarding to manufacture and sale of gold and diamond jewellery were furnished before the Assessing Officer and he has examined the same, there is no reason for the revisional authority to term the assessment order on this issue to be erroneous and prejudicial to the interests of Revenue. He submitted, the learned PCIT has not pointed out what prejudice was caused to the Revenue, even, assuming that the Assessing Officer has not made necessary enquiry which in his opinion should have been made.

6. As far as the issue of acceptance of unsecured loan received from Shri Prabodh B. Thakkar, the learned Authorised Representative submitted, on this issue also, the Assessing Officer has made necessary enquiry during the assessment proceedings. Drawing our attention to notice dated 15th January 2014, the issued under section 142(1) of the Act, learned Authorised Representative submitted, the Assessing Officer has specifically called for the name and addresses of the persons from whom advances were received during the relevant previous year and also to indicate the purposes for which advances were taken. Further, the Assessing Officer also called upon the assessee to furnish confirmations from the concerned parties. He

submitted, in response to the query raised by the Assessing Officer the assessee in reply dated 10th December 2014, has furnished party-wise details of advances received along with other informations. Referring to the details submitted before the Assessing Officer, the learned Authorised Representative submitted, the amount in question was an advance received from customer. He submitted, insofar as the unsecured loans are concerned, the assessee has furnished confirmations from the creditors. However, in respect of advance from customers no confirmations were filed as it is not possible to file such confirmation. He submitted, during the year, assessee has received advances from 80 persons. Therefore, when the learned PCIT has no problem with the advances received from 79 parties, he should not have picked up a single advance received from one party as doubtful on mere presumption and surmises. He submitted, when the assessee has furnished all the details during the assessment proceedings and the Assessing Officer after necessary enquiry and application of mind has accepted the claim of the assessee, the revisional authority cannot consider the assessment order as erroneous and prejudicial to the interests of Revenue. As far as the issue relating to the reasonableness of payment made of ₹ 12.71 crore to Shri Anmol Jewellers, qua section 40A(2)(b) of the Act is concerned, the learned Authorised Representative submitted, in respect of this issue also, the Assessing Officer has enquired into during the assessment proceedings. In this

context, he drew our attention to the notice dated 15th January 2014 issued under section 142(1) of the Act. He submitted, in the said notice, the Assessing Officer has specifically called upon the assessee to furnish the details of payments made to persons covered under section 40A(2)(b) of the Act and justify the reasonableness of expenses vis-a-vis the fair market value of goods, services or facilities for which such payments were made. He submitted, in response to the notice issued by the Assessing Officer, the assessee had submitted its reply furnishing the details of payment made to persons specified under section 40A(2)(b) and reasonableness of such payments. He submitted, in the relevant previous year, assessee had not purchased any goods. He submitted, the entire amount of ₹ 12.71 crore was towards payment made during the year for goods purchased earlier. He submitted, even in the tax audit report filed along with the return of income the assessee has furnished full particulars of payments made to persons covered under section 40A(2)(b) of the Act. He submitted, whether a particular transaction is at a fair market value has to be considered in the year in which such transaction has taken place and not in any other assessment year. He submitted, the purchase transaction for which the payments were made having taken place in the year 2011-12, there is no question of examining the reasonableness of the payments to be made for such transaction in the impugned assessment year, as the assessee has not claimed any

deduction in respect of such transaction in the impugned assessment year. Thus, the learned Authorised Representative submitted, the Assessing Officer having enquired into all the issues on which the learned PCIT has held the assessment order to be erroneous and prejudicial to the interest of Revenue the order passed under section 263 of the Act is invalid. Further, the learned Authorised Representative submitted, the learned PCIT has also failed to point out the error committed by the Assessing Officer and the prejudice caused to the Revenue on account of such error. He submitted, without fulfilling the conditions of section 263 of the Act, the revisional authority cannot exercise power conferred therein. In support of his contention, the learned Authorised Representative relied upon the following decisions:—

- i) CIT v/s Gabriel India Ltd., 203 ITR 108;*
- ii) CIT v/s Geera Development Pvt. Ltd., 387 ITR 691;*
- iii) CIT v/s Fine Jewellery India Ltd., 372 ITR 303; and*
- iv) Priyanka Regency Builders and Developers Pvt. Ltd. v/s CIT, ITA no.2944/Mum./2014, dated 8th February 2017.*

7. Learned Departmental Representative justifying the exercise of power under section 263 of the Act by the learned PCIT submitted, the Assessing Officer during the assessment proceedings has not enquired into the issues on which the revisional authority has revised the assessment order. He submitted, due to lack of proper enquiry by the

Assessing Officer the assessment order is not only erroneous but has also caused prejudice to the interests of Revenue. Therefore, the learned PCIT has correctly exercised his power under section 263 of the Act to set right the error committed by the Assessing Officer. As far as the first issue relating to non-furnishing of carat-wise details of manufacture and sale of gold and diamond jewellery is concerned, the Learned Departmental Representative relied upon the observations of the revisional authority, though, he agreed that assessee has furnished quantitative details before Assessing Officer. With regard to the second issue of unsecured loan received from of Shri Prabodh B. Thakkar, the Learned Departmental Representative submitted, the Assessing Officer, though, has raised the issue in the notice issued under section 142(1), however, he failed to conduct proper enquiry. He submitted, though, in the notice issued under section 142(1) the Assessing Officer apart from calling for details of persons from whom advances were received has also directed the assessee to furnish confirmations, however, in the absence of such confirmations being furnished by the assessee the Assessing Officer has accepted the claim of the assessee. Therefore, he submitted, on the basis of such half backed enquiry conducted by the Assessing Officer it cannot be said that the issue was properly examined or the genuineness of advances received was established. As far as the third issue relating to reasonableness of payment made to Shri Anmol Jewellery, qua section

40A(2)(b) is concerned, the Learned Departmental Representative submitted, though, the Assessing Officer in the notice issued under section 142(1) has initiated some enquiry with regard to reasonableness of payment made, however, he has not taken the enquiry to its logical end. Therefore, the assessment order passed by him was erroneous as it caused prejudice to the interests of Revenue. In support of his contention, the Learned Departmental Representative relied upon the following decisions:-

- i) Malabar Industries Ltd. v/s CIT, 243 ITR 83 (SC); and*
- ii) CIT v/s DLF Power Ltd., 345 ITR 446 (Del.).*

8. We have heard rival contentions and perused the material available on record. We have also applied our mind to the decisions relied upon by both the parties. It is evident from the notice dated 9th December 2015, issued under section 263 of the Act by the learned PCIT, he exercised his revisional jurisdiction on the issues as enumerated in Para-2 of this order. Undisputedly, after considering the explanation / submissions of the assessee, the learned PCIT has dropped proceedings under section 263 of the Act in respect of issues no.1 and 5. Thus, he has revised the assessment order by considering it as erroneous and prejudicial to the interests of Revenue in respect of issues no.2, 3 and 4. Therefore, we have to examine the validity of exercise of power under section 263 vis-a-vis the aforesaid issues on

which he has revised the assessment order. Before that, we must observe, the learned PCIT is empowered to exercise his powers under section 263 of the Act on fulfillment of two conditions cumulatively. Firstly, the order sought to be revised must be erroneous and secondly, it must be prejudicial to the interests of Revenue. Keeping in view the aforesaid legal position, we have to examine the issue at hand. As stated earlier, in the impugned order the assessment order has been revised on three issues. First issue on which the learned PCIT has revised the assessment order under section 263 is on account of alleged non-furnishing of carat-wise details of gold and diamond jewellery. In this context, a perusal of the tax audit report for the relevant previous year filed along with the return of income, a copy of which is placed in the paper book reveals that in the said audit report all details of raw materials and finished products, such as, opening stock, purchases, consumption, sales and closing stock of 14 carat, 18 carat, 22 carat and 24 carat gold, diamond, platinum, silver, jewellery were given in exhibit attached to the tax audit report. Further, the Assessing Officer in the notice issued under section 142(1) dated 24th January 2015, has called for the month-wise details of opening and closing stock of each item of jewellery and in response thereto, the assessee has furnished month-wise quantitative details of opening and closing stock of each item of jewellery carat-wise. In fact, the learned PCIT in the revision order, though, has accepted the fact that the

Assessing Officer has called for details of opening stock and closing stock of jewellery and the assessee has also furnished the details, however, he has held the assessment order to be erroneous and prejudicial to the interest of Revenue on the reasoning that the Assessing Officer has not called for carat-wise details of gold and diamond jewellery manufactured and sold.

9. We find the aforesaid observation of the learned PCIT vague, contrary to materials on record and in the nature of a general observation. As discussed earlier, not only in the tax audit report but also in the course of assessment proceedings, the assessee had produced monthwise and carat-wise details of different categories of jewellery manufactured and sold by it. It is also a fact on record that the Assessing Officer has not only enquired into the issue but has also examined the details furnished by the assessee before completing the assessment. Therefore, observations of the learned PCIT that the Assessing Officer has not made proper enquiry and not called for necessary details is wholly unsubstantiated and baseless. Further, the learned PCIT has not stated in clear terms what prejudice was caused to the Revenue as a result of alleged inaction of the Assessing Officer in making proper enquiry. Therefore, without any specific conclusion / finding by the learned PCIT with regard to prejudice caused to the Revenue, the conditions of section 263 are not fulfilled as one of the

conditions remained to be specified, even, assuming that non-enquiry by the Assessing Officer has made the assessment order erroneous. Even, it is hard to accept the allegation of the learned PCIT that the Assessing Officer has not made any enquiry, keeping in view the facts and materials brought on record indicating not only the enquiry conducted by the Assessing Officer but the details furnished by the assessee. Therefore, we are unable to uphold the validity of exercise of power under section 263 of the Act with regard to this issue.

10. As far as the second issue relating to the genuineness of advance received of ₹ 55 lakh from Prabodh B. Thakkar is concerned, it is noticed, the Assessing Officer in the notice issued under section 142(1) of the Act on 15th January 2014, has called upon the assessee to furnish the name and address and other details of the parties from whom advances were received along with the confirmations. In response to the notices issued by the Assessing Officer, the assessee vide letter dated 10th December 2014, has furnished the details of advances received from customers. A perusal of the party-wise details of unsecured loans / advances, received a copy of which is at Page-96 of the paper book reveals that the assessee has shown an aggregate amount of ₹ 1,30,49,675 towards advances to have been received from 80 customers. The revisional authority has not questioned the advances received from other 79 customers amounting

to ₹ 75,49,675. He has picked up the advances received of ₹ 55 lakh from a single customer. Notably, as per the materials on record, it is evident that the Assessing Officer has not only made enquiry relating to the advances received from different parties but after analyzing the details furnished by the assessee has completed the assessment. Learned PCIT has made an allegation that the Assessing Officer without calling for some other details has accepted the claim of the assessee. Irrespective of the fact whether it is an advance or unsecured loan, we are unable to understand what further details the Assessing Officer should have asked from the assessee. It is evident, assessee has furnished the necessary details before the Assessing Officer and has stated that the amount in question were advances received from customers against sales of jewellery. The Assessing Officer having made enquiry and found the assessee's claim to be correct, the learned PCIT cannot question the decision of the Assessing Officer, merely because in his opinion the Assessing Officer should have made some more enquiry without specifying what more enquiry should have been conducted by the Assessing Officer. Further, the action of the learned PCIT appears to be surprising, considering the fact that he has accepted the advances received from almost all other customers under identical facts and circumstances without doubting their genuineness, even though such advances aggregate to an amount of ₹ 79 lakh. Only because the disputed advance is for an

amount of ₹ 55 lakh, as it appears, the learned PCIT has raised doubts with regard to the said advance. In our view, when the Assessing Officer has conducted necessary enquiry and after examining the material brought on record in response to such enquiry has completed the assessment, the sufficiency or the correctness of enquiry conducted by the Assessing Officer cannot be questioned by the revisional authority in an arbitrary or subjective manner. Without entering into the controversy as to whether Explanation 2 to section 263 would apply prospectively or retrospectively considering the divergent opinion on that issue, we must observe even the existence of Explanation 2 to section 263 would not clothe the revisional authority with unbridled power to hold the order passed by the subordinate authority to be erroneous and prejudicial to the interests of Revenue, only because, in his opinion the enquiry conducted by the Assessing Officer was not sufficient or not in the manner it should have been made. If the material on record demonstrate that the Assessing Officer has made necessary enquiry on a particular issue and has passed the assessment order after due application of mind on the materials brought on record, the assessment order cannot be held to be erroneous or prejudicial to the interests of Revenue due to lack of or inadequacy of enquiry.

11. As far as the third and final issue relating to reasonableness of payment to Anmol Jewellery qua section 40A(2)(b) is concerned, notably, in the tax audit report, the assessee has furnished all payments made to persons specified under section 40A(2)(b). It is also noted, in the questionnaire attached to the notice issued under section 142(1) dated 9th September 2014, the Assessing Officer has specifically called for details of payment made to persons covered under section 40A(2)(b) and also justify that the payments made were as per the fair market value. In response to the query raised by the Assessing Officer, the assessee vide letter dated 10th December 2014, has furnished the details of payment made to the persons specified under section 40A(2)(b) during the year. Thus, from the aforesaid facts, it is clear that in the course of assessment proceedings, the Assessing Officer has enquired into the issue of payment made to persons specified under section 40A(2)(b) and after applying his mind to materials brought on record has completed the assessment. Learned PCIT has held the assessment order to be erroneous and prejudicial to the interests of Revenue, since, according to him the Assessing Officer has not examined the reasonableness of such payment looking at the fair market value of the goods and services received from the concerned party. A perusal of the show cause notice under section 263 as well as the impugned order passed under section 263 does not reveal any conclusive observation / finding of the learned

PCIT that the payment made by the assessee to Anmol Jewellery is not in conformity with the fair market value of the goods purchased. Nothing has been brought on record by the learned PCIT to even remotely suggest that the payment made by the assessee to Anmol Jewellery was either excessive or more than fair market value of the goods purchased. Thus, it indicates that the learned PCIT himself was not sure whether the payments made to Anmol Jewellery were not commensurate with the fair market value. That being the case, by merely observing that the Assessing Officer should have made some more enquiry to ascertain the reasonableness of payment he could not have held the assessment order to be erroneous and prejudicial to the interests of Revenue. Even otherwise also, it can be seen from the ledger account of Anmol Jewellery in the books of the assessee the purchases corresponding to the payments made were effected in the assessment year 2011-12. It is a fact on record that the assessee has not claimed the purchases as deduction in the impugned assessment year. Only the payments against the purchases were made in the impugned assessment year. That being the case, the reasonableness of the payment made against the purchases qua section 40A(2)(b) cannot be examined in the impugned assessment year. If at all the issue relating to the payment whether is in terms of fair market value is to be examined it had to be in the year in which such purchases were made. Therefore, with regard to this issue also, the exercise of

power under section 263 is not valid. The decisions relied upon by the learned Authorised Representative supported this view. Accordingly, we set aside the impugned order of the learned PCIT passed under section 263 of the Act and restore the assessment order passed by the Assessing Officer. Grounds raised are allowed.

12. In the result, assessee's appeal is allowed.

Order pronounced in the open Court on 22.11.2017

Sd/-
RAJESH KUMAR
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 22.11.2017

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai