

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI JOGINDER SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2328/MUM/2016
Assessment Year: 2008-09**

M/s Orra Fine Jewellery
Pvt. Ltd. (Earlier known
as Orra Fine Jewellery
Pvt. Ltd.)
58/60, Jariwala Mansion,
Hughes Road,
Mumbai-400007

**PAN No. AAACI1062K
Appellant**

Vs.

Principal
CIT(Central)-CIR. 46
Room No. 663, 6th
floor, Aayakar
Bhavan
Mumbai-400020.

Respondent

Assessee by : Mr. Nitesh Joshi, AR
Revenue by : Mr. H.N. Singh, DR

Date of Hearing : 22/08/2017
Date of pronouncement : 03/11/2017

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2008-09. The appeal is directed against the order u/s 263 of the Income Tax Act 1961, (the 'Act') dated 28.03.2016 passed by the Principal Commissioner of Income Tax (Central) - 4, Mumbai (hereinafter referred as 'PCIT').

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

1. Learned Commissioner of Income-tax erred in invoking the jurisdiction under section 263 of the Act and setting aside the assessment made under Section 153A r.w.s. 143(3) of the Act.

The Learned Commissioner of Income-tax further erred in holding that the Assessing Officer while framing the assessment under Section 153A r.w.s. 143(3) of the Act did not carry out any further enquiries/necessary verification to ascertain the genuineness of the purchases.

It is submitted that the assessment order passed under Section 153A r.w.s.143(3) of the Act is in accordance with the law, is not erroneous or prejudicial to the interest of the revenue.

The conclusions arrived at by the learned Commissioner of the Income-tax is erroneous and contrary to the facts. The order under Section 263 of the Act is without jurisdiction, bad in law and to be cancelled.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the AY 2008-09 on 30.09.2008 declaring total income of Rs. Nil. The said return was selected in scrutiny and the assessment was completed by the Assessing Officer (AO) u/s 143(3) on 24.12.2010. The total income was assessed at Rs. Nil. The additions made in the said return were deleted by the CIT(A). The appeal filed by the Revenue against the order of the CIT(A) was dismissed by the ITAT.

A search and seizure action was carried out by the Revenue u/s 132 at the residence and business premises of Rosy Blue (India) Group on 25.08.2011. The assessee was also covered in the said search action.

Consequent to the search, the AO issued notice u/s 153A on 11.12.2012. In response to it, the assessee filed its return of income on

30.01.2013 declaring total income of Rs. Nil. The AO after verification made the assessment u/s 153A r.w.s. 143(3) on 31.03.2014 as under:

Particulars	Amount (Rs.)
Business Income	62,32,333/-
Less: Unabsorbed Depreciation of Earlier Years	(62,32,333/-)
Total Income	Nil

4. The PCIT initiated proceedings u/s 263 by issuing a show cause notice dated 02.03.2016. The points raised by the PCIT were (i) on perusal of records, it is seen that the assessee company had made bogus purchases to the extent of Rs.60,56,006/- by way of accommodation entries from the concerns controlled and operated by Shri Rajendra Jain, Shri Sanjay Choudhary and Shri Dharmichand Jain Group. The information to this effect, consequent to the search & seizure action conducted by the Investigation Directorate, Mumbai on 03.10.2013 in the case of Shri Rajendra Jain, Shri Sanjay Choudhary and Shri Dharmichand Jain Group is placed on record and (ii) the AO had not made any inquiry/verification with regard to the purchases.

The assessee filed a reply before him which has been extracted at para 3 of the above order. The initial objection raised by the assessee was that during the course of search in its case, no incriminating material was found. The assessee also submitted before the PCIT that it has not made purchases from the above parties.

However, the PCIT was not convinced with the reply of the assessee as the AO did call for the list of party wise purchases but did not carry out any further inquiry/verification to ascertain the

genuineness of those purchases. Therefore, he set aside the order of the AO on the above issue with a direction to make *de novo* assessment.

5. Before us, the Ld. counsel of the assessee relies on the decision in the case of *CIT vs. M/s Murli Agro Products Ltd.* (ITA No. 36 of 2009) and *CIT vs. Continental Warehousing Corporation* (ITA No. 523 of 2013) by the Hon'ble Bombay High Court.

6. On the other hand, the Ld. DR supports the order passed by the PCIT.

7. We have heard the rival submissions and perused the relevant materials on records. We find that a similar issue arose in the case of *M/s Murli Agro Products Ltd.* (supra). In that case the assessment order for the AY 1998-99 was passed u/s 143(3) on 29.12.2000 determining the loss of Rs.43,02,246/-. Thereafter, on 03.12.2003, there was a search action at the business/office premises of the assessee wherein several incriminating documents/articles were seized. On issuance of notice u/s 153A dated 13.09.2004, the respondent-assessee filed return of income on 29.08.2005 declaring loss of Rs.46,45,338/-. Thereafter, the AO passed an order on 30.03.2006 u/s 153A r.w.s. 143(3) determining the concealed income at Rs.89,19,477/-. On appeal filed by the assessee, the Commissioner of Income Tax (Appeals) by his order dated 30.11.2006 deleted the concealed income computed by the AO on 30.03.2006.

The Commissioner of Income Tax passed an order u/s 263 on 04.10.2007 on the ground that (i) the total income computed in the assessment order passed u/s 153A after giving effect to the order of

CIT(A) being less than 30% of the book profit, the AO ought to have computed the total income by invoking section 115JA, (ii) the deduction allowed u/s 80HHC in the original assessment dated 29.12.2000 was not in accordance with the law and, therefore, while passing the assessment order u/s 153A r.w.s. 143(3), the AO ought to have correctly computed deduction u/s 80HHC.

Challenging the order of the Commissioner of Income Tax passed u/s 263 of the IT Act, the assessee filed an appeal and the ITAT by its order dated 05.01.2009 set aside the order of the Commissioner of Income Tax dated 04.10.2007 on the ground that neither the computation of book profit under Section 115JA nor deduction u/s 80HHC of the IT Act were the subject matter of the proceedings u/s 153A and, therefore, the Commissioner of Income Tax could not have invoked the jurisdiction u/s 263 of the IT Act. Then the Revenue filed appeal before the Hon'ble High Court against the order of the ITAT.

On appeal by the department, the Hon'ble High Court held dismissing the appeal:

(i) On initiation of proceedings u/s 153A, it is only the assessment proceedings that are pending on the date of conducting search u/s 132 or making requisition u/s 132A of the Act that stand abated and not the assessments already finalized. This is made clear in Circular No. 8 of 2003 dated 18.9.2003 (See 263 ITR (St) 61 at 107) issued by the CBDT. Therefore, the argument of the revenue, that on initiation of proceedings u/s 153A, the assessments finalized for the assessment years covered u/s 153A stand abated cannot be accepted. Similarly on annulment of assessment made u/s 153A (1) what stands revived is the pending assessment proceedings which stood abated as per s. 153A(1);

(ii) In the present case, the assessment for AY 1998-99 was finalized on 29.12.2000 and search was conducted thereafter on 3.12.2003. Therefore, initiation of proceedings u/s 153A would not affect the assessment finalized on 29.12.2000.

7.1 In the instant case, there is nothing on record to suggest that any material pertaining to the issues raised by the PCIT in the order u/s 263 was unearthed during the course of search. Facts being similar we follow the judgment of the Hon'ble Bombay High Court in *M/s Murli Agro Products Ltd.* (supra) and cancel the order u/s 263 passed by the PCIT.

8. In the result, the appeal is allowed.

Order pronounced in the open Court on 03/11/2017.

Sd/-
(JOGINDER SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 03/11/2017

Rahul Sharma, Sr. P.S.

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