

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "E", MUMBAI**

**BEFORE SHRI R.C. SHARMA (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 5340/MUM/2015  
Assessment Year: 2010-11**

Shri Surajdev D. Shukla, B/104, Raghunath Krupa Bldg, Near Sabnis Hospital, Goregaon (East), Mumbai – 400063  PAN: ALHPS9881K	<b>Vs.</b>	The Principal Commissioner of – Income Tax – 31, Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : None

Revenue by : Shri Manjunatha Swamy (DR)

Date of Hearing: 09/11/2017  
Date of Pronouncement: 30/11/2017

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against order dated 24/03/2015 passed by the Ld. Principal Commissioner of Income Tax (in short 'PCIT')- 31, Mumbai, for the assessment year 2010-11, whereby the Ld. Pr. CIT has set aside the assessment order passed by the AO by exercising powers u/s 263 of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the appellant/assessee an individual carrying on the business of supplying building material in the name of M/s DG Traders, filed his return of income for the A.Y. 2010-11 declaring the total income of Rs. 3,62,770/-. The assessment was completed u/s 143 (3) of the Act determining the total at Rs. 4,06,760/-. Later on, on going through the statements records certain discrepancies appearing in the said order were intimated to the assessee vide notice u/s 263 issued by the then CIT-24,

Mumbai. The assessee did not file any explanation and accordingly the Ld. PCIT passed order u/s 263 of the Act setting aside the assessment order and further issued the directions to the AO to pass the assessment order afresh in the light of the observations made in the order passed u/s 263.

3. Aggrieved by the order of Ld. Pr. CIT, the assessee has preferred this appeal before the Tribunal on the following effective grounds:-

*“On the facts and in the circumstances of the case and in law the Assessing Officer (or ‘ the Commissioner of Income-tax (Appeals)’ where an appeal is filed before the Tribunal against the order of Commissioner (Appeals) erred in scrutiny assessment done u/s 143 (3) r.w.s. 263 & 147 without appreciating the submissions on facts and evidence stating the views as per the law before the learned officer. The Appellant prays that the addition/disallowance of Rs. 1,68,34,302/- made in respect of/out of 10 points where grounds are submitted before the learned tribunal shall be deleted.*

1. *The learned ITO is not justified in adding Rs. 12,76,150/- as unexplained cash deposit and disallowed u/s 68 of the act.*
2. *The learned ITO is not justified in adding the fresh loans in respect of the following:-*
  - a. *Neelam Shukla :- Rs. 90,000/-*
  - b. *Sheela Shukla :- Rs. 3,59,420/-*
  - c. *Vigyan Rai :- Rs. 2,45,000/-*

*Total:- Rs. 6,94,420/-*
3. *The Learned ITO is not justified in adding the unsecured loan taken from Sushil Kumar Shukla Rs. 23,82,000/-.*
4. *The Learned ITO is not justified in adding the amount of loans taken because of mismatch in opening balance and*

*closing balance of M/s D.G. Traders HUF :- Rs. 9,60,000/-.*

5. *The Learned ITO is not justified in adding the amount of loans taken because of mismatch in opening balance and closing balance of M/s Sona Steel Corporation :- Rs. 55,06,000/-.*
6. *The Learned ITO is not justified in adding the amount of loans taken because of mismatch in opening balance and closing balance of M/s Abhiraji Sales Corporation : - 23,70,600/-.*
7. *The Learned ITO is not justified in adding the amount of loans taken because of mismatch in opening balance and closing balance of Ishwardev Shukla:- Rs. 9,50,000/-*
8. *The Learned ITO is not justified in adding the purchases made through following parties and where bearer cheques were issued to them:*

<i>Amit Enterprises</i>	<i>Rs. 2,50,000/-</i>
<i>Mateshwari Enterprises</i>	<i>Rs. 2,50,000/-</i>
<i>Jay Ambe Traders</i>	<i>Rs. 4,10,006/-</i>
<i>K R Steel Corporation</i>	<i>Rs. 3,69,308/-</i>
<i>K.R. Steel Corporation</i>	<i>Rs. 4,26,355/-</i>
<i>Sacro Wires Traders</i>	<i>Rs. 92,000/-</i>
<i>Bhavya Steels</i>	<i>Rs. 5,00,000/-</i>
<i>Total</i>	<i>Rs. 22,97,669/-</i>

9. *The Learned ITO is not justified in adding the home loan interest of Rs. 1,50,000/- where the certificate is was submitted but no consideration was given to that effect.*
10. *The learned ITO is not justified in making the blank addition without examining the records from the sales tax department.*
11. *Challan for Rs. 10,000/- is enclosed.*
12. *Challan for S. 1,00,000/- part payment of tax is enclosed.*

13. *Letter of authority in favour of CA Jimit C Gathani is enclosed.*
14. *Any delay in the submission of appeal may be condoned.*
15. *The Appellant crave leave for variation or withdrawal of grounds of appeal.*
16. *No TDS claimed during the year where the company has sold Rs. 1,49,20,999/- to Zagdusingh C trust on which parties deducted the TDS of Rs. 1,17,144/- and parties fail to issue the TDS certificates so that the TDS of Rs. 1,17,144/- is remained unclaimed during the year so kindly give the credit for the same.”*

4. This case was fixed for hearing on 09/11/2017. On the said date, when the case was called neither the assessee nor his authorized representative appeared before the Bench nor any application for adjournment was received on behalf of the assessee. We notice that on the last date of hearing i.e. on 17/08/2017 the Bench had to adjourn the case due to none appearance of the assessee. Accordingly, the Bench directed the DR to get the notice served. Despite that, the assessee failed to appear on 09/11/2017. From the conduct of the assessee, we are satisfied that the assessee is not interest in pursuing its appeal. Accordingly, we decided to dispose of the appeal on the basis of evidence on record after hearing the Departmental Representative (DR).

5. Before us, the Ld. DR submitted that since the assessment order is erroneous and prejudicial to the interest of the revenue, the Ld. PCIT has rightly passed the order u/s 263 of the Act and directed the AO to pass the assessment order afresh after hearing the assessee. The Ld. DR relied on the order rendered by the ITAT, Mumbai in *ITA No. 1593/Mum/2013* in the case of *Horizon Investment Company Ltd. vs. CIT, Arbee International*

*vs. ACIT Range, Mumbai (2006) 8 SOT 452 (Mum)* and the decision of Hon'ble Calcutta High Court rendered in *Rajmandir Estate Pvt. Ltd. vs. PCIT, Kolkata – III 386 ITR 162* in support of the contention of the revenue.

6. We have carefully gone through the entire material on record including the cases relied upon by the Ld. DR. The Ld. PCIT has pointed out the material discrepancies in the assessment order mentioned in detail in the order. The Ld. PCIT has mentioned in the order itself that show cause notice u/s 263 of the Act was issued on 24/09/2014 fixing the hearing on 09/10/2014. However, on the said date, nobody appeared on behalf of the assessee. Thereafter, notice was again issued on 03/02/2015 and the case was fixed for hearing on 12/02/2015. The assessee vide letter dated 17/02/2015 requested to adjourn the case. Accordingly, the case was adjourned to 17/03/2015, however, on the said date, none appeared on behalf of the assessee. Hence, the Ld. PCIT decided to pass order u/s 263 of the Act on the basis of material available on record.

7. We find that the Ld. PCIT has rightly pointed out that the AO has not conducted proper enquiry on the points mentioned in para no. 2 of the order. On the basis of material on record, we are satisfied that the Ld. PCIT has rightly passed the order u/s 263 of the Act. As per the orders relied upon by the Ld. DR, the Commissioner is competent to exercise the powers u/s 263 if he finds that the AO has not carried out requisite enquiry during the assessment proceedings on any issue. We find that the AO has not properly examined the issues pointed out by the Commissioner. Hence, the order passed by the AO is erroneous as well as prejudicial to the interest of the revenue. We, therefore, uphold the order

passed by the Ld. PCIT u/s 263 of the Act and dismiss all the grounds of the assessee's appeal.

In the result, appeal filed by the assessee for assessment year 2010-2011 is dismissed.

Order pronounced in the open court on 30<sup>th</sup> November, 2017.

Sd/-

(R.C. SHARMA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 30/11/2017

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

Alindra, PS

**आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai