

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI G. D. AGRAWAL, PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A .No. 3794/DEL/2014 (A.Y 2010-11)

Gee Ispat Pvt. Ltd. A-28, Sector-19, Rohini New Delhi AACCG0954G (APPELLANT)	Vs	DCIT Central Circle-1 New Delhi (RESPONDENT)
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I.T.A .No. 420/DEL/2016 (A.Y 2010-11)

DCIT Central Circle-5 Room No. 361, 3 rd Floor, ARA Centre, Jhandewalan Extn. New Delhi (APPELLANT)	Vs	Gee Ispat Pvt. Ltd. R/o. A-28, Sector-19, Rohini New Delhi AACCG0954G (RESPONDENT)
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Appellant by	Sh. Gautam Jain & Piyush Kumar Kamal, Advs.
Respondent by	Sh. Raja Ram Sah, CIT DR

Date of Hearing	07.12.2017
Date of Pronouncement	18.01.2018

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee and the Revenue against the order dated 10/1/2013 passed u/s 263 of the Income-tax Act, 1961 & order

dated 30/11/2015 passed by CIT(A)-24 respectively for Assessment Year 2010-11.

2. The grounds of appeal are as under:- **I.T.A .No. 3794/DEL/2014**

“1. That the order made by the learned Commissioner of Income Tax, Central-I, New Delhi dated 25.3.2014 holding that order of assessment dated 29.12.2011 is erroneous in so far as it is prejudicial to interest of revenue is without jurisdiction and deserves to be quashed as such.

2. That the learned Commissioner of Income Tax has failed to appreciate that once the addition made on the basis of diary marked as Annexure A- 1 seized from Shri Salek Chand Garg had been made subject matter of appeal before learned Commissioner of Income Tax (Appeals), the entire issue was subject matter of appeal before the learned Commissioner of Income Tax (Appeals) and as such the impugned order is beyond the scope of powers of learned Commissioner of Income Tax in view of provisions contained section 263(l)(c) of the Act.

2.1 *That the finding of the learned Commissioner of Income Tax that “the issue of assessment of undisclosed income detected on account of suppression of “sale rate” of M.S. Plant sold by the assessee totally amounting to Rs. 44,94,34,849/ and the taxability of entire amount was not sub-judice in the order of learned Commissioner of Income Tax (Appeals) dated 31.8.2012” is factually and legally misconceived and hence untenable.*

3. *That furthermore even-otherwise order u/s 263 of the Act dated 25.3.2014 by the learned Commissioner of Income Tax, Central-I, New Delhi has been made without satisfying the statutory preconditions contained in the Act and is therefore without jurisdiction and thus, deserves to be quashed as such.*

3.1. *That the learned Commissioner of Income Tax has failed to appreciate that once the learned Assessing Officer on examination of facts on record and after making all possible enquiries had held only addition is to be made by applying net profit on sales then such an order of assessment could not be regarded as erroneous in as much as prejudicial to the interest of revenue merely because the learned Commissioner of Income Tax had a*

different opinion and that too, without having established in any manner that, view adopted by the learned Assessing Officer was an impossible view.

- 3.2. *That the finding of learned Commissioner of Income that “the Assessing Officer is directed to examine the taxability of the amount of Rs. 11,57,03,488/- in the hands of the assessee on account of unaccounted sales made” is based on factually misconception and, misinterpreted of provision of law and is thus untenable.*
- 3.3. *That further the learned Commissioner of Income Tax has also failed to appreciate that, u/ s 263 of the Act, an order of assessment cannot be set-aside to simply to make further enquiries and thereafter pass fresh order of assessment and as such, impugned order is contrary to law and hence, unsustainable.*
- 3.4. *That various adverse findings and observations recorded in order u/s 263 of the Act without granting opportunity are not only contrary to facts but also law and therefore, unsustainable.*

It is therefore prayed that, impugned order made under section 263 of the Act dated 25.3.2014 be held to be without jurisdiction and, therefore be quashed and appeal of the appellant be allowed.”

I.T.A .No. 420/DEL/2016

1. *The order of the Ld.CIT(A) is not correct in law and on facts.*
2. *On the facts and circumstances of the cases, the Ld.CIT(A) has erred in appreciating that the addition of Rs.11,57,03,448/- was made in the income originally assessed on the basis of material gathered during the search on the premises of commission agent of the assessee.”*
3. In this case search and seizure action was carried out on the assessee, two commission agents namely Sh. Salek Chand Garg and Sh. Sabarmal Goel on 17/01/2010. A diary was seized from the premises of Sh. Salek Chand Garg and a stock register from the assessee’s premises, which allegedly

contain quantity-wise details of sales made by the assessee. The various additions were made by the Assessing Officer in the assessment order, including addition of Rs. 8,37,60,000/- being undisclosed GP at the rate of 10% of the undisclosed sales. The CIT(A) vide order dated 31.08.2012 upheld the finding of the Assessing Officer that the undisclosed sales is Rs. 83,76,00,000/- but restricted the G.P. percentage to 5% of the undisclosed sales. Accordingly, he determined the undisclosed G.P. at Rs. 4,18,80,000/-. The assessee filed appeal against the order of the CIT(A) on this issue. Meanwhile, the CIT(A) Central-1, New Delhi vide order u/s 263 dated 25.03.2014, directed the Assessing Officer to consider the entire undisclosed sales as undisclosed income of the assessee, instead of restricting the profit to 10% of the undisclosed sales. However, the CIT(A), Central-1, New Delhi accepted the assessee's contentions that part of sum of the amount of undisclosed sales determined by the assessee was attributable to excise duty, VAT, freight and labour and directed that the total undisclosed sale was to be quantified at Rs. 1 1,57,03,488/-. The Assessing Officer vide his order u/s 143(3) r.w.s. 263 of the Income Tax Act, 1961 dated 20/03/2015 gave effect to the revision order of the CIT(A) Central-1, New Delhi.

4. The Ld. AR submitted that order under Section 263 of the Act was passed on the basis of some diary which was allegedly stated to be incriminating material by the Revenue and the said diary found in the possession of the third party was held not sufficient to draw an inference about the alleged undisclosed income by the Tribunal vide order dated 18/5/2015 in ITA No. 5550/Del/2012 and all the advances were deleted by the Tribunal. Thus, nothing survives for the order u/s 263 of the Act. The Ld. AR further submitted that there is a delay of 34 days in filing of the appeal.

5. The Ld. DR vehemently opposed the condonation of delay application.

6. We have heard both the parties and perused all the records. The assessee has made out the case for why the delay has occurred. It was due to the reason that since January 2014 the assessee company was shut down and the company let of all its employee along with accounts/taxation staff. Therefore, delay is condoned. On the merits of the case, it can be seen that order under Section 263 of the Act passed, was on the basis of some diary which was allegedly stated to be incriminating material by the Revenue and the said diary found in the possession of the third party was held not sufficient to draw an inference about the alleged undisclosed income by the Tribunal vide order dated 18/5/2015 in ITA No. 5550/Del/2012 and all the advances were deleted by the Tribunal. Thus, order u/s. 263 of the Act passed by the CIT is set aside. Therefore, the appeal of the assessee is allowed. As related to Revenue Appeal, the same will not sustained as the main issue is already decided by the earlier decision of this Tribunal.

7. In result, appeal of the assessee is allowed and appeal of the revenue is dismissed.

Order pronounced in the Open Court on 18th January, 2018.

Sd/-

(G. D. AGRAWAL)
PRESIDENT

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 18/01/2018
*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	07/12/2017	PS
2.	Draft placed before author	11/12/2017	PS
3.	Draft proposed & placed before the second member	.2017	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	18.01.2018	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	18.01.2018	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		