

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

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 1716/Del/2017
(Assessment Year: 2012-13)**

Rajeev Agarwal, W-7, 2 nd Floor, Greater kailash, Part-1, New Delhi. PAN No. AHBPA5683K	vs	Pr. CIT Aayakar Bhawan, Opp. Mansarover Park, Rohtak.
APPELLANT		RESPONDENT

Appellant/ Assessee by	Sh. Sameer Kapoor, CA
Respondent/ Revenue by	Smt. Paramita Tripathi, CIT (DR)

Date of Hearing	12.06.2018
Date of Pronouncement	.06.2018

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed against the order dated 09.02.2017 passed by the Pr. CIT-Rohtak u/s 263 of the Income Tax Act, 1961.

2. The grounds of appeal are as under:

1. *“Whether the Ld. Pr. CIT has erred in law and circumstances of the case in holding the assessment u/s 143(3) of the Act as erroneous and prejudicial to the interest of the revenue u/s 263.*
2. *Whether the Ld. Pr. CIT has erred in law and circumstances of the case in rejecting the explanation provided by the assessee in the proceedings u/s 263 of the Act and directing the ld.AO to make an addition of Rs. 1,47,29,502/-.*
3. *The assessee may please be allowed the right to add/delete/modify any of the above grounds of appeal at any stage.”*

3. The assessee is engaged in the business of trading of bullion and artificial stones. The return of income was filed on 24.04.2012 declaring total income of Rs. 28,18,860/-. The assessment was completed on 30.01.2015 under Section 143(3) of the Income Tax Act, 1961 at an income of Rs. 29,18,860/-. During the year under consideration, the assessee has shown income from business/profession, Income from House Property, Income from Capital Gain and Income from Other sources. The Pr. CIT noticed that the Assessing Officer had completed the assessment without carrying out necessary and proper enquiry which he ought to have carried out. The Pr. CIT observed that scrutiny of assessment records revealed that the assessee during the previous year purchased 1643 kg. of gold bar for Rs. 3,77,46,98,443/- and sold 1641 kg for Rs. 3,43,89,91,867/-. The average price for purchase of Gold worked out to Rs. 22,97,442/- per kg and average selling price worked out to Rs. 20,95,668/-. Thus, there was difference in sale/purchase price by Rs. 2,01,774/- per kg. There was sharp hike/difference in the month of Sep., 2011 and March, 2012 in the value of sale price and purchase price, which is tabularized as under:

Month	Gold bar Purchased			Gold bar Sold			Difference Per kg
	Weight (in kg.)	Amount	Rate per kg (Rs.)	Weight (in kg.)	Amount	Rate per kg. (Rs.)	
09/2011	36	97180631	2699461	29	35396070	1220554	1478960
01/2012	124	340706998	27474637	126	206104547	1635750	1111887
03/2012	72	17107934	2376499	73	38504246	527455	1849044

The Pr. CIT further observed that even if the difference in average selling price of Gold bar purchased and sold for the whole year is adopted at Rs. 2,01,774/- per kg. average purchase price for 1643 kg. Rs. 22,97,442 – average sale price for 1641 kg. Rs. 20,95,668/-, the suppressed sale for 73 kg of gold is worked out to Rs. 1,47,29,502/-. Thus, the assessee had suppressed its sales by Rs. 1,47,29,502/- and consequently, income was shown less to this extent involving revenue impact of Rs. 45,51,415/-. Accordingly, show-cause Notice u/s 263 of the Act was issued to the assessee on 5th January, 2017 fixing the case for hearing on 24th January, 2017. The assessee filed written submissions on 03.02.2017. The assessee submitted

that purchases and sales of Gold Bar were made at 1641 kg. and 1639 kg. respectively. The Pr. CIT held that the figures of purchase/sale which was tendered during the course of revisionary proceedings are fabricated one, being not substantiated with any documentary evidence. In view of above discussion, the assessment order u/s 143(3) of the Act dated 30.01.2015 passed by the Assessing Officer was held to be erroneous in so far as it is prejudicial to the interests of the revenue. The Pr. CIT further held that the Order passed by the Assessing officer was made without making enquiries or verification which should have been made. Thus, the Pr. CIT directed the Assessing Officer to make addition of Rs. 1,47,29,502/-. Accordingly, the Assessing Officer was directed to re-frame the assessment accordingly.

4. Being aggrieved by the order u/s 263 of the Act passed by the Pr. CIT, the assessee filed appeal before us.

5. The Ld. AR submitted that during AY 2012-13, the assessee had purchased 1641 kg of Gold bars (.995%) for Rs. 3,82,71,63,207/- and not 1643 kg for Rs. 3,77,46,98,443/-. The correct figure is 1641 kg and its cost comes to Rs. 3,82,71,63,207/-. The average price of gold purchase works out to Rs. 23,32,214/- and not Rs. 22,97,442/- as mentioned in the notice issued under Section 263 of the Act. The Ld. AR further submitted that during the year the assessee had sold 1639 kg Gold bars (.995%) for Rs. 382,33,90,969/- and not 1641 kg for Rs. 343,89,91,867/-. The average price of gold sold comes to Rs. 23,32,758/- and not Rs. 20,95,668/- as mentioned in the notice under Section 263 of the Act. The Ld. AR further submitted that no purchases and sales are effected after 21.03.2012 for one kg. gold bar (.995%). The closing stock as on 31.03.2012 is 2 kg only while entering closing stock of 2 kg, but due to inadvertent clerical mistake entry on 31.03.2012 of 2 kg gold bars was reflected in purchases while actually no purchases were made after 21.03.2012 and similarly due to inadvertent clerical mistake entry on 31.03.2012 of 2 kg gold bar was reflected in sales

though actually no sales were made of 2 kg gold bars. Due to above inadvertent clerical mistake purchases and sales are increased by 2 kg. In fact purchase of gold bar (one kg) are 1641 kg and not 1643 kg as mentioned in the notice. Similarly, sales of gold bar are 1639 kg and not sales of gold bars are 1641 kg as mentioned in notice. The Ld. AR further submitted that the assessee is trading in bullion (Gold & Silver) and artificial stones and 100 grams pcs also. The Ld. AR submitted that the sales are effected in three ways.

- a) Sale of bullion in per 1 kg.
- b) Sale of bullion in pcs of one kg Bar as per customer's request.
- c) Sale of 100 gram pcs.

The Ld. AR further submitted that in the month of March the assessee had sold Four Bars of One Kg each and also in pcs. weighing Sixty Seven Kgs. While calculating sales, the sale of pcs. weighing Sixty Seven Kg was not taken into consideration. The Ld. AR submitted that the assessee had made the purchases in 1 kg. bar while the sales are effected in 1 kg bar and also in pcs as per customer's request. The Ld. AR further submitted that the AO had not taken into consideration sale of pcs from 1 kg Bar especially in the month of March weighing 67 kgs sold in pcs. The value of the same comes to Rs. 18,51,97,030/- of Sixty Seven Kg. The position of gold a/c are as under:

PURCHASE			SALES		
	3827163207.00	1641 Kg. 995 1 Kg. each		3823390969.00	1639 Kg. 995 (1 Kg. Bar 1424 kg in pcs. 215 kg i.e. 1639 Kg)
3908498410.00	81335203.00	32 Kg. 100 gms each	3906075456.00	82684487.00	32 Kg 100 gms pcs.
3045832.00		Profit	5468786.00		2 Kg. 995 Closing Stock
3911544242.00			3911544242.00		

As regard method of valuation of the stock the assessee is following FIFO method of valuation of closing stock. As per details given above the

purchase and sale and closing stock is duly verifiable as per the details submitted along with the return and as such there is no suppression of sales. The Ld. AR submitted that the assessee is submitting herewith monthly position of stock i.e. Opening Stock, inward, Sales of Gold Bar & also in pieces. The Ld. AR submitted that the average purchase price comes to Rs. 23,32,214/- per kg and sale price comes to Rs. 23,32,758/- per kg. The Ld. AR submitted that there is no suppressed sales amounting to Rs. 147,29,502/- as alleged in the notice and profit computed thereon Rs. 45,51,415/-. If the sales of pieces from one kg. (.995) is considered, then there will be no suppressed sales and also no profit thereon. The assessee has submitted details of gold bar (.995 purity) as well as the Purchases in one kg and the sales thereon in one kg and also in pieces. The sales of pieces in September and March were also submitted by the Assessee before the Pr. CIT. The Ld. AR submitted that the sales and profit computed on hypothetical way is legally wrong despite the entire position is crystal clear from the details produced before the Pr. CIT. The Ld. AR relied upon the following decisions:

- i) Amira Pure Foods Pvt. Ltd. vs. Pri. CIT (2018) 63 ITR 355 (Del. Tri.)
- ii) Narayan Tatu Rane vs. ITO (ITA No. 2690, 2691/Mum/2016 order dated 06.05.2016)

6. The Ld. DR relied upon the order of Pr. CIT. The Ld. DR also relied upon the following decisions:

- 1) *Supreme Court in the case of Deniel Merchants P. Ltd. vs. ITO (Appeal No. 2396/2017) dated 29.11.2017;*
- 2) *Malabar Industrial Co. Ltd. vs. CIT (2000) 109 Taxman 66 (SC)/(2000) 243 ITR 83 (SC)/(2000) 159 CTR 1 (SC);*
- 3) *Rajmandir Estates (P) Ltd. vs. PCIT [70 taxmann.com 124 (Calcutta)/[2016] 240 Taxman 306 (Calcutta)/[2016] 386 ITR 162 (Calcutta)/[2016] 287 CTR 512];*
- 4) *Rajmandir Estates (P) Ltd. vs. PCIT (2017) 77 taxmann.com 285 (SC)/[2017] 245 Taxman 127 (SC);*

5) *Shree Manjunathesware Packing Products & Camphor Works vs. CIT [1998] 96 Taxman 1 (SC)/[1998] 231 ITR 53 (SC)/[1997] 143 CTR 406 (SC)*

7. We have heard both the parties and perused all the records. In the present case, it is pertinent to note that the assessee admitted that there is clerical mistake in the details filed regarding sale and purchase of the gold during the month of March which was overlooked by the Assessing Officer. The assessee had purchased 1641 kg of Gold bars (.995%) for Rs. 3,82,71,63,207/- and not 1643 kg for Rs. 3,77,46,98,443/-. The correct figure is 1641 kg and its cost comes to Rs. 3,82,71,63,207/-. The average price of gold purchase works out to Rs. 23,32,214/- and not Rs. 22,97,442/- as mentioned in the notice issued under Section 263 of the Act as per the Ld. AR's contention. During the year the assessee had sold 1639 kg Gold bars (.995%) for Rs. 382,33,90,969/- and not 1641 kg for Rs. 343,89,91,867/- as per Ld. AR's contention. The average price of gold sold comes to Rs. 23,32,758/- and not Rs. 20,95,668/- as mentioned in the notice under Section 263 of the Act as per the Ld. AR's contention. The Ld. AR further submitted that no purchases and sales are effected after 21.03.2012. The closing stock as on 31.03.2012 is 2 kg only while entering closing stock of 2 kg, but due to inadvertent clerical mistake entry on 31.03.2012 of 2 kg gold bars was reflected in purchases while actually no purchases were made after 21.03.2012 and similarly due to inadvertent clerical mistake entry on 31.03.2012 of 2 kg gold bar was reflected in sales though actually no sales were made of 2 kg gold bars. Due to above inadvertent clerical mistake purchases and sales are increased by 2 kg. In fact purchase of gold bar (one kg) are 1641 kg and not 1643 kg as mentioned in the notice. Similarly, sales of gold bar are 1639 kg and not sales of gold bars are 1641 kg as mentioned in notice. Thus, this has been overlooked by the Assessing Officer during the Assessment Proceedings for which the Pr. CIT has rightly taken the action under Section 263 of the Act as the Assessment Order is erroneous and prejudicial to the interest of the Revenue. As regards the case laws submitted

by the Ld. AR, it can be seen that the Delhi Tribunal's decision in case of Amira Pure Foods Pvt. Ltd. (supra) will not be applicable in the present case as in that case the Pr. CIT has directed the Assessing Officer for further /thorough enquiry regarding the queries raised by the Assessing Officer during the relevant Assessment Proceedings for which correct details have been filed by the said Assessee. But in this case the correct details have not been filed by the assessee which is admitted by the assessee before the Pr. CIT that there is a clerical error. Regarding the Mumbai Tribunal's decision in case of the Narayan Tatu Rane (supra) also will not be applicable in the present case as the Assessing Officer after reopening the assessment u/s 147 of the Act, has taken the cognizance of the incriminating documents. Thus, both the case laws cited by the assessee will not be applicable in the present case. As regard the case laws submitted by the Ld. DR of the Apex Court as well as of the Jurisdictional High Court the same are applicable in the case where the Assessing Officer fails in his/her duty to assess the income properly and because of that there is a prejudicial interest of the Revenue. The Pri. CIT has looked into the aspect of the Assessment Order in the present case to the extent of erroneous & prejudicial to the interest of the Revenue and thus, Section 263 of the Act is attracted in the present case. Section 263 of the Act is not invoked simply for correcting mistake or error committed by the Assessing Officer in the present case. It can be observed that the Pr. CIT has considered all the contentions of the assessee and thereafter rightly came to the conclusion that the Assessing Officer passed the Assessment order without making enquiries or verification which should have been made. The present case is covered by the decision of the Hon'ble Apex Court in case of Deniel Merchants Private Limited & Anr. Vs. Income Tax Officer (Appeal No. 2396/2017 order dated 29.11.2017). The Hon'ble Supreme Court held as under:

"In all these cases, we find that the Commissioner of Income Tax had passed an order under Section 263 of the Income Tax Act, 1961 with the

observations that the Assessing Officer did not make any proper inquiry while making the assessment and accepting the explanation of the assessee(s) insofar as receipt of share application money is concerned. On that basis the Commissioner of Income Tax had, after setting aside the order of the Assessing Officer, simply directed the Assessing Officer to carry thorough and detailed inquiry. It is this order which is upheld by the High Court. We see no reason to interfere with the order of the High Court.

The Special Leave Petitions are dismissed.”

Since, in the instant case the Assessing Officer failed to make any enquiry regarding the purchase and sale including quantitative details of the gold bars, therefore, it is a case of no enquiry by the Assessing Officer for which the Pr. CIT has rightly invoked the provisions under Section 263 of the Income Tax Act, 1961. Provisions u/s 263 of the Act becomes redundant, if it is not invoked in such type of cases like the present one where the assessee pleads before the Pr. CIT that there were certain inadvertent clerical error of purchase and sale including quantitative details. This itself shows that there is absolute non-application of mind and no enquiry conducted by the Assessing Officer at all. Thus, the Assessment order has become both erroneous as well as prejudicial to the interest of revenue for which Pr. CIT was justified in invoking the provision of Section 263 of the Income Tax Act, 1961. Various decision relied by the Ld. AR are distinguishable and not applicable to the peculiar facts of the present case. Thus, grounds raised by the assessee are dismissed. The Order under Section 263 of the Income Tax Act, 1961 passed by the Principal Commissioner of Income Tax is just and proper. There is no need to interfere with the same. The appeal of the assessee is dismissed.

8. In result, appeal of the assessee is dismissed.

Order pronounced in the open court on .06.2018

(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: .06.2018

*Kavita Arora

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI

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