IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI

Before Sh. N. K. Saini, AM and Smt. Beena A. Pillai, JM

ITA No. 808/Del/2017 : Asstt. Year : 2011-12

Vijay Kundu, C/o Raj Kumar & Associates, CAs, L-7A (LGF), South Ext., Part-2, New Delhi-110049	Vs	Pr. CIT, Delhi-21, New Delhi
(APPELLANT)		**(RESPONDENT)**
PAN No. AJNPK7914P		

Assessee by : Sh. Raj Kumar Gupta, CA
Revenue by : Sh. S. S. Rana, CIT DR

Date of Hearing : 23.04.2018		**Date of Pronouncement : 12.07.2018**

ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 29.03.2016 of the ld. CIT(A)-21, New Delhi.

2. The Registry has pointed out that the appeal of the assessee is barred by limitation by 260 days. The assessee moved an application for condonation of delay stating therein as under:

"RESPECTFULLY. I submit as under:-

1. That the impugned order U/s. 263 dtd. 29.03.2016 has been received on 30.03.2016. The appeal before Hon'ble ITAT was required to be filed on or before 29.05.2016. However, it is being filed on 13.02.2017. Thus, there is a delay of 260 nos. of days in filing the appeal.

2. That the delay has caused bonafidely for a reasonable cause as explained in following Para's.

3. That the matter U/s. 263 was handled by the then counsel Adv. Rakesh Bobal. On receipt of the order U/s. 263, assessee handed over the same to Adv. Rakesh Bobal for taking all possible legal steps and legal actions required in the matter. However, Adv. Rakesh Bobal never advised for filing any appeal to Hon'ble ITAT. It is now, when fresh Asstt. dtd. 28.12.2016 was completed in pursuance to directions U/s. 263, then under advise to me, Adv. Rakesh Bobal engaged CA. Raj Kumar on 27.01.2017 for doing the further needful in the matter. It was, for the first time that on meeting CA. Raj Kumar, it was advised that under the present facts, in this case, the appeal was needed to be filed to Hon'ble ITAT against order U/s. 263 within 60 days of the receipt of said order. However, since, the said period already stood expired, therefore, on his advise, this appeal is now being filed alongwith application for condonation of delay.

4. That the affidavit of Adv. Rakesh Bobal and of the assessee are attached in conformity of the facts as stated in Para - 3 above.

5. That the delay has cause for a bonafide and a reasonable cause without any melafide intention or benefit to the assessee in filing delayed appeal.

6. That by condoning the delay, no loss would cause to the revenue and the assessee will get proper justice while in case of its decline, the assessee will suffer irreparable loss."

For Vijay Kundu
Sd/-
(Appellant)
Individual

Submitted:-
Verified today the 11th day of FEBRUARY, 2017

3. During the course of hearing, the ld. Counsel for the assessee submitted that the delay took place on account of mistake and wrong

legal advice by the Counsel Sh. Rakesh Bobal, Advocate. In support of the above, an affidavit of Advocate Sh. Rakesh Bobal was filed which is placed on record. It was stated that the delay took place for a bonafide reason, the same may be condoned. The reliance was placed on the following case laws:

- *Vijay Vishin Meghani Vs DCIT 398 ITR 250 (Bom.)*
- *Oracle India (P) Ltd. 118 TTJ 812 (Del.)*
- *Perfect Scale Co. (P) Ltd. Vs DCIT (2013) 60 SOT 255 (Mum.)*

Request has been made to condone the delay.

4. In his rival submissions, the ld. CIT DR opposed the application for condonation of delay filed by the assessee.

5. After considering the submissions of both the parties and the material on record. In the present case, the explanation of the assessee for the delay was that the same occurred due to wrong advice of the Advocate Sh. Rakesh Bobal who has also filed an affidavit stating therein as under:

> *"I Rakesh Bobal, S/o Late Shri I. S. Bobal, R/o E-48, Greater Kailash, Part-1, New Delhi, do hereby state on solemn affirmation as under:*
>
> *1. That I was engaged by Sh.Vijay Kundu of 200, Pocket-C-8, Rohini, Delhi for looking after his income tax proceedings U/s 263 before Pr.CIT-21, New Delhi for A.Y.2011-12.*
>
> *2. That the order U/s.263 dated 29.03.2016 was handed over to me Sh.Vijay Kundu for taking all possible legal steps and actions in this matter.*
>
> *3. That I was under a bonafide impression and belief that in case where the matter is set aside to AO, the only course*

remains to get the consequential proceedings finalized before AO and that under such circumstances no appeal to Hon'ble ITAT lies against order U/s.263. Hence, I never advised Sh. Vijay Kundu to file an appeal before ITAT.

4. That on receipt of consequential Asstt. Order dated 28.12.2016, we engaged CA Raj Kumar for further needful in the matter on 27.01.2017. On going through the order etc., he advised that the appeal was required to be filed before Hon'ble ITAT also against order U/s.263, however, which had already been delayed. He further advised to file an appeal before ITAT alongwith application for condonation of delay, hence the appeal has been filed alongwith application for condonation of delay.

5. That under the facts and circumstance mentioned in para - 3 and 4 above, the delay has taken place in filing the appeal before ITAT.

6. That the delay is for a bonafide reason and I pray for its condonation please."

Dated: *Sd/-*
DEPONENT

I RAKESH BOBAL *above named deponent, do hereby state and verify that the contents given in the above affidavit are true and correct to the best of my knowledge and belief.*

Dated: 09.02.2017
Place: New Delhi *Sd/-*
DEPONENT

6. From the above contents of the application and the affidavit of the then Counsel for the assessee Sh. Rakesh Bobal, it appears that the delay occurred on the wrong advice of the Advocate.

7. On a similar issue, the Hon'ble Bombay High Court in the case of Vijay Vishin Meghani Vs DCIT 398 ITR 250 (Bom.) (supra) held as under:

> *"The assessee filed appeals with a delay of 2984 days before the Appellate Tribunal for the assessment years 1994-95and 1996-97, against the decision of the Commissioner (Appeals) denying the deduction claimed under section 80-O of the Income-tax Act, 1962. The assessee submitted an affidavit stating that he followed the advice given by his chartered accountant not to file further appeals before the Tribunal for the assessment years 1994-95 and 1996-97, as the issue involved was identical to the appeal filed before the Tribunal for the assessment year 1993-94, which was then pending before the Tribunal, to avoid multiplicity of litigation and that after the adjudication of appeal for the assessment year 1993-94 by the Tribunal, he could move a rectification application before the Assessing Officer to bring the assessment order in conformity with the decision of the Tribunal. In support of the averments made in the affidavit, the assessee also filed an affidavit by one of the partners of the firm of chartered accountants. The Tribunal dismissed the appeal in limine and observed that a chartered accountant could not have given an absurd advice. The affidavit filed by the firm of chartered accountants was rejected. The affidavit filed by the assessee was also rejected on the ground that it gained strength only from the affidavit filed by the firm of chartered accountants. It held that the assessee had failed to show the reasons for the entire period of delay, i.e., no reason was given for the delay that occurred between periods and therefore, the delay in filing the two appeals could not be condoned."*

It has further been held as under:

> *"That none should be deprived of an adjudication on the merits unless the court or the Tribunal or appellate authority found that the litigant had deliberately and intentionally delayed filing of the appeal, that he was*

careless, negligent and his conduct lacked bona fides. Those were the relevant factors. The Tribunal's orders did not meet the requirement set out in law. It had misdirected itself and had taken into account factors, tests and considerations which had no nexus to the issues at hand. The Tribunal, therefore, had erred in law and on the facts in refusing to condone the delay. The explanation placed on affidavit was not contested nor could it have been concluded that the assessee was at fault, that he had intentionally and deliberately delayed the matter and had no bona fide or reasonable explanation for the delay in filing the proceedings. The position was otherwise."

8. In the present case also, the delay occurred due to wrong advice of the ld. Counsel for the assessee and there was no malafide intention in filing the appeal belated. In our opinion, the explanation given by the assessee is plausible, therefore, the delay is condoned and the appeal is admitted.

9. Following grounds have been raised in this appeal:

"1. That under the facts and circumstances, Ld. CIT exceeded his jurisdiction in invoking provisions of Sec. 263 of the I.T. Act as the order of Ld. AO is neither erroneous nor prejudicial to the interest of revenue apart from that there exist no such circumstance which may justify invoking of Sec. 263 of I.T. Act.

2. That without prejudice, Ld. AO duly applied his mind lawfully and legally and substantively adjudicated the same and also made the addition for the same, thus, under the facts and circumstances, Sec. 263 has been wrongly invoked by the Ld. Pr. CIT.

3. That without prejudice, on the issues raised U/s. 263, the Ld. AO has taken a logical and possible view, which cannot be interfered by invoking Sec. 263 of the Act.

4. That without prejudice, Pr. CIT, further erred in law by giving contradictory directions to the AO U/s. 263 wherein on one side he directed the AO to make fresh Asstt. after considering the correct factual and legal position and on the other side in Para - 3.1. of the order he held that the AO should had treated the cash deposit of Rs. 65 lacs as undisclosed income of the assessee and further in concluding Para - 3.2.4 he directed the AO to make fresh Asstt. as suggested in the order. Hence, in view of above directions, the AO, cannot apply his independent free mind for deciding the issue, thus, such directions needs to be expunched / deleted."

10. The main grievance of the assessee in this appeal relates to the action of the ld. CIT u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) considering the assessment order passed by the AO u/s 143(3) of the Act as erroneous and prejudicial to the interest of the revenue.

11. Facts of the case in brief are that the assessee filed the return of income electronically declaring an income of Rs.6,04,363/- on 25.09.2011 which was processed u/s 143(1) of the Act. Later on, the case was selected for scrutiny. The AO noticed that as per AIR information, the assessee had made cash deposits/transactions of Rs.46,10,000/- with Bank of Baroda and Oriental Bank of Commerce. The AO observed that the assessee vide letter dated 07.03.2014 submitted that total cash deposits of Rs.65,00,000/- were made in the banks on various dates and that there were some other cash business and the total cash receipts of business came to Rs.1,08,65,550/-. The assessee revised the computation of income and declared net profit @ 8% on the total receipts of Rs.1,08,65,550/-. However, the AO estimated the income of the assessee by applying net profit rate of 10% and made the addition of Rs.10,86,555/-.

12. Thereafter, the ld. Pr. CIT exercised his powers u/s 263 of the Act and issued a show-cause notice dated 26.02.2016 to the assessee by stating therein as under:

> *"From the record, it is found that the said order of the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue and requires to be amended as there is an error apparent from the record within the meaning of Section 263 of the income Tax Act, 1961. The error as per particulars given below will have the effect of enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment."*

13. The ld. Pr. CIT observed that the assessee had shown computation of income filed alongwith the return of income, only the income from salary and income from other sources and that as per the resolution Dissolution Deed of M/s Kundu Construction Co. dated 31.03.2010. The assessee was working as a partner of the said firm which was taken over by KCC Buildcon Pvt. Ltd. having its Registered Office at Outer Ring Road, Pitampura, Delhi and the assessee became the Director of the said company w.e.f. 01.04.2010. The ld. Pr. CIT observed that the following facts emerged from the order of the AO:

> *"3.2.1 The AO did not record the statement on oath of the assessee to reach to the conclusion that the assessee has submitted factually correct details regarding his business and other activities or simply cooked up story to explain the huge cash deposits in the respective three savings bank accounts, as referred to above.*
>
> *3.2.2 The AO did not collect documentary evidence regarding the business of the assessee from other departments such as VAT/Sales Tax/Commercial Tax etc. and the facts as to whether the assessee was registered there and had shown receipts in its VAT/Sales Tax/ Commercial Tax returns and assessments thereof by the respective departments."*

14. According to the ld. Pr. CIT, the AO should have treated the cash deposit of Rs.65,00,000/- in the specified banks as undisclosed income of the assessee and added the same to the total income of the assessee. The reliance was placed on the following case laws:

- *Goetze (India) Ltd. Vs CIT (2006) 284 ITR 323 (SC)*
- *CIT Vs Raja Industries (2012) 340 ITR 344 (P&H)*
- *Dawjee Dadabhoy & Co. Vs S.P. (1957) 31 ITR 872 (Cal.)*
- *CIT Vs T. Narayana Pai (1975) 98 ITR 422 (Kar.)*
- *CIT Vs Gabriel India Ltd. (1993) 203 ITR 108 (Bom.)*

15. The ld. CIT cancelled the order passed by the AO and directed him to make fresh assessment by observing in para 3.2.4 of the impugned order as under:

> *"In the assessment order under reference, I have noticed vital flaws which is inter alia, attributable to the defiant and deliberate approach of the assessee. Therefore, considering the facts of the case and totality of circumstances, the assessment made by the Assessing Officer u/s 143(3) of the Act, dated 31.03.2014 is treated as erroneous and prejudicial to the interest of revenue as not only the assessment order has been passed in utmost haste and in a cryptic manner, but the AO has wrongly believed the version of the assessee as regards its business activities and other activities thereby inter alia, ignoring the huge cash deposits in the respective Savings Bank Accounts of the assessee to the extent of Rs.65,00,000/- that tantamount to undisclosed income of the assessee for the relevant assessment year. Therefore, the order passed by the Assessing Officer u/s 143(3) of the Act, dated 31.03.2014 is hereby cancelled and the Assessing Officer is hereby directed to make a fresh assessment after considering the correct factual and legal position in this regard, as suggested in this order."*

16. Now the assessee is in appeal. The ld. Counsel for the assessee submitted that the issue was decided by the AO while framing the assessment u/s 143(3) of the Act and the addition was made by rejecting the books of accounts. It was further submitted that the cash deposits of Rs. 65,00,000/- in the bank accounts were examined by the AO thread where in assessment order passed u/s 143(3) of the Act. It was further stated that the AO during the course of assessment

proceedings noted that as per AIR information Rs. 46,10,000/- were deposited in cash. However, the assessee explained to the AO that the deposit was of Rs.65,00,000/- and not of Rs.46,10,000/- . The AO vide questionnaire dated 06.02.2014 required the assessee to explain the deposit of Rs.1,08,65,550/- which also included Rs.65,00,000/- and the assessee explained the source of Rs.1,08,65,550/- (including Rs.65,00,000/-) as business receipts from purchase and sale of building material vide his letters dated 07.03.2014 and 14.03.2014, a reference was made to paras 2 to 4 of the assessment order. It was further stated that the assessee also produced the cash memos and sale bills etc. for carrying out the said business, which the AO examined and found to be correct. It was further stated that since the activity was not disclosed in the original return, the assessee filed the revised computation and declared the business income @ 8% from receipts of Rs.1,08,65,550/-. However, the AO estimated the business profit @ 10% of the receipts of Rs.1,08,65,550/- which included cash deposits of Rs.65,00,000/-. Therefore, the issue was thoroughly examined during the assessment proceedings and the addition was also made. It was contended that the AO had a right conscious decision by analyzing the nature of receipts of Rs.65,00,000/- and also made the addition by considering the said deposits as a part of the assesseeôs turnover and the assessment order was passed after making proper enquiries and verification. However, the ld. CIT invoked the provisions of Section 263 of the Act and felt that more enquiries should have been done by the AO. It was stated that the provisions of Section 263 of the Act cannot be invoked if the AO had taken one of the possible views after applying his mind on the issue under consideration and there is no material in possession of ld. CIT to justify his findings that the decision taken by the AO was not legally or factually sustainable. It was contended that the directions of the ld. CIT were self contradictory which is clear from para 3.1 wherein he has held as under:

"Therefore, the assessing officer should have treated the said cash deposit of Rs.65,00,000/- in the specified banks as the undisclosed income of the assessee and added to the total income of the assessee."

And thereafter in para 3.2.4, ld. CIT held as under:

"……and the assessing officer is hereby directed to make a fresh assessment after considering the correct factual and legally position in this regard, as suggested in this order."

17. It was submitted that on the one hand, the ld. CIT directed the AO to make the addition and on the other hand, he directed him to decide the issue afresh on the basis of correct factual and legal position. It was accordingly submitted that the assessment order passed by the AO was neither erroneous nor prejudicial to the interest of the revenue. The reliance was placed on the following case laws:

- *DCIT Vs Jyoti Foundation 357 ITR 388 (Del.)*
- *Jagjit Industries Ltd. Vs ACIT 60 ITD 295 (Del.)*
- *Y. V. Ramana Vs CIT (2017) 183 TTJ (Vishaka) 337*
- *CIT Vs Hindustan Marketing and Advertising Co. Ltd. 341 ITR 180 (Del.)*
- *CIT Vs Sunbeam Auto Ltd. 332 ITR 167 (Del.)*
- *CIT Vs Anil Kumar Sharma 38 DTR 305 (Del.)*
- *Malabar Industrial Co. Ltd. 243 ITR 83 (SC)*
- *CIT Vs Kelvinator of India Ltd. 332 ITR 332 (Del.)*
- *DIT Vs Jyoti Foundation 357 ITR 388 (Del.)*
- *CIT Vs Gabrial India Ltd. 203 ITR 108 (Bom.)*

18. In his rival submissions, the ld. CIT DR strongly supported the order of the ld. CIT and submitted that the AO had not made proper enquiries relating to the deposit of Rs.65,00,000/- in the bank account and earlier the assessee had shown the income from salary and other sources but no business income was shown. Therefore, the assessment order passed by the AO without making the proper enquiries and verification was erroneous and prejudicial to the interest of the revenue. As such, the ld. CIT was fully justified in directing the AO to pass a fresh

assessment order by making the proper enquiries. The reliance was placed on the following case laws:

- *Mewat Grit Udyog Vs PCIT [2017-TOIL-607-ITAT-Del]*
- *M/s Kolte Patil Developers Ltd. Vs DCIT [2016-TIOL-3158-HC-MUM-IT]*
- *Shri Subodh Parkash Vs JCIT [2017-TOIL-2249-HC-P&H-IT]*
- *Nandkishor Education Society Vs CIT [2017-TOIL-451-ITAT-Pune]*

19. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it appears that the ld. CIT considered the order passed by the AO as erroneous and prejudicial to the interest of the revenue for the reasons that the AO has not enquired and verified properly a sum of Rs.65,00,000/- which was deposited in the bank account. He directed the AO to make the addition of the said amount. On the contrary, it is noticed that the AO during the course of assessment proceedings asked the assessee to furnish the details relating to the source of deposit of Rs.46,10,000/- for which he got the AIR information. In response, the assessee vide letter dated 07.03.2014 submitted that total cash deposits of Rs.65,00,000/- were made in the bank on the various dates. It was also stated that there were some other cash business and total cash deposits from the business was at Rs.1,08,65,550/-. The assessee also offered net profit @ 8% on the said deposits/receipts. The AO after considering the submissions of the assessee made the addition of Rs.10,86,550/- by observing as under:

> *I have considered the assessee's explanation as well as the documents furnished therewith. The assessee has stated that he was engaged in the same business as partner of M/s Kundu Construction Co. which was dissolved on 01.04,2010. it has also been stated that the trucks of the farm some of which had become more than 15 years old were not allowed to travel out of Haryana. Evidence in the form of insurance and registration paper of the vehicle were also submitted. A perusal of last balance sheet of M/s Kundu Construction Co. i.e. as on 31.03.2010 and the dissolution deed of the firm also supports the*

version of the assessee. The assessee has also furnished bill in support of purchase and supply of building material in the form of Rodi, stone etc. cash memos /bills of sale etc as evidence of carrying out such business. Upon examination of the above evidence, it is held that the assessee had been carrying on business of supplying construction material. However, the rate of profit offered by the assessee @ 8% applicable to contractual income u/s 44AD of I.T. Act. Cannot be accepted as it applies to business profit earned on turnover less than the limit of Rs.60,00,000/- for the year under consideration. In the instant case the assessee had admitted to a turnover of Rs.1,08,65,550/- and in the absence of any books or records of expenses, having regard to the nature of business receipts, profit of the assessee are estimated @ 10% of gross receipts i.e. Rs.10,86,555/. Since the assessee has concealed the particulars of his income and furnished in accurate particulars of his income, penalty proceedings u/s 271(1)(c) of I.T. Act. shall be initiated separately."

20. From the aforesaid observations of the AO, it cannot be said that he did not make the proper enquiries or had not applied his mind while framing the assessment u/s 143(3) of the Act. In our opinion, the AO has taken one of the possible view after making the proper enquiries and the ld. CIT in his order passed u/s 263 of the Act directed the AO to make more enquiries.

21. On a similar issue, the Hon'ble Delhi High Court in the case of CIT Vs Kelvinator of India Ltd. (2011) 332 ITR 231 (supra) held as under:

"that if the Assessing Officer had adopted one of the courses permissible in law, which resulted in loss of revenue or where two views were possible the Assessing Officer had taken one view with which the Commissioner did not agree, it could not be treated as an erroneous order prejudicial to the interest of the Revenue unless the view taken by the Assessing Officer was unsustainable in law. The view which was prevalent at the appropriate point in time was that the income of the assessee, shown in its balance-sheet under the head "Other income" had not to be excluded for purposes of determining the permissible deduction under section 32AB of the Act. The notice was issued by the Commissioner under section 263 of the Act at a time when the legal position admittedly enured for the benefit of the

assessee. Therefore, on the date the Commissioner issued the show notice, the legal position which obtained supported the view taken by the Commissioner (Appeals). Therefore the issuance of show-cause notice to the assessee was uncalled for."

22. On a similar issue, the Hon'ble Apex Court in the case of Malabar Industries Co. Ltd. Vs CIT 243 ITR 83 held as under:

"A bare reading of section 263 of the Income-tax Act, 1961, makes it clear that the prerequisite for the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent-if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but us prejudicial to the Revenue-recourse cannot be had to section 263(1) of the Act. The provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law wilt satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. The phrase "prejudicial to the interests of the Revenue" is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide ***import*** *and is not confined to loss of tax. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income-tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly k prejudicial to the interests of the Revenue. The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be*

treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law."

23. In the present case also, the AO after making proper enquiries and applying his mind has taken one of the possible view while framing the assessment u/s 143(3) of the Act. Therefore, the assessment order passed by the AO cannot be considered as erroneous or prejudicial to the interest of the revenue. In the present case, the ld. CIT directed the AO to make further enquiries, therefore, the assessment order passed by the AO after proper enquiries /investigation on the question/issue under consideration cannot be treated as erroneous and prejudicial to the interest of the revenue for the reason that the revisionary authority only opined that the further inquiry/investigation were required.

24. On a similar issue, the Hon'ble Delhi High Court in the case of CIT Vs Hindustan Marketing and Advertising Co. Ltd. 341 ITR 180 (supra) held as under:

"When it has come on record that the Income-tax Officer had made reasonably detailed enquiries, collected relevant material and discussed various facets of the case with the assessee, the order of the Commissioner to direct fresh assessment by going deeper into the matter would not form a valid or legal basis to exercise jurisdiction under section 263 of the Income-tax Act, 1961."

It has further been held as under:

"that the view of the Commissioner regarding agreements entered into between the wholesale dealers and the assessee was based on the surmise that the Income-tax Officer did not look into them and did not call for the names of the parties. Records revealed that the assessee's books of account, including the general ledgers were seized and complete details of parties, their addresses and the amounts received were recorded in this general ledger on the basis of which the Income-tax Officer had made further enquiries. It was not clear what kind of further enquiry the Commissioner wanted the Assessing Officer to make, keeping in view the nature of the assessee's business, especially when no error was pointed out in the assessment orders and it was

also not pointed out as to how these assessment orders had caused prejudice to the Revenue. The Tribunal was right in law in cancelling the order passed by the Commissioner under section 263."

25. In the present case also, the ld. CIT revised the assessment order on the ground that the enquiry should have been more detailed. Therefore, the ld. CIT was not justified in exercising his revisionary power when the AO passed the assessment order after proper enquiry and the assessee explained in detail. We, therefore, considering the totality of the facts are of the view that the assessment order passed by the AO was neither erroneous nor prejudicial to the interest of the revenue and the ld. CIT was not justified in exercising his power u/s 263 of the Act. Accordingly, the impugned order passed by the ld. CIT is set aside and the assessment order passed by the AO is restored.

26. In the result, the appeal of the assessee is allowed.

(Order Pronounced in the Court on 12/07/2018)

Sd/-	**Sd/-**
(Beena A. Pillai)	**(N. K. Saini)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 12/07/2018
Subodh
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR