

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री भागचन्द, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 420/JP/2018  
निर्धारण वर्ष / Assessment Year : 2013-14.

M/s. Mittal Export House, A-129, Janta Colony, Jaipur.	Vs.	Pr. Commissioner of Income Tax, Jaipur-II, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAFFM 0446 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Advocate)  
राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 25.06.2018.  
घोषणा की तारीख / Date of Pronouncement : 20/07/2018.

आदेश / ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the revision order dated 28<sup>th</sup> March, 2018 passed by the Id. Principal Commissioner of Income Tax, Jaipur-II, Jaipur under section 263 of the I.T. Act for the assessment year 2013-14. The assessee has raised the following grounds of appeal :-

- “ 1. In the facts and circumstances of the case the learned Pr. CIT, Jaipur-II, Jaipur has erred in passing the order u/s 263 of the Income Tax Act, 1961 which is void ab-initio deserves to be quashed.
2. In the facts and circumstances of the case the learned Pr. CIT, Jaipur-II, Jaipur has erred in holding that the order passed by learned Assessing Officer u/s 143(3) of the Income Tax Act,

1961 dated 29.01.2016 was erroneous and prejudice to the interest of the revenue.

3. In the facts and circumstances of the case the learned Pr. CIT, Jaipur-II, Jaipur has erred in holding that the learned Assessing Officer has erred in granting deduction u/s 10AA on the stated sales of the SEZ unit under the given facts.
4. The assessee craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing.

2. The assessee filed its return of income on 30<sup>th</sup> September, 2013 declaring total income of Rs. 71,79,770/-. The assessee claimed exemption under section 10AA which was allowed by the AO while completing the assessment under section 143(3) on 29<sup>th</sup> January, 2016. Subsequently, the Id. Pr. CIT on examination of assessment record noted that the AO has allowed the claim of deduction under section 10AA of the Act without proper examination of the matter and particularly the eligibility for claiming deduction under section 10AA on account of the SEZ unit set up by splitting up the business already in existence. Accordingly, the Id. Pr. CIT issued a show cause notice under section 263 on 13.03.2018 proposing to modify the order on the issue of claim of deduction under section 10AA. In response to the show cause notice the assessee filed its reply as well as referred the relevant record in support of the claim of deduction under section 10AA of the Act. The Id. Pr. CIT was not impressed with the reply and contention of the assessee and held that the order passed under section 143(3) by the AO is erroneous in so far as it is prejudicial to the interest of the revenue as the said order was passed by the AO in a routine and perfunctory manner without verification of deduction under section 10AA of the Act. Accordingly, the Id. Pr. CIT set aside the assessment order on the issue of

deduction under section 10AA and directed the AO to re-do the same afresh denovo in the light of the revision order.

3. Before us, the Id. A/R of the assessee has submitted that the assessee is engaged in the business of manufacturing of gold and silver jewellery/ornaments studded with diamond and precious stones. The entire business is of export and there are no local sales. The manufacturing unit is located at H-115, SEZ-II, Sitapura, Jaipur. The Id. A/R has pointed out that all the sales are export sales and has been approved by the SEZ authorities as evident from the Shipping Bills and Invoices of sales made by the assessee during the year under consideration. He has further submitted that the assessee produced all the records during the assessment proceedings and the AO on examination of the relevant record was satisfied with the claim of the assessee. Therefore, when the entire sales are export made from the SEZ Unit engaged in handmade jewellery and role of machinery is nil, then the revision order passed by the Id. Pr. CIT on the basis of suspicion about the setting up of SEZ unit by splitting up the existing business and further doubting the quantum of articles manufactured and sold by the assessee in a short span of time is not based on any tangible material or fact. The Id. A/R has referred to the purchase bills and sales vouchers which were duly approved by the SEZ authorities and submitted that when all the transactions of purchase and sale at SEZ unit were carried out after approval of the SEZ authorities, then there was no question of suspecting the purchases and sales made by the assessee from SEZ unit. The AO thoroughly examined the claim of the assessee and the relevant record. The assessee filed the replies dated 13<sup>th</sup> July, 2015 and 21<sup>st</sup> July, 2015 before the AO in respect of the query raised by the AO. All these replies filed by the assessee are

available in the assessment record. The assessee specifically explained the business address of the firm at H-115, SEZ-II, Sitapura, Jaipur and also filed the copy of LOA for SEZ to show the setting up of a new unit at the SEZ. The agreement for purchase and sale of SEZ was also furnished. The AO after making necessary enquiry and examination of the relevant record was satisfied with the claim of the assessee. The Id. A/R has further contended that it is not a case of splitting up of business already in existence. In fact, the existing business was discontinued and the stocks of the same remained lying in Janta Colony Office since 2006 as it is. This fact was brought to the notice of the AO during the assessment proceedings vide letter dated 11.1.2016 and also brought to the notice of the Id. Pr. CIT in the revision proceedings. Therefore, the assessee has brought all the relevant record and details before the AO to show that manufacturing at SEZ unit has no connection or relevance with the existing business being carried out at Janta Colony office. The Id. A/R has then pointed out that the Id. Pr. CIT has doubted the transaction of purchase and sale as the quantity of sale/article was more than the purchased quantity. However, the Id. Pr. CIT completely ignored the fact that the difference in purchase of pure gold quantity and the quantity of sold goods is due to the other metals and stones in the manufactured jewellery. The Id. A/R has referred to the purchase and sale bills and submitted that the difference in the weight of the quantity of purchase and sale is due to the use of other metals and stones in the gold jewellery. The invoice clearly reflects the quantity of gold being 58.3% of the gross weight of jewellery and rest of the weight was of precious/semi precious stones and diamonds. Thus the observation of the Id. Pr. CIT is based on presumption of wrong facts that sale quantity is more than the purchases made by

the assessee during the period. Another point raised by the Id. Pr. CIT is the short span of period during which the assessee has made the first sale of finished goods. The Id. A/R has submitted that since the assessee is not using machinery in the manufacturing process but all the manufacturing is done by the artisans who have been paid wages. He has referred to the chart indicating the names of the artisans, the work for which he has been engaged and the wages paid to him. Thus when the assessee has got the jewellery manufactured through artisans and not through the machinery, therefore, only the workers had carried out the manufacturing job with their own tools. The assessee, however, purchased the machinery and tools such as Polish machine and other tools required for the manufacturing activity. He has referred the list of articles and tools which were purchased by the assessee. Thus the Id. A/R has submitted that the assessee produced entire relevant record in support of the claim of manufacturing done by the assessee at SEZ unit and sale of the finished goods which is duly approved by the SEZ authorities. The purchases made by the assessee have not been disputed even by the Id. Pr. CIT though he has doubted only the manufacturing activity done by the assessee within the short span of time. Since the assessee got all the jewellery manufactured through various artisans/workers, therefore, raising the objection and doubt by the Id. Pr. CIT is without any basis. The Pr. CIT has misunderstood the facts regarding purchase and sale of the goods by considering only the gross weight of the sold jewellery without considering the net weight of the gold. Hence the Id. A/R has submitted that when the entire record was produced by the assessee before the AO and after conducting a thorough examination and enquiry by the AO, the AO was satisfied and accepted the claim of the assessee, then the Id. Pr. CIT cannot revise and set aside the order

passed by the AO only for making a fresh assessment. He has pleaded that the impugned order is not sustainable and the same may be quashed.

4. On the other hand, the Id. D/R has submitted that the AO has passed the assessment order summarily without discussing anything about the claim of deduction under section 10AA of the Act. The Id. Pr. CIT noted from the record that the assessee was earlier doing the business of sale of jewellery from Janta Colony Office as the address of the assessee firm is also shown as Janta Colony, Jaipur. Therefore, the Id. Pr. CIT noted that the assessee has purchased only a single Polish machine of Rs. 58,168/- and claimed the turnover of Rs. 1,34,72,590/- during the year under consideration. Thus this fact indicates that the SEZ Unit was set up by splitting up the business already in existence and all the machinery already used by the existing business were shifted to the SEZ unit as the assessee has shown the purchase of a single machine during the year under consideration. The AO has not at all verified the claim in terms of provisions of section 10AA whether the assessee has fulfilled the conditions for eligibility of claim under section 10AA. Thus the order passed by the AO without conducting the proper enquiry is erroneous so far as prejudicial to the interest of the revenue. The assessee has not disputed that prior to the setting up of the SEZ unit, the assessee was having its business from the Janta Colony and, therefore, the possibility of using the facility at Janta Colony for the SEZ unit activity cannot be ruled out. The Id. Pr. CIT has clearly made out the case of more sale than the purchases made by the assessee during the year under consideration when this is the first year of manufacturing activity of SEZ unit. All these facts were required to be verified by the AO. However, when the AO has not

conducted any enquiry then the said order passed by the AO suffers from error and liable to be set aside. He has relied upon the impugned order of the Id. Pr. CIT.

5. We have considered the rival submissions as well as the relevant material on record. The AO has accepted the returned income while passing the scrutiny assessment order dated 29.01.2016. However, the AO has stated in the assessment order that a notice under section 142 as well as under section 142(1) along with a query letter was issued to the assessee. In compliance, the assessee attended through its Authorized Representative and filed the necessary details on various queries made by the AO. The relevant part of the AO's order is as under :-

*" The case was selected for scrutiny and notice u/s 143(2) was issued on 03.09.2014 by the ACIT, Circle-5, Jaipur which was served on 09.09.2014. On change of incumbent again notices u/s 142(1) along with a query letters were issued on 17.06.2015, in compliance, the case was attended by Shri S.L. Poddar, CA/AR of the assessee and necessary details on the various queries were submitted. The assessee was involved in the business of Trading and manufacturing of Silver and Gold Jewellery, Bullions and Precious and Semi Precious Stones. The regular books of accounts, consisting of cash book & ledger were maintained. The books of accounts were duly audited u/s 44AB and audit report in form No. 3CB were furnished. The case was examined on test check basis and discuss, the return income of the assessee is accepted."*

Thus it is clear from the assessment order that the AO issued the notice under section 142 along with a questionnaire wherein various queries were asked by the AO from the assessee. In response to the said notice and query, the assessee filed

replies dated 13.07.2015 and 21.07.2015 at pages 59 to 61 and pages 62 to 63 of the paper book as under :-

To,

The Asstt. Commissioner of Income Tax,  
Circle – 5,  
Jaipur

**Ref: Assessment proceedings u/s 143(2) of the IT Act, 1961 in case of M/S Mittal Export House, A-129, Janta Colony, Jaipur**

PAN - AAFFM0446D  
Assessment Year - 2013-14

Dear Sir,

With reference to your above notice dated 17.06.2015, we are submitting herewith-

1. That copy of acknowledgement of Return and computation of Income is already submitted in our earlier reply dated 15-09-2014.
2. That the Audit Report with all annexure for Assessment Year 2013-14 is already submitted in our earlier reply dated 15-09-2014.
3. That the assessee is a partnership firm and engaged in the business of trading and manufacturing of Silver and Gold Jewellery, Bullions and Precious and Semi Precious Stones.
4. The business address of the assessee firm is A-129, Janta Colony, Jaipur and H-115, SEZ-II, Sitapura, Jaipur.
5. The address of the godown is A-129, Janta Colony, Jaipur and H-115, SEZ-II, Sitapura, Jaipur. The assessee is also maintained book of account at same address. Copy of LOA for SEZ is enclosed herewith. **(Page 1 to 2)**

TRUE COPY

6. Complete detail of partners in prescribed format is enclosed herewith. Copy of partner's capital account is also enclosed herewith. ( Page 3 to 8)
7. That the assessee is maintained current account with ICICI bank, C Scheme, Jaipur ( 001205000369) and ICICI bank (001205030972) . ( Page no 9 )
8. N.A
9. That the most of work of manufacturing process is done manually so the assessee is not maintained any register of assets.
10. The assessee is used mainly gold, silver, diamond, precious and semi precious stone as raw material for gold and silver jewellery. During the financial year the assessee has purchased raw material more than Rs 10 lakh from following suppliers. ( Page 10 to 11)
  - a) Sheeta Manufacturing Pvt Ltd
  - b) Mohan Lal Mahendra Kumar jewelers
11. The assessee is engaged in business of trading and manufacturing of Silver and Gold Jewellery studded with diamond and stone. The main customer of the assessee is Jahangir Singh Noor and Sanscage Ltd.
12. N.A
13. N.A
14. That during the financial year there is no loan raised by the assessee firm.
15. N.A
16. N.A
17. N.A

TRUE COPY  
GODDAR

18. That the Turnover, Gross Profit, Gross Profit Rate for the last three year are as under:

A.Y.	Turnover	Gross Profit	G.P. Rate
2013-14	12472590.00	4009917.18	32.15%
2012-13	0.00	0.00	0.00
2011-12	264240.00	39604.00	14.99%

The GP rate is better in comparison to earlier years.

19. Comparative chart of expenses of last three year is enclosed herewith. (Page no 12)

20. During the year under consideration the assessee has made following addition in the fixed assets –

1. Building - Rs. 2381000/-
2. Plant & Machinery- Rs 58168/-

Copy of ledger accounts and bill in support of addition made is enclosed herewith for your kind verification. (Page no 13 to 33)

21. N.A

22. N.A

Kindly do the needful and oblige.

Thanking you,

Yours faithfully,

Date: 13.7.15

Place: - Jaipur

(S.L. PODDAR)  
Counsel for the Assessee

To,

The Asstt. Commissioner of Income Tax,  
Circle – 5,  
Jaipur

**Ref: Assessment proceedings u/s 143(2) of the IT Act, 1961 in case of M/S Mittal Export House, A-129, Janta Colony, Jaipur**

PAN - AAFFM0446D  
Assessment Year - 2013-14

Dear Sir,

With reference to your and as required by you at the time of last hearing, we are submitting herewith-

1. Copy of undertaking is enclosed herewith. **(Page 1)**
2. Copy of partnership deed is enclosed herewith. **(Page 2 to 7)**
3. Lease agreement for the purchase of land in SEZ is also enclosed herewith for your kind persual. **(Page 8 to 12)**
4. Acknowledgements of income tax return, computation of total income of all the partners are enclosed herewith. Bank statements of partners highlighting the entries are also enclosed herewith for your kind persual. **(Page 13 to 51)**
5. Confirmation of following creditors are enclosed herewith- **(Page 52 to 53)**
  - i. Sheetal Manufacturing Co.Pvt Ltd
  - ii. Mohan Lal Mahendra Kumar Jewellers
6. That during the year under consideration the assessee has received interest of Rs.7185125/-from loans and advances and credited the same in the P&L a/c. Complete details of loans and advances made along with loan amount and interest rate is enclosed herewith. **(Page 54)**

TRUE COPY

7. Copy of extension letter of LOA is enclosed herewith. **(Page 55)**
8. As per the provisions of Wealth Tax Act 1957 a partnership firm is not liable for wealth tax return.

Kindly do the needful and oblige.

Thanking you,

Yours faithfully,

Date: 21.07.2015

Place: - Jaipur

**(S.L. PODDAR)**

Counsel for the Assessee

It is manifest from the replies filed by the assessee that the assessee has clearly explained all the details of the partnership firm, nature of business of trading and manufacturing and further the SEZ unit of the assessee at Sitapura, Jaipur. Thus the assessee has explained the facts that the original business of the partnership firm was being carried out from the premises A-129, Janta Colony, Jaipur and a new SEZ unit was set up at H-115, SEZ-II, Sitapura, Jaipur. The assessee also produced LOA of SEZ and manufacturing process being done manually. Therefore, the assessee was not maintaining any register of assets. The comparative turnover details were also produced by the assessee along with all the relevant details of purchase bills, sale invoices, manufacturing charges paid to the artisans/workers. The Id. Pr. CIT after completion of assessment under section 143(3) invoked the provisions of section 263 by issuing the show cause notice dated 13<sup>th</sup> March, 2018. The Id. Pr. CIT noted that the partnership firm was not new and, therefore, it has not come into existence for the first time in the year under consideration, rather it was already existing and was engaged in the same business of trading and manufacturing of gold

and silver jewellery. It was also noted that during the assessment proceedings, the assessee had explained the opening stock of finished goods as on 1<sup>st</sup> April, 2012 and rest material were lying in the Janta Colony office, and further the SEZ unit was claimed as an independent manufacturing unit. However, the Id. Pr. CIT noted that the purchases of new plant and machinery amounting to Rs. 58,268/- only has been shown during the year. Out of this total amount of purchase of plant and machinery, Rs. 53,698/- reflect various small articles like wax, buf, kuchhi wire etc. and the bill amount of Rs. 5560/- reflects purchase of a single Polish machine. Thus the Id. Pr. CIT doubted the turnover of Rs. 1,34,72,590/- claimed by the assessee during the year as from the manufacturing activity of the SEZ Unit having only one Polish machine. In response to the show cause notice, the assessee filed reply and explained the facts that the entire manufacturing work is done by the artisans/workers who were using their own tools and the assessee was not required to have more machinery for carrying out the manufacturing work. The assessee referred to the relevant documents and evidences as available on the assessment record including copy of purchase bills and sale vouchers duly approved by the SEZ authorities. The assessee also explained the nature of manufacturing activity carried out by the assessee. However, the Id. Pr. CIT was not satisfied with the reply of the assessee and noted that the purchase of gold made by the assessee on 23<sup>rd</sup> May, 2012 of 509.890 gms whereas the assessee made first export of mixed gold and silver jewellery on 31<sup>st</sup> May, 2012 having gold net weight at 686.770 gms. The Id. Pr. CIT has further noted that the total gold purchased during the year was 809.89 grams whereas the sale of jewellery having gold of 1087.388 gms. Thus according to the Id. Pr. CIT, the sales shown from the SEZ unit apparently exceeds the

availability of gold at SEZ unit. All these facts as understood by the Id. Pr. CIT led to the revision of the assessment order. We find that as per the details of purchase and sale bills, the Id. Pr. CIT has taken the gold weight of jewellery sold vide bill dated 31<sup>st</sup> May, 2012 at 686.770 gms. However, the pure gold weight of said jewellery was 402.399 gms as against the purchases of 509.89 gms vide bill dated 23<sup>rd</sup> May, 2012. These details are also shown in the sale invoices that the gold content is only 402.399 gms as per the bill dated 31<sup>st</sup> May, 2012 as against the weight of the gold taken by the Id. Pr. CIT at 686.770 gms. Thus the difference in the weight taken by the Id. Pr. CIT is due to the purity of gold. It is apparent from the sale invoice itself that the weight of the pure gold in the jewellery was only 402.399 gms as against the weight of 686.770 gms. The relevant details of the difference of the gold and the pure gold weight as well as other metals and stones in the jewellery exported by the assessee during the year are as under :-

Bill No. and Date	Gold weight net	Gold weight 995	Metal weight	Weight taken by Pr.CIT (This is weight 3+4)
(1)	(2)	(3)	(4)	(5)
01/2012-13 31.05.2012	686.770	402.399	284.371	696.770
EX03/12-13 18.01.2013	290.258	170.071	120.187	290.258
EX03/2012-13 11.02.2013	110.360	64.663	45.697	110.360
	1087.388	637.133	450.255	1097.388

All these details are available in the relevant bills which were also considered by the Id. Pr. CIT while passing the impugned order. However, he took the gold weight of lesser purity used for manufacturing of jewellery instead of pure gold weight which can be compared with the purchases made by the assessee of the pure gold.

Therefore, the Id. Pr. CIT has presumed wrong facts while comparing the purchase of gold and sale of gold jewellery. The purchases were made of pure gold and, therefore, quantity of pure gold purchased by the assessee was compared with the quantity of gold of a lesser purity used for manufacturing of jewellery. The Id. Pr. CIT has completely over-looked and ignored the weight of pure gold given in the export bills. Thus pure gold weight of the jewellery as shown in the export bill was required to be compared and if the same quantity is taken into consideration, we find that the pure gold weight used in the jewellery sold during the year is lesser than the purchases made by the assessee. Hence this observation of the Id. Pr. CIT is based on incorrect facts and misunderstanding of the details provided in the sale bills.

5.1. The second ground for invoking the provisions of section 263 was doubting the setting up of SEZ unit by splitting up of the existing business whereas we find that the assessee has brought this fact during the assessment proceedings that the earlier business activity from Janta Colony office was discontinued and the stocks remained lying at Janta Colony office since 2006. The assessee has also shown that the stocks lying at the Janta Colony office was not disturbed either by the AO or by the Id. Pr. CIT. These facts were available on the assessment record. We find that all the relevant details as well as documents were available on the assessment record and Id. Pr. CIT has also not pointed out that any further record was required for examination of the claim of deduction under section 10AA of the Act. Rather, the assessment order was set aside on the ground that the AO has passed the order without conducting a proper enquiry in respect of the claim made by the assessee which makes the order erroneous and prejudicial to the interest of the revenue. The

Id. Pr. CIT has not given a concluding finding that the claim of the assessee is not allowable but the matter was set aside to the record of the AO for re-doing the same. Thus once the entire record relevant to the claim of deduction under section 10AA was available on the assessment record and the AO has conducted an enquiry as it is evident from the assessment record and even the assessment itself manifest the conducting of enquiry by the AO, it is not a case of lack of enquiry on the part of the AO though it may be a case of inadequate enquiry on the part of the AO. Once the case in hand does not fall in the category of lack of enquiry, the order passed by the AO after considering the relevant record and making an enquiry cannot be said to be erroneous and prejudicial to the interest of the revenue. The Id. Pr. CIT can invoke the provisions of section 263 only when it is found that the order passed by the AO is erroneous as the claim of the assessee is not allowable as per the provisions of the Act. The Id. Pr. CIT cannot invoke the provisions of section 263 only for the purpose of setting aside the order for making a fresh enquiry once the AO has conducted an enquiry on the issue. There is a distinction between the case where the AO does not conduct an enquiry and the case where the AO conducts an enquiry but the finding recorded is erroneous and which is also prejudicial to the interest of the revenue. In the case falling in first category where there is a lack of enquiry on the part of the AO, it would render the order of the AO erroneous and prejudicial to the interest of the revenue, but where the AO conducts an enquiry and the Id. Pr. CIT was of the view that the order of the AO is erroneous and prejudicial to the interest of the revenue, then such an order can be revised only when the Id. Pr. CIT finds that on the merits of the issue the order of the AO is erroneous and prejudicial and not because of lack of enquiry. In the case in hand, undisputedly the AO has

conducted the enquiry which was found by the Id. Pr. CIT as not a proper enquiry and, therefore, it may be a case of inadequate enquiry conducted by the AO. Consequently, the Id. Pr. CIT while invoking the provisions of section 263, is required to give a finding that the order passed by the AO on merits is erroneous and prejudicial to the interest of the revenue. The AO has conducted an enquiry and took a view which is a possible view under the law then even if the view taken by the AO is not acceptable to the Id. Pr. CIT, it would not render the assessment as erroneous and prejudicial to the interest of the revenue so as to empower the Commissioner to invoke the provisions of section 263 of the Act. Undisputedly, when the case in hand is not in the category of lack of enquiry, then the Id. Pr. CIT cannot exercise his jurisdiction under section 263 for asking the AO to re-do the assessment. This view is supported by the decision of Hon'ble Delhi High Court in the case of ITO vs. D.G. Housing Projects Ltd., 343 ITR 329 (Delhi) wherein the Hon'ble High Court has held in para 18 as under :-

*"18. It is in this context that the Supreme Court in Malabar Industrial Co. Ltd. v. Commissioner of Income Tax, [2000] 243 ITR 83 / 109 Taxman 66 (SC), had observed that the phrase 'prejudicial to the interest of 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 interest of Revenue. Thus, when the Assessing Officer had adopted one of the courses permissible and available to him, and this has resulted in loss to Revenue; or two views were possible and the Assessing Officer has taken one view with which the CIT may not agree; the said orders cannot be treated as an erroneous order prejudicial to the interest of Revenue unless the view taken by the Assessing Officer is unsustainable in law. In such matters, the CIT must give a finding that the view taken*

*by the Assessing Officer is unsustainable in law and, therefore, the order is erroneous. He must also show that prejudice is caused to the interest of the Revenue.”*

Thus once all the relevant record and material in respect of the claim of deduction under section 10AA was available on the assessment record and were examined by the AO while allowing the claim of the assessee, then the Id. Pr. CIT cannot exercise his jurisdiction under section 263 only for the purpose of setting aside the order and directing the AO to re-do the assessment. Hence, in view of the above facts and circumstances of the case as well as the decision of Hon'ble Delhi High Court in the case of ITO vs. D.G. Housing Projects Ltd. (supra), we find that the impugned order passed under section 263 is not sustainable in law. Hence we set aside/quash the impugned revision order passed by the Id. Pr. CIT under section 263.

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

Order pronounced in the open court on 20/07/2018.

Sd/-

( भागचन्द )  
( BHAGCHAND )

लेखा सदस्य / Accountant Member  
जयपुर / Jaipur  
दिनांक / Dated:- 20/07/2018.  
das/

Sd/-

( विजय पाल राँव )  
( VIJAY PAL RAO )

न्यायिक सदस्य / Judicial Member

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant-M/s. Mittal Export House, Jaipur.
2. प्रत्यर्थी / The Respondent-The Pr. CIT, Jaipur-II, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No.420/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar