

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH: RAIPUR**

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

I.T.A .No. 77/BIL/2016 (A.Y 2010-11)

Swaraj Builders Agroha Marg, Korba Korba (CG) ABDFS0662C (APPELLANT)	Vs	Pr. Commissioner of Income Tax Aayakar Bhawan Vyapar Vihar, Bilaspur Raipur Bilaspur (CG) (RESPONDENT)
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Appellant by	Sh. G. S. Agrawal, CA
Respondent by	Sh. P. K. Mishra, CIT DR

Date of Hearing	17.08.2018
Date of Pronouncement	25.10.2018

ORDER

PER SUCHITRA KAMBLE, JM

The present appeal is filed by the assessee against the order dated 21/03/2016 passed under Section 263 of the Income Tax Act, 1961 by the Principal Commissioner of Income Tax, Bilaspur, for Assessment Year 2010-11.

2. The grounds of appeal are as under:

“1. That on the facts and the circumstances of the case, the proceeding u/s 263 are illegal and bad in law, as all the issues mentioned in the aforesaid order were duly considered and examined during the assessment proceeding as well as Re-assessment Proceedings.

2. That the assessee had submitted the form 15G before the ITO-TDS, Bilaspur , on 3/5/2010, and the proof of submission had been submitted before the learned A.O during the Re-assessment proceeding, after considering the same and being satisfied Learned A.O drop the re-

assessment proceeding on that. On the same issue proceeding u/s 263 is beyond the jurisdiction learned Pr. CIT and the order so passed is bad in law and against the principal of natural justice.

3. That the Appellant reserve the right to add omit, or amend any ground after the copies mrelevant documents-prayed for are supplied by the CIT.”

3. The assessee is engaged in business of mining contractor and transport contractor. Most of the time assessee remained engaged in sub-contract works. For the year under consideration, the assessee firm filed its return of income on 05.10.2010 disclosing NIL income. The case was selected for scrutiny and first notice u/s 143(2) was issued, which was duly served on the assessee firm. The second notice u/s 142(1) was issued on 09.01.2012. A detailed query letter was issued on 31.01.2012. In response, the FCA & AR attended the proceedings from time to time and filed requisite documents along with reply. The Assessing Officer after making detailed observations on each query and reply of the assessee to the said query made addition of Rs.30,320/- and completed the Assessment u/s 143(3) of the Income Tax Act, 1961 on 28.03.2012. Subsequently, notice under Section 148 was issued on 27.03.2014 and served on the assessee asking him to file return of income. In response to this notice, CA appeared on behalf of the assessee and asserted that the return of income filed originally on 05.10.2010 should be treated as return filed in response to the notice u/s 148. His reply was admitted by the Assessing Officer and further Notices u/s 143(2) and 142(1) were also issued and served. In response to the said notices the CA of the assessee appeared from time to time and submitted written explanations which was taken on record by the Assessing Officer. After detailed discussions and observations, the Assessing Officer vide order dated 25.03.2015 passed Assessment Order u/s 147 r.w.s. 148/143(3) of the Income Tax Act, 1961 by making addition of Rs. 51,360/-.

4. Subsequently, proceedings u/s 263(1) of the Income Tax Act, 1961 were

initiated and notice was issued on 18.12.2015. During the course of the proceedings u/s 263 of the Act, the assessee submitted the reply. The Principal Commissioner of Income Tax after making observation held that the assessment order passed on 25.03.2015 is erroneous in so far as it relates to 194A read with Section 40(a)(ia) of the Act and is prejudicial to the interest of the revenue.

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

6. The Ld. AR submitted that the order of the Pr. CIT is erroneous as the issue on which the order u/s 263 of the Act is passed is merely a second opinion and there are no new facts unearthed by the Pr. CIT regarding the interest paid to alleged unsecured loan on which TDS u/s 194 is applicable as per the Pr. CIT. In fact, the Ld. AR pointed out para 4 of the Assessment Order dated 25.03.2015 wherein it is clearly mentioned by the Assessing Officer that the assessee filed the declaration in Form 15G and therefore, the Assessing Officer held that TDS liability does not exist. The Ld. AR submitted that the Assessee at no point of time suppressed any factual aspect of the case and all queries were properly answered by the assessee during the original assessment as well as during the re-opening proceedings as well and also produced all the requisite document in support of assessee's case. Therefore, the Pr. CIT has incorrectly applied Section 263 of the Act in assessee's case.

7. The Ld. DR relied upon the order of the Pr. CIT.

8. We have heard both the parties and perused all the relevant material available on record. From the Original Assessment Order u/s 143(3) dated 28.03.2012 as well as the Assessment Order u/s 147 r.w.s. 148/143(3) dated 25.03.2015, each and every time the assessee has provided all the relevant documents in respect of the queries raised by the Assessing Officer. While

invoking Section 263 (1) of the Income Tax Act, 1961, the Pr. CIT has not made out the case that the Assessment Order is passed without making inquiries or verification which should have been made. There was no material brought by the Pr. CIT stating therein that the Assessment Order is passed allowing any relief without inquiring into the claim of the assessee. Thus, the Pr. CIT has only expressed the second opinion which is not permissible under Section 263 of the Act. Revisionary power u/s 263 of the Act is conferred by the Act on the Commissioner when an order is passed by the Authority is erroneous and prejudicial to the interest of the Revenue. Orders which are passed without inquiry or investigation are treated as erroneous and prejudicial to the interest of the Revenue, but which are passed after inquiry/investigation on the question/issue are not per se are normally treated as erroneous and prejudicial to the interest of the Revenue. Because, the Revisionary Authority feels and opines that further inquiry/investigation was required or deeper or further scrutiny should be undertaken, the same cannot be initiated without following the proper provisions u/s 263 of the Act. In the present case the Assessing Officer has made all the inquiries and after verifying the documents/ material on record passed a reasoned Assessment Order. Therefore, the Commissioner does not have any locus standi to make further inquiry. Therefore, order u/s 263 of the Act in present appeal is not justified and is set aside herewith. Therefore, the order u/s 263 is passed by the Commissioner of Income Tax is set aside.

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

Order pronounced in the Open Court on 25th OCTOBER, 2018.

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 25/10/2018

*R.N

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Copy forwarded to:

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

Private Secretary.....

Raipur Bench, Raipur.....

Date of dictation	22.10.2018
Date on which the typed draft is placed before the dictating Member	22.10.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	.10.2018
Date on which the final order is uploaded on the website of ITAT	.10.2018
Date on which the file goes to the Bench Clerk	.10.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	