

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND  
SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

ITA Nos.1034, 1058, 1059 & 1056/Bang/2017
Assessment years : 2008-09 to 2011-12

M/s. Rajesh Exports Ltd., No.4, Batavia Chambers, Kumara Part (East), Bengaluru-560001. <b>PAN : AAACR 8642 N</b>	Vs.	The Principal Commissioner of Income Tax, (Central), Central Revenue Building, Queens Road, Bengaluru-560001.
APPELLANT		RESPONDENT
Assessee by	:	Shri. A. Shankar, Advocate
Revenue by	:	Smt. Bhavna C. Yashoy, CIT DR
Date of hearing	:	26.09.2018
Date of Pronouncement	:	27.11.2018

**ORDER**

**PER BENCH :**

These appeals are preferred by the assessee against the respective orders of the CIT passed under section 263 of the IT Act (hereinafter called as an “Act”), setting aside the assessment orders on common grounds. Therefore, these appeals were heard together and are being disposed of through this consolidated order. In these appeals, grounds on which the orders of the CIT are assailed are almost same except the difference in quantum. The main issues on which assessment orders are revised by the CIT are only 2. First is with regard to the purchase of gold bar in the name of Basma Jewellers, Sharjah and the other is with regard to the allocation of expenses amongst the main unit, export unit and SEZ unit. For the sake of reference, we extract the grounds raised in ITA No. 1056/Bang/2017:

1. *The Order of the learned Principal Commissioner of Income-tax (PCIT) (Central), Bangalore passed under section 263 of the Act in so far as it is against the Appellant is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.*
2. *The learned PCIT was not justified in law and facts to set aside the assessment order dated 31/3/2016 and direct the assessing officer to make a de novo assessment on the facts and circumstance of the case.*
3. *The learned PCIT was not justified in passing an order under section 263 of the Act, as the order passed under section*

143(3)r.w.s 153A of the Act, was pursuant to proper enquiry on the facts and circumstances of the case.

4. *The order of revision has been passed in violation of the principles of natural justice, as the order has been passed without giving adequate opportunity of being heard and thus the order is required to be set aside on the facts and circumstances of the case.*
5. *The order of revision passed by the learned PCIT is also in violation of Principles of natural justice as the details requested by the appellant have not been given to the appellant and thus reliance on certain material by the PCIT without putting the same to the appellant is also violation of the principles of the principles of natural justice and on this count also the order is required to be cancelled on the facts and circumstance of the case.*
6. *The learned PCIT has passed an unsustainable order which is based purely on assumptions and presumptions. The order is absolutely arbitrary and full of surmises, without considering the relevant material and assuming irrelevant material. Consequently the order passed is a perverse order on the facts and circumstance of the case.*
7. *The learned PCIT has grossly erred in revising the order passed by the learned Assessing officer without appreciating that there is no error, much less prejudicial to the interests of the Revenue to warrant a revision and therefore the order passed by the learned PCIT is ultra vires to the scope of Section 263 and requires to be cancelled under the facts and circumstances of the Appellant's case. The direction to make thorough verification amounts to ordering fishing and roving enquires without any material in support thereof and consequently the impugned order passed is bad in law and is liable to be cancelled.*
8. *The learned PCIT failed to appreciate that the Assessing Officer before completing the assessment order under section 143(3)r.w.s153A of the Act on 31.01.2016 had made detailed enquiries and hence on the very same issue no action can be taken under section 263 of the Act as the action of the Assessing Officer is in accordance with law.*
9. **Grounds on account of Typographical error in the name of the Party:**
  - a) *The learned PCIT failed to appreciate that the learned Assessing officer had indeed verified the details and after being fully satisfied by the said explanation and after application of mind accepted the issue in the appellate proceedings and thus there is no error on this **issue** on the facts and circumstances of the case.*
  - b) *The learned PCIT failed to appreciate that in accordance with Explanation b to 263(1) the meaning of word "record" is records available at the time of examination by the*

*revisional authority.*

- c) The learned PCIT failed to appreciate that all details including supporting evidences from several government agencies were part of record which ought to have been considered by the learned PCIT before invoking the jurisdiction under section 263 of the Act on the facts and circumstance of the case.*
- d) The learned PCIT, failed to appreciate that the information was verified by multiple governmental agencies and a mere typographical error while collating the details in a chart cannot lead to an inference that the order is erroneous on the facts and circumstances of the case.*

**10. Grounds regarding verification of Gross Losses:**

- a) The learned PCIT erred in holding that there has been gross loss in the main unit which is contrary to the material on record as there is no gross loss in the main unit and consequently passed a perverse order on the facts and circumstance of the case. Without prejudice the contention of the learned PCIT is arithmetically incorrect and consequently the impugned order is liable to be set aside.*
- b) The learned PCIT has erroneously arrived at the Gross losses by conveniently ignoring certain operational income and not considering all the material on record and thus the very substratum of the numbers adopted by her are totally erroneous and consequently the order of the learned PCIT is liable to be set aside on the facts and circumstance of the case.*
- c) The learned PCIT failed to appreciate that when the entire operational income is taken into consideration there is no gross loss in the Main Unit of the appellant and hence when there is no gross loss itself there would not arise a need verify the gross loss leading to a clear inference that the assumption of jurisdiction under section 263 is erroneous the facts and circumstance of the case.*
- d) The gross loss numbers arrived at by the learned PCIT are contrary to the facts and material available on record. Hence it is clear that the impugned order passed by the learned PCIT is without any foundation and the entire order is on presumption and assumption and full of surmises and is resting on miscalculations and consequently the order requires to be to be set aside on the facts and circumstance of the case.*
- e) The learned PCIT erred in calculation and thus is not correct in holding that there has been a gross loss of 6.07% and 9.48% in the Main and the SEZ Units on the facts and circumstance of the case.*
- f) Without prejudice the PCIT failed to appreciate that there is a gross profit of 1.60% in the Main Unit and a gross loss of 1.0 1% in the SEZ Unit.*
- g) The learned PCIT has failed to appreciate it is not prudent for any business man to increase the income in the taxable division and claim loss in the exempted segment*

*and consequently the very basic assumption of the learned PCIT is fatal and further the learned PCIT failed to appreciate that presenting accounts indicating gross loss in the Main Unit and a gross profit in the SEZ unit would have benefitted the appellant as the Main Unit is liable to income tax whereas the SEZ unit is exempted from income tax on the facts and circumstance of the case.*

*h) The learned PCIT failed to appreciate that the appellant has not presented accounts which would be beneficial to it but has transparently presented accounts as they have occurred even if it meant that having profit in the taxable segment and loss in the exempted segment on the facts of the case.*

*i) The learned PCIT, failed to appreciate that detailed individual profit and loss accounts of each of the units have been filed before the Assessing officer and that there has been no dispute in the figures, which have been accepted after thoroughly cross verifying the data. The observation of the learned PCIT, that there has been no enquiry is totally erroneous on the facts and circumstances of the case.*

*j) The learned PCIT has lost track of the detailed questionnaire issued during the assessment and that the details furnished by the appellant are all part of the assessment order and thus the jurisdiction to invoke section 263 does not arise on the facts of the case.*

*k) The learned PCIT failed to appreciate that the various divisions of the company have different methods of business transactions and consequently the gross profits would be different.*

*l) The learned PCIT failed to appreciate that the assessment has been completed after thoroughly examining all the details more than 5 years back vide order dated 30/12/2011 which was further examined in detail while passing the 143(3) order read with 153A and consequently on the same point there cannot be proceedings under section 263.*

*m) Without prejudice the issue of gross loss does not arise out of any seized material and consequently is beyond the scope of assessment under section 153A read with 143(3) of the Act.*

*n) The learned PCIT is not justified in indirectly attempting to reopen the assessment order under section 143(3) dated 30.12.2011 after a lapse of more than 5 years which is impermissible in law and barred by limitation on the facts and circumstances of the case.*

*o) The learned PCIT is not justified in not appreciating that all the details of the Purchases, Sales and several other voluminous details were provided during the course of the original assessment proceedings and consequently there*

*has been no failure on the part of the assessing officer to verify such details and hence the order under section 263 is without jurisdiction on the facts and circumstances of the case*

11. *The learned PCIT is not correct in invoking the jurisdiction under section 263 when the entire assessment was subject matter of appeal before the CIT(A) as to its validity and the order is beyond the scope of the revisional authority in accordance with explanation (c) to section 263(1) of the act on the facts and circumstances of the case.*
12. *The order of revision under section 263 is bad in law as the notice has been issued for review and order has been passed for revision which is impermissible in law.*
13. *The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*

*In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.*

2. The facts in brief borne out from the record are that the original assessment was completed under section 143(3) in ITA Nos.1034 and 1056/Bang/2017 relating to assessment year 2008-09 and 2009-10 on 30.12.2010 and 30.12.2011 respectively. Similarly for the assessment year 2010-11, the assessment was completed under section 143(3) of the Act and the issues of allocation of expenses in main unit, EOU division, SEZ division were examined and discussed by the AO in his order. Similarly for the assessment year 2011-12, the assessee filed return of income u/s 139 (1) on 29.09.2011 declaring NIL income. The assessee was subjected to search on 17.12.2013. Thereafter, notice u/s 153A was issued by the AO on 04.07.2014 and on 19.09.2014, the assessee filed a letter before the AO and intimated the AO that the return filed u/s 139 (1) may be treated as return filed u/s 153A. On 31.03.2016, the AO passed order u/s 153A r.w.s. 143 (3) and income was assessed at Rs. 3571,84,31,323/-. In fact, after search conducted upon the assessee on 17.12.2013, the assessment was completed under section 153A r.w.s. 143(3) in all these assessment years on 31.03.2016 after making necessary verifications on different issues.

In all these years, the AO made certain additions against which appeals were filed by the assessee before the CIT (A). After completion of the assessment, the AO received a communication from Forex Tax Authorities vide

its letter dated 18.04.2016 with regard to Basma Jewellers, UAE from whom assessee claimed to have made purchases of gold bars. As per the claim of the assessee, it had imported gold bars from Basma Jewellers from assessment year 2007-08 to 2013-14 whereas as per the information received from Basma Jewellers, it was incorporated only in financial year 2010-11. Therefore, claim of the assessee needs verification. The AO forwarded this letter to the CIT (A) before whom the appeals were pending and CIT(A) has confronted this communication to the assessee and sought his comments.

3. Assessee submitted its detailed reply stating therein that the information submitted by it during assessment proceedings contained a typographical error where the names of the parties from whom import was done were wrongly typed inadvertently. He submitted various documents in support of this contention. The copy of the reply received from the assessee/appellant was forwarded to the AO vide letter dated 2.1.2016 calling for its comments. The AO reverted back to the CIT(A) vide its letter dated 10.01.2017 stating therein that since information was not available at the time of assessment, necessary enquiries to examine the genuineness of the assessee's import could not be carried out, rendering the assessment erroneous and prejudicial to the interest of the Revenue. The AO accordingly sent the proposal for revision of the assessment to the Pr.CIT, Central, Bengaluru. Before the CIT(A), assessee has given a detailed submission and furnished import invoice, airways bills, bills of entries, duty paid challans for payments made in respect of imports etc. But it was not verified either by the CIT(A) or the AO during the remand proceedings. He simply said that all these facts can be verified in set aside proceeding when the assessment order on this issue is set aside. The letter of the AO was duly endorsed by the JCIT. On receipt of this reply from the AO, the CIT(A) disposed off the appeals without adjudicating the issue of import from Basma Jewellers on merit. From this action of the Revenue, it appears that CIT has initiated action under section 263 of the Act on the basis of the report of the AO and issued a show cause notice to the assessee for all the 4 years on 27.01.2017 proposing a revision of assessment orders framed under section 143(3) r.w.s. 153A mainly on two issues, one is with regard to correctness of gross losses claimed by the assessee

and the other is with regard to purchase of gold bars from Basma Jewellers. In response to show cause notices, assessee has furnished detailed reply before the CIT with the submissions that both the issues were duly examined by the AO as well as CIT(A). Therefore action under section 263 is not possible.

4. Being not convinced with the explanations furnished by the assessee, the CIT set aside the order of the AO passed under section 143(3) r.w.s. 153A dated 31.03.2016 having held that assessment is erroneous and prejudicial to the interest of the Revenue.

5. Aggrieved, the assessee preferred an appeal before the Tribunal with the submissions that the issue with regard to correctness of losses claimed by the assessee or the allocation of expenditure etc., were examined by the AO in the original assessment proceedings framed under section 143(3) of the Act. In support of this contention, the learned counsel for the assessee has invited our attention to the various notices issued by the AO and the evidences filed by the assessee during the course of original assessment proceedings.

6. Having examined the details furnished by the assessee in the original assessment proceedings, the AO has accepted the claim of the assessee. Therefore, it cannot be said that the AO has not applied his mind to the facts of the case or the controversies raised before it. In support of this contention, the learned counsel for the assessee has invited our attention to the order of the AO wherein the AO has discussed the issue in detail before accepting the claim.

7. So far as purchase from Basma Jewellers is concerned, the learned counsel for the assessee has contended that assessee has made the purchases from AJR Mathey but unfortunately, on account of typographical error, the name of Basma Jewellers was mentioned. He has filed a reconciliation statement before the CIT (A), but CIT(A), instead of getting it verified by himself or through AO, disposed off the appeal without adjudicating the issue of import from Basma Jewellers on the basis of the proposal of the AO for setting aside the assessment orders on the ground that the assessment order is erroneous and prejudicial to the interest of the revenue. The learned counsel for the assessee further contended that provisions of section 263 can only be invoked when the CIT himself comes to the conclusion that the assessment order is erroneous and prejudicial to the interest of the Revenue. He cannot act on the advice of the AO.

The decision with regard to the nature of assessment order is to be taken by the CIT himself. In the instant case, it appears that CIT has acted on the proposal of the AO whereas the AO could have made all necessary enquiries with regard to the genuineness of the purchases made by the assessee from Basma Jewellers.

8. The learned counsel for the assessee further contended that for initiating action under section 263 of the Act, the CIT should have been satisfied that the assessment order passed by the AO is erroneous and prejudicial to the interest of the Revenue. The satisfaction is individual satisfaction and not on the advice of the subordinates. In the instant case, the issue was subjudice before the CIT (A) and when the CIT (A) called for a remand report from the AO, the AO instead of submitting the remand report after making a detailed enquiry, sent a proposal to the CIT to initiate action under section 263 of the Act. The learned counsel for the assessee further contended that one issue was examined in original assessment proceedings and the second issue could have been examined during the remand proceedings but the AO did not do the same and made a reference for initiating action under section 263 of the Act. The learned counsel for the assessee placed reliance upon the judgment of Hon'ble Delhi High Court in the case of *ITO vs. D.G. Housing Project Ltd. (2012)343 ITR 329* in support of this contention, the revisional jurisdiction under section 263 of the Act can only be exercised where the assessment order is erroneous and prejudicial to the interest of the Revenue. Besides, reliance was also placed upon the judgment in the case of *CIT Vs. Anil Kumar Sharma 335 ITR 83* and the order of the Tribunal in the case of *Modern Minerals Vs. ACIT* reported at 59 TTJ 733 and the judgment of Hon'ble Calcutta High Court in the case of *Jeevanlal (1929) Ltd., Vs. ACIT 108 ITR 407* in support of this contention that on the basis of the audit objection, revision under section 263 is not possible. The learned counsel for the assessee has also invited our attention to the fact that during the course of search, no incriminating material was found either with regard to carry forward of brought forward losses/profits of different units of the assessee. Therefore, there was no occasion with the AO to readjudicate the issues again in the proceedings under section 153A r.w.s. 143(3) of the Act. He however examined the claim of deductions under section 10B of the Act. When the AO was not under the obligation to readjudicate, the issue of profit and loss of different units as no

incriminating material was found during the course of search, the order passed by him cannot be called to be erroneous and prejudicial to the interest of the Revenue.

9. The learned DR, on the other hand has placed reliance upon the order of the CIT.

10. Having carefully examined the orders of the lower authorities in the light of rival submissions, we find that the CIT has set aside the order having invoked the jurisdiction under section 263 of the Act mainly on two issues, one is with regard to correctness of gross losses claimed and the other is with regard to discrepancies in purchases made from Basma Jewellers. The original assessment relating to assessment years 2008-09 and 2009-10 were framed on 30.12.2010 and 30.12.2011 respectively. Similarly, the original assessment for assessment year 2010-11 was also framed. During the course of original assessment proceedings, the AO has issued various notices seeking information from the assessee with regard to the addresses of the premises and nature of product manufactured in main unit, EOU Unit and SEZ Unit. He has also sought information with regard to income and losses from these units. The query letter dated 5.10.2010 is available at page Nos. 1-3 of the compilation. This query was duly replied by the assessee vide its letter dated 03.11.2010. The same is also available at page Nos. 4-9 of the compilation. Along with this reply, assessee has also filed the annexures. Again notice under section 142(1) for the assessment year 2008-09 was issued on 09.12.2014 after the search, in the assessment proceedings conducted subsequent to the search. In that notice also, the AO has asked the assessee to file the entire set of return of income and complete details. The notice dated 09.12.2014 is available at page Nos.95-97 of the compilation. Again, thereafter one more notice dated 02.12.2016 under section 142(1) was issued asking the assessee to state the items manufactured by the main unit, SID Unit, EOU Unit and SEZ Unit and also explain the step by step procedure involved in manufacturing of the items. He has also sought information with regard to claim of deductions under section 10B of the Act. Financials and details of expenditure relating to these units were also called for by the AO through these notices. Copies of the notices are available at page 95-104 of the compilation. This notices were duly replied by the assessee vide its

letter dated 25.01.2016 furnishing the entire details with regard to activities of all these units and the income and losses of these units. Reply is also available at page 106-108 of the compilation. In the assessment order passed under section 143(3) r.w.s. 153A, the AO has again examined year wise and unit wise details of the exports while dealing with the claim of deduction under section 10B of the Act. The business income of these units were also examined by the AO while dealing with the issue of setoff of brought forward losses before computing the income under section 10AA of the Act. In the original assessment order passed on 30.12.2010 and 30.12.2011, the AO has discussed the issue in detail with regard to income and losses of different units after obtaining information from the assessee. Since the issue of income and losses of different units were thoroughly examined by the AO in the original assessment proceedings, there was no need to readjudicate or to re-examine all these evidences in subsequent proceedings. Therefore, the AO has not discussed these issues in detail in subsequent proceedings framed consequent to the search.

11. We have also examined the contentions raised by the assessee that the AO was under no obligation to examine the issue of deduction or the losses suffered by the non eligible unit as no incriminating material was found during the course of search, as these issues were already adjudicated by the AO in the original assessment framed before the search. In this regard, it has been repeatedly held by the Tribunal and the Hon'ble jurisdictional High Court particularly in the case of *CIT Vs. Lancy Constructions (237 Taxman 728)* and the judgment of the Delhi High Court in the case of *CIT Vs. Kabul Chawla (234 Taxman 300)* in which different judgments of different High Courts were examined and held that if no incriminating material is found during the course of search, the concluded assessment cannot be reopened. In the light of these facts, we are of the view that since the AO has examined the issue of deduction under section 10B with regard to eligible units and profit and loss of different units in detail in the original assessment orders and also in the subsequent orders, the issue cannot be examined in post search assessment proceedings. Therefore, it cannot be said that AO has not applied his mind to the facts of the case while adjudicating the issue. The CIT may not agree with the conclusion of the AO but if the AO has applied his mind and adjudicated the issue in the light of legal

provisions, the CIT cannot set aside the order of the AO simply by holding that the order of the AO is erroneous and prejudicial to the interest of the Revenue. It has been repeatedly held that for setting aside the order under section 263 of the Act, the CIT is required to establish that the assessment order is not only erroneous but also prejudicial to the interest of the Revenue. In the instant case, when the AO has examined the issue in detail after calling all requisite information from the assessee, the assessment framed cannot be called to be erroneous and prejudicial to the interest of the Revenue. We are therefore, of the view that the Revision Order passed by the CIT on this issue is without assuming the proper jurisdiction and we accordingly set aside his order on this issue.

12. So far as the other issue regarding import made from Basma Jewellers is concerned, we find that this issue was not examined either by the AO or by the CIT(A). The assessee has raised the claim to have purchased the gold bar from Basma Jewellers and AO intended to make verification but could not get the report from the concerned authorities before the conclusion of the assessment. The report came after the conclusion of the assessment and the same was given to the CIT(A) who was already seized with the matter on account of filing the appeal by the assessee. The CIT(A) has called for the comments on the information received from the AO which were duly replied by the assessee stating therein that it was only a typographical error and in support of that, he has filed the detailed evidence. The CIT(A) called the remand report from the AO but the AO instead of giving a remand report after making verification, has recommended the case to the CIT for revision under section 263 of the Act. These facts were brought to the notice of the CIT(A) on the basis of which the CIT(A) did not adjudicate the issue and disposed off the appeal. According to us, the right course would have been for the AO to make a necessary verification of the detailed evidences filed and thereafter to adjudicate the issue and submit the report to the CIT(A) and then CIT(A) should have adjudicated the issue by passing a detailed order. But unfortunately, the AO has not discharged his duties and recommended the matter for revision under section 263 to the CIT (Administration). In any case, though the action of the AO may not be proper but for this reason, the order of CIT passed under section 263 on this issue cannot be sustained as the issue was never examined either by the AO or the CIT(A).

Therefore, we are of the view that this issue requires a proper adjudication by the AO. Accordingly, we find no infirmity in the order of the CIT in this regard. Accordingly, we confirm his order. Now the AO is required to adjudicate only one issue i.e., with regard to purchase of gold bars made from Basma Jewellers. Accordingly, these appeals of the assessee are disposed off.

13. In the result, appeals of the assessee are partly allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-  
(SUNIL KUMAR YADAV)  
JUDICIAL MEMBER

Sd/-  
(ARUN KUMAR GARODIA)  
ACCOUNTANT MEMBER

Bangalore  
Dated, the 27<sup>th</sup> November, 2018.  
MS\*

Copy to:  
1. Appellant  
2. Respondent  
3. CIT

4. CIT(A)  
5. DR, ITAT, Bangalore  
6. Guard file

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Bangalore.