

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,  
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 984/DEL/2016  
[A.Y 2011-12]**

Shri Neeraj Puri  
74-C, Rajpur Road  
Dehradun

Vs.

The Pr. C.I.T  
Dehradun

PAN : AKGPP 4617A

[Appellant]

[Respondent]

**Date of Hearing : 15.01.2019  
Date of Pronouncement : 16.01.2019**

Assessee by : Shri Rohit Tiwari, Adv

Revenue by : Ms. Shefali Swaroop, CIT-DR

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

With this appeal, the assessee has challenged the assumption of jurisdiction u/s 263 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'] by the ld. PCIT, Dehradun.

2. The assessee alleges that the order dated 18.01.206 framed u/s 263 of the Act by the ld. PCIT, Dehradun is bad in law.

3. It is the say of the ld. AR that during the course of scrutiny assessment proceedings, the Assessing Officer had made necessary enquiries in respect of property sold and has accepted the long term capital gains shown by the assessee on the sale of the said property. The ld. AR pointed out that due to an inadvertent mistake, the property has been shown as closing stock as on 31.03.2010, whereas the same was investment. The ld. AR further pointed out that the assessee was filing return of income under presumptive tax and, therefore, was not maintaining any books of account and the balance sheet was only prepared for internal use. The ld. AR concluded by saying that the assessment order dated 26.11.2013 framed u/s 143(3) of the Act is neither erroneous nor prejudicial to the interest of the Revenue, and, therefore, the assumption of jurisdiction u/s 263 of the Act is bad in law.

4. Per contra, the ld. DR strongly supported the order of the ld. PCIT.

5. The Hon'ble Supreme Court in *Malabar Industrial Co. Ltd.*, 243 ITR 83, has laid down the following ratio:-

"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 is 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 by the Assessing Officer, it is only when an order is erroneous that the be attracted. An incorrect assumption of facts or an incorrect will satisfy the requirement of the order being erroneous'.

6. All that we have to see is that whether the twin conditions have been fulfilled or not, which means that the assessment order should not only be erroneous but also prejudicial to the interest of the

Revenue. It is true that in the balance sheet for the year ending 31.03.2010 the assessee has shown the following properties as stock in trade:

Sl. No.	Particulars of Property	Value
1.	K. Colony	Rs. 4,49,000
2.	Sahastradhara Rpad	Rs. 6,99,320
3.	Bhagirath [Dilaram] $\frac{1}{2}$	Rs. 27,64,582
4.	Malsi	Rs. 15,00,000
5.	Total	Rs. 54,13,002

7. During the year under consideration, the assessee has sold Property Malsi for a consideration of Rs. 15 lakhs and the gains arising out of the said property has been shown under the head 'Capital Gains'. The balance sheet may have been prepared for some internal use, but the fact of the matter is that, the property has been shown as stock in trade. We find that while framing the assessment u/s 143(3) of the Act, the Assessing Officer has completely ignored this fact, which resulted in appreciation of wrong facts by the Assessing Officer. Moreover, the assessee could not demonstrate by bringing any cogent material evidence on record that the properties were, in fact, investment made by the assessee and have been wrongly shown as stock in trade. Without making any specific enquiry on this aspect, the

Assessing Officer has accepted the capital gains returned by the assessee, which makes the assessment order not only erroneous but prejudicial to the interest of the Revenue. We, therefore, do not find any reason to interfere with the findings of the Id. PCIT. Accordingly, order framed u/s 263 is upheld.

8. In the result, the appeal of the assessee in ITA No. 984/DEL/2016 is dismissed.

**The order is pronounced in the open court on 16.01.2019.**

**Sd/-**

**[SUCHITRA KAMBLE]  
JUDICIAL MEMBER**

**Sd/-**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 16<sup>th</sup> January, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

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