

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH
MUMBAI**

**BEFORE SHRI M.BALAGANESH, AM
&
SHRI RAM LAL NEGI, JM**

**ITA No.3158/Mum/2019
(Assessment Year :2011-12)**

Smt. Rupa Jayesh Shah Block No.4, Shyamkunj, 2 nd Floor, SVP Road, Borivali (W) Mumbai- 400 092	Vs.	Pr. Commissioner of Income Tax-32, Mumbai C-11, 2 nd Floor, Pratyaksha Kar Bhavan Bandra Kurla Complex, Bandra (E) Mumbai – 400 051
PAN/GIR No.ARZPS3269F		
(Appellant)	..	(Respondent)

Assessee by	Shri Kirit S. Sanghvi
Revenue by	Shri Lakshmi U Prasad
Date of Hearing	29/08/2019
Date of Pronouncement	11/09/2019

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.3158/Mum/2019 for A.Y.2011- preferred by the order against the final assessment order passed by the Assessing Officer dated 05/07/2016 u/s.143(3) r.w.s.147 of the Income Tax Act, hereinafter referred to as Act, 1961 pursuant to the directions of the Id. Principal Commissioner of Income Tax-32, Mumbai u/s.263 of the Act dated 27/03/2019 for the A.Y.2011-12

2. The only issue to be decided in this appeal is as to whether the Id. CIT was justified in invoking revisionary jurisdiction u/s.263 of the Act in the facts and circumstances of the case.

3. We have heard rival submissions. We find that the assessee had filed his return of income in the A.Y.2011-12 on 17/09/2011 declaring total income of Rs.3,20,870/-. The said return was processed u/s.143(1) of the Act. Later the assessment was sought to be reopened and re-assessment was completed u/s.143(3) r.w.s. 147 of the Act dated 05/07/2016 wherein disallowance on account of non-genuine purchases were made to the tune of Rs.4,10,110/- being 25% of purchases of Rs.16,40,439/- made from four parties by the assessee. The assessee carried the matter in appeal before the Id. CIT(A) and the Id. CIT(A) in appeal No. CIT(A)-44/ITO 32(3)(2)/ITA-335/2016-17 dated 17/04/2018 disposed off the appeal of the assessee by restricting the disallowance to 12.5% of total purchases of Rs.16,40,439/-. In effect, the disallowance on account of non-genuine purchases was reduced to Rs.2,05,055/- by the Id. CIT(A). We find the Id. Administrative CIT had sought to invoke his revisionary jurisdiction u/s.263 of the Act by treating the order passed by the Id. AO as erroneous and prejudicial to the interest of the revenue on the ground that the entire purchases valued at Rs.16,40,439/- should have been considered for disallowance by the Id. AO. The Id. CIT in this regard placed reliance on the decision of the Hon'ble Supreme Court in the case of NK Proteins Ltd., reported in 2017-TIOL-23-SC-IT dated 16/01/2017. We find that the entire issue of disallowance on account of non-genuine purchases has been the subject matter of the adjudication by the Id. AO and by the Id. CIT(A) in the instant case by making some estimation of disallowance. Hence the doctrine of merger would duly get applied in the instant case, meaning thereby the order of the Id AO had already merged with that of the order of the Id CIT(A). The provisions of

Section 263(1) Explanation -1 Clause-C are very clear that the issue cannot be the subject matter of revision u/s.263 where the same had been the subject matter of the appeal and the same had been heard and decided by the Id. CIT(A). Hence, we hold that the Id. CIT grossly erred in invoking revisionary jurisdiction u/s.263 of the Act in the facts and circumstances in the instant case. We hold that in the instant case, what the Id CIT had effectively sought to revise is not the order of the Id AO (subordinate authority) and instead had only sought to revise the order passed by an equal authority i.e Id CIT(A), which is not permissible u/s 263 of the Act. Hence, we have no hesitation in quashing the revision order passed by the Id. CIT u/s.263 of the Act. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on this 11/09/2019

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 11/09/2019

KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai

