

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

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA Nos. and Assessment Years	Appellant	Respondent
2455/Bang/2018 2013-14	Shri Ravish Laxmikanth Vernekar, D. No.13-4-447, Laxmi Nilaya, Bridge Cross Road, Marnamikatte, Mangaluru. PAN : AKNPR 6969 C	The Principal Commissioner of Income-Tax, 1 st Floor, C. R. Building, N. R. Road, Attavar, Mangaluru – 575 001.
2456/Bang/2018 2013-14	Shri. Sonar Laxmikanth Vernekar, D. No.24-9-996, Laxmi Nilaya, Bridge Cross Road, Marnamikatte, Mangaluru. PAN : AEVPL 4549 N	-do-
2457/Bang/2018 2013-14	Shri. Raghavendra Laxmikanth Vernekar, D. No.24-19-996, Laxmi Nilaya, Opp Jai Hind Building, Marnamikatte, Mangaluru. PAN : ADLPV 5851 E	-do-
2458/Bang/2018 2013-14	Shri. Rajesh Laxmikanth Vernekar, D. No.24-9-996, Laxmi Nilaya, Opp Jai Hind Building, Marnamikatte, Mangaluru. PAN : ADLPV 5850 F	-do-

2459/Bang/2018 2013-14	Shri. Mangaladevi Jewellers, Jayanthi Building, Opp: University College, Hampankatta, Mangaluru – 575 001. PAN : ABOFS 3766 N	-do-
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Assessee by	:	Shri. K. Chandrasekhar, Advocate
Revenue by	:	Shri. Pradeep Kumar, CIT (DR)(ITAT), Bengaluru

Date of hearing	:	20.02.2020
Date of Pronouncement	:	29.05.2020

ORDER

Per A.K. Garodia, Accountant Member

These are five appeals which are filed by five different but connected assessees and these are directed against five separate orders all dated 29.07.2017 passed by of learned PCIT Mangaluru under section 263 of the Income Tax Act, 1961 for Assessment Year 2013-14. All these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The grounds of appeal raised by the assessee are identical and for the sake of brevity, we reproduce the grounds of one appeal in ITA No.2455/Bang/2018. The grounds are as under:

1. *The order of Revision dated 29-12-2017 passed u/s.263 of the I.T. Act by Learned Principle CIT in the Appellant's case for the assessment year 2013-14 is opposed to law.*
2. *The Order of assessment made for the assessment year 2013-14 u/s.143(3) r.w.s.147 of the Act on 31-03-2016 is after due*

application of mind and there was no error which was prejudicial to the interests of revenue.

3. On the facts and in the circumstances of the appellant's case, the order of the learned Principle CIT passed u/s.263 of the Act dated 29-12-2017 is not sustainable in law.

3. In the course of hearing, it was submitted by learned AR of the assessee that a survey was conducted in the case of M/s. Sri Mangaladevi group of cases which included the business of Mangaladevi Jewellers firm, business premises of Shri. Laxmikanth Vernekar and business premises of Shri. Raghavendra Vernekar on 13.11.2013. The firm had three partners i.e., Shri. Raghavendra Vernekar, Shri. Rajesh Vernekar and Shri. Ravish Vernekar. He also pointed out that in course of survey, undisclosed income was declared to the extent of Rs.36 lakhs in the hands of M/s. Mangaladevi Jewellers, Rs. 35 lakhs in the hands of Shri. Raghavendra Vernekar and Rs. 4 lakhs in the hands of Shri. Ravish Vernekar. He further submitted that in the return of income filed by these assesseees, these amounts were not added in the return of income and in the course of assessment proceedings, it was explained before the AO that these persons have availed large number of gold loan by pledging gold and business stock and have utilized the fund to meet their requirement for acquisition of property including the additional amount declared during the survey. He submitted that since all these facts were duly considered by the AO in the assessment proceedings, the Assessment Order is neither erroneous nor prejudicial to the interest of Revenue and therefore, the impugned orders passed by learned PCIT under section 263 of the Income Tax Act, 1961 are not maintainable. In reply, learned DR of the Revenue supported the impugned orders passed by PCIT under section 263 of the Income Tax Act, 1961. He also submitted that in the case of M/s. Mangaladevi Jewellers

in ITA No.2459/Bang/2018, even in the consequential order passed by the AO under section 143(3) r.w.s. 263 of the Income Tax Act, 1961, on 30.10.2018, the income of the firm was assessed at the same figure i.e. Rs.1,46,030/- as assessed in the earlier order passed under section 143(3) dated 31.03.2016 and therefore, this appeal of the assessee is of academic interest only.

4. We have considered the rival submissions. We find that in the original Assessment Orders passed by the AO in these five cases, the AO has noted about this fact that survey has taken place and in the course of survey, M/s. Mangaladevi Jewellers has made a declaration of Rs.36 lakhs, Shri. Raghavendra Vernekar made a declaration of Rs.35 lakhs and Shri. Ravish Vernekar made a declaration of Rs.4 lakhs but in para No.3.1 of the Assessment Order, the AO has stated that during the course of assessment, it was seen that the assessee has not declared the about mentioned declaration in the respective return of income and when this issue was put before the AR, he has submitted that the assessee have availed large number of gold loans by pledging personal gold and in some cases business stock and has utilized the said funds to meet the requirements for acquisition of property including partly, the additional amount declared during the course of survey.

5. At this stage, we reproduce para 7 from the order of PCIT which is common in all these five cases and hence, we reproduce this para from ITA No.2455/Bang/2018. This para reads as under:

“7. The Assessee and the group have failed to truthfully declare the investment of Rs 70,00,000/- made in cash out of undisclosed sources in the cash flow statement and consequentially evaded the payment of tax. There is an omission on the part of the Assessing officer in overlooking the said facts and this failure has resulted in underassessment of the said income in the Assessment order which is not only erroneous but prejudicial to the interest of Revenue as well. It is to be further noted that there is no appeal right available

to the Revenue from the order of assessment passed by Assessing Officer and i.e. why revisionary powers u/s. 263 have been given in the statute and such power were held to be of wide amplitude by the Hon'ble Supreme Court in the case of CIT v. Shree Manjunathesware Packing Products & Camphor Works [1998] 231 ITR 53/96 Taxman 1. Therefore, in the instant case, when Assessing Officer has not verified the facts correctly, then such order in view of the above detailed discussion has to be construed as erroneous and prejudicial to the interest of Revenue. Moreover, in terms of Explanation 2 to Section 263(1) of the Act, an order passed by the AO is deemed to be erroneous and prejudicial to the interest of Revenue if the order is passed without making enquiries or verification which should have been made. Therefore, it is held that the assessment order passed by the AO is erroneous and prejudicial to the interest of Revenue as Assessing Officer has failed to verify the available records and make requisite enquiry as may be necessary for the assessment.”

6. From the above para reproduced from the order of PCIT, it is seen that a categorical finding is given by the learned PCIT that the Assessment Order passed by the AO is deemed to be erroneous and prejudicial to the interest of the Revenue because in the instant case, the AO has not verified the facts. He has also noted that when an Assessment Order is passed without making enquiries for verification which should have been made, the Assessment Order is erroneous as well as prejudicial to the interest of Revenue. After giving these findings, learned PCIT has set aside the Assessment Order and he has directed the AO to redo the assessment afresh after making detailed examination of the relevant facts after affording to the assessee adequate opportunity of being heard before passing fresh Assessment Order in accordance with law. These findings of learned PCIT could not be controverted by learned AR of the assessee to show that enquiry and verification was done by the AO in the course of original assessment proceedings and hence, we find no infirmity in the impugned orders passed by learned PCIT in all these cases. Moreover, in the case M/s. Mangaladevi

Jewellers in ITA No.2459/Bang/2018, in the consequential Assessment Order passed by the AO under section 143(3) r.w.s. 263 of the Income Tax Act, 1961 on 30.10.2018, the income is assessed at the same figure of Rs.1,46,030/- which was assessed income as per the original Assessment Order and hence, in this appeal, the appeal of the assessee is academic only and therefore, liable to be dismissed for this reason also.

7. In the result, all the five appeals of the assessee are dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(A.K. GARODIA)
Accountant Member

Bangalore,
Dated: 29th May, 2020.

/NS/*

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| 1. Appellants | 2. Respondent | 3. CIT |
| 4. CIT(A) | 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.