

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

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER AND  
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No.46/RPR/2021  
Assessment Year: 2017-18**

M/s. Mahavir Ashok Enterprises P. Ltd., vs. Pr. CIT-1,  
Halwai Line, Raipur.  
Sadar Bazar,  
Raipur (CG)  
[PAN – AABCM 5742 M] (Appellant) (Respondent)

Appellant by : Shri R.B. Doshi  
Respondent by : Shri P.K. Mishra, CIT D.R.

Date of hearing : 30.07.2021  
Date of pronouncement : 29.09.2021

**ORDER**

**PER PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER :**

The captioned appeal has been filed at the instance of the assessee against the revisional order of the Principal Commissioner of Income Tax (PCIT in short), Raipur-1 communicated to assessee on 27.03.2021 passed under section 263 of the Income Tax Act, 1961 (the Act in short) whereby the assessment order passed by the Assessing Officer (A.O.) dated 21.12.2019 under section 143(3) of the Act concerning Assessment Year (A.Y.) 2017-18 was sought to be set aside for reframing the assessment in terms of supervisory jurisdiction.

2. As per its grounds of appeal, the assessee has challenged the revisional action of the PCIT whereby the Assessing Officer (A.O.) was directed to pass the assessment order *denovo* after making enquiries on the points set out in the notice which has already examined and considered during the original assessment proceedings concerning A.Y. 2017-18. The assessee has challenged the assumption of jurisdiction by the PCIT under section 263 of the Act essentially on the ground that the Assessment Order under revision is neither erroneous nor prejudicial to the interest of the revenue.

3. Briefly stated, the assessee is engaged in the business of trading of Gold Ornaments, Gold Bullion, Diamond Ornaments & precious metals and derives income therefrom. A survey under section 133A of the Act was conducted on the business premises of the assessee on 06.03.2017. During the course of survey proceedings, the excess stock of Rs.2,25,75,951/- was found. The assessee surrendered the same and offered the same as his taxable income while filing the return of income for A.Y. 2017-18 in question. The assessee accordingly filed return of income declaring total income at Rs.2,36,89,620/- as profit and gains from business or professional which includes excess stock of Rs.2,25,75,951/-. The case was taken for compulsory scrutiny. In the course of assessment proceedings, the assessee was asked to furnish explanation and required information and evidences in respect of return of income so filed. The assessment was eventually completed by making addition of Rs.1,42,715/- to the returned income on the ground that Net Profit ratio declared by the assessee is lower than the earlier years.

4. After completion of the assessment, the revisional authority (PCIT) called for assessment records and alleged that order passed by the A.O. deserves to be set aside for re-adjudication of the issues as pointed out in the show cause notice dated 02.03.2021 in the absence of proper enquiry

5. Aggrieved by the revisional action of the PCIT, the assessee preferred appeal before the Tribunal.

6. We have carefully considered the rival submissions and challenge to invoking jurisdiction under section 263 of the Act and consequential revisional order. We have also taken note of the material referred to and relied upon during the hearing and the case laws cited.

7. In exercise of powers conferred under section 263 of the Act, the PCIT has proposed revision of the assessment order on two counts:

- i) The excess stock surrendered by the assessee during the survey, returned as business income, is liable to be considered as unexplained investment under section 69 of the Act and consequently tax was required to be enforced in terms of section 115BBE of the Act.

- li) The figures of purchase in the in the audited accounts drawn as on 31.03.2017 were not reconciled with the figures in the Trial Balance as on the date of survey i.e. 06.03.2017.

8. As regards the first issue concerning assessment of excess stock under section 69 of the Act, it is contended on behalf of the assessee that in the course of statement recorded during the survey (page nos.15 to 21 of the Paper Book), the assessee was called upon to explain the discrepancy in the stock in pursuance of enquiries made and recorded in the statement. The assessee pointed out that the excess stock was generated out of business activities in the ordinary course. The excess stock was accordingly credited to the business Profit & Loss (page no.32 of the Paper Book) and the amount so declared was shown under the head "revenue from operations towards jewellery business". It is asserted on behalf of the assessee that in the course of survey, no other activity/other source of income was found in the hands of the assessee except the ongoing jewellery business. The excess stock declared as business income in the statement under section 133A of the Act was reflected in the return of income. The A.O. issued a specific show cause notice dated 18.12.2019 wherein the identical question was raised and the assessee was required by the A.O. to show cause as to why the amount of Rs.2,25,75,951/- be not treated as unexplained investment under section 69 of the Act and tax rate under section prescribed under section 115BBE need not apply. A reply thereof was furnished (dated 19.12.2019) to the A.O. On consideration of the facts and circumstances narrated in the reply and original submissions, the A.O. found merit in the plea of the assessee and dropped the issue and did not disturb the position taken by the assessee. Certain case laws are relied upon to support the stance taken by the assessee.

9. It was contended that statement taken under section 133A of the Act should either be relied in full or not relied upon. A part of statement cannot be read differently. On appraisal of the facts narrated on behalf of the assessee, it is manifest that the assessee has taken a consistent position on submission of excess stock from business activities and thus a business income in ordinary course right from survey proceedings till filing return of income and subsequent completion of assessment. Significantly, the A.O. has made specific query in this regard and found the reply of

the assessee in sync with the factual matrix. Thus the action of the A.O. was after due application of mind. We further notice that similar issues have cropped up in other cases as well and judicial view is available on subject matter of dispute in similar circumstances. The Hon'ble Rajasthan High Court in the case of PCIT vs. Aacharan Enterprises Pvt. Ltd. (2020) 117 taxmann.com 745 (Raj) in similar facts upheld the stance of the assessee. In Bajaj Sons Limited vs. DCIT, the coordinate bench of Chandigarh also answered the issue in favour of the assessee therein and held that surrender of undisclosed business income would not attract provisions of section 115BBE of the Act. Similar view has been taken by the Hon'ble Calcutta High Court in the case of PCIT vs. Subarna Rice Mills. Thus, taxability of such income under the head "business income" has been endorsed by the judicial view and hence could not have been disregarded outrightly by the A.O. in departure with the statement under section 133A while performing quasi judicial function. The issue thus cannot be said to be, at least, free of debate. Clearly, the A.O. having applied the mind to the facts of the case and has taken a view which cannot be said to be wholly unsustainable in law. Therefore, the action of the A.O. cannot be branded as erroneous *per se* on this issue. The invocation of section 263 is thus unjustified on this point.

10. The second issue concerning alleged mismatch between figures appearing in the Trial Balance viz-a-viz audited Balance Sheet towards purchases. Noticeably, the Trial Balance has drawn at 06.03.2019 i.e. date of survey whereas, the audited Balance Sheet has been drawn at 31.03.2017. The assessee contends that it cannot be visualised that two figures at different dates would ordinarily match particularly where the business of the assessee is dynamic and continuing. Secondly, the Trial Balance itself has been taken from books of accounts maintained by the assessee which has been updated as on 31.03.2017 after the survey and, therefore, there is no variance as on date of survey. Thirdly, the audited accounts are drawn having regard to the provisions of Company Law and the figures appearing in the group and the sub-group of a particular genre are regrouped and rearranged to make it in conformity with the accounting requirements to make it readable to the user of the Balance Sheet. It is thus asserted that the alleged difference is only a figment of the mind of the PCIT without understanding the accounting usage and business practices.

11. It is further contended that the books of accounts were produced before the A.O. for the whole year and the A.O. was not satisfied with the net profit declared and,

therefore, books were rejected and net profit was estimated and re-worked. It is thus contended that where the books of accounts itself rejected and the profits have been estimated, the alleged difference in the figures of purchases merges in void and is of no consequence. Thus, no separate addition would be made by the A.O. in any case.

12. We find considerable force in the contentions raised on behalf of the assessee. Firstly, it is elementary that the figures of two different dates would ordinarily vary. The A.O. has examined the books. The PCIT himself could have called for records again and looked into the explanation offered by the assessee himself. On a perusal of the purchase figures under various heads, we find justification in the explanation of the assessee towards regrouping of certain purchase entries. For instance, under the head "Inside State" & "Ornaments (URD)" purchases appearing in the Trial Balance seem to have been clubbed under the head "New Ornament" & Old Ornament" making it comparable. Once the transfer entries are passed, the figures as per Trial Balance and audited account stands at the near vicinity and purchase shown in the Trial Balance appears to be in conformity with the Balance Sheet subject to time difference. The PCIT, under such circumstances, ought to have been circumspect while putting the assessee with the burden of further enquiry without having any cogent case for doing so. Secondly, we also find merit in the other line of argument that once the books of accounts are rejected, the individual entries of expenses etc. lose its relevance. Hence, we see no perceptible error in the action of the A.O. The directions of the PCIT in this regard deserve to be set aside and quashed.

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

PRONOUNCED ON 29.09.2021 as per Rule 34(4) of the Income Tax Appellate Tribunal Rules,1963.

Sd/-

**(N.K. CHOUDHRY)**  
Judicial Member

**PBN/\***

Sd/-

**(PRADIP KUMAR KEDIA)**  
Accountant Member

True Copy

*Copies to:*

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Raipur Bench, Raipur*