

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'A' NEW DELHI]**

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

**I.T.A. No. 2835/DEL/2018 (A.Y 2014-15)
(THROUGH VIDEO CONFERENCING)**

B. L. Kashyap & Sons Ltd., 409, 4 th Floor, DLF Tower-A, Jasola, New Delhi - 121 025. PAN: AAACB0205F (Appellant)	Vs.	Pr. CIT Central - 2, New Delhi. (Respondent)
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Appellant by :	Shri Salil Kapoor, Adv.; & Ms. Soumya Jain, Adv.;
Respondent by:	Shri Satpal Gulati; [CIT] - DR;

Date of Hearing :	02.11.2021
Date of Pronouncement:	15.11.2021

ORDER

PER SUCHITRA KAMBLE, JM :

This appeal is filed by the assessee against the order dated 31.03.2018 passed by CIT, Central-II, New Delhi, for assessment year 2014-15.

2. The revised grounds of appeal, filed by the assessee, are as under:-

"1. That the notice issued u/s. 263 of the Income Tax Act, 1961 ("the Act") and the order dated 31.03.2018 ("the impugned order") passed by Ld. Principal Commissioner of Income Tax, Central -2, New Delhi ("Pr. CIT") under the said section is illegal, bad in law and without jurisdiction.

2. That, in view of the facts and circumstances of the case, the Pr.CIT has erred on facts and in law in exercising jurisdiction u/s 263 of the Act more so when the assessment order passed by the Assessing Officer ("AO") u/s 143(3) of the Act dated 31.03.2016 is neither erroneous nor prejudicial to the interest of the revenue.

3. That having regard to the facts and circumstances of the case, Pr. CIT has erred in setting aside the assessment order passed under section 143(3) of the Act by the A.O. on the ground that certain facts were required to be deeply examined and verified A.O. during assessment proceedings.

4. That Pr. CIT has erred on facts and in law in not appreciating that the issue of loss amounting to Rs. 8.51 crores was specifically inquired into and a categorical reply to the same was furnished by the Appellant-Assessee, as also confirmed by Pr. CIT in the impugned order passed u/s 263 of the Act.
5. That the Pr. CIT has failed to consider that the assessment as framed by the Assessing Officer was after due application of mind and after considering the detailed replies on various dates as filed before him during the course of assessment proceedings.
6. That the Pr. CIT has failed to appreciate that details of expenses were filed as required by the AO and the assessment order has been passed after due application of mind.
7. That, in the facts and circumstances of the case and in law, the Ld. Pr.CIT has factually erred in holding that the purchase of structural steel in AY 2014-15 amounting to Rs 63.7 crore (attributable to 4.96% of turnover) seems to be disproportionate vis-a-vis purchase of structural steel in AY 2013-14 amounting to Rs. 26.5 crore (attributable to 1.8% of turnover), and thus, required to be deeply examined, and that the AO has not made necessary inquiries/ verification as were required.
8. That the Ld. Pr.CIT failed to appreciate that the assessee had duly filed details of purchases made by the assessee, and the same were inquired into and examined by the AO in assessment order u/s. 143(3) dated 31.03.2016, wherein the AO was satisfied by the explanations and reason given for the marginal shortfall in G.P. for AY 2014-15 as compared to AY 2013-14. Consequently, upon examination of the material before him, the AO was of the considered view that no addition was required to be made on trading account in case of the assessee.
9. That in the facts and circumstances of the case and in law, the Ld. Pr.CIT has erred in holding that purchase of other material totalling to Rs. 124.5 crore (attributable to 9.7% of turnover) seems to be disproportionate vis-a-vis purchase of other material in AY 2013-14 totalling to Rs. 98.6 crore (attributable to 6.5% of turnover), and thus, required to be deeply examined, and that the AO has not made necessary inquiries/ verification as were required.
10. That the Ld. Pr.CIT failed to appreciate that the assessee had duly filed details of purchases made by the assessee, and the same were inquired into and examined by the AO in assessment order u/s. 143(3) dated 31.03.2016, wherein the AO was satisfied by the explanations and reason given for the marginal shortfall in G.P. for AY 2014-15 as compared to AY 2013-14. Consequently, upon examination of the material before him, the AO was of the considered view that no addition was required to be made on trading account in case of the assessee.
11. That the assessment order dated 31.03.2016 passed u/s. 143(3) cannot be set aside by resorting to provisions of section 263 by Ld. Pr.CIT merely because he is of the opinion that purchase of other material in the relevant AY 2014-15 is disproportionate to that of AY 2013-14.
12. That in the facts and circumstances of the case and in law, the Ld. Pr.CIT has erred in holding that the AO has not examined/cross verified the claim of assessee with respect to exceptional loss amounting to Rs. 81.5 crore in AY 2014-15.
13. That the Ld. Pr.CIT failed to appreciate that complete details of exceptional loss amounting to Rs. 81.5 crore were filed by the assessee before the AO, who upon examination of material before him, was of the considered view that no additions were required to be made on trading account in the case of the assessee.
14. That accordingly, the Ld. Pr.CIT has factually erred in holding that the AO has

not examined details of the claim of exceptional loss amounting to Rs. 81.5 crore incurred by the assessee.

15. That without prejudice to the grounds above, the issue of claim of exceptional loss amounting to Rs. 81.5 crore was not forming part of the show cause notice dated 23.02.2018 issued by Ld. Pr.CIT u/s. 263 of the IT Act, 1961. Thus, there has been a clear violation of provisions of section 263 of the I.T Act along with principles of natural justice in so far as the assessee was never given an opportunity to be heard on the issue of claim of exceptional loss amounting to Rs. 81.5 crore.

16. That the appellant reserves their right, without prejudice, to add, delete, alter or modify any of the grounds of appeal either at the time of hearing, or before hearing of the appeal.”

3. The search and seizure operation under Section 132 of the Income Tax Act, 1961 was conducted by the Investigation Wing. For the assessment year 2014-15 the assessee had filed return of income on 29.11.2014 declaring loss of Rs.125,10,58,455/-. Thereafter assessee revised its return of income under Section 139(5) of the Act on 8.03.2016 declaring loss of Rs.125,10,58,455. The assessment was completed on 31.03.2016 by the Assessing Officer at returned loss of Rs.124,85,58,455/-. The Commissioner of Income Tax, Circle – 2, New Delhi, observed that the assessment order passed by the Assessing Officer is erroneous as well as prejudicial to the interest of Revenue to the extent that assessment was completed without proper examination / verification. The Assessing Officer completed the assessment in which all expenses shown by the assessee in its return of income was allowed. A show cause notice as per the provisions of Section 263 of the Act was issued to the assessee on 23.02.2018. The assessee filed its submission before the Pr. Commissioner of Income Tax, Central – 2, New Delhi. After considering the submissions, the Pr. CIT passed order under Section 263 of the Act on 31.03.2018 thereby directing the Assessing Officer to examine and verify 3 points which are mentioned in para 5 of the said order.

4. Being aggrieved by the order dated 31.03.2018 passed by the Pr. Commissioner of Income Tax, Central – 2, New Delhi, the assessee filed the present appeal before us.

5. The ld. AR submitted that the show cause notice issued by the Pr. Commissioner of Income Tax was on different point and the verification as per the direction to the Assessing Officer was on a different footing. Therefore, the order passed under Section 263 of the Act is not valid order.

6. The Ld. DR relied upon the order of the Pr. Commissioner of Income-tax.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the show cause notice related to the purchases was for the entire purchases and not for the specific purchase. In fact the assessee's submissions to the show cause notice revealed that the details were presented before the Assessing Officer as there were specific purchases and the same was properly taken into account by the Assessing Officer. Thus, Section 263 of the Act does not attract, as the Pr. CIT has taken divergent view on particular issue which is not contemplated while invoking the provisions of Section 263 of the Act, hence appeal of the assessee is allowed.

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

Order pronounced in the Open Court in presence of both the parties on this 15th Day of November, 2021.

**sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

**sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated : 15/11/2021
MEHTA

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI