

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "B", CHANDIGARH

BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

आयकर अपीलसं./ITA No.143/CHD/2021

निर्धारणवर्ष / Assessment Year : 2016-17

Royal Lifestyle Jewellers Pvt. Ltd., 18-A, 2 nd Floor, North Avenue Road, West Punjab Bagh, New Delhi	बनाम	The PCIT, (Central) Ludhiana
स्थायीलेखासं./PAN NO: AACCB0185A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing though video Conferencing

निर्धारितकीओरसे/Assessee by : Sh. Sudhir Sehgal, Advocate.

राजस्वकीओरसे/ Revenue by : Sh. Sarabjeet Singh, CIT DR

सुनवाईकीतारीख/Date of Hearing : 17.02.2022

उदघोषणाकीतारीख/Date of Pronouncement : 25.03.2022

आदेश/Order

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the assessee against the order dated 31.03.2021 passed u/s 263 of the Income Tax Act, 1961 (hereinafter called 'the Act') by the Ld. Principal Commissioner of Income Tax (Central), Ludhiana [hereinafter referred to as 'PCIT'] for assessment year 2016-17.

2.0 The assessee has raised the following grounds of appeal:-

1. *That the learned Principal Commissioner of Income Tax 'Central), Ludhiana has erred in assuming jurisdiction under section 263 of the Income Tax Act and thereby setting aside the order of AO completed under section*

143(3) of the Act with the direction to make the assessment de novo.

2. *That the learned Principal Commissioner of Income Tax (Central), Ludhiana has erred in assuming the jurisdiction under section 263 of the Income Tax Act by invoking the explanation 2 of section 263 of the Act without pointing out in which manner the inquiries or verification should have been made.*
3. *That the learned Principal Commissioner of Income Tax (Central), Ludhiana has failed to consider the fact that the assessment was made under section 143(3) of the Act by the AO after verifying the unsecured loans and making detailed inquiries. The loans were also verified by the Investigating Wing during post search inquiry made after the search. As such, the observations of the of the learned Principal Commissioner of Income Tax (Central), Ludhiana that the loans were not examined as per section 68 of the Income Tax Act are against the facts and circumstances of the case.*
4. *That the learned Principal Commissioner of Income Tax (Central), Ludhiana has failed to consider the fact that the refining loss of old gold ornaments was duly examined by the Investigating Wing on the day of search i.e. 11-02-2016 at the time of getting trading account prepared. Therefore, the AO after considering the detailed submission of the assessee company regarding refining loss in old gold ornaments and report of the Investigating Wing accepted the same. As such, the observations of the Ld. PCIT (Central), Ludhiana that the loss has not been examined are against the facts and circumstances of the case.*
5. *That the appellant craves to add or amend the grounds of appeal.*

3.0 The Ld. Authorised Representative (AR) submitted that the appeal challenges the setting aside of the assessment by the Ld. PCIT and the sum and substance of the various grounds of appeal taken by the assessee is that the said

assessment had been framed by the Assessing Officer (AO) after making requisite enquiries and after due application of mind and, therefore, the Ld. PCIT was wrong in holding the said assessment was erroneous and prejudicial to the interest of the revenue. It was submitted that the two issues which were the subject matter of the proceedings u/s 263 of the Act viz. unsecured loans, as raised during the year under consideration, and the issue of refining loss in old gold ornaments had been adequately enquired into by the AO during the course of assessment proceedings and the assessee too had responded by submitting the required details and evidences and, therefore, the Ld. PCIT was not justified in invoking the provisions of section 263 of the Act.

3.1.0 In order to substantiate that there was due application of mind by the Assessing Officer, the Ld. AR drew our attention to the various pages of the paper book filed by the assessee and also outlined the factual matrix of the case as under:

3.1.1 It was submitted that the assessee is dealing in the purchase and sale of gold and diamond jewellery for the past few years and the books of accounts of the assessee were duly audited. Our attention was drawn to the copies of computation of income, audit report and audited balance sheet placed in the paper book. It was submitted that search operations were conducted at the business premises of the assessee on 11.02.2016 and during the course of such search, the assessee was confronted with the difference in stock of gold jewellery as per the physical verification and as per the books of accounts and

an amount of Rs. 2.83 crore was surrendered in respect of excess stock in the statement recorded during survey. Our attention was drawn to a copy of the said statement placed at pages 1 to 13 of the paper book and it was further submitted that while filing the return of income, the said amount of Rs. 2.83 crore had been duly offered to tax. It was further submitted that during the course of search, gold trading account, diamond trading account and silver trading account from 01.04.2015 to 11.02.2016 were also prepared by the department and at page 14 of the paper book, in the gold trading account, refining loss of 450.840 grams has been mentioned and that after considering the said 'refining loss,' closing stock of 82053.709 grams had been determined as on 11.02.2016.

3.1.2 It was further submitted that the Assessing Officer issued a notice u/s 142(1) of the Act (placed at paper book pages 48 to 50) wherein, amongst other queries, the AO raised specific queries with respect to the gross profit rate and the net profit rate as well as loans and advances to which the assessee had given an elaborate reply enclosing relevant evidences. The Ld. AR submitted that the assessee had also submitted quantitative details of opening and closing stock and item wise trading account quantity wise. It was further submitted that the assessee also provided details of the unsecured loan/s from 01.04.2009 to 31.03.2016 to the AO and all the evidences with regard to the identity, genuineness and creditworthiness were furnished. Our attention was again drawn to the relevant pages in the paper book wherein such details had been submitted before the AO.

3.1.3 It was further submitted that another detailed questionnaire was issued by the AO (pages 82 to 85 of the paper book) wherein specific queries with respect to closing stock and quantitative details of gold ornaments were raised and the working of the surrender made during the search was also required to be submitted along with details of unsecured loans received during the year. It was submitted that again a reply was submitted to the Assessing Officer (paper book pages 86 to 91) and the discrepancy with regard to the stock was adequately explained and also the query regarding unsecured loan from M/s T. K. Professional Pvt. Ltd. was duly replied to by providing copy of ledger account for Assessment Years 2015-16 and 2016-17 along with confirmation, copy of PAN, copy of bank account, copy of Income Tax Return and audit report.

3.1.4 It was further submitted by the Ld. AR that, thereafter, the Assessing Officer sought approval u/s 153D of the Act and in the copy of the said approval which has been enclosed as pages 115 to 116 of the paper book, the Addl. CIT at page 116 has mentioned that the assessment proceedings along with seized record analysis were discussed from time to time and that he i.e. the Addl. CIT had also monitored field enquiries prior to the granting of the said approval.

3.1.5 The Ld. AR also referred to the detailed 'office note' as given by the Assessing Officer, while framing the assessment, wherein, the offer, as made on account of the stock of gold, has been discussed and the same is stated

to have been verified (pages 117 to 122 of the paper book). It was further noted that with respect to the unsecured loan, the satisfaction of the AO has been recorded at page 122 of the paper book.

3.1.6 It was further argued by the Ld. AR that the assessment proceedings were initiated on 16.05.2017 and they came to be concluded on 07.10.2017 (as per order sheet entry placed at page 123 to 125 of the paper book) and, thus, the said proceedings were carried out after due application of mind both by the AO as well as by the Addl. CIT (Central), Ludhiana and it was not a case that where no enquiry was made.

3.1.7 Our attention was, thereafter, drawn to the show-cause notice issued by the Ld. PCIT and placed at page 126 to 127 of the paper book and it was submitted that in the said show cause notice only two issues have been raised viz. refining loss of 450.840 grams and unsecured loan. It was submitted that in response to the show cause notice, reply was been given (placed at pages 128 to 131 of the 'paper book') which have been duly reproduced by the Ld. PCIT in the impugned order. It was further submitted that, however, while passing the order u/s 263, the Ld. PCIT has set aside the issue of verification of unsecured loan in respect of one party i.e. M/s. T. K. Professional Pvt. Ltd. in spite of the AO having duly enquired into the issue during the course of assessment proceedings. It was also submitted that the unsecured loan from M/s. T. K. Professional Pvt. Ltd. had been returned in the assessment year 2017-18 as per necessary evidence placed at page 149 of the 'paper book'. The Ld.

AR also drew our attention to the 'trading account' of gold prepared at the time of search at page 14 of the 'paper book' and argued that if the Refining loss of 450.840 grams was not considered, then the closing stock as on 11.02.2016 should have been more and he also referred to the 'office note' of the Assessing Officer in this regard. It was submitted by the Ld. AR that the Ld. PCIT has not considered the above said evidences and verification carried out by the Assessing Officer and has only stated that it needs verification and consequential enquiry without assigning any reason. The Ld. AR argued that the Ld. PCIT has not even stated as to what further enquiries were required to be made by the AO and how the enquiries made by the AO were not adequate. It was argued that the Ld. PCIT himself had not carried out any independent enquiry prior to reaching the conclusion that the assessment order was erroneous and prejudicial to the interest of the revenue.

3.1.8 It was submitted by the Ld. AR that the Ld. PCIT had completely chosen to ignore the fact that the AO had made proper and adequate enquiries and the assessee had given proper responses which were duly supported by evidences and that it was only after considering these evidences and responses that the AO had completed the assessment and that too after obtaining the necessary approval under the scheme of the Act. It was argued that the Ld. PCIT had merely acted on surmises and conjectures and had completely ignored the record before him and, therefore, the proceedings u/s 263 of the Act were bad in law and were liable to be quashed. It was argued by the Ld. AR that

where the Assessing Officer has specifically raised queries during the assessment proceedings, which proves the application of mind, then, such assessment proceedings cannot be held to be erroneous and prejudicial to the interest of revenue in terms of section 263 of the Act. Reliance was placed on the order of the Chandigarh Bench of this Tribunal in the case of Shri Surinder Pal Singh in ITA No. 57/Chd/2021, vide order dated 31.01.2022, wherein after examining the various case laws and the latest judgments, the order as passed by the PCIT u/s 263 was set aside. The Ld. AR also placed reliance on the following judicial precedents:

- (i) Venkatesh Technokraft Pvt. Ltd., in ITA No. 1464/Chd/2018
- (ii) Manisha Ajay Shah in ITA No. 3001/MUM/2019
- (iii) Pramod Kasharichand Shah in ITA No. 43/SRT/2018
- (iv) CIT vs. Anil Kumar Sharma reported in 335 ITR 83 Delhi-HC
- (v) CIT vs. Hindustan Marketing & Advertising Co. Ltd. reported in 341 ITR 180 Delhi-HC
- (vi) CIT Vs Late Shri Vijay Kumar Koganti reported in 195 DTR 428 Madras High Court.
- (vii) M/s DTE Exports Pvt. Ltd. Vs Pr. CIT (ITAT Visakhapatnam).

3.1.9 Reliance was placed on numerous other judicial precedents copies of which have been enclosed in the paper book and the same have been taken on record.

3.1.10 It was further contended by the Ld. AR that proceedings u/s 263 can be invoked only on the personal satisfaction of the Ld. PCIT and it was

brought to our notice that in the present case the proposal u/s 263 was moved by the AO to Ld. PCIT for invoking provision of Section 263 and, thereafter, the Ld. PCIT, on the basis of the said proposal, had issued a notice u/s 263, and, thus, it was argued that the observation of the Ld. PCIT in the impugned order that he had occasion to peruse the assessment record is not correct. Reliance was placed on the order of the 'Amritsar Bench' of the ITAT in the case of 'Ambey Construction' in ITA No. 208/Asr/2017 vide order dated 07.05.2019, wherein the order of the Ld. PCIT u/s 263 was quashed as having been passed on the basis of the proposal given by the AO. Similar reliance was placed on the following judicial precedents:

-Manish Chirani vs. PCIT in ITA No. 1161/Kol/2019

-John Galt International vs. PCIT in ITA No. 2155/Mum/2017

-Span Overseas Ltd. vs. CIT in ITA No. 1233/PN/2013

- Priyank Sharma vs. CIT in ITA No. 347/JP/2013

-Alfa Laval Lund AB Vs CIT (International Taxation) reported in 210 DTR 313.

3.1.11 The Ld. AR also argued that the impugned order was liable to be set aside on another ground also i.e. for the reason that the order of assessment had been passed on the basis of 'approval' given by the Addl. Commissioner of Income Tax u/s 153D of the Act and that as per the order of the 'Delhi Bench' of ITAT in the case of .Pankaj Bansal in ITA No. 383/Del/2021 & Ors. it has been held that without revising the order of the Addl. Commissioner of Income

Tax u/s 153D of the Act, no valid order u/s 263 could be passed by the Ld. PCIT.

3.1.12 The Ld. AR concluded his arguments by submitting that the order of assessment had been passed after making due enquiries, verification and due application of mind by the Assessing Officer and, therefore, the order, as passed u/s 263 of the Act, by the Ld. PCIT deserved to be set-aside.

4.0 Per Contra, the Ld. CIT DR on behalf of the department relied vehemently on the finding of the Ld. PCIT and argued that detailed enquiries were required to be made on the two issues which had not been made and that the Ld. PCIT had only set-aside the issue and, therefore, there should not be any grievance. With respect to the approval u/s 153D of the Act not having been revised, reliance was placed on the order in the case of Kapil Mehta passed by the Delhi Bench of ITAT, bearing ITA No. 533/2021 vide order dated 11.10.2021 wherein, after considering the judgment in the case of Pankaj Bansal (supra), finding had been given in favour of the revenue. While supporting the order of the Ld. PCIT, the Ld. CIT DR vehemently argued that the AO had failed to make the requisite enquiries and, therefore, the assumption of jurisdiction u/s 263 of the Act and subsequent setting aside of the assessment was legally valid and justified.

5.0 We have heard the rival contentions and have also perused record as well as the paper book filed by the assessee in support of its contention that the AO had made adequate enquiries during the course of assessment

proceedings and further in support of its claim that the assessee had submitted all relevant documents and evidences in response to the queries raised by the AO. We have duly considered the assessment order and at the very outset it can be seen that all the issues which were the subject matter of the show cause notice issued by the Ld. PCIT had already been enquired into by the Assessing Officer and he, after duly considering the voluminous documents and evidences furnished by the assessee, reached a conclusion after due application of mind. It is a matter of record that specific queries were raised by the AO and required details were filed in respect of unsecured loans as well as in respect of refining loss in gold account. It is also not the case of the Department that the assessee did not discharge its onus before the AO. Therefore, we are unable to concur with the view taken by the Ld. PCIT that the AO had not conducted necessary enquiries prior to the passing of the assessment order. We also do not agree with the argument advanced by the Ld. CIT DR that there was a non-application of mind on the part of the AO.

5.1 At this juncture, it would be relevant to make a reference to the judgment of the Hon'ble Delhi High Court in the case of CIT Vs. Sunbeam Auto Ltd reported in [2011] 332 ITR 167 (Del.) wherein the Hon'ble Delhi High Court has ruled that one has to keep in mind the distinction between 'lack of inquiry' and 'inadequate inquiry' and further if there was any inquiry, even inadequate, that would not by itself give occasion to the Commissioner to pass orders u/s 263 of the Act, merely because he has a different opinion in the

matter. It was further held by the Hon'ble Delhi High Court that if any Assessing officer, acting in accordance with law, makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately.

5.2 Similar were the observation of the Hon'ble Delhi High Court in the case of ITO Vs. DG Housing Projects Ltd [2012] 343 ITR 329 (Del). In this case, the Hon'ble Delhi High Court went on to observe that in case where there is in-adequate inquiry but no lack of inquiry, the CIT must give and record a finding that the order/enquiry made is erroneous and that this can happen only if an inquiry and verification is conducted by the CIT. The Hon'ble Delhi High Court in the case of ITO Vs. DG Housing Projects Ltd (supra) also held that in most cases of alleged 'inadequate inquires' it will be difficult to hold that the order of the Assessing officer, who had conducted enquiries and had acted as a Investigator, is erroneous, without the CIT conducting verification /inquiry himself. However, in the present cases, no such inquiry has been carried out by the Ld. PCIT and he has simply directed the Assessing officer to carry out detailed inquires. In our considered opinion, the Ld. PCIT, without making further inquiries on his own account, has simply stated in the impugned orders that the Assessing officer was required to make more inquiries. The Ld. PCIT has not pointed out as to what further inquiries was the Assessing officer required to make and as to how without those inquires the order of the

Assessing officer were erroneous in so far as prejudicial to the interest of the Revenue.

5.3 Similarly, the Hon'ble Delhi High Court in the case of DIT Vs. Jyoti Foundation [2013] 357 ITR 388 (supra) held as under:

“that inquiries were certainly conducted by the Assessing Officer. It was not a case of no inquiry. The order under section 263 itself recorded that the Director felt that the inquiries were not sufficient and further inquiries or details should have been called for. The inquiry should have been conducted by the Director himself to record the finding that the assessment order was erroneous. He should not have set aside the order and directed the Assessing Officer to conduct the inquiry.”

5.4 In the present case also, the A.O. made the requisite enquiries, therefore, it is not a case of no enquiry and if the Ld. Pr. CIT was not satisfied with the enquiries made by the AO, he should have conducted the enquiries himself to record the findings that the assessment order was erroneous and he should not have simply set aside the order passed by the AO directing him to conduct the further enquiries.

5.5 On identical issue, the Hon'ble Jurisdictional High Court in the case of CIT vs. M/s Unique Autofelts (P) Ltd (2009) 30 DTR 231 (P&H) held as under:

"5. From the finding of the Tribunal, it is clear that the assessee had given proper explanation by filing the necessary confirmations. In view of such a finding, the

Tribunal rightly held that power under Section 263 of the Act could be exercised where view taken by an Assessing Officer was erroneous. While exercising such power, the Commissioner was bound to take into account all relevant facts. If order invoking the said power proceeds on an erroneous assumption, the same could be set aside by the Tribunal. Finding of the Tribunal is not shown to be perverse. No substantial question of law arises."

5.6 Similarly, the Hon'ble Supreme Court in the landmark judgment reported in the case of Malabar Industries vs. CIT (2000) 243 ITR 83 (SC) has held as under:

"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 committed by the Assessing Officer, if is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. The phrase "prejudicial to the interests of the Revenue" is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not

confined to loss of tax. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income-tax officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue. The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law."

5.7 In the present case, even at the risk of repetition, we observe that the AO had made enquiry regarding unsecured loans and had also enquired into the issue of melting loss and the assessee too had responded to the query and had submitted details and evidences in support of its contention before the AO. The same was duly brought to the notice of the Ld. PCIT also in response to the show cause notice issued u/s 263 of the Act. However, the Ld. PCIT did not consider the submissions of the assessee to be of any good. Therefore, it is our considered view that there was a due application of mind on the part of the AO and that adequate and proper enquiries had been conducted by the AO in this regard and, therefore, the impugned order passed u/s 263 of the Act has no feet to stand on. Accordingly, we hold that the proceedings u/s 263 of the Act were bad in law and we quash the revisionary proceedings for the reason that

the AO had already made adequate enquiries on the issues raised by the Ld. PCIT and further the Ld. PCIT had not conducted any independent enquiry on his own before coming to an incorrect conclusion that the assessment order was erroneous as being prejudicial to the interest of the revenue and was liable to be set aside.

5.8 Since we, have quashed the impugned order passed u/s 263 of the Act for the reasons as given in the preceding paragraphs, we are not inclined to comment/adjudicate on the issue of requirement of revision of approval obtained under section 153D of the Act. We are also not inclined to comment/adjudicate on the issue of the Ld. PCIT having initiated the impugned proceedings on proposal initiated by the Assessing Officer.

6.0 In the final result, the appeal of the assessee stands allowed.

Order pronounced on 25.03.2022.

Sd/-
(N.K. SAINI)
Vice President

Dated : 25.03.2022

“आर.के.”

Sd/-
(SUDHANSHU SRIVASTAVA)
Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar