

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “E”: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No. 470/DEL/2021
[Assessment Year: 2015-16]**

Shri Narendra Goel, Prop. V.P. and Company, 92, Gher Khatti, New Mandi, Muzaffarnagar-251001 PAN- AASPG3568R	<u>Vs</u>	Pr. CIT, Income-tax Office, 13-A, Subhash Road, Dehradun-248001.
APPELLANT		RESPONDENT
Appellant by	Sh. Ankit Gupta, Adv.	
Respondent by	Ms. Sarita Kumar, CIT (DR)	
Date of hearing	16.03.2022	
Date of pronouncement	17.05.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Principal Commissioner of Income-tax (“Pr.CIT” in short), Dehradun, dated 9.3.2021, pertaining to the assessment year 2015-16. The assessee has raised following grounds of appeal:

“1. That the notice issued under Section 263 of the Income Tax Act, 1961 and the order passed by the Pr. CIT under said Section are illegal, bad in law and without jurisdiction.

2. That the Pr. CIT has failed to appreciate, that the assessment order passed under Section 143(3) by the Assessing Officer is neither erroneous nor prejudicial to the interest of Revenue and as such the order passed by the Pr. CIT order under Section 263 in set aside the assessment order and given a direction of passing, it fresh is illegal, bad in law and without jurisdiction.

3. That the notice by the Pr. CIT under Section 263 does not show that the Assessing Officer committed any error in passing the assessment order under Section 143(3). Therefore, the jurisdiction assumed by the Pr. CIT under Section 263 is illegal and without jurisdiction and is liable to be quashed.

4. That the Pr. CIT has failed to appreciate, that, the assessment order passed by the assessing officer after duly investigation, therefore, the allegation of Pr. CIT that the assessment order passed by the assessing officer is erroneous and prejudicial to the interest of revenue is highly arbitrary and against the facts of the case.

5. That the Pr. CIT has failed to appreciate that the assessee appellant has filed the confirmations of advance from customer as requisite by the assessing officer, thereafter, the assessing officer has taken a view, which is a possible view. Hence, the Pr. CIT has erred in law and on facts in setting aside the assessment to be redone afresh.

6. That the observation of the Pr. CIT are based on surmises and conjectures and on the basis of the different view taken by the Assessing Officer after framing the Assessment Order Section 143(3) and do not afford any legal justification to the findings given.

7. That the proceedings under Section 263 are initiated at the instance of Assessing Officer and the order passed by the Pr. CIT is clearly without application of mind as it refer to many irrelevant issues hence the order under section 263 is liable to be quashed.

8. *That the Pr. CIT has erred in not providing proper and adequate opportunity to Appellant to place the material on record and the impugned order passed is against the principle of natural of justice.*

9. *That all the facts and circumstances of the case and the material available on record have not been properly considered by the Pr. CIT while passing the order under Section 263. The impugned order is illegal, arbitrary and bad in law.*

10. *The Appellant craves leave to add, amend, alter and or modify the grounds of appeal of the said appeal.”*

2. Facts, in brief, are that in this case assessment u/s 143(3) of the Income-tax Act, 1961, hereinafter referred to as the “Act”, was framed vide order dated 31.5.2017 determining income at Rs.17,82,584/-.Subsequently, the learned Pr.CIT on examination of record observed that the Assessing Officer had not carried out requisite inquiry regarding advances from customers and also introduction of fresh capital. Accordingly a notice u/s 263 of the Act was issued to the assessee. In response thereof, authorized representative of the assessee appeared and filed reply to the show cause notice issued by the learned Pr.CIT. However, the reply of the assessee was not found acceptable. The learned Pr.CIT observed that the assessee had simply submitted a verbal narration without furnishing any documentary evidence in support of its claim. It was further observed that assessee did not submit copy of bank statement reflecting the repayment of liabilities due to M/s Maa Kaila Foundries Private Limited in support of the confirmation of accounts.

Therefore, the learned Pr.CIT revised the assessment order and directed the Assessing Officer to pass the assessment order afresh after examining the issue as observed by the learned Pr.CIT. Aggrieved against this the assessee is in appeal before this Tribunal.

3. Apropos to the grounds of appeal, learned counsel for the assessee reiterated the submissions as made in the written synopsis dated 16.3.2022. For the sake of clarity, the written synopsis of the assessee is reproduced as under:

“That, the assessee is an Individual and enjoy Income from trading of Iron, Re-rolling Material under the proprietorship firm M/s V. P. and Company and Salary from M/s Durga Ispat and M/s Kama Metal and Alloys Pvt. Ltd. and Rent and Interest from Saving Bank Account, The M/s V.P. and Company is mainly purchased Iron, Re-rolling Scrap from Indian Railway through Auction and Indian Railway collect TCS @1% on Auction Amount.

That, the case of the assessee has been picked up for the assessment scrutiny by issuing notice U/s 143(2) dated 27.07.2016 under the scheme of CASS, which was completed by the assessing officer and passed assessment order dated 31.05.2017 on Income of Rs. 17,82,584.00 against the Return Income of Rs. 13.45.220.00. The assessee has not filed any appeal against the said order.

Subsequently, the Pr. CIT, Dehradun has issued notice U/s 263 dated 21.01.2020 and initiated the proceedings U/s 263 of the Income Tax Act, 1961 proposed to set-a-side the assessment proceeding on the following grounds:

- 1) Advance from Customer from M/s Maa Kaila Foundries Private Limited;*
- 2) Introduction of fresh capital of Rs. 18,00,000.00 on 02.04.2014;*
- 3) Entries reflected in the bank account as OWN CHQ XFER DP;*

In response to the alleged notice, the assessee filed a reply before the Pr. CIT, Dehradun and evidences. Thereafter, set aside the assessment order dated 31.05.2017 by passing the order dated 09.03.2021, after making following observation:

“4. The assessee had simply submitted a verbal narration of his case without furnishing any documentary evidence in support of his claim as required vide show’ cause notice dated 21.01.2020. The assessee has not submitted copy of bank statement showing the repayment of liabilities due to M/s Maa Kalia Foundries (P) Ltd in support of the confirmation of accounts. Under this circumstance, the claim of the assessee is found to be deficient and untenable. ”

Being Aggrieved from the above finding and order passed, the assessee filed this appeal before the Hon'ble Tribunal, It is respectfully submitted, as under:

ISSUE-1

1) That Pr.CIT allegedly found only one issue erroneous and prejudicial to interest of revenue, that the assessee did not file the bank account of showing the repayment of liabilities due to M/s Maa Kalia Foundries Ltd in support of confirmation of accounts, without appreciating that the assessing officer has verified the transaction and adequate inquiry was conducted during the assessment proceedings, such as:

- a. That, the assessee has shown the liability under the head of Advance from Customer from M/s Maa Kaila Foundries Private Limited having a PAN No.AACCM-4899-E at Rs.3,12,286.00 in his ITR and Audited Balance Sheet as Annexure D (Kindly Refer Page 57 of P/B).*
- b. That the assessing officer has raised the query in reference to the Advance to Customer at Query 9 of the notice issued U/s 142(1) dated 19.12.2016. (page No. 22 to 24, Kindly Refer Page No. 24 Point 9)*
- c. In response to the said query the assessee filed the details of the Advance from Customer in shape of list and confirmation, as stated below: (page No.25 to 30, Kindly Refer Page No. 25 Point 1)*

- i. Name and Addresses of the Parties.*
- ii. Pan Number of the Parties.*
- iii. Confirmation of the Parties. (Page No.26 & 30 of the P/B)*

Thereafter, the assessing officer conducted the inquiry has issued the notice U/s 133(6) on pick and choose to the major parties, which is also duly complied by the said party, the copy of reply annexed (Page No. 28 & 29). Also, the assessee produce the complete books of accounts, which were check and verified by the assessing officer during the assessing officer.

Before the Pr.CIT the assessee contended that the said liability has been re-paid in the subsequent year, the ledger were filed through banking channels, the copy of the ledger alongwith bank account for subsequent year is being enclosed for your ready reference, .(Kindly Refer page No. 4 to 9 of the Paperbook). It is pointed out that the assessment for the next assessment year A.Y. 2016-17 was completed U/s 143(3) of the Act, in which part payment was made.

ISSUE-2

1) That, the Ld. Pr. CIT has doubted the introduction of fresh capital of Rs. 18,00,000.00 on 02.04.2014 in the show cause notice, without appreciating that the assessing officer has verified the transaction and adequate inquiry was conducted during the assessment proceedings, such as, the assessing officer raised the specific query during the hearing and the assessee duly reply the same (Kindly Refer Page 31-32 Point No.4) vide reply filed before the assessing officer. Further the assessee explained the source of the fresh capital of Rs. 18,00,000.00 has been given out of the opening balance available at Rs. 19,05,053.00 with the assessee, in his bank account with UBI a/c no.513702010001423 as on 31.03.2014, copy of the bank account is enclosed for your ready reference(Page 13 of P/B), out of which the assessee has introduce the capital of Rs. 18,00,000.00 on 02.04.2014. The source of the balance available is as under :-

<i>Sr. No.</i>	<i>Date</i>	<i>Particular</i>	<i>Amount</i>	<i>Remarks</i>
<i>1)</i>	<i>31.03.2014</i>	<i>Opening balance</i>	<i>92,628.00</i>	<i>Bank Statement of assessee (page 13 of P/B)</i>
<i>2)</i>	<i>31.03.2014</i>	<i>Durga Ispat Pvt. Ltd.</i>	<i>4,12,980.00</i>	<i>Director Salary, The confirmed copy of account is enclosed (Page 14-15 of the P/B)</i>
<i>3)</i>	<i>31.03.2014</i>	<i>Durga Ispat Pvt. Ltd.</i>	<i>1,00,000.00</i>	<i>Deposit, the confirmed copy of account is being enclosed</i>

				(page 16 of the P/B)
4)	31.03.2014	V.P. and Company, (Assessee own Prop. Firm)	13,00,000.00	Bank account of the Proprietor firm of the assessee is enclosed (Page 17 of the P/B)
			Total	19,05,608.00

In view of the above facts and circumstances, the assessee has duly explained the source of the introduction of fresh capital of Rs. 18,00,000.00 in his proprietorship firm M/s V.P. & Company, is from the brought forward balance of Rs. 19,05,608 from the earlier year. The assessee is also explaining the source of the available as 31.03.2014, which is brought forwarded balance from previous year.

The same is also appreciated by the Pr.CIT during the hearing and no adverse comment was made in the impugned order by the Pr.CIT.

ISSUE- 3

That, the Td. Pr. CIT has doubted in his show cause that, in the bank account no. 10880239268 with State Bank of India of the assessee, there is an entry of Rs. 10,00,000.00 dated 25.8.2014 reflected in the bank account as OWN CHQ XFER DP and the same amount has been transfer, in the proprietorship firm of the assessee (Kindly refer Page No. 18 to 21, Relevant Page No. 19). It is submitted that the said amount has been received as unsecured loan from his wife Smt. Sushma Goel. During the assessment proceedings, the assessee has filed, the ITR. Bank Account and confirmation from his wife Smt. Sushma Goel. The assessing officer has raised the query in the notice Issued U/s 142(1) dated 19.12.2016 (page No. 22 to 24, Kindly Refer Page No. 24 Point 9). The details of the said unsecured loans were provided by the assessee (page No. 34 - 35, Kindly Refer Page No. 34 Point 4) filed before the assessing officer. The amount is self explanatory, that, the assessee has received unsecured loans from his wife, therefore, the transaction is identifiable, genuine and creditworthy

The same is also appreciated by the Pr.CIT during the hearing and no adverse comment was made in the impugned order by the Pr.CIT.

In view of the facts and circumstances, the Pr.CIT has erred in initiating the proceedings U/s 263 and also in passing the impugned order and set-a-siding the assessment order being erroneous and prejudicial to the interest of revenue, is itself illegal, bad in law and without jurisdiction, on the following grounds:

- a) *No Material on record that the assessment order passed is erroneous and prejudicial to the interest of revenue.*

That, the Pr.CIT failed to bring anything on record that how the assessment order passed is erroneous and prejudicial to the interest of revenue, when the judicial court has categorically observed that the Pr.CIT has to demonstrate in the notice and in the order passed that assessment order passed by assessing officer is erroneous and prejudicial to the interest of revenue, in the present case the Pr. CIT has failed to do so, merely filling of the bank statement of the subsequent year cannot be held erroneous and prejudicial to interest of revenue.

- b) *The assessing officer has made the adequate inquiry ;*

That, Pr.CIT failed to appreciate that the assessing officer has made the inquiry after filling the details by the parties on pick and choose basis U/s 133(6) of the Act.

- c) *The view taken by the assessing officer is possible view:*

That, the inquiry and material available on record, such confirmations and books of accounts, the assessing officer has found the transaction genuine and verifiable, which is a possible view under the above facts and circumstances.

In view of the above submission, the assessee wants to rely on the following judicial precedents:

- a) *The Decision of Hon'ble Delhi High Court in the case of CIT vs. Anil Kumar Sharma 335 ITR 83, has held that where it was discernible from record that the AO has applied his mind to the issue in question, the CIT cannot invoke Section 263 merely because he has different opinion.*
- b) *The Hon'ble Jurisdictional High Court in the case of CIT Vs. Rashid Exports Industries 66 Taxmann.com 38 (All.) has held, that, if the assessing officer had adopted a view which is permissible in law, than, the order passed by the assessing officer cannot be held as erroneous and prejudicial to the interest of revenue, for the purpose of section 263.*
- c) *The Decision Hon'ble Delhi High Court in the case of Vikas Polymer reported in 341 ITR 537*

d) The Decision Hon'ble ITAT, Delhi Benches in the case Eicher Motors Ltd. v. Commissioner of Income-tax [2021] 125 taxmann.com 431 (Delhi - Trib.)/[2021] 86 ITR(T) 530 (Delhi - Trib.)[25-01- 2021]*

In view of the above discussion, it is clearly proved, that, the assessment order passed by the assessing officer is not erroneous and prejudicial to the interest of revenue, hence the presumption of the jurisdiction by Pr.CIT is illegal, bad in law and without jurisdiction.

It is therefore, humbly requested kindly allow the appeal and restore the assessment order by the assessing officer U/s 143(3) of the Act.

4. Per contra, learned CIT(DR) opposed the submissions and supported the order of learned Pr.CIT. Learned CIT(DR) further took us through the provisions of Section 263 of the Act and submitted that the learned Pr.CIT was justified in revising the order under the facts and circumstances of the present case that the Assessing officer grossly failed to examine the issues and verify the correctness of the claim of the assessee. He submitted that the Assessing Officer accepted the claim of the assessee in a mechanical manner.

5. We have heard rival submissions, perused the material on record and gone through the impugned order. The assessee is aggrieved by the action of the learned Pr.CIT for revising the assessment order passed u/s 143(3) of the Act dated 31.05.2017. It is the contention of the assessee that the action of initiation of proceedings u/s 263 is contrary to the settled principle of law. It is submitted on behalf of the assessee that the relevant explanations/ evidences were called by the Assessing Officer and virtually filed before the Assessing Authority, who had

verified and accepted the same. The assessee has placed reliance on the judgment of the Hon'ble Delhi High Court rendered in the case of CIT vs. Anil Kumar Sharma 335 ITR 83 and the decision of the Hon'ble Allahabad High Court in the case of CIT Vs. Rashid Exports 66 Taxmann.com 38. We find that in the present case the Pr.CIT has decided the issue regarding the assessment order being erroneous and prejudicial to the interests of revenue by observing as under:

“2. On examination of the case records, it was noted that

(i) The perusal of the replies received from the parties to whom notices u/s 133(6) have been issued to verify “Advance from Customers” shown in the balance sheet revealed that in the case of Maa Kalika Foundaries Pvt. Ltd., 580, Mohammad Mah, only confirmation of account was submitted. The AO did not carry out examination to verify the identity, genuineness and creditworthiness of the parties from liabilities under the head “ Advances from customers” have been shown.

(ii) The assessee has introduced fresh capital of Rs. 64,05,700/- during the year in his proprietorship firm out of which Rs. 18,00,000/- has been transferred to the firm on 02.04.2014. However, perusal of the bank statement of Union Bank Account No 513702010001423 does not explain the source of amount of Rs. 18,00,000/-. Therefore, the source of fresh capital introduced in the proprietorship firm was not examined by the AO.

(iii) A perusal of statement of bank A/c No 10880239268 revealed that an amount of Rs. 10,00,000/- has been credited with the remark of “ OWN CHQ XEFRDP” on 25.08.2014 and on the same date, an amount of Rs. 10,00,056/- has been transferred to the proprietorship firm. Further, on perusal of the bank statements of family members, it was noticed that most of the entries through which the transactions have been made with the assessee are found with the remarks of “CAS CHQ XFER WD”. Therefore, the transactions made between the assessee and —fife family were not examined by the AO.

3. On being confronted with the above facts through a show cause notice dated 21.01.2020, Shri Rajneesh Goel, Advocate & AR of the assessee filed a written submission. Further, the counsel of the assessee appeared on 13.02.2020 and the case was heard. The written submission filed by the counsel of the assessee is as under:-

That the confirmed account copy from the party M/s Maa Kaila Foundries Private Limited was filed at the time of assessment. The outstanding liability shown under the head "advance from customer" was 3,12,286/-. The assessee had sold goods worth 9,87,714/- on 23.04.2014 against which the party a bank RTGS of Rs. 13,00,000/- was made with specification for more goods to be supplied. The liability of 3,12,286/- remained. This amount was subsequently paid through account payee cheques for Rs. 1,31,350/- on 23.10.2015 and 1,80,936/- on 14.03.2017. The account copy from out books from subsequent years is filed herewith. There is no discrepancy in the account and the confirmed account copy from the party is again filed.

That the fresh capital introduced to the tune of Rs. 18,00,000/- on 02.04.2014 transferred from savings account with Union Bank number 513702010001423 to the business account was from the opening balance of Rs. 19,05,053/- in the assessed saving account. In this opening balance of Rs. 19,05,053/- as on 01.04.2014 the assessee had received transfer of Rs. 4,12,980/- from his salary account with m/s Durga Ispat Pvt. Ltd. and Rs. 1,00,000/- from his loan account with M/s Durga Ispat on 31.03.2014. Rs. 13,00,000/- were transferred by the bank out of the Cash Credit account on 31.03.2014. The bank usually transfer some amount from unused CC limit and to show enhanced deposits in saving account. The saving Bank and a/c copies from M/s Durga Ispat of last year are attached herewith.

That the transaction made between the assessee and family members were thoroughly examined by the assessing officer at the time of assessment. The Income Tax acknowledgement, computation, bank account, and confirmed account copy from the family members were filed.

"CAS CHQ XFER WD" is some bank code but these entries does not involve cash. All these entries were carried out through account payee cheques only.

In the interest of natural justice, the assessee was accorded one more opportunity vide letter dated 26.02.2021 for furnishing any additional submission in support of his claim for which date for compliance was fixed on or before 08.03.2021. However, the assessee preferred not to make additional submission. Therefore, it has been presumed that the assessee has nothing further to add to his earlier submission dated 31.01.2020.

4. *The assessee had simply submitted a verbal narration of his case without furnishing any documentary evidence in support of his claim as required vide show cause notice dated 21.01.2020. The assessee has not submitted copy of bank statement showing the repayment of liabilities due to M/s Maa Kalia Foundries (P) Ltd in support of the confirmation of accounts. Under this circumstance the claim of the assessee is found to be deficient and untenable.*

5. *Having carefully examined the case record and the submission of the assessee, I hold that the assessment order for AY 2015-16 dated 31.05.2017 passed u/s 143(3) is erroneous and also prejudicial to the interests of revenue u/s 263 of the I.T. Act. As the assessment order was passed without making requisite inquiries/ verification which should have been made, it is therefore, set aside with the direction to AO to pass the assessment order afresh after examining above mentioned issued and after affording opportunity of being heard to the assessee.”*

6. From the above finding of the learned Pr.CIT it is clear that the impugned decision for exercising power u/s 263 was taken on account of the failure of assessee for furnishing of documentary evidences in support of his claim.

7. However, the contention of the assessee is that on all the three issues the Assessing Officer has duly examined the called for evidences and all the evidences were supplied to the assessing authority. It is the say of the assessee that the Assessing Officer has made adequate inquiry and issued notice u/s 133(6) of the

Act. The Assessing Officer has taken one of the possible views. Merely because the learned Pr.CIT has a different view that should not be the basis of initiation of proceedings u/s 263 of the Act.

8. There is no dispute with regard to the fact that learned Pr.CIT is empowered to exercise power under Section 263 of the Act, if twin conditions envisaged under the aforesaid provision are satisfied i.e. the order sought to be revised is erroneous and prejudicial to the interest of the Revenue. Therefore, it is to be examined whether the aforementioned requirement of law is satisfied in the present case. Section 263 of the Act has further undergone amendment vide Finance Act, 2015 whereby Explanation 2 is inserted. For the sake of clarity Explanation 2 is reproduced as under:

“Explanation 2. – For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner, -

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) The order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.”

9. As per clause (a), if the order is passed without making inquiries or verification which should have been made, shall be deemed to be erroneous in so

far as it is prejudicial to the interests of the Revenue, if so opined by the learned Pr.CIT. In the present case, in the opinion of learned Pr.CIT, the assessment order was passed without making requisite inquiries/ verification which should have been made. As per learned Pr.CIT, Assessing Officer failed to make necessary inquiry. It is also recorded that the assessee has simply submitted verbal narration without furnishing any documentary evidence. Hence, it was held that the assessment order dated 31.05.2017 passed u/s 143(3) was erroneous and also prejudicial to the interest of revenue. However, looking to the material placed on record we find that the Assessing Officer issued a questionnaire along with notice u/s 142(1) dated 19.12.2016. In response thereto, the assessee had filed his reply regarding the queries raised by the Assessing Officer. It is also transpired from record that notices u/s 133(6) of the Act were issued. Thereafter, he framed the assessment. We find that the assessee in response to notice u/s 263, had duly explained the transaction related to M/s Maa Kalika Foundaries Pvt. Ltd., introduction fresh capital and also description "CAS CHQ XFER WD". Looking to the material placed before us, the Pr.CIT has not made out a case of any prejudice caused to the Revenue. The law is well settled that for exercising power u/s 263 twin conditions are required to be satisfied – (i) that the order should be erroneous and; and (ii) it should cause prejudice to the interests of Revenue. Moreover, it is not the case where the assessee failed to substantiate his claim, rather the

explanation along with supporting evidences were placed before the assessing officer and the learned Pr.CIT. In our considered view merely on the basis of suspicion, invoking of powers u/s 263 would not be justified. The concluded assessment should be revised where there is blatant error committed by the assessing officer, which culminated into the prejudice to the interest of Revenue. But where the Assessing Officer made necessary inquiry and satisfied itself about the explanation offered to him, revising such an order is highly unjustified and contrary to the ratio laid down by the Hon'ble Supreme Court in the case of M/s Malabar Industrial Co. Ltd. Vs. CIT (2000) 243 ITR 83. Therefore, in the present case the action of the learned Pr.CIT is unjustified and the same is hereby set aside and the assessment is restored.

10. Assessee's appeal stands allowed.

Order pronounced in open court on 17th May, 2022.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI