

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"G" BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.919/Mum./2021**  
**(Assessment Year : 2016-17)**

M/s. Gold Star Fine Jewellery LLP  
8, Royal Star Arcade, Opp. Seepz Main Gate  
Andheri (East), Mumbai 400 093  
PAN – AAJFG8272D

..... Appellant

v/s

Principal Commissioner of Income Tax  
Circle-20, Mumbai

..... Respondent

Assessee by : None

Revenue by : Shri Shekhar L. Gagbhiye, CIT-DR

Date of Hearing – 07.03.2022

Date of Order – 20/05/2022

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 24.03.2021, passed under section 263 of the Income Tax Act, 1961 ("*the Act*") by the learned Principal Commissioner of Income Tax, Mumbai ("*learned PCIT*"), for the assessment year 2016-17.

2. When the appeal was called for hearing, no one appeared on behalf of the assessee to represent its case. There is no application for seeking adjournment either. On perusal of the record, we find that notice of hearing

scheduled on 10/01/2022 was issued by the registry of the Tribunal on 02/12/2021 to the assessee. However, no one appeared for / on behalf of the assessee on 10/01/2022 and appeal was adjourned to 07/03/2022. Notice was again directed to be issued to the assessee through learned Departmental Representative ("*learned DR*") for the hearing scheduled on 07/03/2022. We find from the record that the said notice was received by the assessee on 21/01/2022, copy of acknowledgement has been filed by the office of learned DR. In view of the above and considering the nature of dispute, we proceed to dispose of the appeal *ex-parte* qua the assessee after hearing the learned DR and on the basis of material available on record.

3. In this appeal, the assessee has raised following grounds:-

*"1. The Learned Pr. Commissioner of Income Tax has erred in law, facts and circumstances of the case by issuing notice and passing order under section 263 of the Income Tax Act, 1961 and setting aside the Assessment order u/s 143(3) of the Income Tax Act, 1961 dated 22.12.2018 on the ground that the said order is erroneous and prejudicial to the revenue whereas it was a change in opinion rendering the order bad in law.*

*2. The Learned Pr. Commissioner of Income Tax has erred in law, facts and circumstances of the case by treating the order passed under section 143(3) of the act dated 22.12.2018 erroneous and prejudicial to the Interest of the Revenue u/s 263 of the Income Tax Act, 1961 on the issue of genuineness of unsecured loans amounting to Rs. 6,48,49,874/- by ignoring the fact that the Learned Assessing Officer has called for information on this issue and thereafter made full inquiry during the proceedings u/s 142(1)/143 (3) of the Income Tax Act, 1961 and the submission was made on 17.12.2018 thereby rendering the notice and the subsequent order u/s 263 of the Income Tax Act, 1961 merely a change of opinion and bad in law.*

*3. The Learned Pr. Commissioner of Income Tax has erred in law, facts and circumstances of the case by treating the order passed under section 143(3) of the act dated 22.12.2018, erroneous and*

*prejudicial to the interest of the Revenue u/s 263 of the Income Tax Act, 1961 on the issue of genuineness of claim of other expenses amounting to Rs. 1,23,63,820/- by ignoring the fact that the Learned Assessing Officer has called for information on this issue and thereafter made full inquiry during the proceedings u/s 142(1)/143 (3) of the Income Tax Act, 1961 and the submission was made on 17.12.2018 thereby rendering the notice and the subsequent order u/s 263 of the Income Tax Act, 1961 merely a change of opinion and bad in law."*

4. The only grievance of the assessee in the present appeal is against the order dated 24/03/2021 passed by the learned PCIT under section 263 of the Act.

5. The brief facts of the case pertaining to the appeal as emanating from the record are: The assessee e-filed its return of income on 17/10/2016 declaring total income at Rs. Nil. The Assessing Officer passed the order dated 22/12/2018 under section 143 (3) of the Act, observing as under:

*"2. The case was selected for 'Complete Scrutiny' under the category "CASS". Subsequently, notice u/s 143 (2) of the Income Tax Act, 1961 dated 04.07.2017 was issued and duly served on the assessee. Further, notices u/s 142 (1) of the Income Tax Act, 1961 dated 17.07.2018 and 31.10.2018 along with detailed questionnaire were issued and served on the assessee requesting to submit the requisite details. In response to the above notices, the assessee has filed part details.*

*3. Hence, a show cause notice dated 15.11.2018 was issued and duly served upon the assessee asking to show-cause in absence of compliance of the above notices, as to why assessment should not be completed ex-parte u/s 144 of the Income Tax Act, 1961 based on material available on record.*

*4. In response to the above notices, Ms. Varsha Nanwani of M/s Desai Saksena & Associates, C.A. and authorised representative of the assessee e-filed all the detailed.*

*5. The assessee is a firm and during the year under consideration having income from business or profession.*

*6. Subject to above remarks, total income of the assessee for A.Y. 2016-17 is computed as under:*

Total assessed income Rs. NIL  
(As per Return of Income filed)  
Losses of current year to be carry forward of Rs. 4,74,495/-."

6. The learned PCIT vide notice issued under section 263 of the Act, noted as under:

"1. The case was selected for scrutiny under the CASS to examine the following issues:-

Reason Code	Reasons Description	Issue
BE01.04	Very low PBDIT Ratio in specific business code and turnover range (Part A-P & L)	Whether deduction claimed on account of business expenses is admissible
BL05.01	Large increase in unsecured loans during the year (Part A-BS of ITR)	Whether unsecured loans are genuine and from disclosed sources
BA01.02	Large difference in the opening stock of current year and closing stock of previous year shown in P&L A/c as per return of income	Whether stock has been valued correctly
BE16.01	Larger other expenses claimed in the Profit & Loss A/c	Whether deduction claimed on account of other expenses is admissible

2. It is seen from the Balance Sheet as on 31.03.2016, the unsecured loans shown are at Rs.15,89,24,874/- and Rs.9,40,75,000/- as on 31.03.2016 and as on 31.03.2015, respectively. Therefore, during the year, the unsecured loans of the assessee as on 31.03.2016 has increased by Rs.6,48,49,874/-. Large increase in unsecured loans during the year is one of the reasons for selection of the case for scrutiny under CASS parameters. On perusal of the records, it is seen that the details of the unsecured loans such as loan confirmation, return of income, computation of income, P&L A/c., Balance Sheet, Bank Statement of the parties from whom loan taken are not brought on record. Hence, the genuineness and creditworthiness of unsecured loans increased during the year remained unverified.

3. Further, on perusal of the P&L A/c it shows that the assessee has debited other expenses of Rs.1,23,63,820/-. Large other expenses claimed in P&L A/c is also one of the reasons for selection of the case for scrutiny under CASS parameters. The sufficient details for these huge expenses are not brought on record."

7. Accordingly, the learned PCIT was of the view that the order passed by the Assessing Officer under section 143(3) dated 22/12/2018 is erroneous and prejudicial to the interest of the revenue. Notices for hearing were issued through ITBA, speed post and also shared in e-proceeding in e-filing portal but the assessee neither attended nor submitted any reply to the notice issued under section 263 of the Act.

8. In view of the above, learned PCIT passed the order on the basis of material available on record. Vide impugned order dated 24/03/2021, the learned PCIT noted that the Assessing Officer during the course of assessment proceedings did not examine the genuineness of the transaction and capacity of the loan creditors of new loans added during the year. The learned PCIT further observed that the Assessing Officer did not even call for confirmations of loan transactions from the purported loan creditors. Accordingly, the learned PCIT held that the Assessing Officer has omitted to examine the genuineness of loan transaction of Rs. 6,48,49,874 claimed by the assessee. The learned PCIT further observed that the Assessing Officer has not verified the other expenses of Rs. 1,23,63,820 despite the large other expenses claimed in the profit and loss account. The learned PCIT vide impugned order passed under section 263 of the Act set aside the assessment order and directed the Assessing Officer to examine the genuineness of new loans of Rs. 6,48,49,874, added during the year, by verifying the identity and creditworthiness of the lender and genuineness of transaction. The learned PCIT further directed the

Assessing Officer to verify the genuineness of claim of other expenses of Rs. 1,23,63,820. Being aggrieved, the assessee is in appeal before us.

9. During the course of hearing, learned DR vehemently relied upon the impugned order passed by the learned PCIT.

10. We have considered the submissions and perused the material available on record. From the perusal of the impugned order, it is clearly discernible that even before the learned PCIT the assessee did not object to the initiation of revision proceedings under section 263 of the Act nor filed any submission in reply to the notices issued. Though, the return filed by the assessee was selected for 'Complete Scrutiny' under the Category "CASS", however, there is no discussion on examination/verification conducted by the Assessing Officer on the issues highlighted by the learned PCIT in the assessment order. There is also no mention in the assessment order about the notices being issued and reply being filed on these issues during assessment proceedings. It is pertinent to note that as per Explanation 2 to section 263 of the Act, order passed by the Assessing Officer shall be deemed to be erroneous insofar as it is prejudicial to the interest of revenue if the said order is passed without making inquiries or verification, which should have been made by the Assessing Officer. In view of the facts as are available on record, we are of the considered view that the present case clearly falls within the ambit of provision of the aforesaid Explanation. Thus, the impugned revision order passed under

section 263 of the Act is completely justified in the facts of the present case. Accordingly, the grounds raised by the assessee are dismissed.

11. In the result, appeal by the assessee is dismissed.

Order pronounced in the open court on 20<sup>th</sup> May, 2022

**Sd/-**  
**PRASHANT MAHARISHI**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 20<sup>th</sup> May, 2022**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai