

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.729/Mum./2021
(Assessment Year : 2010-11)

ITA No.728/Mum./2021
(Assessment Year : 2011-12)

Goldiam Jewellery Ltd.
G-10, Ground Floor,
Gems & Jewellery Complex-II
SEEPZ SEZ, Andheri (East)
Mumbai 400 096 PAN – AACCG3424F

..... Appellant

v/s

Principal Commissioner of Income Tax
Central Circle-1, Mumbai

..... Respondent

Assessee by : Shri Madhur Agrawal
Revenue by : Shri Shekhar L. Gajbhiye, CIT-DR

Date of Hearing – 08.03.2022

Date of Order – 01/06/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the impugned orders dated 09.03.2021, passed under section 263 of the Income Tax Act, 1961 ("*the Act*") by the learned Principal Commissioner of Income Tax (Central), Mumbai [*learned PCIT*], for the assessment year 2010-11 and 2011-12.

2. Since, the identical issues are involved, therefore, both the appeals are taken up together and disposed off by this common order for the sake of convenience. With the consent of both the parties, the appeal of the assessee for the assessment year 2010-11 was taken up as the lead case and the decision rendered therein would apply with equal force in appeal for assessment year 2011-12, except with variance in figures.

3. In its appeal for assessment year 2010-11, the assessee has raised following grounds:-

"The Appellant appeals against the impugned Order dated 16.03.2021 passed by the Principal Commissioner of Income-tax (Central)-1, Mumbai (the PCIT) under section 263 of the Income-tax Act, 1961 (the Act), in accordance with section 253(1)(c) of the said Act, on the following amongst other grounds each of which is in the alternative and without prejudice to any others:

1. *"That the PCIT erred in passing the impugned Order setting aside the assessment order and directing the AO to undertake assessment proceedings denovo.*

2. *That the PCIT failed to appreciate that the jurisdictional pre-conditions as contained in section 263 of the Act being the assessment order being both erroneous and prejudicial to the interests of the Revenue had not been fulfilled in the present case.*

3. *That the PCIT failed to appreciate that Explanation 2 to section 263(1) of the Act had no application on the facts of the present case and, hence, the PCIT erred in invoking the same to justify the exercise of jurisdiction under section 263 of the Act.*

4. *That the PCIT failed to appreciate the fact that documentary evidences relating to purchases were produced during the assessment proceedings and the Appellant had established the nexus of the purchase with the export sales and realisation of sale proceeds, and, therefore, the assessment order cannot be said to be erroneous.*

5. *That the PCIT failed to appreciate that the Appellant had furnished all the documents and evidence to prove the genuineness of the transaction."*

4. The only grievance of the assessee in the present appeal is against the order 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 is primarily engaged in the business of manufacturing and trading in diamond studded jewelry. During the year under consideration, assessee filed its return of income on 15/09/2010 declaring total income at Rs.73,320. The assessee claimed deduction under section 10AA of the Act in respect of its unit situated at Seepz – SEZ Andheri East, Mumbai. During the year under consideration, the assessee has shown income under the head 'business' at Rs. 5,59,36,165 and claim the entire income as exempt under section 10AA of the Act. The return filed by the assessee was selected for scrutiny and notice under section 143 (2) of the Act was issued. Further, notice under section 142 (1) of the Act was issued calling for various details. The said notices were duly responded by the assessee. The Assessing Officer vide order dated 08/03/2013 passed under section 143 (3) of the Act assessed the income of the assessee at Rs. 73,320.

6. Thereafter, notice under section 148 of the Act was issued to the assessee alleging that income chargeable to tax for assessment year 2010–11 has escaped assessment within the meaning of section 147 of the Act. Pursuant to the request by the assessee, the Assessing Officer provided a copy of the reasons for initiating reassessment proceedings, which reads as under:

"3. As per the reasons recorded for the purpose of initiating proceedings u/s 147, the AO observed that you were beneficiary in respect of bogus purchases made for Rs. 2,31,96,950/-. They were relied upon the information received from DGIT (Inv), Mumbai. Further the AO, from the details received from the Investigation Wing, found that you were beneficiary in transaction with the following persons:

4. *M/s Minal Gems (PAN - AHOPJ 4856D) – Rs. 1,25,82,073*
M/s Jewel Diam (PAN – ABUPV 3494J) – Rs. 58,05,715
M/s Minal Gems (PAN – AHOPJ 4856D) – Rs. 48,09,162

5. On the basis of that the AO had reasons to believe that above mentioned amount of ₹ 23,196,950 chargeable to tax had been escaped assessment in your case for AY 2010 – 11. Accordingly, the AO was convinced and satisfying that this was a fit case for reopening of assessment proceedings."

7. During the reassessment proceedings, in response to the notices issued under section 143 (2) of the Act, assessee filed documents vide letters dated 18/12/2015, 18/02/2016 and 06/03/2016 in respect of the transactions with Minal Gems and Jewel Diam. The assessee also clarified that that there was only one Ledger account maintained for Minal Gems and thus accepted only one transaction of Rs. 1,25,82,073 with Minal Gems.

8. While the reassessment proceedings were pending, search and seizure action under section 132 and survey action under section 133A of the Act was conducted in the case of Shri Rashesh M Bhansali and Smt. Ami Rashesh Bhansali on 17/03/2016 by the DDIT (Investigation), Unit-3(3), Mumbai. As a result of search action, reassessment proceedings were abated as per proviso to section 153A of the Act. During the course of search, residential premises, business premises and bank lockers of Goldiam Group including the associated key persons were covered, and

various incriminating materials, documents, unexplained cash and jewellery were seized. Subsequent to notice issued under section 153A of the Act, assessee filed its return of income on 29.05.2017 declaring total income of Rs. 73,320. Notice under section 143 (2) as well as notices under section 142 (1) alongwith questionnaire were issued to the assessee calling for various details, which were attended and duly responded on behalf of the assessee. The Assessing Officer vide order dated 22/12/2017 passed under section 143(3) r.w.s. 153A of the Act assessed the total income of the assessee at Rs. 73,320.

9. Subsequently, the learned PCIT issued notice dated 20/06/2018 under section 263 of the Act, observing as under:

"The return of income for A.Y. 2010-11 was filed on 15.09.2010 at an income of Rs.73,320. The same was processed u/s 143(1) on 16.06.2011. Scrutiny was completed u/s 143(3) on 08.03.2013.

Subsequently, information was received vide letter no.DIT(Inv.II/Information.BLJ/SAL/2014-15/269 dated 16.07.2014 and the case was reopened by the A.O. On the basis of the list provided by the DGIT(Inv.), Mumbai, and it was found that you were one of the beneficiary. The following details were provided by the investigation wing in which M/s. Goldiam Jewellery was termed as the beneficiary, in respect of bogus purchases made by the company through the following entities which are as under:-

<i>Sr. no.</i>	<i>Name of the bogus concern of Bhanwarlal Jain</i>	<i>PAN</i>	<i>Amount (Rs.)</i>
<i>1.</i>	<i>JEWEL DIAM</i>	<i>ABUPV3494J</i>	<i>58,05,715</i>
<i>2.</i>	<i>MINAL JEMS</i>	<i>AHOPJ4856D</i>	<i>1,25,82,073</i>
<i>3.</i>	<i>MINAL JEMS</i>	<i>AHOPJ4856D</i>	<i>48,09,162</i>
			<i>2,31,96,950</i>

During the reassessment proceedings this issue has not been considered.

Due to the search conducted in this case, the assessment was abated on

29.03.2016 as per Proviso to Section 153A of the Act.

The AO had not conducted any enquiry or made any addition related to the above issues during block assessment proceedings. As per the Bombay High Court decision in the case of CIT vs Continental Warehousing Corporation enquiry and addition can be done even on issues not related to the search findings, in the assessment years for which scrutiny assessments have been abated. Thus, your case squarely falls into this scenario.

In view of the above, / have reason to believe that an amount of Rs.2,31,96,950 chargeable to tax has escaped assessment for AY 2010-11, by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the said assessment year.

Thus the order passed by the A. O. has rendered the assessment erroneous in so far as it is prejudicial to the interest of revenue, for the reasons mentioned above. Therefore, prima facie action under section 263 of the I. T Act, 1961 is considered necessary."

10. In response, assessee filed reply vide letter dated 25/07/2018. The learned PCIT after going through the submission of the assessee issued another notice dated 26/02/2020 for furnishing additional details / documents / evidences. The said notice was replied by the assessee vide letter dated 09/03/2020. The assessee also submitted additional details/submission vide letter dated 13/03/2020. Thereafter, further details were sought vide notice dated 13/01/2021, which was also replied by the assessee vide letter dated 21/01/2021.

11. The learned PCIT vide impugned order dated 09/03/2021 passed under section 263 of the Act held that Assessing Officer has not conducted any enquiry nor made any addition in respect of the information received from the Investigation Wing, while passing the order under section 143 (3) r.w.s. 153A of the Act. The learned PCIT by referring to the clauses (a) and

(b) of Explanation to section 263 held that the assessment order passed under section 143 (3) r.w.s. 153A of the Act squarely falls within these clause and thus is erroneous and prejudicial to the interest of revenue. Accordingly, the learned PCIT vide impugned order set aside the assessment order so passed, with a direction to complete the assessment afresh after conducting necessary enquiries with respect to the contentious purchases. Being aggrieved, assessee is in appeal before us.

12. During the course of hearing, Shri Madhur Agrawal, learned counsel appearing for the assessee by referring to the submissions forming part of the paper book submitted that the Assessing Officer made detailed enquiry and all the notices issued by the Assessing Officer were duly replied by the assessee. Therefore, clauses (a) and (b) of Explanation to section 263 are not applicable as the Assessing Officer has made proper enquiry. Learned counsel submitted that assessee is eligible for deduction under section 10 AA of the Act and thus its profits are exempted and any addition made will also be exempted under section 10 AA of the Act. Further, learned counsel submitted that the reassessment proceedings may have been abated but all the data in respect of the information received from Investigation Wing, Mumbai was available with the Assessing Officer at the time of passing of the assessment order under section 143 (3) r.w.s. 153A of the Act.

13. On the other hand, Shri Shekhar L. Gajbhiye, learned Departmental Representative ("*learned DR*") vehemently relied upon the order passed under section 263 of the Act and decisions referred therein. Learned DR

submitted that the order passed by the Assessing Officer under section 143 (3) r.w.s. 153A of the Act is a non-speaking and cryptic order. The learned DR further submitted that the issues pointed out by the Investigation Wing were not properly examined by the Assessing Officer vide aforesaid order and general/common notice was issued seeking information from the assessee. Learned DR submitted that there is no indication in the assessment order as to how the Assessing Officer has dealt with submissions filed by the assessee.

14. In a short rebuttal, learned counsel submitted that findings by the Assessing Officer are only necessary in case where Assessing Officer doesn't agree the submission of the assessee and make any disallowance/addition.

15. We have considered the rival submissions, decisions referred and perused the material available on record. In the present case, it is evident from the record that the initial proceedings under section 147 and subsequent proceedings under section 263 of the Act are based upon the information received from Investigation Wing, Mumbai, which, as per record, has emanated as a result of search action under section 132 of the Act in the case of Bhawarlal Jain group of cases of Mumbai. It is also evident that in both the notices i.e. issued under section 147 as well as 263 of the Act, it was alleged that the assessee was a beneficiary in respect of bogus purchases made by the assessee through entities, namely, Jewel Diam and Minal Jems. As is also evident that during the reassessment

proceedings, Assessing Officer sought details from the assessee in respect of transactions undertaken by the assessee with aforesaid two entities. The assessee vide letter dated 18/12/2015, forming part of the paper book, provided following details:

- a) *confirmation of account from Minal Jems;*
- b) *affidavit received from Minal Jems;*
- c) *copy of bank statement reflecting the payment received;*
- d) *copy of income tax return filed for the relevant assessment year;*
- e) *stock register with purchase of diamonds from Minal Jems and exports of jewelry;*
- f) *copy of export invoice and purchase invoice for each exports made from purchase of diamonds.*

Further, in respect of Jewel Diam, assessee vide aforesaid letter as well as letter dated 18/02/2016, forming part of the paper book, provided following details:

- a) *confirmation of account from Jewel Diam;*
- b) *stock register with purchase of diamonds from Jewel Diam;*
- c) *copy of purchase invoice for each exports made from purchase of diamonds;*
- d) *also affidavit received from Jewel Diam;*
- e) *Ledger confirmation received from Jewel Diam;*
- f) *bank statement of Jewel Diam received from the party for payment received;*
- g) *copy of acknowledgement of return filed for proprietor of Jewel Diam;*
- h) *copy of audited accounts of proprietor of Jewel Diam.*

16. The assessee vide letter dated 06/03/2016 also clarified that there are no two Ledger accounts maintained for Minal Jems and thus assessee had accepted one amount i.e. of Rs. 1,25,82,073. Further, vide this letter, assessee, on a without prejudice basis, also agreed to the addition at 5% on the purchases from the above referred party and agreed to pay the tax on same in order to buy peace of mind.

17. However, pursuant to search action conducted in the case of Directors of the assessee, based on some allegations, the aforesaid reassessment proceedings were abated. In addition to the above information regarding bogus purchase made by the assessee, it was found that director of the company were having offshore undisclosed foreign bank accounts. The Assessing Officer issued notice dated 30/10/2017 under section 142 (1) of the Act stating as under:

"Vide your authorized representative's letter dated 31.05,2017 and 21.09.2017, you had requested this office to provide copy of the documents loose papers, any other material findings and alleged specific information regarding foreign bank accounts. In his regard, it is informed that as requested by your AR, vide letter dated 12.04.2016, the Xerox copies of all the seized /impounded material were handed over to your AR by the Investigation Wing, Mumbai. Further, the Information/documents received from Singapore Tax Authorities about foreign bank accounts cannot be shared, since the same is received under Exchange of Information Article of India-Singapore Double Taxation Avoidance Agreement (DTAA) and its use and disclosure is strictly governed by It and as per the terms prescribed in Manual on Exchange of Information issued by CBDT in May, 2015.

2. Further, there are certain points in connection with the block assessment proceedings u/s 153A r.w.s. 143(3) of the Income-tax Act 1961, for AY 2010-11 to 2016-17 on which I would like to have some further information. Attached is Annexure, which contains the questionnaire on issues identified in your case. Kindly provide your submissions and arguments on these issues."

18. In response to aforesaid notice, the assessee vide letter filed on 04/12/2017 submitted, inter-alia, following details to the Assessing Officer:

- a) *Details of sale made along with sample invoices for the year under consideration;*
- b) *Details of purchases made along with sample invoices for the year under consideration;*
- c) *Details of expenses along with sample TDS payment challans for the year under consideration.*

19. In addition to submissions filed by the assessee in compliance of the notices issued by the Assessing Officer, authorised representatives of the assessee also attended the hearings before the Assessing Officer and the case was discussed with them. It is only after this process, the Assessing Officer passed order under section 143 (3) r.w.s. 153A of the Act.

20. The learned PCIT vide impugned order passed under section 263 of the Act has now alleged that the Assessing Officer has not conducted any enquiry or made any addition in relation to the issues highlighted by the Investigation Wing, Mumbai. It is pertinent to note that even during the proceedings before learned PCIT under section 263 of the Act, the assessee in response to various notices provided the detailed explanation for purchase made from Minal Jems and Jewel Diam. The assessee also submitted that its unit is located in Speez-SEZ and each and every entry of goods, whether raw materials including diamonds and consumables stores and spares are checked by custom officials, and goods are verified not only with respect to quantity but also in terms of quality particularly high-priced

goods like diamonds. In this regard, assessee also produced purchase tax invoice of the above referred entities together with proof of receipt of goods, stamp of custom officials for entry of goods within the Seepz. However, without addressing/dealing with any of the details filed by the assessee, learned PCIT came to the conclusion that the assessee has failed to establish the nexus between the purchases and sales during this proceedings. Further, learned PCIT merely alleged that the Assessing Officer has not conducted any enquiry or made any addition relating to the issues highlighted in information received from Investigation Wing, Mumbai. The learned PCIT also did not mention as to how the issue of bogus purchase from aforesaid 2 entities, in respect of which assessee is alleged to be the beneficiary, is proved in the present case vis-à-vis the details filed by the assessee before the Assessing Officer and also produced before the learned PCIT. It is also not the claim of Revenue that the details filed before the Assessing Officer during the reassessment proceedings as well as during proceedings under section 153A of the Act were not sufficient to decide whether the purchases made by the assessee from the aforesaid 2 entities were bogus. Merely by referring to clause (a) and (b) of Explanation – 2 to section 263 of the Act, the learned PCIT alleged that the assessment order is erroneous insofar as it is prejudicial to the interest of revenue.

21. Neither in revision proceedings under section 263 nor during the hearing before us, it has been pointed out as to what enquiry was not

conducted by the Assessing Officer with regard to the issue of bogus purchase, which can lead to the conclusion that the assessment order is erroneous and prejudicial to the interest of revenue. Further, during the hearing before us it was submitted by the learned DR that mere filing of submissions by the assessee would not lead to the conclusion that same has been considered by the Assessing Officer while passing the assessment order. In this regard, it is relevant to note following observations of Co-ordinate Bench of Tribunal in JRD Tata v. DCIT, Exemption, [2020] 122 taxmann.com 275 (Mumbai - Trib.):

"21. That brings us to our next question, and that is what a prudent, judicious, and responsible Assessing Officer is to do in the course of his assessment proceedings. Is he to doubt or test every proposition put forward by the assessee and investigate all the claims made in the income tax return as deep as he can? The answer has to be emphatically in negative because, if he is to do so, the line of demarcation between scrutiny and investigation will get blurred, and, on a more practical note, it will be practically impossible to complete all the assessments allotted to him within no matter how liberal a time limit is framed. In scrutiny assessment proceedings, all that is required to be done is to examine the income tax return and claims made therein as to whether these are prima facie in accordance with the law and where one has any reasons to doubt the correctness of a claim made in the income tax return, probe into the matter deeper in detail. He need not look at everything with suspicion and investigate each and every claim made in the income tax return; a reasonable prima facie scrutiny of all the claims will be in order, and then take a call, in the light of his expert knowledge and experience, which areas, if at all any, required to be critically examined by a thorough probe. While it is true that an Assessing Officer is not only an adjudicator but also an investigator and he cannot remain passive in the face of a return which is apparently in order but calls for further inquiry but, as observed by Hon'ble Delhi High Court in the case of Gee Vee Enterprises v. ACIT [(1195) 99 ITR 375 (Del)], "it is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. (Emphasis, by underlining, supplied by us). It is, therefore, obvious that when the circumstances are not such as to provoke an inquiry, he need not put every proposition to the test and probe everything stated in the income tax return. In a way, his role in the scrutiny assessment proceedings is somewhat akin to a conventional statutory auditor in real-life situations. What Justice Lopes said, in the case of Re Kingston Cotton Mills [(1896) 2 Ch 279, 288)], in respect of the role of an auditor, would

equally apply in respect of the role of the Assessing Officer as well. His Lordship had said that an auditor (read Assessing Officer in the present context) "is not bound to be a detective, or, as was said, to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watch-dog, but not a bloodhound. ". Of course, an Assessing Officer cannot remain passive on the facts which, in his fair opinion, need to be probed further, but then an Assessing Officer, unless he has specific reasons to do so after a look at the details, is not required to prove to the hilt everything coming to his notice in the course of the assessment proceedings. When the facts as emerging out of the scrutiny are apparently in order, and no further inquiry is warranted in his bonafide opinion, he need not conduct further inquiries just because it is lawful to make further inquiries in the matter. A degree of reasonable faith in the assessee and not doubting everything coming to the Assessing Officer's notice in the assessment proceedings cannot be said to be lacking bonafide, and as long as the path adopted by the Assessing Officer is taken bonafide and he has adopted a course permissible in law, he cannot be faulted- which is a sine qua non for invoking the powers under section 263. In the case *Strial Co Ltd v. CIT* [(2000) 243 ITR 83 (SC)], Hon'ble Supreme Court has held that "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 ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO 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 ITO is unsustainable in law." The test for what is the least expected of a prudent, judicious and responsible Assessing Officer in the normal course of his assessment work, or what constitutes a permissible course of action for the Assessing Officer, is not what he should have done in the ideal circumstances, but what an Assessing Officer, in the course of his performance of his duties as an Assessing Officer should, as a prudent, judicious or reasonable public servant, reasonably do bonafide in a real-life situation. It is also important to bear in mind the fact that lack of bonafides or unreasonableness in conduct cannot be inferred on mere suspicion; there have to be some strong indicators in direction, or there has to be a specific failure in doing what a prudent, judicious and responsible officer would have done in the normal course of his work in the similar circumstances. On a similar note, a coordinate bench of the Tribunal, in the case of *Narayan T. Rane v. ITO* [(2016) 70 taxmann.com 227 (Mum)] has observed as follows:

"20. Clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the AO vis-a-vis its reasonableness in the facts and circumstances of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have claimed out or not. It does not authorise or give unfettered

powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made."

22. Thus, in view of the above once submission/reply filed by the assessee, pursuant to enquiry by the Assessing Officer, are accepted by the Assessing Officer then finding on that particular aspect is not necessary to be recorded by the Assessing Officer. Further, it has not been denied in the present case that though the proceedings under section 147 of the Act may have been abated, as a result of search action, all the information filed by the assessee in response to notice(s) under section 143 (2) of the Act, during reassessment proceedings, were available with the Assessing Officer.

23. Therefore, in view of the above, we are of the considered opinion that clauses (a) and (b) of Explanation-2 to section 263 of the Act are not applicable to the facts of the present case and thus the revision order passed by the learned PCIT under section 263 of the Act is set aside.

24. As stated earlier, the facts for assessment year 2010-11 are exactly identical with the assessment year 2011-12 except with variance in figures. Hence, the decision rendered hereinabove for assessment year 2010-11 shall apply *mutatis mutandis* to assessment year 2011-12 and accordingly, revision order passed by the PCIT under section 263 of the Act for assessment year 2011-12 is also set aside.

25. In the result, appeals by the assessee are allowed.

Order pronounced in the open court on 01/06/2022

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 01/06/2022

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