

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI B. R. R. KUMAR, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 6226/DEL/2019 (A.Y 2014-15)

Rits Jewellers Pvt. Ltd. FF-9, Vishnu Place, near Neelam Flyover, Sec-20B, Faridabad Haryana- PAN: AAFCR8802D (APPELLANT)	Vs	Pr. CIT Faridabad, Haryana (RESPONDENT)
---	----	---

Appellant by	Sh. Rajeev Saxena, Adv, Ms.Sumangla Saxena, & Sh. Shyam Sunder, Adv
Respondent by	Sh. Atiq Ahmed, Sr. DR

Date of Hearing	04.08.2022
Date of Pronouncement	02.09.2022

\

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee against the order dated 29/03/2019 passed u/s 263 of the I.T Act ("Act" for short) by the Principal Commissioner of Income Tax, Faridabad, for Assessment Year 2014-15.

2. The grounds of Appeal are as under:-

1. *That the Ld. Pr. Commissioner of Income Tax erred in law and on facts in assuming jurisdiction u/s 263 of the Act in order to substitute his subjective view in place of judicious view taken by the ld. AO on the same set of facts/evidences on record, by holding that the order passed u/s 143(3) of the Act dated 19.04.2016 was*

erroneous and prejudicial to the interests of revenue.

2. *That, the Ld. Pr. Commissioner of Income Tax has erred in law as well as on facts in assuming that no verification was made during the course of the assessment failing to appreciate that assessment was passed after due enquiry and hence assumption of jurisdiction u/s 263 of the Act on misconceived premise is unsustainable in law.*

3. *That, the Ld. Pr. Commissioner of Income Tax has erred in law as well as on facts in observing that the ld. AO has not verified the creditworthiness of the creditors failing to appreciate that once the sums have been received through banking channels and complete evidences was provided during the course of the assessment, suspicion raised purely on assumptions is wholly unsustainable in law.*

4. *That, the Ld. Pr. Commissioner of Income Tax has erred in law as well as on facts in failing to appreciate that since there was no adverse material in respect of credits received by the assessee, ld. AO was legally obliged in law to accept the transaction in view of the various judicial pronouncements of the jurisdictional and other High Courts and the Apex Court.*

5. *That, the Ld. Pr. Commissioner of Income Tax has erred in law as well as on facts in relying on the report of the ld. AO obtained during the course of the revision proceedings wherein instead of making independent enquiry, the ld. AO merely relied on some other cases, and hence the reliance placed on such report of the ld. AO by the Id. Pr. CIT is wholly erroneous and unsustainable in law.*

6. *That, the Pr. Commissioner of Income Tax has erred in law as*

well as on facts in having assumed jurisdiction u/s 263 of the Act on surmise and conjecture and passed consequential order directing the ld AO to make a fresh assessment.

7. That, therefore, in view of facts and circumstances of the case, the assessment order passed u/s 143(3) of the Act accepting the returned income filed by assessee being not erroneous and hence not prejudicial to the interests of revenue, the order passed u/s 263 of the Act directing to make a fresh assessment is without any basis, bad in law and liable to be quashed.”

3. Brief facts of the case are that, the assessee is engaged in the business of trading of all the kinds of jewelry Items. The return of income declaring an amount of Rs. 3,64,150/- has been filed by the assessee and a same has been processed u/s 143(1) of the Act. Later, the case was selected for limited scrutiny through CASS. Notice u/s 143(2) of the Act dated 18/09/2015 was issued which was duly served upon the assessee. Thereafter, notice u/s 142(1) of the Act was issued on 09/10/2015. The representative of the assessee has attended the assessment proceedings.

4. The Ld. A.O found that during the year the assessee has not done any work except interest income and the return of income of the assessee has been accepted by the Ld. A.O and passed assessment order dated 19/04/2016.

5. An order u/s 263 of the Act came to be passed against the assessee on 29/03/2019 by the Principal Commissioner of Income Tax, Faridabad(“PCIT” for short) declaring that the assessment

order passed u/s 143(3) read with 147 of the Act dated 19/04/2016 is erroneous and also prejudicial to the interest of Revenue, thus cancelled the assessment order. Further, the Ld. PCIT directed the A.O to make proper enquiries to verify the issue before completing the assessment with a direction to pass fresh assessment order.

6. Aggrieved by the order dated 29/03/2019, the assessee has preferred the present appeal on the grounds mentioned above. The present appeal is filed with the delay of 53 days in filing the appeal. The assessee has also filed an application for condonation of the delay of 53 days. On the ground that the C.A who was looking after the matter was not well therefore, he could not prefer the Appeal on time, thus the assessee has engaged the service of another counsel to prepare the Appeal, therefore, the Appeal could not be filed on time. By considering the reason assigned in the application, the delay in filing of the present appeal of 53 days is condoned.

7. The Ld. Counsel for the assessee on the merit of the case, vehemently submitted that the Ld. PCIT has committed error in observing that '*no verification was made during the course of the assessment by the A.O*'. The Ld. PCIT failed to appreciate that the assessment order was passed after due enquiry and after verifying the materials produced by the assessee and also the material available on record based on the enquiry. The Ld. A.O has also verified the creditworthiness of the creditors. The sums have been received through banking channels and complete evidence was provided during the course of assessment, which has been duly verify and accepted by the A.O. The Ld. Counsel for the assessee further submitted that, even notice u/s 133(6) of the Act has been

issued to the firms whom the assessee had the transactions and calling them to submit the Balance sheet, ledger and the ITR. Thus, the Ld. A.O has made proper enquiry and thereafter accepted the return filed by the assessee. Ld. Counsel for the assessee further submitted that the Ld. PCIT has not even complied with any of the twin conditions of Section 263 of the Act. The order of the Ld. A.O neither prejudicial to the interest of the Revenue and the order of the Ld. A.O is nor erroneous one. Therefore, submitted that, the order passed u/s 263 by the Ld. PCIT is required to be quashed.

8. Per contra, the Ld. DR relying on the order of Ld. PCIT submitted that the impugned order is well reasoned. Therefore, which requires no interference.

9. We have heard the parties, perused the material on record and gave our thoughtful consideration.

10. It is seen from the Record that the Ld. A.O., during the Assessment proceedings not only called for the record from the Assessee to submit, issued the questioners to the Assessee, but also issued Notice under Section 133(6) of the Act to the firms from whom the Assessee had the transactions calling upon them to produce the Balance sheet, Ledger and the ITR for the purpose of verifying the creditworthiness of the creditors. The said details were made available to the AO by the Creditors and also the Assessee respectively, which are produced by the Assessee before us by way of Paper Books, which are as under:

Sr. No.	Date	Particulars	Page No(s)
		Copy of Index to Paper Book	1 - 2
1.	22.03.2012	i. Form I Certificate of Incorporation along with memorandum and articles of association/AoA	3 - 24
		ii. auditors report and balance sheet and profit and loss account for FY 2013 - 14 relevant to assessment year 14 - 15	24 - 38
	22.03.2012	iii. Assessment order u/s 143(3) of the IT Act 1961	39 - 41
		iv. Acknowledgment of return of income along with computation of income and form 6 of ITR	42 - 73
		v. Bank statement of Axis Bank Book from 01.04.2013 to 31.03.2014	74 - 75
		vi. Ledger account of Axis Bank book in the books of the appellant company	76 - 77
2.		Cee Aar Decors Pvt. Ltd.	
	18.12.2019	i. Form I Certificate of Incorporation along with memorandum and articles of association/AoA	78 - 101
		ii. auditors report and balance sheet and profit and loss account for FY 2013 - 14 relevant to assessment year 14 - 15	102 - 113
	28.09.2014	iii. Acknowledgment of return of income	114
		iv. Share Application Form	115
	01.04.2014	v. Confirmation of accounts	116
	22.01.2014	vi. Bank statement of IDBI Bank	117 - 118
	15.12.2014	vii. Intimation U/s 143(1) of the income tax	119 - 124
		Gharonda Nirman Pvt. Ltd.	
	22.07.2019	i. Form I Certificate of Incorporation along with memorandum and articles of association/AoA	125 - 146
		ii. auditors report and balance sheet and profit and loss account for FY 2013 - 14 relevant to assessment year 14 - 15	147 - 158

	18.09.2014	iii. assessment order u/s. 143(3)	159 - 160
		iv. Acknowledgment of return of income	161
	01.04.2014	v. Confirmation of accounts	162
	14.03.2014	vi. Bank statement of IDBI Bank	163 - 164
	08.12.2014	vii. Intimation U/s 143(1) of income tax act 1961	165 - 170
		Hercules Builders Pvt. Ltd.	
	22.02.2005	i. Form I Certificate of Incorporation along with memorandum and articles of association/AoA	171 - 189
		ii. auditors report and balance sheet and profit and loss account for FY 2013 - 14 relevant to assessment year 14 - 15	190 - 199
	19.09.2014	iii. Acknowledgment of return of income	200
	01.09.2014	iv. Confirmation of accounts	201
	25.07.2013	v. Bank statement of Axis Bank from 01.03.2014 to 25.04.2014	202 - 203
	15.04.2015	vi. Intimation U/s 143(1) of income tax act, 1961	204 - 209
		Pawansuit Contractors Private Limited	
	31.10.2005	i. Form I Certificate of Incorporation along with memorandum and articles of association/AoA	210 - 232
		ii. auditors report and balance sheet and profit and loss account for FY 2013 - 14 relevant to assessment year 14 - 15	233 - 242
	20.09.2014	iii. Acknowledgment of return of income	243
	01.04.2014	iv. Confirmation of accounts	244
	29.01.2014	v. Bank statement of IDBI Bank	245 - 246
	04.03.2016	vi. Intimation U/s 143(1) of Income tax act, 1961	247 - 251
		Rocky Syntex Industries Ltd.	
	08.03.1994	i. Form I Certificate of Incorporation along with memorandum and articles of association/AoA	252 - 268
		ii. auditors report and balance sheet and profit and loss account for FY 2013 - 14 relevant to assessment year 14 - 15	269 - 280
	05.10.2014	iii. Acknowledgment of return of income	281
	01.04.2015	iv. Confirmation of accounts	282
	15.07.2013	v. Bank statement of Axis Bank from 01.03.2013 to 11.07.2013	283 - 284
	27.11.2014	vi. Intimation U/s 143(1) of IT Act 1961	285 - 289
		Texcity Constructions Pvt. Ltd.	
	22.02.2005	i. Form I Certificate of Incorporation along with memorandum and articles of association/AoA	290 - 308
		ii. auditors report and balance sheet and profit and loss account for FY 2013 - 14 relevant to assessment year 14 - 15	309 - 318

	18.09.2015	iii. Acknowledgment of return of income along with computation of income	319
	01.04.2014	iv. Confirmation of accounts	320
	15.05.2013	v. Bank statement of IDBI Bank	321 - 323
	04.03.2015	vi. Intimation U/s 143(1) of the Income Tax act 1961	324 - 328

Sr. No.	Date	Particulars	Page No(s)
1	07.08.2015	Copy of questionnaire issued by assessing officer	329 - 335
2	18.09.2015	Copy of notice u/s. 143(2) of the IT Act' 1961 along-with envelop	336
3	06.10.2015	Copy of submission of information filed by assessee before A.O in response to notice dated 18.09.2015	337
4	09.10.2015	Copy of notice u/s. 142(1) of the IT Act' 1961	338
5	03.11.2015	Copy of notice u/s. 142(1) of the IT Act' 1961	339
6		Copy of replies filed by assessee before assessing officer in response to notice dated 07.08.2015 along-with enclosures, information apart from documents filed in Paper Book - I	340 - 405
7	13.01.2016	Copy of notices seeking information u/s. 133(6) from following parties i. Cee Art Decors Pvt. Ltd. ii. Gharonda Nirman Pvt. Ltd. iii. Herculese Builders Coimbtore Pvt. Ltd. iv. Pawansat Contractors Pvt. Ltd. v. Rocky Syntex Pvt. Ltd. vi. Texcity Construction Kovai Pvt. Ltd.	406 - 411
8	20.01.2016 22.01.2016 28.01.2016	Information sent directly to AO in response to notices confirming the investment copy of courier receipt thereof and some of the replies are also enclosed	412 - 418

11. Thus, from the above it is evident that the Ld. A.O. not only made detail enquiry with the Assessee but also by issuing the Notice under Section 133(6) of the Act to the Creditors and after obtaining the details and convincing himself, found that the Creditors are genuine and passed the Assessment Order in-favour of the Assessee.

12. Further, there was no material brought by the Pr. CIT to observe that "no verification was made during the course of the assessment by the A.O." On the other hand, it is seen from the record that, the Ld. A.O. has made detailed enquiry, considered all evidence and arrive to a conclusion to accepted the income declared by the Assessee. Thus, in our opinion, the Pr. CIT has only expressed the different view which is not permissible under [Section 263](#) of the Act. Revisionary power u/s 263 of the Act is conferred by the Act on the Commissioner when an order is passed by the Authority is erroneous and prejudicial to the interest of the Revenue. Orders which are passed without inquiry or investigation are treated as erroneous and prejudicial to the interest of the Revenue, but which are passed after inquiry/investigation on the question/issue are

not per se are normally treated as erroneous and prejudicial to the interest of the Revenue. Because, the Revisionary Authority feels and opines that further inquiry/investigation was required or deeper or further scrutiny should be undertaken, the same cannot be initiated without following the proper provisions u/s 263 of the Act.

13. In the present case the Assessing Officer has made all the inquiries and after verifying the documents/ material on record passed a reasoned Assessment Order. Therefore, the Commissioner does not have any locus standi to make further inquiry. The decision of the Hon'ble Supreme Court in case of [CIT vs. Max India Ltd](#) 295 ITR 282, [Malabar Industrial Co. Ltd. vs. CIT](#) 243 ITR 83 are aptly applicable in the present case as the Hon'ble Apex Court wherein it is held that [Section 263](#) has to be read in conjunction with the expression "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. The case laws relied by the Revenue in respect of [Section 263](#) also reiterates the said ratio as well. Some of the decisions relied by the Revenue are not at all applicable in the present case as distinguishing facts involved in those cases. Therefore, order u/s 263 of the Act in present appeal is not justified. Accordingly, we allow the Grounds of Appeal of the assessee and the order u/s 263 is passed by the Principal Commissioner of Income Tax is set aside.

14. In the result, Appeal of the assessee is allowed.

Order pronounced in the Open Court on this 02nd Day of September, 2022

**Sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Dated: 02/09/2022
R. N, Sr PS*

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI