

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI  
**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**  
AND  
**SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 532/Del/2018  
(Assessment Year: 2010-11)

Ajay Grover, Prop. Of M/s. R.R. Enterprises, RRA Taxindia, D-28, South Extension, Part-I, New Delhi (Appellant)	Vs.	ITO, Ward-1(1), Faridabad  (Respondent)
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**PAN: AGXPG6032B**

ITA No. 4113/Del/2016  
(Assessment Year: 2010-11)

Ajay Grover, Prop. Of M/s. R.R. Enterprises, RRA Taxindia, D-28, South Extension, Part-I, New Delhi (Appellant)	Vs.	Pr. CIT, Faridabad  (Respondent)
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**PAN: AGXPG6032B**

Assessee by :	Dr. Rakesh Gupta, Adv Sh. Somil Agarwal, Adv
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Revenue by:	Shri P. Praveen Sidhrath, CIT DR
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Date of Hearing	17/11/2022
Date of pronouncement	23/11/2022

ORDER

**PER ANUBHAV SHARMA, J. M.:**

The assessee is in appeal ( ITA No. 4113/Del/2016) challenging the order u/s 263(1) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') passed on 23.03.2015 By Ld. PCIT, Faridabad 9 here in after referred as Ld. Authority) in regard to the assessment order dated 24.11.2012 passed u/s 143(3) of the Act for the

Assessment Year 2010-11 by ITO, Ward-II(2), Faridabad. The assessee has also filed appeal( ITA No. 532/Del/20118) challenging the order u/s 250(3) of the Act passed by the Id CIT(A), Faridabad dated 14.12.2017 in appeal No. 10472/2016-17 was upheld.

2. The fact in brief are that the assessee filed return of income for Assessment Year 2010-11 u/s 139(1) on 12.10.2010 declaring income of Rs. 8,82,580/-. Assessment was completed u/s 143(3) on 24.11.2012 at a total income of Rs. 9,67,800/-. The Id Authority believed that the Id AO had not called for complete detail information in respect of following:-

- i. The difference in closing stock as per statement of bank and has shown in audited balance sheet.
- ii. Excess claim of liability in respect of creditor.
- iii. Difference in sundry creditors declared by assessee and declared to bank.
- iv. Difference in purchase reflected in the ledger account of M/s. Shiv Shankar Enterprises and the party-wise details of purchase filed by the assessee.
- v. Lack of evidence regarding, identity, creditworthiness of the creditors and genuineness of the certain transactions of unsecured loan.

3. Accordingly, considering the lack of enquiry leading to passing of assessment order which is erroneous and prejudicial to the interest of revenue, a show cause notice dated 11/12.02.2015 was issued and after taking in account the response of the assessee Id Revisionary Authority was of the view that there has been non application of mind on the part of the Id AO and thus cancelling the assessment order dated 24.12.2012 the Id AO was directed to make fresh assessment after conducting proper enquiry and investigation and collecting relevant documents.

4. The assessee is in appeal vide ITA No. 4113/Del/2016 raising following grounds:-

*"1. That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in assuming jurisdiction u/s 263 and has further erred in holding that the assessment order is erroneous and prejudicial to the interest of revenue,*

*2. That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in holding that the assessee failed to reconcile the difference in stock to the tune of Rs. 1,74,574/-*

*3. That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in holding that the accounts of the assessee appear to be unreliable because of such major discrepancies found in the statements filed before Ld. A.O. and before the bank.*

*4. That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in holding that assessee has failed to reconcile the difference of Rs. 2,06,927/- in the account of M/s Sidharth International.*

*5. That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in holding that there was difference of Rs. 2,60,959/- in the account of M/s Malik Trading and Manufactures.*

*6. That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in holding that there was difference in purchases made from M/s Shiv Shanker Enterprises.*

*7. That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in holding that unsecured loan from Sh. Bhim Sain Grover requires to be investigated.*

*8. That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in holding that A.O should make necessary investigation regarding the genuineness of unsecured loans of Rs. 25,00,000/- from Sh. Deepak Suri.*

*9. That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in setting aside the assessment order and that too without giving show cause notice.*

*10. That in any view of the matter and in any case, the order passed u/s 263 by Ld. Pr. CIT is bad in law and against the facts of the case, in as much as no adequate opportunity of hearing was granted and framing the impugned order without considering the principles of natural justice.*

*11. That having regard to facts & circumstances of the case, Ld. CIT has erred in law and on facts in passing the impugned order u/s 263 which is barred by limitation, illegal, without jurisdiction and contrary to law and facts and deserves to be quashed."*

5. Heard and perused the record.

6. In regard to exercise of revisionary jurisdiction by the Id Revisionary Authority the crux of argument of Id AR was that audit objections was the only basis for exercising powers and that the settled proposition of law is that the powers cannot be exercised on the basis of audit objection. The Id AR specifically referred to section 263 of the Act and submitted that the use of old 'record' in section 263, implies the assessment record and any extraneous record or information cannot be used for invoking powers of section 263 of the Act. In this context he specifically relied on the show cause notice dated 11.02.2015 available at page Nos. 5 and 6 and the copy of the audit objection available at page Nos. 7 and 8 to contend that show cause notice issued us/s 263 is verbatim reproduction of the audit objections. The Id AR also referred to a copy of the letter dated 28.03.2014 available at page No. 9 and 10 and copy of the letter dated 13.08.2014 available at page No. 11 to 13 of the paper book to contend that in regard to audit objections the Id AO has made given relevant explanation and sought the filing of audit objections as settled. On the other hand the Id AR relied on the following judicial pronouncement to buttress the argument that 263 initiated on the basis of audit note is not sustainable:-

- CIT vs. Shona Woollen Mills, (2008) 296 ITR 0238, High Court of Punjab & Haryana.

- Dharmendra Kumar Bansal vs. CIT, (2014) 101 DTR 377/(2015) 152 ITD 406, ITAT Jaipur Bench.
- Shantai Exim Ltd. vs. CIT, (2016) 136 ITD 0313, ITAT Ahmadabad Bench.
- Rajiv Arora vs. CIT, (2011)131 ITD 0058, ITAT Jaipur Bench.
- Paramjit Singh vs. PCIT, (2016) 48 CCH 0199, ITAT Chandigarh Bench.
- M/s Refex Industries Ltd. vs. DCIT, ITA No. 972/Mds/2014, date of order 09.09.2014, ITAT Chennai Bench.
- Sartaj Singh vs. PCIT, (2016) 48 ITR (Trib.) 0604/ (2016) 179 TTJ 0017, ITAT Amritsar Bench.
- Jaswinder Singh vs. CIT, (2012) 150 TTJ 0033, ITAT Chandigarh Bench.
- VikarmKaswan vs. CIT, (2016) 47 ITR (Trib.) 0322/ 46 CCH 0561, ITAT Chandigarh Bench.
- Sunil Gavaskar vs. ITO, (2016) 47 ITR (2016) 47 ITR (TRib.) 0243/ (2016) 134 DTR 0113, ITAT Bombay Bench.

7. On the other hand the Id DR relied on the judgment of the coordinate bench of Delhi in Mannesmann Demag A. G. Vs. DCIT decided on 20.03.1995 reported in 1995 53 ITD 533 Delhi to contend that the audit objection are one of the source of information and can be foundation for exercising revisionary powers u/s 263 of the Act.

8. Giving thoughtful consideration to the matter on record it can be observed without doubt that the show cause notice issued u/s 263 is a verbatim reproduction of the audit objection. However, when the order u/s 263 is considered it goes to show that there is no reference of the audit objection. But, what is important and relevant is the fact that except for the queries raised by the audit, the Id Revisional authority has not gone into any other aspect of the assessment order. Only those heads of queries as raised by the audit party have

been considered to be valid grounds to conclude that the assessment order was erroneous and prejudicial to the interest of revenue. The Id authority has merely taken into consideration audit objection and the response of the assessee on the show cause notice to give a finding in the manner as if the audit objections have been sustained.

9. Although the order of the revisionary authority mentions that the assessment record in the case for the above noted assessment years were called for examination. It no where mentions that the audit objection were part of the assessment record. Thus matter extraneous to the assessment record has been considered. Which certainly is not the mandate of Section 263 of the Act. The order of Ld. Revisional authority would have had a more sustainable taste and tenor had it reflected in its order that primary information was the audit objection but for the purpose of section 263, the Ld. had applied its mind independently upon the assessment record from where the errors were disclosed. However, that is not the case here as Ld. Revisional authority has issued notice on audit objections and sustained them with his reasoning too, instead of reflecting in order that an independent enquiry and reasoning was the basis of reaching conclusion that order is prejudicial to the interest of revenue.

10. In the judgment relied by the Id DR in **Mannesmann Demag A.G. Vs. DCIT** in para 13 the coordinate bench observed as follows:-

*"13. We have given our careful consideration to the rival contentions and have perused the records. The contention raised on behalf of the assessee that the action of the Commissioner of Income-tax under Section 263 based on the audit objection is invalid and contrary to law is not well-founded. Whereas we agree with the learned counsel for the assessee that the powers under Section 263 are vested in the Commissioner of Income-tax and it is he who has to apply his mind before coming to the conclusion that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of revenue, yet, that does not mean that the Commissioner of Income-tax has not to be assisted by anyone else in collecting information and in bringing to his notice any errors or omissions requiring action under Section 263 or under any other provision of the Act. It will be unreasonable to perceive that the Commissioner of Income-tax*

would himself examine the assessment records of all the assessees within his jurisdiction so as to arrive at a conclusion whether any action under Section 263 is required or not. It is humanly impossible. Therefore, setting up of a machinery known as internal audit which assists the Commissioner of Income-tax in this regard is not improper as the said machinery only brings to the notice of the Commissioner of Income-tax the acts of omission, errors and matters of prejudice caused to the revenue. It has to be borne in mind that opinion or the information of the internal audit is not binding upon the CIT. It is a mode for excluding such cases not requiring the attention of the Commissioner for the purposes of consideration of any action under Section 263. Once the matter has been brought to the notice of the CIT, it is the Commissioner who has to exercise his powers under Section 263 and for that purpose it is necessary for him to apply his mind to the facts of the case taking into account the objection raised by the internal audit. Such a consideration would not be contrary to the spirit of the scheme of the Act and the powers of the CIT under Section 263. The learned D.R. has cited the decision of the Supreme Court in the case of Kasturbhai Lalbhai (supra) which as rightly pointed by Shri Ganeshan has been overruled by the Supreme Court in the case of Indian and Eastern Newspaper Society v. CIT [1979] 119 ITR 996.

In any case that decision is inapplicable to the facts of this case. We are not called upon to decide as to whether the audit objection shall constitute information for the purposes of re-opening of an assessment under Section 147 as was the issue before the Supreme Court in the aforementioned case. The issue before us is limited as to whether the Commissioner of Income-tax would be justified in taking action under Section 263 when the matter is brought to his notice by the internal audit. In our view, the internal audit being a machinery under the administrative control of the CIT for the purposes of pointing out the acts of omissions, errors and prejudices caused to the revenue, they are doing so for and on behalf of the Commissioner of Income-tax. Such a report as already observed can form the basis for taking action under Section 263 provided the Commissioner of Income-tax applies his mind before deciding as to whether any action under Section 263 is warranted or not. He has not to merely act upon the audit objection in a mechanical manner but has to form his own opinion which would include information and opinion of the auditors.

Considering the facts and circumstances of this case and the view expressed above, we do not find any fault with the Commissioner of Income-tax in having initiated action after the receipt of the objection from the internal audit, in so far as, we are satisfied that CIT has applied his mind before taking action under Section 263. This objection raised on behalf of the assessee in this regard is, therefore, rejected."

11. These observations of the coordinate bench only strengthen view of this bench that the audit objection may trigger point but cannot be the basis for issuing show cause notice and to examine the record in context to audit objection alone. Certainly independent enquiry is the foundation of exercising revisional powers which are vested to superior and controlling adjudication authorities. Thus, the ground No. 1 of exceeding jurisdiction u/s 263 deserves to be sustained. The remaining grounds become superfluous. The same is allowed and the impugned order is set aside.

**ITA NO. 532/Del/2018**

12. This appeal of the assessee is against the orders arising out of effect giving order passed u/s 263 of the Act and as the same stands set aside consequently, the effect giving impugned assessment order dated 05.12.2016 has no foundation left and the consequential, assessment order and the order of Id appellate authority are also liable to be set aside. **Accordingly, both the appeals of the assessee are allowed.**

Order pronounced in the open court on 23/11/2022.

-Sd/-  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

-Sd/-  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

Dated: 23/11/2022  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi