

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.17/Asr/2021  
Assessment Year: 2011-12**

Sh. Sham Sunder Aggarwal, Prop. M/s P K & Company, 15- New Sabji Mandi, Kapurthala. [PAN:AAWPA3347E] (Appellant)	Vs.	Pr.CIT-1 Jalandhar.  (Respondent)
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<b>Appellant by</b>	Sh. J.S. Bhasin, Adv.
<b>Respondent by</b>	Sh. Hitendra Bhauraoji Ninawe, CIT. DR

<b>Date of Hearing</b>	17.04.2023
<b>Date of Pronouncement</b>	27.04.2023

**ORDER**

**Per:Anikesh Banerjee, JM:**

The instant appeal of the assessee is directed against the order of the Id.  
Principal Commissioner of Income Tax-1,Jalandhar,[in brevity the 'PCIT'] order

passed u/s 263 of the Income Tax Act 1961, [in brevity the Act] order dated 30.03.2021. The impugned order was emanated from the order of the Id. Income Tax Officer, Ward –II, Kapurthala order passed u/s 143(3)/147 of the Act.

The assessee has taken the following ground: -

- “1. That the impugned order, passed in a most mechanical and summary manner, by neither allowing sufficient opportunity, nor by considering the assessee's explanation filed at short notice, is wholly illegal and deserves to be quashed on this very premise.*
- 2. That the reassessment order dated 27.12.2018, under challenge in first appeal, being invalid for wrongful assumption of jurisdiction u/s.147/148, could not be set-aside by Id. PCIT u/s.263, unless its validity u/s.147/148 was first upheld.*
- 3. That when the assessee's first appeal, disputing the reopening u/s. 147 as also the additions made in order dt.27.12.2018, having close bearing on purchases doubted by PCIT, was pending, the jurisdiction u/s.263 could not be invoked in law.*

4. *That when all the relevant details and documents were filed in reassessment, and examined by the ld. ITO qua the issues as per 'reasons recorded', the ld. PCIT erred in assuming the purchases of 18 parties as bogus, to hold the order as erroneous and prejudicial u/s.263.*

5. *That the order under appeal is wholly against law and facts of the case.”*

2. The ld. Counsel for the assessee (in short AR) argued and submitted a written submission which is kept on record. First, the ld. AR invited our attention in the assessment order, on dated 27.12.2018 u/s 143(3)/147 of the Act. The relevant paragraph of the assessment order is extracted as below:

*“In view of above position, the purchases are remained unverifiable amounting to Rs. 1,87,26,637/- as mentioned by the Excise & Taxation Department-is not authenticated purchases and are not verifiable. In view of above position, cash purchases to the tune of Rs. 1,87,26,637/- are added to the income of the assessee. These purchases are not reflected in the form No. 24 of Excise and taxation. The purchases mentioned as Part (B) above are cash purchases which also does not find*

*place in the form No. 24. But addition is only made equal to amount of Excise Department Rs 1,87,26,637x5%. Thus total addition of Rs.924490+936334= 18,60,824/- is therefore made in this account.”*

2.1 The Id. AR further invited our attention in the order of the Id. PCIT in para no. 2 and 3 which are extracted as follows:

*“2. The above show cause notice was issued on 15-03-2021 fixing the date for 19.03-2021 and sent through Speed Post as well as through ITBA System. In response to the show cause notice, the counsel of the assessee Sh. Jorawar Singh Bhasin, Advocate filed reply/statements of accounts through email on 27.03.2021-. I have considered the reply of the assessee on the issues raised in the show cause notice and the documents filed by the assessee which need to be verified. Therefore, the order passed by the Assessing Officer is held to be erroneous and prejudicial to the interest of the revenue. The case is, therefore, set aside to the file of the A.O. for fresh assessment on the above mentioned issue.*

*3 In view of the above facts and discussions, I am satisfied that the assessment order passed by the Assessing Officer is*

*erroneous in so far as it is prejudicial to the interests of the revenue. Therefore, the said order passed is set aside to this extent to the file of the assessing officer to pass fresh order after making necessary enquiries/investigations in the light of the discussions made above and after giving due opportunity to the assessee of being heard.”*

2.2 The Id. AR fully relied that the same issue was agitated by the revenue during the reopening of assessment u/s 148 and relevant approval was received u/s 151 of the Act. During hearing before the Id. PCIT, the Id. AR submitted the following details which are enclosed in **APB page 1 to 16**. The relevant paragraph of assessee's submission is extracted as below:

**13.** *Now coming to the issues raised in the SCN as regards the alleged bogus purchases of Rs.1,97,93,175/- from 18 parties, which are proposed to be disallowed, the humble assessee, while seeking not to give recourse to any such action, has to advance his case as follows:*

i) *It is admittedly true that M/s Guru Teg Bahadur Rice Mill did not figure in the list of 18 parties, with alleged cancelled TINs. Therefore, the reduction of purchases of the said party, from the amount of purchases made in r/o 18 parties, was not called for. To this extent, the*

- observation made in the SCN is not objected to. But, this act on the part of AO, would not by itself, justify the other view taken that the whole of the purchases made from said 18 parties, being bogus and unverifiable, was required to be added as against the addition of Rs.9,24,491/- made on account of 5% VAT disallowed.*
- ii) *Firstly, for reopening of this case, when it had already been assessed u/s.143(3), in which the trading results were verified and accepted after inviting all relevant details of purchases/sales/expenses, the reasons as recorded by the ld.ITO u/s.148, were silent as to the source of information received by him, in respect of the bogus purchases, which, now as per the SCN, is stated to be the report of Investigation Wing. There was no reference made to any information received from the Sales Tax Authorities either. It is well settled that reasons recorded cannot be supplemented by subsequent acts/information. In any case, but for the point taken in reasons recorded that the impugned purchases were made from parties with cancelled TINs, there was no indication, not even a remote one, that the purchases made were also bogus. Therefore, when in the reasons recorded, satisfaction was drawn only qua the TIN status of the suppliers, nothing beyond disallowance of VAT paid, could be added, much less, the entire purchases, alleged to be bogus. Hence, sec 263 cannot be invoked to enlarge the scope of jurisdiction, to make addition beyond the subject matter of reasons recorded u/s.148.*
- iii) *Now coming to the merits of the proposed addition of the entire purchases made from these 18, being bogus, this allegation is absolutely false, baseless and totally de hors the facts on record. Undoubtedly, the*

*payment of VAT, being part of the purchase price paid to the suppliers, the entire purchase itself was to be first verified for its genuineness. One fact, which cannot be lost sight of, is that in this case, it was the second round of regular proceedings reinitiated to examine an issue, which in the earlier course of regular proceedings too, had stood the litmus test of scrutiny. It is naïve to assume that the assessee, aware of the fact that his case, though reopened to examine VAT paid to parties with cancelled TINs, was also first to justify the genuineness of purchases made, VAT being integral to same, would be so causal as not to provide the relevant details and documents, even when he was possessed of the same, and thus add to his unending woes as he had faced similar situation in earlier years too.*

- iv) *As a matter of fact, the assessee, while denying any bogus purchases made from these parties, had made available all documents in the shape of copies of a/c of these parties as per his books, as also from the books of suppliers, and also produced his ledger, purchase bills, his bank account with PNB wherefrom the payments were made by RTGS/Cheques etc, and VAT 23, 24 & 20 returns, declaring therein all such purchases as also the sales made. It is indeed unfortunate that the incumbent ITO, for apparent lack of his understanding the issues and skill to marshal the facts and spell out his versions unambiguously, drafted the order with loose ends. His act of reducing the purchases of M/s Guru Teg Bahadur Rice Mill from the impugned purchases, when this party did not even figure in the list of such parties, is ample testimony of his inept working. That each time, the axe is to fall on assessee for the lapses of the incumbent AO, is indeed coercive, more particularly when a good case is*

- made a no case, making room for assessee to suffer the aftermaths repeatedly.*
- v) *Nonetheless, it is vehemently denied that the purchases made from the said 18 parties were bogus or for that matter, the VAT paid was faulty. To say the least, the actual purchases made from these parties, rather far exceeded the amount sought to be disallowed, as discerns well from the list now drawn, placed below at Page 14, which bears the value of purchases made as per list at Rs.1,97,93,175/- and as per books of assessee at Rs.3,43,66,084/23. In fact the list received from Inv.Wing, casually made, without stating as to how and wherefrom the figures were drawn, is prima facie not reliable. If it has originated from Sales Tax authorities, then the amount indicated seems to have been adopted from one or the other quarterly returns, filed by the respective parties and not from the annual returns of the parties concerned. The list now drawn and appended at Page 14, bears the actual purchases made from all these parties, which invariably appear in assessee's ledger account, duly audited and produced before the AO not once but twice. If the AO fails to take note or record true facts from books produced, the assessee cannot be faulted with. This act of AO though erroneous, cannot be simultaneously held to be prejudicial to interest of revenue, twin conditions essential to be satisfied for action u/s.263.*
- vi) *Further, as per copies of account of these parties, appended below from Page 15-67, the amount of total purchases, made in each case, inclusive of VAT, was paid substantially by cheque/RTGS., with cash payment bare minimum. Parallel copies of account from the books of concerned*

*parties, not all but in some cases, as could be then procured, and given to ITO, are appended at Page 23-30, 32-33, 35-36, 39-42, 45-47, 51-52, 55-56, 58-59, 62-64 & 67, alongside the respective accounts as per assessee's ledger, which hardly show any difference. All the purchase bills, as entered in the ledger, are also available and were duly shown to ld.ITO and copies of few are appended at **page 89-104**. If the AO chooses not to record such facts in the order, then it leads to his satisfaction, not to make addition on such point. It defies logic as to why should the assessee feel shy of showing all these records to ld.ITO when the same were with him and can be produced even before your goodself, if so desired ? Obviously, the facts have been misread, which now seek to have triggered the present proceedings u/s.263.*

- vii) *Another important point, contextually relevant, is that the sales made by assessee, are mostly to well established Companies of national repute namely M/s Jagatjit Industries Ltd, Hamira, M/s JCT Mills Ltd, Phagwara, M/s A B Sugar Mills, Dasuya, M/s Mahavir Spinning Mills, Hoshiarpur and so on. There is no cash sales made to any such customers. As per the trading account, duly audited (copy placed below at **Page 81**), total sales made during the year aggregated to Rs. 19,88,61,397/14 as against total purchases of Rs.15,03,48,519/42 made during the year. Opening stock of Rs.1.53 crores was also held. When none of the sales made by assessee have been brought in dispute, nor for that matter, the trading results, which are progressive, were disputed, it is well neigh impossible to infer, that the purchases of a huge value of Rs.1.97 crores (actual figure is over Rs.3.43 crores) were bogus. Rather it reflects of the satisfaction of the AO that the purchases as such were not bogus.*

viii) *One more point, important and relevant to part with, is that the assessee in that year, had a fleet of about 25 trucks of his own, besides a tractor trolley, (as evident from the schedule of fixed assets enclosed at **Page 82**), deployed to lift the stocks of rice husk from various suppliers and deliver the same directly at the premises of respective buyers. This was necessitated as it was not viable to first take delivery of rice husk, a light weight heavy volume by- product obtained from shelling of paddy, at assessee's premises and then to reload and deliver it at the premises of buyers, by incurring heavy labour for its rehandling, besides arranging huge space for storage. For this reason, while outside transport bills were not available, but expenses on fuel and drivers salary etc, were invariably debited in books.*

ix) *In addition to above, the genuineness of the purchases made from 18 parties in the list, is further established by specific reference to the documents of a few parties, placed hereinbelow:*

**a) M/s Wahid Sandhar Sugar Ltd: (at S No.3 of list)**

*Copy of a/c as per assessee's ledger is placed at **Page 18-22**. Parallel copy of a/c in the books of supplier is also placed below at **page 23-29**. Not only the purchases of Rs.1,17,72,324 /- tally with them, but also, all payments were made by cheques.*

**b) M/s Shree Puran Chand Rice Mills (at S No.4 of list)**

*Copy of a/c as per assessee's ledger is placed at **Pg.31** and that of the party's parallel a/c is placed at **page 32-33**. All the figures fully tally*

with payments made by cheques/RTGS. Also, enclosed at **pg.33** is copy of **VAT-23** form filed by said party, though for one quarter, which bears the Vat Regn.No (VRN) of the party and the name of this assessee as purchaser.

**c) Ram Nath Dhir & Sons: (at S.No.5 of list)**

Copy of a/c as per assessee's ledger is placed at **Pg.34-35** and parallel copy of a/c though not readily available, copy of VAT-23 filed by said party, which bears their VRN no and also the assessee's name, among other parties, as their purchaser is enclosed at **Page.36**. Though taxable value shown is Rs.12.50 lacs, inclusive of the vat element of Rs.68750/-, the gross figure shown by assessee would fully match.

**d) Hari Om Trading Co. (at S.No.7 of list)**

Copy of a/c as per assessee's ledger is at **page 38** and the parties a/c is at **page 39-42**, which reconciles with assessee's a/c.

**e) Bharat Gram Udyog Samiti, Bathinda (at S.No.8 of list)**

Copy of a/c as per assessee's ledger is at **page 43-44** and the parties a/c is at **page 45-47**, which reconciles with assessee's a/c.

**f) Vij Agro Industries Phagwara ( at S No.10 of list)**

*Copy of their a/c in assessee's ledger is at Page 49 and copies of two VAT 23 forms filed by said party, for two different quarters, are enclosed at **page 5-51**, wherein the assessee's name appears as their 'purchaser'.*

**g) King Rice & General Mills, Phillaur (at S No.13 of list)**

*Their copy of a/c as per assessee's ledger is at **page 53-54** and their parallel copy of a/c is placed at **pg.55-56** which confirm the figures and also show payments by cheques/RTGS.*

**h) Annpurna Rice & General Mills, Jalandhar (S.No.14 of list)**

*Their copy of a/c as per assessee's ledger is placed at **page 57** and their parallel a/c is placed at **page 58-59**, which fully tally besides showing all payments of cheques/RTGS.*

**i) Arora Rice Mills, Rayya (S No.16 of list)**

*Their copy of a/c as per our ledger is at **page 61** and their parallel a/c is at **page 62**. Also enclosed is copy of Form No.23, at **page 63-64** which shows assessee as their purchaser.*

**j) Malhotra Rice & General Mills, Rayya (S No.18 of list)**

*Their copy of a/c as per our ledger is at **pg.66** with their confirming a/c at **page 67** showing mode of payment being thru bank.*

- x) *Besides the above documents, copies of a few purchase bills received from parties amongst the list of 18, are also enclosed at **Page 89-104** which bear the relevant details of goods supplied, value thereof and their TINs . These bills also bear the Truck details, which belong to assessee and prove the point that assessee deployed own trucks to lift the material.*
- xi) *To establish the factum of purchases & sales actually made, as declared in audited trading account, also enclosed at **page 105-108** is the extract of VAT return in **FORM No.24**, declaring total purchases of Rs.15,03,48,519/-inclusive of 18 parties in question, and VAT return in **FORM No.23** at **Page 83-88** declaring total sales at Rs.19,88,61397/-. These two VAT returns were also filed,with the ITO during reassessment, alongwith other supporting evidence, vide reply dt.21.12.2018 (**copy appended at pg.109-110**).*
- xii) *As to the truth of cancelled TINs of 18 parties, it is factually incorrect. At least in respect of the parties whose VAT 23 is being filed herein above, it is false per se. Then the timing of this allegation is no where stated, which is important qua the fact that the assessee, when made purchases from these parties during the relevant period, they had active TINs. If at any later stage, the TINs were cancelled, (as the husk was exempted w.ef.7.1.2011 from VAT) then it will not impact the purchases made by assessee. This fact is however, instantly verifiable from the official web-site of the Sales Tax Authorities. Moreover, when the assessee made payments as per VAT invoices raised by the said suppliers, inclusive of*

*VAT on sale price, then its mechanical disallowance is absolutely arbitrary and illegal. This apart, if the parties having received VAT from the assessee, failed to further pay to Govt at their end, the assessee cannot be faulted with.*

- 14.** *Thus from the facts and figures stated hereinabove, the proposed action u/s.263 is unwarranted since, the order even if erroneous, is not prejudicial to interest of revenue, twin conditions essentially required as held by Hon'ble Apex Court in the case of Malabar Industrial Co.Ltd. v. CIT (2000) 243 ITR 83(SC). If given resort to, it would simply push the assessee into third round of proceedings, with seamless litigation, when in set aside proceedings, the AO hardly deviates from the standpoint taken by the PCIT in order u/s.263.*

*Thanking you, “*

- 2.3 The 1d AR relied on the order of Hon'ble **Punjab and Haryana High Court in the case of Commissioner of Income-tax vs. R.K. Metal Works [1978] 112ITR445 (PUNJ & HAR.)**. The relevant paragraph is extracted as below: -

*“A perusal of the order of the Commissioner of Income-tax clearly shows that the criticism of the Tribunal is well-founded. There is no indication in the order of the Commissioner as to the basis on which he came to the prima facie conclusion that the capital borrowed by the firm was utilised for purposes other than that of the firm's business. When the assessee filed a detailed written statement before*

*him, the Commissioner did not deal with any of the points raised in the statement. He thought that the best course in the circumstances was to remand the matter to the Income-tax Officer for consideration of the points raised in the assessee's written statement. That certainly was not the proper course to be adopted by him. It was necessary for the Commissioner to state in what manner he considered that the order of the Income-tax Officer was erroneous and prejudicial to the interests of the revenue and what the basis was for such a conclusion. After indicating his reasons for such a conclusion, it would certainly have been open to him to remand the matter to the Income-tax Officer for such other investigation or enquiry as might be necessary. But that was not the course which the Commissioner pursued. The Tribunal was, therefore, justified in setting aside the order of the Income-tax Commissioner. The learned counsel for the revenue urged that, while setting aside the order of the Commissioner, the Tribunal had purported to restore the order passed by the Income-tax Officer and this meant that the Commissioner was precluded from taking up the matter again. We do not want to express any opinion on this question, since our jurisdiction is confined only to answering the question referred to us. The question referred to us is answered in the affirmative. There will be no order as to costs."*

3. The Id. DR fully relied on the order of the revenue authorities. The Id DR relied on order of High Court of Bombay & ITAT- Jaipur. The case laws are extracted below:

**Shoreline Hotel (P.) Ltd. v. Commissioner of Income-tax, Central-I, [2018] 98 taxmann.com 234 (Bombay).**

*“25. Once we do not find that in this case there is any substitution of the views of the Assessing Officer, but there was a clear failure to abide by the statutory mandate and by making an estimate so also accepting a vague and general explanation of the assessee, the assessment has been made, then, it will undoubtedly be erroneous insofar it is prejudicial to the interest of the Revenue. It is erroneous insofar as the same is prejudicial to the interest of the Revenue because the Assessing Officer has failed to carry out his statutory obligation and duty and failed to discharge it by holding further probe and inquiry. More so, when the assessee virtually had no answer to his notice. Secondly, very reliable and genuine information was received from the VAT and Sales Tax authorities with regard to the operations with these dealers styled as 'hawala traders'. This certainly brought the matter within the purview of section 263 of the Income-tax Act 1961. No error of law or perversity is committed either by the Commissioner or the Tribunal. We do not find that their order raised any substantial questions of law.”*

ITAT- Jaipur, in the case of **JR Industriesv. Principal Commissioner of Income-tax, [2021] 132 taxmann.com 302 (Jaipur - Trib.)**. Held that

*“I. Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interest of revenue (Scope of Jurisdiction) - Assessment year 2011-12 - Whether Commissioner can assume jurisdiction under section 263 during pendency of appeal before Commissioner (Appeals) - Held, yes - Whether further, in view of Explanation (c) to section 263(1), Commissioner can assume jurisdiction under section 263 in respect of issues which have not been considered and decided by Commissioner (Appeals)”*

4. We heard the rival submission and relied on the documents available in the record. The assessment was complicated under section 143(3) r.w.s. 147 of the Act. The assessment was reopened under section 148 r.w.s.151. The approval was granted by the Id. PCIT during issuance of notice u/s 148. During the proceeding under section 263 the assessee submitted relevant documents in relation to show cause notice issued by the Id. PCIT. The Id. PCIT after receiving the submission from assessee just subsided the entire documents to the lower authority for further verification. Without proper verification of documents of the assessee, only to remand the matter to the Id. AO ‘for verification’ which is vitiated the order u/s

263. In the assessment order, the issue of purchase is dealt by the Id AO&is reflected in order of assessment. We respectfully consider the orders which are relied by the revenue are factually not similar with the assessee's case. We fully relied on the order of Hon'ble Jurisdictional High Court in the case of **R.K. Metal Works** (supra). In our considered view when the assessee filed a detailed written submission before him, the Id. PCIT did not deal with any of the points raised in the submission. Without verification of the documents only to remand the matter to the Id. AO for consideration of the points raised in the assessee's written statement. In our considered view the order U/s 263, passed by the Id. PCIT is setting aside and quashed.

5. In the result, the appeal of the assessee bearing **ITA No. 17/Asr/2021** is allowed.

**Order pronounced in the open court on 27.04.2023**

Sd/-

**(Dr. M. L. Meena)**  
**Accountant Member**

Sd/-

**(ANIKESH BANERJEE)**  
**Judicial Member**

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By order