

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

**BEFORE SHRI S RIFAUH RAHMAN, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 969/Del/2022
Asstt. Year: 2017-18

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| M/s. M C Jewels P. Ltd. 3222/30, Beadon Pura, Karol Bagh, New Delhi – 110 005 PAN AADCM9030C | Vs. | DCIT, New Delhi. |
| (Appellant) | | (Respondent) |

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|------------------------|---|
| Assessee by: | Shri Manish Malik, Advocate Shri Pankaj Jain, Advocate |
| Department by: | Shri Subhra Jyoti Chakraborty, CIT DR |
| Date of Hearing: | 04.06.2024 |
| Date of pronouncement: | 27 .06.2024 |

ORDER

PER VIMAL KUMAR, JM

The assessee's appeal is against order dated 21.3.2022 of Learned Principal Commissioner of Income Tax (Appeals) (hereinafter referred as "Learned PCIT") through which assessment order dated 28.12.2019 of Learned Deputy Commissioner of Income Tax (hereinafter referred as "Learned AO") was cancelled with the direction that the assessment be made afresh denovo.

2. Brief facts of the case are that on 18.10.2017, the assessee filed income tax return for assessment year 2017-18, declaring

income of Rs. 1,77,25,250/-. The case was selected for scrutiny under CASS-complete scrutiny (E-proceeding) for the reason as under:-

1. Large increase in unsecured loan
 2. Large value cash deposit during demonetization
 3. Abnormal increase in cash deposit during demonetization
3. Statutory notice under section 143(2) of the Income Tax Act, 1961 (hereinafter referred as “the Act”) was issued. Subsequent notices under section 142(1) along with questionnaire was issued through email. In response to notices assessee company furnished details. The assessee is engaged in business of trading and manufacturing of jewellery. After considering replies of assessee it was observed that certain expenses claimed by assessee were quite high as compared to previous years and seemed to be inflated. Assessee was asked to submit details and ledgers of these expenses. But the replies filed by assessee were incomplete. Through notice under section 142(1) dated 24.12.2019 assessee was asked to explain expenses along with copies of bills. Assessee filed reply and for the reasons, Rs.23,50,230/- i.e. 50% of Rs. 47,00,461/- was disallowed under section 37 of the Act. Penalty proceedings under section 270A of the Act were initiated. The income of assessee was rounded off as Rs. 2,00,75,480/-.
4. Assessee filed appeal before Learned PCIT. Through order dated 28.12.2019, Learned PCIT set aside assessment order with direction to Learned AO to make assessment afresh de novo.

5. Being aggrieved, appellant/assessee preferred present appeal.

6. Learned authorised representative for assessee submitted that Learned PCIT had not brought any material on record regarding inquiries or verification by himself to substantiate his inference that the order of Learned AO was erroneous and prejudicial to the interest of revenue. In para No. 2.4 Learned PCIT wrongly held that -

“.....AO has not conducted any enquiry to verify the genuineness of cash sale in 960 invoices during the period of 11 days just before commencement of demonetization period because there was abnormal increase in sale, in spite of specific reason for selection of case into scrutiny. AO has also not obtained item wise details of stock to verify the value of items whether the same was less than or not. It is important to obtain item wise stock of jewellery and item wise sale bills of jewellery as that is the appropriate way to keep stock of jewellery.”

However, in reply dated 11.12.2019 before the Learned AO datewise item stock for period from 1.11.2016 to 31.12.2016 was submitted. Sales and purchase register for the period from 01.11.2016 to 31.12.2016 was submitted. In reply dated 19.12.2019 item wise stock register was submitted for the period 09.11.2016 to 30.12.2016.

7. Learned authorized representative of assessee submitted that the Learned PCIT erred in observing in para 2.5 that Learned AO has not made enquiry. In reply dated 12.10.2019 assessee submitted details of advances received from customers. In reply dated 14.11.2019 details submitted along with PAN and address.

8. Learned authorised representative for assessee submitted that Learned PCIT erred in observing in para 5.1 that cash sales of Rs. 9,41,29,160/- identify and genuineness of cash memo not verified by Learned AO as sales bills were less than Rs. 2,00,000/-. However in reply dated 19.12.2019 reason for increase in turnover of company was due to fact that company had launched scheme of 100% buy back of ornaments and diamond jewellery, from middle of October 2016 and November 2016 and photo of hoarding was submitted.

9. Learned authorised representative for assessee submitted that the finding of Learned PCIT that most of the sale bill is less than Rs. 2 lakhs and sale bills do not contain item wise weight and description of jewellery in para 5.3. Learned PCIT failed to appreciate that in reply dated 27.12.2019 explanation submitted that PAN is not mandatory in respect of sale below Rs. 2 lakhs as per decision of Hon'ble Delhi High Court in case of CIT-II vs. Jindal Dychem Industries Limited.

10. Learned authorised representative for assessee argued that Learned PCIT erred while observing that assessee did not have item wise weight and price of jewellery in stock and no such description in cash memo in para 5.4. Learned PCIT failed to appreciate reply dated 19.12.2019 submitting sale invoice including cash sale invoice for period from 01.04.2016 to 31.12.2016 mentioning item name, quantity and rate. Reference in judgement of Hon'ble ITAT Delhi in ITA No.836/Del/2022 titled as V.L. Jewellers Vs. PCIT was made.

11. Learned representative for the department of revenue submitted that Explanation 2 has been inserted in Section 263 of I.T. Act by Finance Act 2015 w.e.f. 01.06.2015 which is reproduced below:

“Explanation 2-For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,-

- (a) the order is passed without making inquiries or verification which should have been made;*
- (b) the order is passed allowing any relief without inquiring into the claim;*
- (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or*
- (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.”*

Regarding validity of proceedings u/s 263 of the Act reference was made to judgment reported as [2023] 146 taxmann.com 209 (Jabalpur-Trib.)-Nisha Sharma vs. Principal Commissioner of Income-tax.

12. From examination of record in light of aforesaid rival contentions it is crystal clear that assessee filed income tax return for the assessment year 2017-18 declaring income of Rs. 1,77,25,250/-. The case was selected for scrutiny under CASS. For the reasons which are as under:-

1. Large increase in unsecured loan

2. Large value cash deposit during demonetization

3. Abnormal increase in cash deposit during demonetization

In response to notice assessee filed replies dated 12.10.2019 submitting details of advance received from customers reply dated 14.11.2019 advance from major parties.

13. In para 2.4 and 2.5 Learned PCIT held as under:-

“2.4 The above facts show that the AO has not conducted any enquiry to verify the genuineness of cash sale in 960 invoices during the period of 11 days just before commencement of demonetization period because there was abnormal increase in sale, in spite of specific reason for selection of case into scrutiny. AO has also not obtained item wise details of stock to verify the value of items whether the same was less than or not. It is important to obtain item wise stock of jewellery and item wise sale bills of jewellery as that is the appropriate way to keep stock of jewellery.”

“2.5 Further, on going through the records of the assessee it is also observed that the assessee has received advance from customers of Rs. 43,03,669/-, but the AO has not made any enquiry or verification of the same.”

14. Learned PCIT in paras 2.4 and 2.5 had observed that Learned AO had not conducted any inquiry to verify the genuineness of cash sale in 960 invoices during the period of 11 days just before commencement of demonetization period because there was abnormal increase in sale. In spite of specific reason for selection of case into scrutiny, Learned PCIT erred in observing that Learned AO had not obtained itemwise details of stock to verify the value of items whether the same was less than or not. It is important to obtain item wise stock of jewellery and item wise sale bills of jewellery as that is the appropriate way to keep stock of jewellery.

- (a) Reply dated 11.12.2019- Date wise item stock register for period from 1.11.2016 to 31.12.2016 was submitted
- (b) Sales and purchase register for period from 1.11.2016 to 31.12.2016 was submitted
- (c) Reply dated 19.12.2019 item wise stock register was submitted for period from 01.04.2016 to 31.03.2017

15. So the observations in para no.2.4 and 2.5 are not just fair and reasonable.

16. In para 5.1, 5.3 and 5.4 of Learned PCIT observed that :

“5.1 With regard to cash deposit of Rs. 9,51,00,000/- by the assessee in its bank account during demonetization period, on perusal of records it is found that out of total cash deposit of Rs. 9,51,00,000/-, cash amounting to Rs. 6,46,000/- was received from persons with PAN, cash of Rs. 3,24,840/- was received from identifiable persons without PAN and cash totalling of Rs. 9,41,29,160/- was received from un-identifiable persons. Neither the identity details of cash sales of Rs. 9,41,29,160/- was furnished by the assessee nor the identity and genuineness of the customers was verified by the AO. Needless to state that all such sale bills were for less than Rs. 2,00,000/-“.

“5.3 In regard to cash deposited during the demonetization period, the assessee has not been able to substantiate with evidence the comparable data of previous year month wise/fortnightly cash sale and deposit during demonetization period. The assessee has also not substantiated with supporting evidence why most of sale bill was less than Rs 2 lakhs. The sale bills also do not contain item wise weight and description of jewellery.”

“5.4 It is usual practice of jewellery companies/shops to keep stock as per description of the jewellery along with weight and cost. Similarly, in the cash memos for sale, the description of jewellery along with weight and price are noted. This is also how stock and sale can be correlated. The assessee, though a big

jewellers' company did not have item wise weight and price of jewellery in stock nor such description is there in cash memos.”

17. So it is apparent on record that all the details were filed before the Learned AO by the assessee. Complete Paper Book was filed before the Learned AO. Copy of details of source of cash is at page No. 1 to 4 of Paper Book. Copy of details of partywise purchase is at page No. 148-157, copy of detail of total sale is at page No. 158 to 195. Copy of major parties to whom sales were made, copy of detail of major parties to whom sales were made is at page No. 196-200 so it is evident that Learned PCIT erred in not considering the replies by the assessee in true perspective.

18. As such it is evident that the Learned PCIT pointed out the errors in the assessment order, had not made any inquiries.

19. Hon'ble High Court of Delhi in DCIT vs. Jyoti Foundation, 357 ITR 388 observed that

“Thus, in cases of wrong opinion or finding on the merits, the Commissioner of Income-tax has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under section 263 is passed. In such cases, the order of the Assessing Officer will be erroneous because the order passed is not sustainable in law and the said finding must be recorded. The Commissioner of Income-tax cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous.....”

20. In ITA No. 836/Del/2022 titled as V.L. Jewellers vs Pr. CIT, scase (supra) observed that :-

“In the case of Ld. Pr.CIT vs. Delhi Airport Metro Express Pvt. Ltd. in ITA No. 705/2017 dated 05.09.2017 the Hon'ble Delhi High Court held that for the purpose of exercising jurisdiction

u/s 263 of the Act the conclusion that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue has to be preceded by some minimal enquiry by the Pr.CIT. It was held that if that basic exercise has not been undertaken by the Pr.CIT he cannot exercise the second option available to Pr.CIT u/s 263 of the Act by sending the entire matter back to the Assessing Officer for a fresh assessment. The Hon'ble High Court opined that the second option of sending back the entire matter to the Assessing Officer can be exercised only after the Pr.CIT undertakes an enquiry himself. In the case on hand before us, the Ld. Pr.CIT has not made basic exercise, enquiries herself with respect to the evidences/explanation on record before concluding that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue even though elaborate submissions were made by the assessee along with evidences to prove its case that the assessment order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of Revenue.”

21. In view of above material facts and well settled principle of law and as per ratio of aforesaid judgements, the impugned order of Learned PCIT dated 28.12.2019 passed under section 263 is not legal and sustainable. Impugned order deserves to be is set aside.

22. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 27th June, 2024.

sd/-

**(S RIFAUH RAHMAN)
ACCOUNTANT MEMBER**

sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

Dated: 27/06/2024

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Copy forwarded to -

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

ASSISTANT REGISTRAR
ITAT, New Delhi

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| Date of dictation | |
| Date on which the typed draft is placed before the dictating Member | |
| Date on which the typed draft is placed before the Other Member | |
| Date on which the approved draft comes to the Sr. PS/PS | |
| Date on which the fair order is placed before the Dictating Member for pronouncement | |
| Date on which the fair order comes back to the Sr. PS/PS | |
| Date on which the final order is uploaded on the website of ITAT | |
| Date on which the file goes to the Bench Clerk | |
| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |