

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM &  
SHRI SUNIL KUMAR SINGH, JM**

**I.T.A. No. 1567/Mum/2024  
(Assessment Year: 2018-19)**

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| <b>Niraj Kirit Doshi</b><br>701, Silver Solitaire, Tilak Road,<br>Opp. Axis Bank, Ghatkopar East,<br>Mumbai-400077.<br><b>PAN : AAEPD3229Q</b> | Vs. | <b>PCIT, Mumbai-27,</b><br>Room No. 401, 4 <sup>th</sup> Floor,<br>Tower No.6, Vashi Station<br>Commercial Complex,<br>Vashi, Navi Mumbai-400703. |
| <b>Appellant)</b>  | :   | <b>Respondent)</b>  |

**Appellant/Assessee by** : Shri Kirit S. Sanghvi, AR

**Revenue/Respondent by** : Shri S Srinivasu, CIT-DR

**Date of Hearing** : 21.08.2024

**Date of Pronouncement** : 26.08.2024

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the assessee is against the order of the Principal Commissioner of Income Tax, Mumbai - 27 [in short 'the PCIT'] passed under section 263 of the Income Tax Act 1961, (the Act) dated 28.02.2024 for Assessment Year (AY) 2018-19. The assessee raised the following grounds of appeals:

**“No error in the Order**

*The learned Pr.CIT erred on facts and in law in passing the impugned Order dated 280 February, 2024 passed under 5.263 of the Act when there is no error in the Order of the AO which is sought to be revised.*

**Relief claimed:** *The order passed under s.263 of the Act be cancelled.*

2. *The learned Pr. CIT erred on facts and in law in not appreciating that the provisions of 5.68, 69, 5.69A,5.69B,s.69C and s.69D of the Income-tax Act, 1961 do not apply in the case where income referred to in those sections is voluntarily included in the Return of Income filed by an assessee.*

**Relief claimed:** *Tax be not-worked out under s. 115BBE.*

3. *The learned Pr.CIT erred in law in not appreciating that s.69B of the Act did not apply to the facts of the case*

**Relief claimed:** *s.115BBE be held not applicable to the facts.*

4.1 *The learned Pr. CIT erred in law in not appreciating that even if an assessee commits an error in his return of income, the AO should have assisted the assessee in taking a correct stand, and by keeping this principle of taxation in sight, the AO should have held inventory of diamonds found as relating to business.*

**Relief claimed:** *5.69B and s.115BBE be held inapplicable.*

5.0 *Without prejudice to the other Grounds of Appeal, the learned Pr.CIT erred on facts and in law in not appreciating that the provisions of s.263 of the Act do not apply if the AO has taken a view which is one of the many possible views, and that the view taken by the AO was one such possible view.*

6.0 *The learned Pr.CIT erred in law in stating that the AO failed to initiate penalty proceedings for which, according to the Pr.CIT, the appellant was liable without appreciating that a case does not become subject to penalty unless facts justified initiation of penalty proceedings.*

*Relief claimed: The CIT be directed to revise his premature direction to the AO in this regard.”*

2. The assessee is an individual engaged in Jewelry business and filed the return of income for AY 2018-19 on 14.08.2018 declaring a total income of Rs. 95,69,880/-. The return was selected for scrutiny and the statutory notices were duly served on the assessee. The Assessing Officer (AO) completed the assessment

assessing the income at Rs. 95,73,471/-. From the assessment records, the PCIT noticed that the assessee while filing the return of income had included excess stock of Diamonds found during the course of survey action to the tune of Rs. 50,03,200/- under the head "Income from Other Sources" and has paid normal tax. The PCIT was of the view that since the assessee has accepted the said income towards unexplained stock of loose diamonds the income should be added under section 69B as unexplained investments and to be taxed under section 115BBE. The PCIT accordingly issued a show-cause notice under section 263 of the Act. The assessee submitted that the stock of loose diamonds was excess stock earned from business of Jewelry and was declared suo-moto during the course of survey which was part of the business income. The assessee further submitted that the loose diamonds cannot be treated as unexplained investments since the same are part of stock of the Jewelry business. The assessee also submitted that the income has been offered as part of the income returned by the assessee while filing the return of income and therefore, the same cannot be added under section 69B of the Act.

3. The PCIT after considering the submissions of the assessee held that

*“4.2 It is noticed that the Assessing Officer passed the assessment order without making inquiries or verification of the source and nature of income shown in the ITR under the head income from other sources amounting to Rs. 50,03,200/- under normal provision. Moreover, the assessee itself in his statement recorded during the course of survey action has accepted that he had unexplained stock of loose diamond of 125.08 carat amounting to Rs. 50,03,200/- which he had declared as undisclosed business income over and above his normal income for AY 2018-19. Thus, the amount of Rs. 50,03,200/- should have been treated as income u/s 69B of the Act and tax should have been charged as per provision of section 115BBE of the Act which the Assessing Officer failed to do so. Further, the assessee was also liable for penalty u/s 271AAC of the Act which the AO failed to initiate.*

*Considering the above, the Assessing Officer has failed to verify/examine the issue with respect to income from other sources, and on the facts and circumstances of the case, it can be said that the A.O. had not sought any explanation from the assessee and also failed to properly examine the issue, which has rendered the assessment order erroneous in so far as it is prejudicial to the interest of revenue.*

*5 The various Courts have held time and again that if the AO failed to conduct proper enquiries, the resultant assessment order may be held to be erroneous.*

*In CIT Vs. Ballarpur Industries, [(2017) 85 Taxman.com 10 (Bombay)], the Bombay High Court had held that where the AO allowed claim of deduction without examining the said claim, the Commissioner was justified in invoking revision under section 263.*

*In Deniel Merchant Pvt. Ltd. Vs. ITO (SC) (Appeal no. 2396/2017)/[2018] 95 Taxmann.com 366 (SC), the Hon'ble Supreme Court has dismissed SLPs by observing the following:*

*"In all these cases, we find that the Commissioner of Income Tax had passed an order under section 263 of the Income Tax Act, 1961 with the observations that the Assessing Officer did not make any proper inquiry while making the assessment and accepting the explanation of the assessee(s) insofar as receipt of share application money is concerned. On that basis the Commissioner of Income Tax had, after setting aside the order of the Assessing Officer, simply directed the Assessing Officer to carry through and detailed inquiry. It is this order which is upheld by the High Court. We see no reason to interfere with the order of the High Court."*

*6. In the assessee's case, it is abundantly clear that the AO has failed to properly examine the issue as per para 4.2, which has rendered the assessment order erroneous in so far as it is prejudicial to the interest of revenue. In view of the above facts and circumstances of the case, it is held that the order dated 30.09.2021 passed u/s. 143(3) of the Income Tax Act, 1961 is erroneous in so far as it is prejudicial to the interest of the revenue within the meaning of Sec. 263 of the Income Tax Act 1961 and, as the Assessing Officer failed to conduct proper inquires. investigation and examination, the assessment order is set aside to the Assessing Officer with the direction to pass a fresh assessment order considering the issues raised in the notice u/s. 263 of the Act in accordance with law and after affording an opportunity of being heard to the assessee."*

4. The ld. AR submitted that during the course of survey proceedings, the assessee offered excess stock of diamonds and the same was offered to tax under the head "Income from Other Sources" while filing the return of income instead of business income erroneously. The AO during the course of assessment has accepted the said income returned by the assessee and completed the assessment accordingly. The ld. AR further submitted that since the income has already offered to tax the addition cannot be made under section 69B of the Act and therefore, the order of the AO cannot be held to be erroneous or prejudicial to that extent.

5. The ld. DR on the other hand argued that the assessee has offered the income as unaccounted stock and therefore the same cannot be treated as normal income to be taxed at regular rate of taxes. The ld. DR further submitted that the AO ought to have examined the source of the unexplained stock and should have treated the same as unexplained investments in the hands of the assessee which is subject to higher rate of tax. With regard to the reliance placed by the assessee in the decision of Rajkot Bench of the Tribunal in the case of Parshottambhai Maganlal Ramotia Vs. Pr.CIT [2023] 157 taxmann.com 5158 (Rajkot-Trib.), the ld. DR submitted that assessee case is distinguishable since the income in the said case pertains to professional income and not unexplained stock as in assessee's case.

6. We heard the parties and perused the material available on record. There was a survey in the case of the assessee where some unaccounted loose diamonds were found and that the assessee suo-moto agreed to offer the same to tax. In the return of income filed the assessee has included a sum of Rs. 50,03,200/- under the head "Income from Other Sources" stating that the same is towards loose diamonds found during survey. The AO completed the assessment by making certain small

additions. It is relevant to mention here that the AO in the assessment order has not mentioned anything about the survey operations conducted in assessee's case and nothing is stated with regard to the income offered towards unexplained stock of diamonds. The PCIT invoked the powers of revision under section 263 for the reason that the AO has not made any enquiry or examination with regard to income offered towards unexplained diamonds found during search. The argument of the assessee is that the AO has examined and has taken a conscious decision to accept the income declared. However we are unable appreciate this contention of the assessee since the AO's order does not even mention the fact that there has been survey and therefore the claim that the AO has applied his mind while accepting the income offered by the assessee towards unexplained diamonds found during survey does not have merit. The Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd v/s CIT [2000] 243 ITR 83 (SC) held that non- enquiry before allowing the claim would make the order of the AO amenable to jurisdiction under Section 263 of the Act. In the given case, the Id AR did not bring anything on record to show that the AO has raised any query with regard to the income declared by the assessee from the survey operations and that the assessee furnished any details which were examined by the AO. The AO has completely ignored the fact that the assessee was subject to survey and has declared certain income under the head Income from Other Sources towards unexplained stock found during survey. Therefore in our considered view the PCIT is justified in invoking the powers of revision under section 263 on the ground that the AO has not done any proper enquiry which ought to have been done. With regard to the merits of the issue as to whether the income should be subject to normal tax or under section 115BBE since the AO has not examined the issue at all we modify the order passed u/s.263 with a direction to the AO to examine the issue afresh by calling for the

relevant details and decide the taxability of the income offered during survey in accordance with law. It is ordered accordingly.

7. In the result, the appeal by the assessee is dismissed.

*Order pronounced in the open court on 26-08-2024.*

**Sd/-**  
**(SUNIL KUMAR SINGH)**  
**Judicial Member**

*\*SK, Sr. PS*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**