

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

ITA No.311/Ind/2024
Assessment Year: 2017-18

S. Gandhi Jewellery Private Limited, C/o Adv. Hitesh Chimnani, UG-37 Trade Centre, 18, South Tukoganj, Indore	<u>बनाम/</u> Vs.	PCIT-1, Indore
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AAMCS1613G		
Assessee by	Shri Hitesh Chimnani, AR	
Revenue by	Shri Ram Kumar Yadav, Sr. DR	
Date of Hearing	10.02.2025	
Date of Pronouncement	21.02.2025	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by revision-order dated 18.03.2024 passed by learned Pr. Commissioner of Income-Tax, Indore-1 ["PCIT"] u/s 263 of Income-tax Act, 1961 ["the Act"] which in turn arises out of assessment-order dated 29.03.2022 passed by learned NFAC, Delhi ["AO"] u/s 147 r.w.s. 144B of the act for Assessment-Year ["AY"] 2017-18, the assessee has filed this appeal on following grounds:

"1. That on the facts and in the circumstances of the case and in law, the Hon'ble PCIT erred in assuming jurisdiction u/s 263 on the same issue, which was subject matter of appeal before CIT Appeals.

2. That on the facts and in the circumstances of the case and in law, the Hon'ble PCIT without properly appreciating the facts of the case, erred in alleging that the order u/s. 147 r.w.s 144 of the Act is not only erroneous but also prejudicial to the interest of the revenue as the Assessing Officer has failed to conduct any inquiry and verification which is patently incorrect.

3. That on the facts and in the circumstances of the case and in law, the Ld. PCIT erred in treating the order passed by the Id. AO as erroneous simply because he harbored a different view than that of the Id. AO. The view adopted by the Id. AO was one of the possible views duly fortified by decisions of Hon'ble ITAT, duly quoted in the order itself. The exercise of revisionary jurisdiction under the facts of the case, by the Ld. PCIT, is thus not legal and proper. Thus, the impugned order is bad in law and needs to be quashed.

4. The appellant craves leave to add, amend, modify, or withdraw any of the grounds of appeals at the time of hearing."

2. The background facts leading to present appeal are such that the assessee filed its original return of income of relevant AY 2017-18 declaring a total income of Rs. 34,91,432/- which was subjected to scrutiny-assessment and the AO completed assessment u/s 143(3) vide order dated 17.12.2019 accepting the income returned by assessee. Subsequently, on the basis of certain incriminating information received from Investigation Wing through Insight Portal based on surveys conducted on 12.11.2018 on two different persons named M/s Krishna Gold (proprietor Shri Vankatesh Lodha) and M/s N.S. Jewellers & Bullion (proprietor Shri Shailesh Mehta) indicating that the assessee has received accommodation by way of bogus purchases of Rs. 1,55,00,000/- from M/s N.S. Jewellers & Bullion, the AO issued notice dated 31.03.2021 to re-open assessee's case u/s 147 followed by notices u/s 143(2) and 142(1). In response, the assessee filed submission objecting to the re-opening of assessment as also claiming that the

impugned purchases was a genuine purchase. However, the AO extracted the Survey Report dated 23.09.2020 forwarded by Investigation Wing on Page 3 to 13 of assessment-order and considered assessee's submissions on Page 13 to 14 of assessment-order and finally rejecting the assessee's objections made an addition of Rs. 19,37,500/- equivalent to 12.50% of alleged bogus purchase of Rs. 1,55,00,000/- while completing assessment of re-opened case vide order dated 29.03.2022 u/s 147 r.w.s. 144B and thereby re-assessing total income at Rs. 54,28,932/-.

3. Subsequently, Ld. PCIT examined the record of re-assessment proceeding and viewed that the impugned order of re-assessment dated 29.03.2022 passed by AO is erroneous in so far it is prejudicial to the interest of revenue which attracts revisionary-jurisdiction u/s 263. Accordingly, the PCIT issued show-cause notice dated 23.02.2024 and finally passed revision-order dated 18.03.2024 u/s 263. Aggrieved by such revision-order, the assessee has come in this appeal before us.

4. Ld. AR for assessee carried us to revision-order and demonstrated that there is one single issue for which the PCIT undertook revision. The PCIT has alleged that the entire amount of purchase transaction of Rs. 1,55,00,000/- was liable to be added as total income of assessee. The PCIT has further alleged that during assessment-proceeding the assessee has neither furnished any detail nor explained the issue and that the submission and details available on record was not enough to verify the reasons of re-opening assessment u/s 147. Therefore, the order of re-

assessment passed by AO is erroneous-cum-prejudicial to the interest of revenue. The PCIT has also observed that since the section 263 has been amended and Explanation 2 as reproduced below had been introduced therein, the assessment-order is deemed to be erroneous-cum-prejudicial to the interest of revenue if the same had been passed without inquiries or verification which should have been made:

“Explanation 2 – For the purpose 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 interest of 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.”*

5. Having explained the basis of revision done by PCIT, Ld. AR strongly contended that the Ld. PCIT is very much wrong in undertaking revision u/s 263 due to *three-fold* reasons. These reasons are very succinctly narrated by Ld. AR in Para 13 of his Written-Synopsis, we re-produce the same:

“13. In this respect, the brief submissions of the assessee are as follows:

- 1. The assumption of jurisdiction by the Ld. PCIT on 23.02.2024 when an appeal had been filed on 12.04.2022 against the order dated 29.03.2022 and was pending before him on the same subject matter is bad-in-law considering the doctrine of merger. This issue has been dealt with by the assessee on pgs 116-118 of the paper book and by the Ld. PCIT on pages 4-5 of the impugned order.*
- 2. The Ld. AO, after examining the entire factual gamut of the case, the survey report of the third parties, their statements, bank statements of the assessee,*

purchases and cash sales as well as cash deposited by the assessee, came to the conclusion that it was in fitness of things to add the profit element embedded in the alleged bogus purchases (pg. 13 and 14 of the reassessment order) - In doing that, he adopted one of the possible views which was open to him by relying on decisions of Hon'ble Mumbai bench of ITAT and Gujarat High Court quoted in the body of the order. Thus, it was not a case of lack of enquiry or even inadequate enquiry. The Ld. AO had consciously taken a view of the situation and it was impermissible for the Ld. PCIT to hold that the order was erroneous merely to super impose his own view against that consciously taken by the Id. AO. (pages 118-124 of the paper book) The issue of cash deposit and purchase-sales already stood examined on 3 separate occasions by the revenue department once immediately after the time of deposit of cash during demonetization period by way of issue letters for SBN deposits, secondly in the regular assessment proceedings u/s 143(3) and lastly under reassessment proceedings u/s 144B r.w.s. 147 and the same issue of cash deposit and eventual purchase-sale of jewellery was examined and accepted or addition was made in the reassessment proceedings after taking a conscious view. The sales of the assessee are subject to VAT and have not been doubted throughout. (kind attention is invited to pages 22,37,38,52-53,54,55-79,80,81,82-83,84,85, 86-91 of the paper book).

3. The Ld. PCIT failed to conduct any independent enquiry on his part to demonstrate the error in the judgement of the Id. AO. He simply tried to brush aside the view taken by the Id. AO and set aside the case for de-novo proceeding which is impermissible in law."

6. Ld. AR for assessee carried us to Pages 1 to 16 of assessment-order to show that that the case was re-opened on the basis of allegation of bogus purchase of Rs. 1,55,00,000/- having been made by assessee from M/s N.S. Jewellers & Bullion and the AO after considering entire factual gamut of assessee's case including the survey report, the bank statements of assessee and the purchase and sales transactions done by assessee, etc. and taking into account the decisions of *ITAT, Mumbai in Shri Madhukant B. Gandhi Vs. ITO, ITA No. 1950/Mum/2009 dated 23.02.2010* and *Hon'ble Gujrat High Court in CIT Vs. Bholanath Ply Fab. Pvt. Ltd. (2013) 355 ITR 290*, made addition of 12.50% profit qua the alleged bogus purchases of Rs. 1,55,00,000/-. Therefore, there is nothing like absence of enquiry or

inadequate enquiry by AO, in fact the AO has considered entire material and thereafter framed assessment. Therefore, the PCIT is very much wrong in holding that the AO has not made enquiry qua the issue of re-opened assessment. Ld. AR submitted that the assessee was even aggrieved by AO's action of re-opening assessment based on borrowed satisfaction and also on the amount of income assessed as high as 12.50% from alleged bogus purchase of Rs. 1,55,00,000/-, therefore the assessee has gone into first-appeal before CIT(A) even against the order of re-assessment passed by AO. Thus, the very same issue i.e. bogus purchase of Rs. 1,55,00,000/- was already for consideration and decision before CIT(A), the AO's order qua this issue stood merged in the order of CIT(A) and the PCIT did not have jurisdiction to take up revisionary action u/s 263 due to 'doctrine of merger' as provided in Explanation 1(c) to section 263(1) reading as under:

"Explanation 1. - For the removal of doubts, it is hereby declared that, for the purposes of this sub-section, -

(a) To (b) [XXXX]

(b) where any order referred to in this sub-section and passed by the Assessing Officer or the Transfer Pricing Officer, as the case may be, had been the subject-matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal."

7. Ld. AR submitted that the effect of above Explanation which captures the 'Doctrine of Merger' is such that where the AO's order has been the subject-matter of appeal before CIT(A), the revision power of CIT(A) u/s 263 is barred in respect of such matter as is considered and decided in first-

appeal. Ld. AR submitted that in present case, the matter of bogus purchase was before CIT(A) and therefore the assessee brought above position of law to the knowledge of Ld. PCIT but the Ld. PCIT rejected assessee's submission by observing thus in Para 5 of impugned order:

"In view of above mentioned clause (c) of Explanation (1) of sub-section (1) of section 263, it is clearly evident that this section empowers the Pr. Commissioner or Commissioner, to revise the order u/s 263 in such matter which has not been either considered or decided in appeal. And, the issue in the instant case has not been decided yet and is pending before the Hon'ble CIT(A). Hence, as per the section 263(1), the provisions of section 263 can be invoked in this case. In view of the above, this contention of the assessee is not tenable and cannot be accepted."

8. Ld. AR submitted that the Ld. PCIT has rejected assessee's claim for the frivolous reason that the assessee's appeal was not decided, by that time, and was pending before CIT(A) instead of considering the logic of 'doctrine of merger' as captured in aforesaid Explanation to section 263(1).

9. Ld. AR relied upon a decision of Co-ordinate Bench of ITAT, Indore in **Shri Chandmal Hukumchand Jain Vs. PCIT (2024) 36 ITJ Online 221 (Trib. - Indore)** wherein the assessing authority made addition of Rs. 4,00,000/- being 10% of the unsecured loan of Rs. 40,00,000/- taken by assessee and the PCIT invoked revisionary jurisdiction on the footing that the AO ought to have made 100% addition of Rs. 40,00,000/-. The assessee, however, went in first-appeal before CIT(A) contesting the addition of Rs. 4,00,000/- made by AO. In this set of facts, the ITAT held that when the issue was a subject-matter of appeal pending before CIT(A), the PCIT ought to have not taken up the said issue u/s 263 of the Act.

10. When these deliberations were taking place, the Bench enquired to know the status of appeal before CIT(A). In response, Ld. DR for revenue submitted that the assessee's appeal has already been dismissed by CIT(A) vide order 03.06.2024 upholding the addition of Rs. 19,37,500/- made by AO. Ld. DR also filed a copy of order passed by CIT(A). At the same time, it also emerged that the office of Ld. DR directed the AO to write a letter to CIT(A) for enhancement of addition on the very same issue as raised by Ld. PCIT in revision-order u/s 263 but the AO found that the CIT(A) has already passed order on 03.06.2024 disposing of assessee's first appeal. The letter of AO is scanned and placed below:



भारत सरकार
Government of India
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Department of Revenue)

OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX-4(1), INDORE
Main Building, Aayakar Bhawan, White Church Road, Residency Area, Indore - 452001
Phone: 0731-2496011, Fax 0731-2497170, Email: indore.dcit4.1@incometax.gov.in

F.No.DCIT-4(1)/Ind./S Gandhi Jewellers/2024-25/ 7-L

Dated: 22/11/2024

To,

✓ Pfc Commissioner of Income Tax(DR)
ITAT, Indore

Sir,

**Sub: Appellate proceeding in the case of M/s S Gandhi Jewellery Pvt.
Ltd. ITA No. 311/Ind./2024 for the A.Y. 2017-18, PAN-
AAMCS1613G, reg.**

Ref: Your good office's letter F. No. CIT(DR)/ITAT/IND/2024-25/242 dated
18.09.2024

Kindly refer to the above subject.

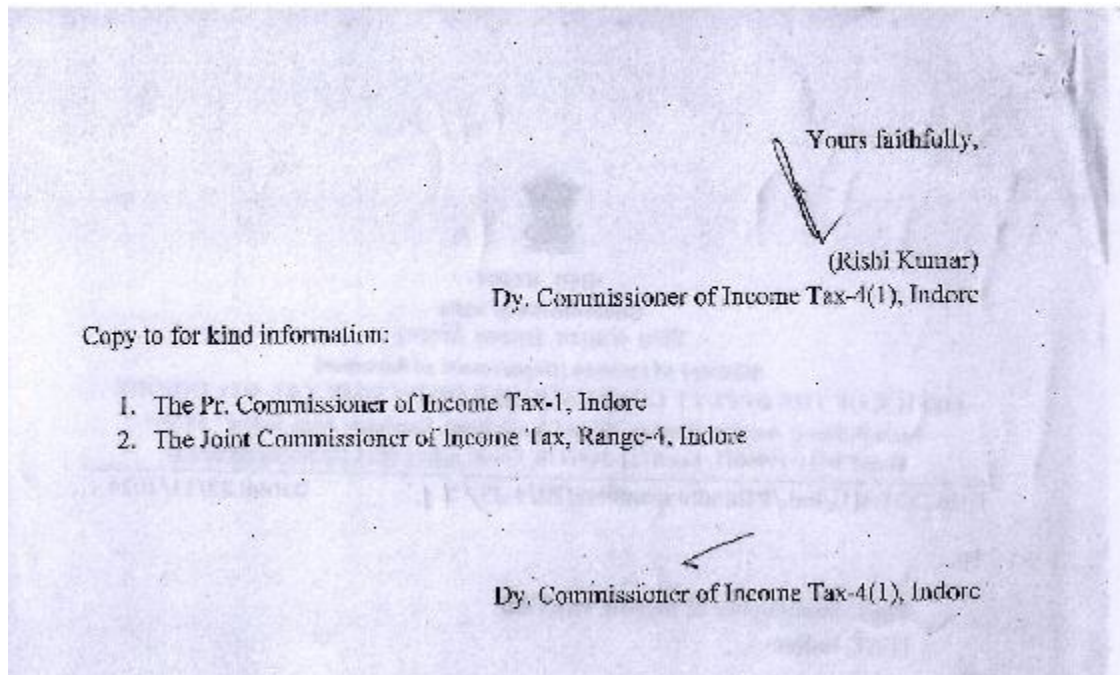
2. Vide above referred letter dated 18.09.2024 of your office, it was directed to this office to write an application to the commissioner of Income Tax (Appeals) for enhancement of the addition on the issue which was raised by the Pr. CIT-I, Indore in his order u/s 263 of the Act.

3. Meanwhile, on verification of the ITBA data w.r.t the appeal of the above said assessee, it is found that the Ld. CIT(A) has passed the order u/s 250 of the Act on 03.06.2024 against the order u/s 147 of the Act dated 29.03.2022. In this order, appeal of the assessee company has been dismissed and confirmed the addition made by the AO of Rs.19,37,500/- by the Ld. CIT(A). The Copy of the said order is enclosed herewith.

Submitted for your kind information and consideration.

Encl:- The CIT(A)'s order dated 03.06.2024





11. At first, we re-produce below the relevant portion of order passed by CIT(A) qua the issue of addition of 19,37,500/- made by AO:

"5.2 Analysis and Findings:

Reassessment Proceedings:

The AO initiated reassessment proceedings based on information from the Investigation Wing, which indicated that the appellant was involved in bogus purchases of gold amounting to Rs. 1,55,00,000/- from M/s N.S. Jewellers & Bullion during FY 2016-17. The AO issued a notice under section 148 on 31/03/2021 after forming a belief that income had escaped assessment.

The appellant contended that the reasons recorded for reopening the assessment were erroneous, as they were based on incorrect and unsubstantiated information. The appellant further argued that there was no independent application of mind by the AO before issuing the notice under section 148.

The reassessment proceedings were initiated based on credible information received from the Investigation Wing. The AO followed due process by recording reasons and obtaining necessary approvals before issuing the notice under section 148. The reasons recorded clearly indicate the AO's belief that income had escaped assessment. Hence, the initiation of reassessment proceedings under section 147 is justified and in accordance with the law.

Alleged Bogus Purchases:

The AO noted that the appellant made a purchase of Rs. 1,55,00,000/- from M/s N.S. Jewellers & Bullion, which was found to be a provider of accommodation

entries through bogus sales. The AO relied on the survey report and other materials to conclude that the purchase was not genuine and added 12.5% of the purchase amount (Rs. 19,37,500/-) as the estimated profit.

The appellant denied any bogus transactions with M/s N.S. Jewellers & Bullion and argued that the addition was made on an estimated basis without proper justification. The appellant submitted that the purchases were genuine, supported by invoices, bank statements, and VAT payments.

The survey report indicated that M/s N.S. Jewellers & Bullion was involved in providing accommodation entries. The appellant's payment of Rs. 1,55,00,000/- to M/s N.S. Jewellers & Bullion, followed by a significant cash deposit the previous day, aligns with the modus operandi described in the survey report. While the appellant submitted certain documents, they failed to provide conclusive evidence to substantiate the genuineness of the transactions. The AO's reliance on the survey report and other materials to conclude the transactions as bogus is reasonable. The addition of Rs. 19,37,500/- as estimated profit is consistent with judicial precedents, such as the Gujarat High Court's decision in CIT Vs Bholanath Ply Fab. Pvt. Ltd. (2013) 355 ITR 290."

12. Thus, the issue of issue of bogus purchase of Rs. 1,55,00,000/- has been duly considered and decided by CIT(A). The CIT(A) has categorically concluded thus *"The AO's reliance on the survey report and other materials to conclude the transactions as bogus is reasonable. The addition of Rs. 19,37,500/- as estimated profit is consistent with judicial precepts such as .."*. It is also noteworthy that the office of DR as well as AO made an effort to apprise the CIT(A) for making enhancement of income from 10% to 100% also which supports the assessee's claim that the issue of bogus purchase was a subject-matter of appeal before CIT(A). Thus, it is clear that all three-fold contentions raised by Ld. AR, namely (i) the PCIT had no authority to invoke revisionary jurisdiction when the issue was before CIT(A), (ii) the AO has passed a vehement order after making due enquiries from assessee and after considering assessee's facts and submissions, and (iii) the PCIT has simply tried to brush aside the view taken by AO and set aside the case for de nove assessment, hold good. Ld. DR for revenue though supported the

revision-order passed by PCIT AO but could not show as to how these claims of assessee/Ld. AR are not valid. In view thereof, we are persuaded to hold that in the facts of present case, the revision-order passed by Ld. PCIT is not sustainable. We, thus, quash the revision-order and restore the original assessment-order passed by AO.

13. Before parting we may, however, mention that the above observations made by us are prima facie observations while dealing the present appeal of assessee challenging only the revisionary order of PCIT. These prima facie observations are not meant to confirm the order of first-appeal passed by CIT(A) which shall be separately decided if occasion so arises.

14. Resultantly, this appeal is allowed.

Order pronounced by putting on notice board
as per Rule 34 of ITAT Rules, 1963 on 21/02/2025

Sd/-

Sd/-

(DINESH MOHAN SINHA)
JUDICIAL MEMBER
Indore

(B.M. BIYANI)
ACCOUNTANT MEMBER

दिनांक /Dated : 21/02/2025

Dev/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore