

**आयकर अपीलीय अधिकरण “जी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“G” BENCH, MUMBAI**

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं  
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.2308/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2014-15)

<b>Sky Gem</b> CC-2081, Bharat Diamond Bourse BKC, Bandra(E), Mumbai-400 051	<b>बनाम/ Vs.</b>	<b>Pr. CIT-33</b> C-12, 5 <sup>th</sup> Floor, Pratyakshkar Bhavan BKC Bandra (E), Mumbai-400 051.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AAYFS-8765-J</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Suchek Anchaliya-Ld. AR
<b>Revenue by</b>	:	Shri S.C.Tiwari- Ld. CIT DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	13/01/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	13/01/2021

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. By way of this appeal, the assessee challenges the validity of revisional jurisdiction u/s 263 as exercised by learned Pr. Commissioner of Income-Tax-33, Mumbai [in short referred to as ‘Pr.CIT’], for Assessment Year [in short referred to as ‘AY’] 2014-15, vide order dated 29/03/2019. The effective grounds taken by the assessee read as under:-

1. On the facts and in the circumstances of the case, the learned CIT erred in setting aside the assessment order u/s 263 of the Act without fully appreciating the facts of the case.

2. The learned CIT erred in setting aside the assessment order u/s 263 of the Act even though the impugned transactions were confirmed by the concerned parties in response to notice u/s 133(6).

at on the facts and in the circumstances of the case, the Id CIT, Bikaner erred in not recording own satisfaction in respect of assessment order passed by the Id AO is erroneous so as it prejudicial the interest of revenue as per provision of section 263 of the Act.

3. The action of learned CIT is nothing but change of opinion, which cannot be a ground for invoking the provisions of Sec.263 as a conscious decision supported by reasons and with full application of mind by the AO cannot said to be erroneous.

4. The learned CIT erred in not considering the submission of the appellant vide its letter dated 09.07.2018.

5. The learned CIT erred in his observation that the learned AO wrongly made addition on adhoc basis @3% of the alleged bogus purchases without any justification and reason which is factually incorrect in as much as the learned AO in his order vide para 8.8 on page 10 has, discussed and stated the reasons why he was adopting 3% addition.

6. The learned CIT erred in ignoring various judicial pronouncements especially of the jurisdictional Hon. ITAT, Mumbai on this issue.

2. We have carefully heard the rival submissions and perused relevant material on record including submissions made by assessee during assessment proceedings as well as during revisional proceedings. The judicial precedents as cited during the course of hearing have duly been deliberated upon. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3.1 The material facts are that the assessee being resident firm stated to be engaged in diamond manufacturing & trading, was assessed u/s. 143(3) on 21/12/2016 wherein it has been saddled with addition of Rs.7.40 Lacs on account of estimated addition of 3% on alleged bogus purchases. During assessment proceedings, pursuant to receipt of information as received from Sales Tax Department, it transpired that the assessee made aggregate purchases of Rs.246.98 Lacs from an entity namely M/s Prime Star, an alleged entry provider belonging to Bhanwarlal Jain Group.

Accordingly, the assessee was directed to substantiate these transactions.

3.2 In defense of purchase transactions, the assessee submitted purchase invoices, ledger confirmations, copy of ITR-V of the supplier, its audited financial statements, bank statements highlighting payment through banking channels. It was submitted that goods purchased from this party was one to one identified and sold locally as well as exported outside India. The assessee also pleaded that only the profit margins embedded in these transactions could be taxed.

3.3 The Ld. AO, after perusal of documentary evidences as well as assessee's submissions in the light of ledger confirmation received from the supplier in response to notice u/s 133(6), estimated addition of 3% against these purchases and added the same to the income of the assessee.

4.1 Subsequently, learned Pr.CIT, upon perusal of case records and invoking the provisions of Sec.263 opined that the order was passed without making proper enquiry on certain points and therefore the same would require exercise of revisional jurisdiction u/s. 263. It was opined by Ld. Pr.CIT that Ld. AO wrongly estimated the additions @3% without any justification. The Ld. AO did not carry out sufficient investigation, movement of stock as well as quantitative details were not verified. Hence, the order was erroneous as well as prejudicial to the interest of the revenue which would require invocation of revisional jurisdiction u/s 263.

4.2 Accordingly, a show-cause notice was issued to the assessee on 02/08/2017. The assessee defended the assessment order,

inter-alia, by submitting that Gross profit reflected on suspicious purchases was more than normal Gross profit and therefore, the estimation of 3% was justified. However, rejecting the same, Ld. Pr. CIT directed Ld. AO to pass fresh assessment order after considering the genuineness of the purchases as well as sales since the entities controlled by Bhanwarlal Jain group were merely engaged in the business of providing accommodation entries.

Aggrieved as aforesaid, the assessee is in further appeal before us challenging the validity of revisional jurisdiction as exercised by Ld. Pr.CIT u/s 263.

5. Upon perusal of assessment order, we find that issue of suspicious purchases was under due consideration of Ld.AO. The requisite purchase details as to purchases made from M/s Prime Star were called-for by Ld. AO from the assessee during the course of assessment proceedings. The notice u/s 133(6) was issued to confirm the transactions. The assessee submitted various details as well as documentary evidences in the shape of purchase invoices, ledger confirmations, copy of ITR-V of the supplier, its audited financial statements, bank statements highlighting payment through banking channels. It was also submitted that goods purchased from this party was one to one identified and sold locally as well as exported outside India. The audited financial statements were placed on record which contained quantitative details of the goods being dealt with by the assessee. The goods purchased from this party were correlated with the sales made by the assessee.

6. After considering all these evidences as well as submissions, Ld. AO estimated an addition against the same @3%. It is notable that the sales were not doubted and there could be no sale without actual purchase of material. Therefore, there was no option but to estimate the additions to account for unaccounted profit which may have generated by the assessee in these suspicious transactions. The action of Ld. AO in estimating the addition could not be said to be arbitrary or perverse, in any manner. There was due application of mind by Ld. AO on the stated issue. Merely because, Ld. Pr.CIT did not agree with the aforesaid estimation, the same could not be sole ground to invoke revisional jurisdiction u/s 263 particularly when there is due application of mind to the issue by Ld. AO. Once a possible view has been taken by Ld. AO, the revisional jurisdiction u/s 263 would not be valid. Merely because the inquiries were not done in a particular manner, the same would not make assessment order expose to revisional jurisdiction u/s 263.

7. Therefore, on the facts and circumstances, we are inclined to quash the revisional order dated 29/03/2019. We order so.

8. Resultantly, the appeal stands allowed.

*Order pronounced on 13<sup>th</sup> January, 2021.*

**Sd/-**  
**(Mahavir Singh)**  
उपाध्यक्ष / **Vice President**

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 13/01/2021  
Sr.PS, Jaisy Varghese

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.