आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, ई, मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI

श्री जोगिन्दर सिंह, न्यायिक सदस्य **एवं**
श्री रमित कोचर, लेखा सदस्य, के समक्ष

Before Shri Joginder Singh, Judicial Member, and
Shri Ramit Kochar, Accountant Member

ITA NO.2464/Mum/2013
Assessment Year: 2009-10

<table>
<tr><td>Small Wonder Industries,
78, Virwani Indl. Estate,
Western Express Highway,
Goregaon (East),
Mumbai-400063</td><td rowspan="2"><u>बनाम</u>/
Vs.</td><td>CIT-24,
Mumbai</td></tr>
<tr><td>(निर्धारिती /Assessee)</td><td>(राजस्व /Revenue)</td></tr>
<tr><td colspan="3">P.A. No. AALFS6318Q</td></tr>
</table>

निर्धारिती **की ओर से /** Assessee by	Shri Prakash Jotwani
राजस्व **की ओर से** / Revenue by	Shri Debasis Chandra CIT-DR

सुनवाई की तारीख / **Date of Hearing :**	**23/02/2017**
आदेश की तारीख /**Date of Order:**	**24/02/2017**

http://www.itatonline.org

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The assessee is aggrieved by the impugned order dated 19/02/2013 of the Ld. Commissioner of Income Tax, Mumbai, invoking revisional jurisdiction u/s 263 of the Income Tax Act, 1961 (hereinafter the Act), holding the original assessment made u/s 143(3) of the Act to be erroneous and prejudicial to the interest of the Revenue.

2. During hearing of this appeal, the ld. counsel for the assessee, Shri Prakash Jotwani, invited our attention to the assessment order framed u/s 143(3) of the Act by contending that the case of the assessee was selected for scrutiny, therefore, notice u/s 142 along with questionnaire was issued to the assessee. The assessee attended the proceedings from time to time and filed various details called for and after considering the factual matrix, the assessment was framed. Our attention was invited to the various issues discussed/deliberated upon in the assessment order. The crux of the argument is that the assessment order is neither erroneous nor prejudicial to the interest of the Revenue, therefore, the revision jurisdiction was wrongly invoked.

2.1. On the other hand, the ld. DR, Shri Devasis Chandra, ld. CIT-DR, defended the order of the Ld. Commissioner by contending that the assessment order is erroneous as well as prejudicial to the interest of Revenue. Our attention was invited to para-2 of the impugned order.

http://www.itatonline.org

Reliance was placed upon the decision in Horizon Investment Co. Ltd. vs CIT (ITA No.1593/Mum/2013), order dated 27/06/2014.

2.2. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee engaged in the business of manufacturing of feeding bottles and accessories. The assessee showed total turnover of Rs.2,40,72,048/- and offered gross profit of Rs.99,20,394/- at the rate of 41.21% of the total turnover. The assessee claimed deduction u/s 80IB of the Income Tax Act, 1961 (hereinafter the Act) at the rate of 25% of the total profit of Rs.65,39,181/- after reducing the brought forward losses of Rs.3,44,910/-. The assessee declared income of Rs.49,04,386/-. The case of the assessee was selected for scrutiny, therefore, notice u/s 143(2) and 142(1) of the Act along with questionnaire were issued and served upon the assessee. In response to these notices, the assessee attended the proceedings from time to time and filed various details called for (as is evident from page-1 of the assessment order itself). After scrutiny of various details filed during the course of assessment proceedings and after examination of return of income, an annexure thereto, after having making the discussion made certain disallowances. It is noted that the ld. Assessing Officer has made an elaborate discussion with respect to disallowance of deduction u/s 80IB of the Act on interest income (page-2 of the assessment order), disallowance out of interest u/s 36(1)(iii) of the Act as detailed

http://www.itatonline.org

in para (b) onwards, set off of unabsorbed losses (para-c) and finally, the computation part, etc. There is a noting at the last page of the assessment order 'assessed u.s 143(3) of the I.T. Act, 1961, credit for pre-paid taxes is given after due verification. We have verified the assessment order and find that the assessment order is broadly neither erroneous nor prejudicial to the interest of the Revenue as the same has been framed after due application of mind and on consideration of factual matrix along with the details/questionnaire, filed by the assessee. Before invoking the revisions jurisdiction, the ld. Commissioner has to be satisfied of twin conditions i.e.

(1) The assessment order, sought to be revised, is erroneous and

(2) It is prejudicial to the interest of the Revenue.

If one of theme is absent, meaning thereby, if the assessment order is erroneous but not prejudice to the Revenue or if it is not erroneous but prejudicial to the Revenue recourse cannot be had to section 263(1) of the Act. The provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer. It is only when the order is erroneous and prejudicial to the Revenue, the revisional jurisdiction is attracted. Our view find supports from the landmark decision from the Hon'ble Apex Court in Malabar Industrial Company Ltd. vs CIT 243 ITR 83 (SC), CIT vs Gabriel India Ltd. (203 ITR 109)(Bom), ratio laid down in Ashok manilal Thakkar vs ACIT 279 ITR (AT)143(Ahd.), CIT vs

http://www.itatonline.org

Honda Siel power Products Ltd. 194 taxman 175 (Del.), CIT vs Internal travel House Ltd. 194 taxman 324 (Del.) and CIT vs Hindustan Coca Cola Beverages Pvt. Ltd. (ITA Nos.1391/2010, 1394/2010 & 1396/2010) wherein, the Hon'ble Delhi High Court held that section 263 cannot be invoked to correct each and every type of mistake committed by the Assessing Officer, if it is not 'prejudicial to the interest of the revenue' and every loss of revenue as a consequence of assessment order cannot be treated as prejudicial to the interest of the revenue. So far as, non-application of mind by the Assessing Officer is concerned under the facts narrated in this order, reliance can be placed upon the ratio laid down in following cases:-

i. *CIT vs Gabriel India Ltd. 203 ITR 108 (Bom.)*
ii. *CIT vs. Ashish Rajpal (320 ITR 674)(Del.)*
iii. *CIT vs. Eicher Ltd. (294 ITR 310) (Del.)*
iv. *Hari Iron Trading Co. vs. CIT (263 ITR 437) (P&H)*
v. *CIT vs. Development Credit Bank Ltd. (323 ITR 206) (Bom.)*
vi. *RCI Ltd. vs. CIT (2010) 40 DTR Mum (Trb.) 186*
vii. *Reliance Gas Transportation Infrastructure Ltd. vs. CIT(2014) (100 DTR 1)(Mum.)(Trb.) and*
viii. *CIT vs. Anil Kumar Sharma 335 ITR 83(Del.)*
ix. *CIT vs Arvind Jewellers 259 ITR 502 (Guj.)*
x. *CIT vs Sunbeam Auto 189 taxman 436 (Del.)*

2.3. The Hon'ble Delhi High Court in International Travel House Ltd. (344 ITR 554) held that the ld. Commissioner has no unfettered power to initiate proceedings by revision for

reexamining and directing fresh enquiry on his own whim for change or having a different view.

2.4. If the observation made in the assessment order, notices issued to the assessee along with questionnaire, reply filed by the assessee along with documents/details, objections/observations made in the notice issued u/s 263 by the ld. Commissioner and reply filed by the assessee, if kept in juxtaposition and analyzed undisputed fact oozes out is that the assessment u/s 143(3) of the Act was framed after examination of necessary details/reply to the questionnaire, filed by the assessee. It is not the case that assessment was framed without application of mind and in a slip shot manner. Now question arises whether the assessment order is erroneous or prejudicial to the interest of the Revenue. We are of the view, that there is a distinction between "lack of enquiry" and "inadequate enquiry". In the present case the Assessing Officer collected necessary details, examined the same and then framed the assessment u/s. 143(3) of the Act. Therefore, in such a situation the decision from *Hon'ble High Court of Delhi in CIT vs. Anil Kumar Sharma (2011) 335 ITR 83 (Del.)(supra),* clearly comes to the rescue of the assessee . The Hon'ble High Court held as under :-

> *" Held, dismissing the appeal, that the present case would not be one of "lack of enquiry" even if the enquiry was termed inadequate. The Tribunal found that complete details were filed before the Assessing Officer and that he applied his mind to the relevant material and fact,* ***although such***

> ***application of mind was not discernable from the assessment order***. *The Tribunal held that the Commissioner in proceedings u/s. 263 also had all these details and materials available before him but had not been able to point out defects conclusively in the material, for arriving at a conclusion that particular income had escaped assessment on account of non-application of mind by the Assessing Officer . The Tribunal was right and the order of revision was not valid."*

2.5. The aforesaid order clearly fits into the facts before us. While coming to the aforesaid conclusion the Hon'ble High Court duly considered the decision in *CIT vs. Sunbeam Auto Ltd. (2011) 332 ITR 167 (Del.)* (para-6 & 7). We are expected to ascertain whether the Assessing Officer had investigated/examined the issue and applied his mind towards the whole record made available by the assessee during assessment proceedings. Uncontrovertedly, necessary details/reply to the questionnaire were filed/produced by the assessee and the same were examined by the Assessing Officer, therefore, it is not a case of lack of enquiry by the Assessing Officer. Identical ratio was laid down by the Tribunal in the case of *Reliance Gas Transportation Infrastructure Ltd. vs. CIT (2014) 100 DTR (Mum.) (Trb.) 1*, order dated 10/1/2014. In another case from *Hon'ble Jurisdictional High Court in CIT vs. Development Credit Bank Limited (2010) 323 ITR 206*, on identical fact wherein assessment order was passed after considering all details called for and furnished by the assessee. The ld. Commissioner invoked revisional jurisdiction on the ground that enquiry was not conducted, the Hon'ble High Court held that the ld. Commissioner was not justified in

invoking the revisional jurisdiction. Identical is the situation from *Hon'ble High Court Punjab & Haryana in Hari Iron Trading Company vs. CIT (263 ITR 437) order dated 23/5/2003*. The *Hon'ble High Court of Delhi in CIT vs. Eicher (294 ITR 310) (Del.)* wherein the entire material was placed by the assessee before the Assessing Officer at the time of original assessment, **the Assessing Officer applied his mind to the material and accepted the view canvassed by the assessee and mere fact that he did not express this in the assessment order, cannot be a ground to conclude that income has escaped assessment**, further supports the case of the assessee . Identically, the *Hon'ble High Court of Delhi in CIT vs. Ashish Rajpal (320 ITR 674)* vide order dt.14/5/2009, decided in favour of the assessee . The *Hon'ble Jurisdictional High Court in CIT vs. Gabriel India Ltd. (203 ITR 108)* held that there must be material before the Commissioner to satisfy himself that two requisite provided u/s. 263 are present, otherwise power cannot be exercised at the whims and caprice of the Commissioner. We have also seen the paper book filed by the assessee and the documents/papers contained/mentioned therein were duly made available before the Assessing Officer, before framing the assessment u/s. 143(3) of the Act and are satisfied that he asked the assessee to furnish the necessary details, therefore, the observation made by the ld. Commissioner is not substantiated as has been alleged in the revisional order.

http://www.itatonline.org

2.6. Admittedly, an incorrect assumption of fact or an incorrect application of law would satisfy the requirement of order being erroneous u/s. 263 of the Act. The phrase "prejudicial to the interest of the Revenue" u/s. 263 of the Act, has to be read in conjunction with the expression "erroneous" order by the Assessing Officer. Every loss of Revenue as a consequence of assessment order cannot be termed as 'prejudicial to the interest of Revenue', meaning thereby, "prejudice" must be prejudice to the Revenue administration. At the same time, if another view is possible revision is not permissible. Our view is fortified by the decision from *Himachal Pradesh Financial Corpn. (186 Taxmann 105)(HP), Bismillah Trading Co. (248 ITR 292)(Ker.) and CIT vs. Green World Corpn. (314 ITR 81)(SC).* For invoking revisional jurisdiction u/s. 263 the assessment order must contain 'grievous error' which is subversive of the administration of Revenue. Further, 'exact error' must be disclosed by the Commissioner as was held in *CIT vs. G.K. Kabra (211 ITR 336)(AP).* Totality of facts, clearly indicates that assessment u/s. 143(3) of the Act was framed by the Assessing Officer after obtaining necessary details from the assessee and further the same were examined by him. Therefore, even if, the same has not been spelt elaborately in the assessment order it cannot be said that there is a 'lack of enquiry' or 'prejudice' has been caused to the Revenue, as we have discussed various case laws in earlier part of this order which are identical to the facts before us. Our view is further fortified by the decision of

http://www.itatonline.org

Mumbai Bench of the Tribunal (wherein one of us i.e. JM is signatory to the order) in the case of Mehta Trading Company (ITA No.2838/Mum/2013), order dated 31/10/2014, which is also on identical facts/issue.

2.7. It is also noted that the Ld. Commissioner invoked revisional jurisdiction u/s 263 with respect to commission of Rs.2,12,136/- at the rate of Rs.25 per piece to Rajendra Jain and Kiran Jain by observing that no such commission was paid in earlier year for similar sales. The assessee explained that commission was paid to these parties for looking after the logistic issue. We find that the assessee vide letter dated 11/07/2011, addressed to the Ld. DCIT, in response to notice u/s 142(1) clarified the factual matrix and again vide letter dated 26/07/2011 addressed to Ld. DCIT duly furnished the partywise details of commission paid with name, address and purpose (all these documents are available in the paper book of the assessee). The zerox copy of agreement and credit note was also enclosed along with the memorandum of understanding dated 10/04/2008. Thus, we are satisfied that the assessment was framed after making due enquiry and on perusal/examination of documentary evidence. In such a situation, invoking revisional jurisdiction u/s 253 cannot be said to be justified.

2.8. So far as, the reliance upon the decision in Horizon Investment Company Ltd. vs CIT (ITA No.1593/Mum/2013) order dated 27/06/2014 is concerned, we find that the ld. Assessing Officer neither made any query with respect to the

issue nor made any proper enquiry. However, it is not the case before us, therefore, this decision is on different facts. In view of these facts and the judicial pronouncement from Hon'ble Apex Court and various Hon'ble High Courts we set aside the order of the ld. Commissioner and decide the appeal in favour of the assessee, because, by no stretch of imagination, the assessment order can be termed as erroneous and/or prejudicial to the interest of the Revenue, thus, invoking revisional jurisdiction by the ld. Commissioner cannot be upheld.

Resultantly, the appeal of the assessee is allowed.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 23/02/2017.

Sd/-	***Sd/-***
(Ramit Kochar)	(Joginder Singh)
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य** / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 24/02/2017

Shekhar, P.S/निजी सचिव

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,

http://www.itatonline.org

ITAT, Mumbai

6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai,**