IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 2287 OF 2018

Principal Commissioner of Income Tax-12, Mumbai … Appellant

V/s.

Gehna Jewellers Pvt. Ltd. … Respondent

Mr. Akhileshwar Sharma for the Appellant
Mr. B. V. Jhaveri a/w Ms. Bhargavi Raval for the Respondent

CORAM : R.I. CHAGLA AND
FARHAN P. DUBASH, JJ.

RESERVED ON : 18TH SEPTEMBER 2025
PRONOUNCED ON : 25TH SEPTEMBER 2025

ORDER (Per Farhan P. Dubash, J.) :

1. This is an Income Tax Appeal filed under Section 260-A of the Income Tax Act, 1961 **(the Act)** by the Appellant - Revenue impugning the order dated 22nd November 2017 (impugned order) passed by the Income Tax Appellate Tribunal **(ITAT/Tribunal)** in Income Tax Appeal No.3530/Mum/2017 for the Assessment Year **(AY)** 2012-2013, thereby allowing the Appeal filed by the Respondent-Assessee. By the impugned order, the Tribunal set aside the order dated 24th March 2017 passed by the Principal Commissioner of Income Tax -12 **(PCIT)** exercising powers under Section 263 of the Act *inter-alia* holding that the assessment order dated 9th

March 2015 passed by the Assessing Officer/Income Tax Officer **(ITO)** under Section 143(3) of the Act is erroneous in so far as it is prejudicial in the interests of the Revenue and directed the ITO to pass the order afresh on the issues identified therein.

2. In exercise of the power under Section 263 of the Act, the PCIT recorded his findings on 5 issues in the assessment order dated 9th March 2015.

3. The PCIT dropped revisional proceedings with respect to two of these issues whilst holding that the revisional proceedings against the other three issues were valid and accordingly, on that ground, passed the order dated 24th March 2017 setting aside the assessment order dated 9th March 2015 passed by the ITO for AY 2012-2013.

4. Mr. Akhileshwar Sharma, learned Counsel for the Appellant – Revenue would rely upon the impugned order and submit that the same is both, 'erroneous' and 'prejudicial to the interest of Revenue' and would submit that the order of cancellation of the assessment order passed by the PCIT and direction for a fresh assessment for AY 2012-2013 ordered by him, be restored by this Court.

5. Mr. Akhileshwar Sharma would invite our attention to the following substantial questions of law that are proposed in paragraph 4 of the present Income Tax Appeal viz. :

> "*(A) Whether on the facts and in the circumstances of the case and in law, notwithstanding that question on the issues has been raised during proceedings and replies were received, failure to conduct enquiries which are warranted would render the consequential assessment order erroneous and liable to be a subject of revision under Section 263 of the Act; and*
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> *(B) Whether on the facts and in the circumstances of the case and in law, the explanation to section 263 of the Act is clarificatory being statutory recognition of a legal principle recognised in prior judicial decision and, hence, is to be interpreted retrospectively."*

6. Per contra, Mr. Jhaveri, learned Counsel for the Respondent - Assessee would submit that the present Appeal does not raise any substantial question of law inasmuch as, the Tribunal has recorded detailed findings on fact on all the three issues considered by the PCIT whilst setting aside his order dated 24th March 2017. He would further submit that once an enquiry has been made by the AO during the assessment proceedings into the claim, insufficient or inadequate or improper enquiry would not be a ground to invoke powers under Section 263 of the Act, as had erroneously been done by the PCIT.

7. We have heard both, Mr. Akhileshwar Sharma, learned Counsel for the Appellant – Revenue and Mr. Jhaveri, learned Counsel for the Respondent – Assessee and with their able assistance, perused the papers and proceedings in the matter.

8. A perusal of the impugned order would reveal that in so far as,

the first of the three issues raised by the PCIT is concerned, after a detailed examination of the record, the Tribunal has recorded an express finding that the observations of the PCIT on the issue of alleged non-furnishing of carat-wise details of gold and diamond jewellery is not only vague but also contrary to material on record and instead, the same is in the nature of general observations made by him. It is further found that not only in the Tax Audit Report but also in the course of assessment proceedings, the Assessee had produced month wise and carat-wise details of different categories of jewellery manufactured and sold by it. Moreover, the Tribunal also found that the record revealed that the ITO had not only enquired into the said issue but also examined the details furnished by the Assessee before completing the assessment and therefore, the Tribunal concluded that the observations made by the PCIT that the ITO had not made proper enquiry and not called for necessary carat-wise details of gold and diamond jewellery is wholly unsubstantiated and baseless. Moreover, the Tribunal has also recorded an express finding that the PCIT had not stated in any clear terms, what prejudice was caused to the Revenue as a result of the alleged inaction on the part of the ITO in making a proper enquiry and without any such specific conclusion/finding by the PCIT with regard to the 'prejudice caused to the Revenue', one of the two mandatory conditions prescribed in Section 263 of the Act were not fulfilled, even if one were to assume that the non enquiry by the ITO resulted in the assessment order being erroneous.

9. In so far as the second issue relating to the genuineness of the advance received of Rs.55 lakhs from Mr. Prabodh B. Thakkar is concerned, the Tribunal, after going through the record, has recorded a finding that the ITO had not only made the necessary enquiries relating to the advances received by the Assessee from different parties but after analysing the details furnished by the Assessee, completed the assessment. The Tribunal has further concluded that once such an exercise is conducted, the sufficiency or correctness of enquiry conducted by the ITO cannot be questioned by the revisional authority under Section 263 of the Act in an arbitrary or subjective manner and it is held that since the material on record demonstrated that the ITO had made the necessary enquiry on that particular issue and thereafter, passed the assessment order after due application of mind on the material brought on record, the assessment order cannot be held to be 'erroneous' or 'prejudicial to the interest of the revenue' due to lack of or inadequacy of enquiry.

10. In so far as the third issue relating to the reasonableness of payment to Anmol jewellery qua Section 40A(2)(b) is concerned, after going through the record, the Tribunal has recorded a finding that in the course of the assessment proceedings, the ITO has enquired into the issue of such payment and after applying his mind to the material brought on record, completed the assessment. Moreover, the Tribunal has also found that the

order dated 24th March 2017 passed by the PCIT under Section 263 of the Act did not reveal any conclusive observation or finding that the payment made by the Assessee to Anmol jewellery was not in conformity with the fair value of the goods purchased. Additionally, after perusing the ledger account of Anmol jewellery in the books of the Assessee, the Tribunal has recorded a finding that the purchases corresponding to the payments made, were effected in the Assessment Year 2011-2012 and that, from the record, it was an admitted position that the Assessee had not claimed such purchases as a deduction in the said AY 2012-2013 and only the payments against such purchases were made in the said year. As a result, the Tribunal held that the reasonableness of the payment made against the purchases qua Section 40A(2)(b) could not be examined in the AY 2012-2013.

11. The scope of revision proceedings under Section 263 of the Act is now well settled by a catena of decisions including the decision of this Court in ***Commissioner of Income Tax v/s. Gabriel India Ltd.***[1]. In order to exercise power under sub-Section (1) of Section 263, there must be material before the PCIT to consider that the order passed by the ITO was erroneous in so far as it is prejudicial to the interest of the Revenue. The term 'erroneous' is further explained to mean that it must be an order which is not in accordance with the law or one, which has been passed without making any enquiry in undue haste. On the other hand, the order can be said to be

1 (1993) 71 Taxman 585 (Bombay)

'prejudicial to the interest of the Revenue' if it is not in accordance with the law, in consequence whereof, lawful revenue due to the State has not been realised or cannot be realised. Thus, there must be material available on the record called for by the PCIT to satisfy him that both the aforesaid two requisites are present and if not, the PCIT has no authority to initiate proceedings for revision.

12. Whilst considering revision proceedings under Section 263 of the Act, where two views are possible and the ITO has taken one view with which the PCIT does not agree, such a view cannot be said to be 'erroneous' or 'prejudicial to the interest of Revenue' unless such view is unsustainable in law. This is laid down by several decisions including the decision of this High Court in ***Commissioner of Income Tax-9 vs. Future Corporate Resources Ltd.***[2].

13. The Tribunal is the final fact finding authority. In the impugned order, the Tribunal has considered each of the three issues raised by the PCIT and negated the same on the basis of the documents available before it. The necessary findings on each of these three issues is also discussed and recorded hereinabove.

14. Considering the above position, we are of the considered opinion that the Tribunal has neither committed any perversity nor applied

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incorrect principles to the given facts. In fact, it would not be out of place to mention that no such ground of perversity of findings made in the impugned order has also been raised in the memo of appeal filed by the Appellant – Revenue. In the circumstances, we are of the considered view that the present Appeal does not raise any substantial question of law.

15. The present Income Tax Appeal is, therefore, dismissed. There shall be no order as to costs.

(FARHAN P. DUBASH, J.) **(R.I. CHAGLA J.)**

JYOTI PRAKASH PAWAR Digitally signed by JYOTI PRAKASH PAWAR Date: 2025.09.25 16:38:53 +0530