आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ **ITA No. 6606/Mum/2018**

(निर्धारण वर्ष / Assessment Year 2013-14)

M/s Scintillating Jewellery 8, Parekh House, 20, JSS Road, 2nd Bhatwadi, Mumbai	Vs.	The Pr. Commissioner of Income Tax-19, Office, of PCIT-19, Room No. 228 2nd Floor, Matru Mandir Tardeo Road, Mumbai
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**
स्थायी लेखा सं./**PAN No. AAYFS1115N**		

अपीलार्थी की ओर से / **Appellant by**	:	S/Shir Yogesh Thar Chaitanya Joshi Hardik Nirmal, AR's
प्रत्यर्थी की ओर से **/ Respondent by**	:	Shri B.B. Rajendra Prasad, DR

सुनवाई की तारीख **/ Date of hearing:**	17-01-2019
घोषणा की तारीख **/ Date of pronouncement :**	08-02-2019

आदेश / O R D E R

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

This appeal filed the assessee is arising out of the revision order of Pr. Commissioner of Income Tax-19, Mumbai [in short PCIT] passed under section 263 of the Income Tax Act, 1961 (hereinafter 'the Act')

dated 16.03.2018. The Assessment was framed by the Asst. Commissioner of Income Tax, Centre -19(3) Mumbai (in short 'ACIT'/'ITO'/ AO') for the A.Y. 2013-14 vide order dated 04.09.2015 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. At the outset, it is noticed that this appeal is bar by limitation by 179 days. The assessee filed condonation petition dated 20.11.2018 stating the reason. It was contended that the PCIT passed order under section 263 of the Act dated 16.03.2018, which was received by the assessee on 27.03.2018. It was contended that vide revision order PCIT set aside the assessment framed by AO under section 143(3) of the Act dated 04.09.2015. The statutory time limit of 60 days prescribed under the Act for filing of appeal before Tribunal expired on 25.05.2018 and therefore there was a delay of 179 days in this petition. It was contended that the assessee's regular tax consultant M/s Pradeep Kumar Singhi & Associates, who generally handles assessment and first appellate proceedings were unaware of the provisions of section 263 of the Act and Revision order passed. Accordingly, M/s Pradeep Kumar Singhi and Associates through M/s Aarthi Shah advised not to challenge the revision order rather pursue the matter before the AO. Affidavit of M/s Aarthi Shah partner of M/s Pradeep Kumar singhi and his Associates was also filed by assessee, wherein she stated the above said position and the relevant Para 6 to 8 of the affidavit reads as under: -

> *"6. That our firm generally handles tax matters only upto assessment/ first appellate proceedings and therefore we were not much conversant about the provisions under the Act*

that the said revision order under section 263 could be appealed before the Tribunal.

7. That I was also under an honest and bonafide belief that the consequential order that would be passed by the AO as per the direction of the PCIT only could be challenged in appeal.

8. That while complying with/drafting reply to the notice under section 142(1) dated 25 October 2018 issued by the AO for giving effect to s. 263 order and received by the assessee on 29 October 2018, the matter was again discussed with other tax experts and it was advised that the appeal can be filed against the said revision order."

3. It was further contended by the learned Counsel for the assessee Shri Yogesh Thar that when they discussed the matter with other tax consultant who advised for filing of appeal and on his advised the appeal was file belated with the condonation of delay. In term of the above, the learned Counsel Shri Yogesh Thar urged for condonation of delay on the other hand the learned CIT Departmental Representative opposed the condonation of delay but he could not controvert that there was no advice from tax expert like Charter Accountants M/s Aarthi Shah.

4. We are of the view that the assessee has accepted bonafide advice of the tax consultant who was regularly looking after its tax matters but subsequently other consultant advised for filing appeal. We are of the view that this is a reasonable cause as the assessee's tax

Counsel herewith admitted in her affidavit that she advised not file appeal against revision order. Mistake of counsel or wrong advice by counsel constitutes reasonable cause. Hence, we condone the delay and admit the appeal.

5. The only issue in this appeal of assessee is against the order of revision under section 263 of the Act by CIT revising the assessment farmed by the AO by holding the assessment order as erroneous and prejudicial to the interest of the Revenue in the event that alleged bogus purchases are not examined or enquired into. The assessee has raised the following two grounds: -

> *"Ground No. 1 order passed under section 263 is bad in law:*
>
> *On the facts and in the circumstances of the case and in law, the order passed by the Ld. PCIT under section 263 of the Act is invalid, bad in law & without jurisdiction.*
>
> *1.1 Ld PCIT failed to appreciate and ought to have considered that the scrutiny assessment order which was passed by the AO after due inquiry/ investigation on impugned issue, could not per-se be treated as erroneous in nature;*
>
> *1.2 Ld. PCIT failed in not granting any opportunity to the Appellant to cross-examination the third party based on whose alleged statement as gathered by the DGIT (Inv.) Ld. PCIT held that the assessment order*

was erroneous, and thereby violated the principles of natural justice.

The appellant prays the order passed under section 263 of the Act to be struck down as null and void ab initio and bad in law.

Without prejudice to ground No. 1

Ground No. 2 alleged bogus purchase amounting to ₹ 8,22,86,744/-

On the facts and in the circumstances of the case and in law, Ld. PCIT erred in setting aside the order of the AO and directing him to examine the purchases to the tune of Rs. 8,22,86,744/-

The appellant prays that it be held that the purchases made by the Appellant be held as genuine and no re-examination/ disallowance / adjustment is warranted."

6. Briefly stated facts are that the assessee filed its return of income for the relevant AY 2013-14 on 02.09.2013 and the same was processed under section 143(1) of the Act. Subsequently, assessment was completed under section 143(3) of the Act vide order dated 04.09.2015. The assessee is engaged in the business of manufacturing and trading of loose, cut and polished demands and demands studded jewellery. Subsequently, the PCIT-19 Mumbai issued show cause notice vide show cause No. Pr. CIT-19/Vishal Gems/2016-17 dated 07.06.2016 stating that

during the year under consideration assessee had not made any purchase but has taken accommodation entries of bogus purchases from Daksh Diamond & Jewel Diamond amounting to ₹ 8,22,86,744/-. According to the show cause notice, Daksh Diamond and Jewel Diamond are the concerns of Bhanwarlal Jain Group, which was searched by the investigation wing on 03.10.2013, wherein it was noticed that these group concerns are not doing genuine business, rather they are merely providing accommodation entries to the diamond traders. According to show cause notice, the above transaction/information has not been considered or scrutinized in the assessment proceed ngs and thus necessary inquiry, which were required to be made to ascertain the relevant facts, were not made by the Assess ng Officer. The relevant text of the show cause notice reads as under -

> *"The AO has made assessment u/s 143(3) of the Income Tax Act 1961, as per order dated 04.09.2015 determining total income at ₹ 5,48,88,420/-. On perusal of the assessment records it is seen that during the year under consideration the assessee had made a purchase from Daksh Diamond & Jewel Diamond total amounting to ₹ 8,2,86,744/-. Daksh Diamond & Jewel Diamond is a concern operated by Bhanwarlal Jain Group. During a search & Survey action in the case of Bhanwarlal Jain Group by DGIT (Inv.), Mumbai on 03.10.2018 it was found that these group concerns are not doing genuine business they*

are merely providing accommodation entries to the diamond traders.

The above transaction/s information has not been considered and/ or scrutinized in the assessment proceedings. Thus the necessary enquiry which were required to be made to ascertain the relevant facts for the purpose of deciding the issue at hand, were not made by the Assessing Officer. The assessment order therefore, suffers from this infirmity which has caused prejudice to the interest of revenue.

In view of the above discussion, the assessment order is liable to be set aside and proceeded with as pe the provisions of section263 of the Income Tax Act. You are accordingly given an opportunity to make your submissions personally or thorough authorized representative to the under signed on 13.06.2016 at 12.00 AM."

7. The assessee replied this show cause notice vide letter dated 13.06.2016, filing all the evidences to support the purchase as genuine. It was claimed by assessee before PCIT that assessee has filed all the details before the AO and supported his claim that the payments for the same has been made by account payee cheque and all these entries are reflected in the books of account of the assessee. The assessee filed all the evidences before PCIT. Even now, the assessee has filed these details before Tribunal by pages 75 to 100 of assessee's paper book. It

was claimed by the assessee before PCIT that all these details were scrutinized during the original assessment proceedings framed by the AO under section 143(3) of the Act i.e. the details filed in response to notice issued under section 143(2) of the Act. But the PCIT without going into the details, the details which is filed before AO in respect of purchase made from Daksh Diamond & Jewel Diamond amounting to ₹ 8,22,86,744/- directed the AO to examine the purchases claimed from the above mentioned parties. According to PCIT, non-examination of the claim of purchases of ₹ 8,22,86,744/- from the above two parties makes assessment order erroneous so far as it is prejudicial to the interest of the Revenue. The relevant finding for the same by PCIT reads as under: -

> *"7. I have considered the submissions of the assessee and the record It is not disputed by the assessee that the two parties from whom purchases of Rs 8 22,86,744/- have been claimed belong to the Bhanwarlal Jain Group. The exhaustive investigation of the investigation wing has shown that the entries taken from Bhanwarlal Jain Group are only accommodation entries, thereby making the purchases of Rs. 822,86,744/- bogus and liable to be disallowed in computing the profits and gains of Business of the assessee. Non examination of the claim of purchases of Rs. 8,22,86,744/- from the two parties in the light of the information received from DGIT(Inv.), Mumbai makes the assessment order erroneous in so far as it is prejudicial to the interest of revenue.*

8. Accordingly, the assessment order u/s.143(3) dt. 04.09.2015 for A.Y. 2013-14 is hereby set aside u/s. 263 of the 1.1. Act. 1961 to the assessing officer with a direction to examine the purchases of Rs. 8,22,86,744/- claimed from the above mentioned parties after giving an opportunity assessee."

Aggrieved, against the revision order passed by PCIT under section 263 of the Act, the assessee came in appeal before Tribunal.

8. Before us, the learned Counsel for the assessee first of all stated that AO in the case of original assessment proceedings had verified the facts of purchase from the above mentioned parties namely Daksh Diamond & Jewel Diamond amounting to ₹ 4,19,88,265/- and ₹ 4,02,98,479/- respectively. The learned Counsel for the assessee pointed out assessee's paper book consisting of pages at 113, wherein during the course of original scrutiny assessment proceedings issued notice under section 143(2) and 142(1) of the Act dated 23.07.2015 asking the following details: -

Opening Stock Cts & Value	*Purchase Cts & Value*	*Received from Mfg. Cts & Value*	*Cost of goods sold, Cts & Value*	*Sales Cts & Value*	*Closing stock Cts & Value*

9. The learned Counsel drew our attention to the reply of the assessee to the notice under section 142(1) of the Act dated 17.0.2015 and 21.08.2015, which are enclosed as Annexure 'G' and 'C' of the assessee's paper book at pages 68 to 73 and 21 to 67. The learned Counsel for the assessee drew our attention to letter dated 21.08.2015 replied by assessee to the notice under section 142(1) of the Act and

complete partwise details of sales and purchase enclosed and relevant reply reads as under: -

> *"3. Part wise details of Sales and Purchases*
>
> *Party wise details of sales and purchase along with quantity is enclosed vide "Annexure C"*

10. Further, the learned Counsel for the assessee drew our attention to P-68 of the assessee's paper book, wherein the details of inventory were provided to the AO vide letter dated 17.08.2015 and the relevant Para 7 of the letter reads as under: -

> *"7. Details of inventory*
>
> *Details of inventory indicating opening stock, purchase, sales and closing stock along with yield percentage along with soft copy is enclosed vide : "Annexure G". the assessee firm has drawn yield of 36% from the raw materials."*

11. The learned Counsel for the assessee argued that the complete inventory of closing stock and day to day stock was produced before the AO during the original assessment proceedings and nothing was there relating to bogus purchases. The learned Counsel for the assessee stated that the assessee has paid VAT. The learned Counsel for the assessee was confronted that the decision of jurisdictional High court in the case of Shoreline Hotel (P.) Ltd. vs. CIT (2018) 259 Taxman 49, which upheld the order of revision under section 263 of the Act in case of alleged bogus purchases. The learned Counsel for the assessee has distinguish and the distinction is tabulated as under: -

Particulars	**Decision of the Shoreline Hotel (P.). ltd. v. CIT**	**In the Assessee's case**	**Remarks**
Nature of Business	Engaged in Business of running 5 star hotel	Engaged in the business of manufacturing of jewellery and trading of diamonds	
Source of information received	Information was received from the Sales tax department	Information received from investigation wing of IT Department	In the case of the assessee, on the contrary, the alleged bogus purchases parties (i.e. Daksh Diamonds and Jewel Diam) are not doubted by the Sales Tax authorities, as held by ITAT in the following cases: a. Jitendra M Kitavat v. ITO [ITA No. 7102 of 2016] b. ITO v. Bhavana Metal Company [ITA No.5973 of 2016]
Status of alleged bogus parties	Declared 'Hawala' operators by the Sales Tax Department	Not declared as Hawala' operators by the sales tax department	
Nature of goods involved	Furniture, plumbing items etc. for which there was no corresponding sales against the purchase. Accordingly, it was not possible to verify the veracity of the purchases.	Diamonds –for which complete stock tally is available and is available and was provided to the AO in 143 (3) proceedings.	
Extent of enquiry by the Tax Authorities and the level of compliance	AO had also issued notice under section 133(6) of the Act which was returned back and further notice was sent by hand delivery in person but was not able to locate this parties	Neither the AO nor the CIT in 263 proceedings required production of the parties once the copies of invoices, bank statements and stock tally were given. The Hon CIT has not rebutted any of the evidences, and has not arrived at any independent satisfaction that the order of the AO is erroneous and he has simply held that the	

Particulars	Decision of the Shoreline Hotel (P.). ltd. v. CIT	In the Assessee's case	Remarks
		order is erroneous based on the alleged information received from the Investigation. Department This is a clear case of "borrowed satisfaction" which was not the case before the Hon. Bombay High Court in Shoreline Hotel's case. It may be noted that in the course of proceedings under section 143(3) rws 253, the Assessee has produced affidavits from the said parties that they a e ind pendent from the Bhavarlal Jain G oup. These affidavits are set out at pages 591 to 594 of Additional Evidence Paper Books filed on January 10,2019 Further, the parties have replied to the notice issued under section 133(6) in course of proceedings under section 143(3) read with section 263. Refer page No. 595 to 600 of Additional Evidence Paper Books filed on January 10, 2019.	
Erroneous nature of the Assessment	In the case before the Bombay High Court, the Assessee could not produce the parties and hence agreed for a GP Addition. Since the Assessee has agreed	In the present case, the assessee has not agreed to any addition whatsoever. Also, a complete stock tally was given the CIT ought to have given some minimum	In view of the following decisions where it is held that when the purchases are supported by documents and the payments are through account payee

Particulars	Decision of the Shoreline Hotel (P.). ltd. v. CIT	In the Assessee's case	Remarks
	for GP addition, the AO did not further apply his mind as to whether the situation calls for entire addition or only GP addition is find. Besides, in this case, the commodities were non trading items and hence GP addition was evidently erroneous	finding as to how despite the stock tally and other details submitted by the Assessee, the order is erroneous	cheques, the purchase cannot be regarded as bogus, the order passed by the AO cannot be said to be erroneous: a. PCIT v. Tejua Rohitkumar Kapadia (Tax Appeal No. 691 of 2017) b. Dismissal of Department's SLP by SC
Cross Examination of the Parties	In the case before the Hon. Bombay High court, the Assessee did not ask for cross examination of the alleged bogus purchases parties. On the contrary, the Assessee agreed to the GP addition	In the present case the Assessee specifically has asked the CIT for allowing cross examination of the parties concerned	Since cross examination is asked for and not allowed, the CIT's order is bad in law for want of natural justice and needs to be struck down. See the following decisions: a. CIT v. Sunita Dhadda [SLP (Civil) No. 9432 of 2018 (SC)] b. CIT v. J.M.D. P. Ltd (2010) 320 ITR 17 (ST) (SC)

12. We have gone through the facts of the case and arguments of both the sides. From the arguments of the learned counsel, we noted that the CIT in his order has simply based his reliance on the report of the investigation wing of income tax department without providing the same to the assessee or providing an opportunity to cross examine the same or the alleged bogus parties. The assessee's counsel argument is that it is nothing but a borrowed satisfaction of the investigation wing adopted by CIT. The learned Counsel for the assessee for this proposition relied on the decision of Hon'ble Bombay High Court in the case of PCIT vs. Shodiman Investments (P.) Ltd. (2018) 93 taxmann.com 153, wherein

Hon'ble High Court has dealt with the similar proposition by observing as under:-

> *12. The re-opening of an Assessment is an exercise of extra-ordinary power on the part of the Assessing Officer, as it leads to unsettling the settled issue/assessments. Therefore, the reasons to believe have to be necessarily recorded in terms of Section 148 of the Act, before re-opening notice, is issued. These reasons, must indicate the material (whatever reasons) which form the basis of re-opening Assessment and its reasons which would evidence the linkage/nexus to the conclusion that income chargeable to tax has escaped Assessment. This is a settled position as observed by the Supreme Court in S. Narayanappa v. CIT [1967] 63 ITR 219, that it is open to examine whether the reason to believe has rational connection with the formation of the belief. To the same effect, the Apex Court in ITO v. Lakhmani Merwal Das [1976] 103 ITR 437 had laid down that the reasons to believe must have rational connection with or relevant bearing on the formation of belief i.e. there must be a live link between material coming the notice of the Assessing Officer and the formation of belief regarding escapement of income. If the aforesaid requirement are not*

met, the Assessee is entitled to challenge the very act of re-opening of Assessment and assuming jurisdiction on the part of the Assessing Officer.

13. In this case, the reasons as made available to the Respondent- Assessee as produced before the Tribunal merely indicates information received from the DIT (Investigation) about a particular entity, entering into suspicious transactions. However, that material is not further linked by any reason to come to the conclusion that the Respondent-Assessee has indulged in any activity which could give rise to reason to believe on the part of the Assessing Officer that income chargeable to tax has escaped Assessment. It is for this reason that the recorded reasons even does not indicate the amount which according to the Assessing Officer, has escaped Assessment. This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment.

14. Further, the reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDIT (Inv.). The Assessing Officer has merely issued a re-opening notice on the basis of intimation

regarding re-opening notice from the DDIT (Inv.) This is clearly in breach of the settled position in law that re- opening notice has to be issued by the Assessing Office on his own satisfaction and not on borrowed satisfaction."

13. Further, we also noted that the CIT is of the view that the AO is erroneous and prejudicial to the interest of the revenue on account of the purchases made from these parties are bogus and if he hold such view, before revising the assessment under section 263 of the Act, the CIT ought to have made some inquiry of his own and for instance CIT should have issued noticed under section 133(6) of the Act to the concerned parties or CIT should have examine whether the said parties are declared as hawala parties by Sales Tax Authorities. This indicates that the order of CIT revising the assessment is without application of mind. Hon'ble Delhi High Court in the case of PCIT vs. Delhi Airport Metro Express Pvt. Ltd. in ITA NO. 705/2017 dated 05.09.2017, has clearly held as under:-

"10. For the purposes of exercising jurisdiction under Section 263 of the Act, the conclusion that the order of the AO is erroneous and prejudicial to the interests of the Revenue has to be preceded by some minimal inquiry. In fact, if the PCIT is of the view that the AO did not undertake any inquiry, it becomes incumbent on the PCIT to conduct such inquiry. All that PCIT has done in the impugned order is to refer to the Circular of the CBDT and conclude that "in the case of the Assessee company, the AO was

duty bound to calculate and allow depreciation on the BOT in conformity of the CBDT Circular 9/2014 but the AO failed to do so. Therefore, the order of the AO is erroneous insofar as prejudicial to the interest of revenue".

11. In the considered view of the Court, this can hardly constitute the reasons required to be given by the PCIT to justify the exercise of jurisdiction under Section 263 of the Act. In the context of the present case if, as urged by the Revenue, the Assessee has wrongly claimed depreciation on assets like land and building, it was incumbent upon the PCIT to undertake an inquiry as regards which of the assets were purchased and installed by the Assessee out of its own funds during the AY in question and, which were those assets that were handed over to it by the DMRC. That basic exercise of determin ng to what extent the depreciation was claimed in excess has not been undertaken by the PCIT.

12. Mr. Asheesh Jain then volunteered that the PCIT had exercised the second option available to him under Section 263 (1) of the Act by sending the entire matter back to the AO for a fresh assessment. That option, in the considered view of the Court, can be exercised

only after the PCIT undertakes an inquiry himself in the manner indicated hereinbefore. That is missing in the present case."

14. We find that the assessee has submitted/ produced all the documents before the AO during the course of assessment proceedings namely invoices, given details of stocks, payments were made through the banking channels and subsequently the parties were confirmed the said transaction. Even the assessee has shown sales affected from these purchases and stock tally is matching and in such circumstances the parties cannot be held non-genuine.

15. The case law relied on by the learned counsel for the assessee of Hon'ble Bombay High Court in the case of MOIL Ltd. vs. CIT [2017] 396 ITR 244 (Bombay) wherein Hon'ble Bombay High court held that if a query is raised during assessment proceedings and if the assessee responds to the said query, merely because the said aspect is dealt with in the assessment would not lead to a conclusion that the AO has not applied his mind to the response of the assessee. Hon'ble Bombay High Court held as under:

"5 On a perusal of the orders passed by the Authorities, it appears that before the assessment order was passed, a notice was served on the assessee under Section 142 (1) of the Act and 20 queries pertaining to different heads were made therein. The ninth query in the notice under Section 142 (1) of the Act pertains to the expenditure for the Corporate Social Responsibility. By the said query, the

assessee was directed to give a detailed note of expenditure for the Corporate Social Responsibility along with bifurcation of the expenses under different heads. An exhaustive reply was submitted by the assessee to the notice under Section 142 (1) of the Act. In paragraph 8 of the reply, the assessee gave the detailed note pertaining to the expenditure for the Corporate Social Responsibility under different heads that runs into several pages. The heads under which the expenses were made towards the Corporate Socia Responsibility were specifically mentioned as health, environment, sports, education etc. and for each of the different heads, particulars were given in respect of every minor or major expenses. A detailed note on the expenditure on the Corporate Social Responsibility claim was given in paragraph 8 which runs into more than five pages. It is not disputed that the appellant - assessee is a Government of India undertaking and the Government has a control over the expenses of the undertaking. It is pertinent to note that during the previous assessment years, similar claims were made by the assessee - Company and the assessment orders allowing the claims have attained finality. We have minutely perused the assessment order. The

claims for deductions were made by the assessee at least under 20 heads and queries were made in the notice under Section 142 (1) of the Act to the assessee in respect of nearly all of them. We, however, find from the assessment order that the Assessing Officer has dealt with nearly nine claims of deductions. These claims have been specifically mentioned in the assessment order and they have been discussed therein because the Assessing Officer appears to have disallowed those claims either partially or totally. In respect of the claim for the Corporate Social Responsibility and some other claims that were allowed by the Assessing Officer, the Assessing Officer has not made a specific reference in the assessment order. It is apparent from the assessment order that the Assessing Officer has expressed in detail about the claims that were disallowable. Where the claims were allowable, as we find from the reading of the assessment order, the Assessing Officer has not referred to those claims. The Corporate Social Responsibility claim is one of them. It is apparent from the notice under Section 142 (1) of the Act that a specific query in regard to the claim pertaining to the Corporate Social Responsibility was made and a detailed note after giving bifurcation

of the expenses under different heads was sought. We have perused the response in respect of this query which is exhaustive. We find that the assessee has given the details, as are sought under query no.9 in the notice under Section 142 (1) of the Act. If that is so, the judgments, reported in Fine Jewellery (India) Ltd. (supra) and Nirav Modi (supra) and on which the learned Counsel for the assessee has placed great reliance would come into play. It is held in the judgments referred to herein above by relying on the judgment in the case of Idea Cellular Ltd. (supra) that if a query is raised during the assessment proceedings and the query is responded to by the assessee, the mere fact that the query is not dealt with in the assessment order would not lead to a conclusion that no mind has been applied to it. In the case of Fine Jewellery (India) Ltd. (supra) this Court found that from the nature of the expenditure as explained by the assessee in that case the Assessing Officer took a possible view and therefore, it was not a case where the provisions of Section 263 of the Act could have been resorted to. Considering the explanation of the assessee in this case, we are also of the view that the Assessing Officer had taken a possible view. In the case of Nirav Modi (supra)

this Court held that the Tribunal was justified in that case in cancelling the order under Section 263 of the Act as the assessee had responded to the query made to it during the assessment proceedings and merely because the assessment order did not mention the same, it would not lead to a conclusion that the Assessing Officer had not applied his mind to the case. In the instant case, we find that the Assessing Officer has applied his mind to the claims made by the assessee and wherever the claims were disallowable they have been discussed in that assessment order and there is no discussion or reference in respect of the claims that were allowed. In view of the law laid down in the judgments in the case of Fine Jewellery (India) Ltd. (supra) and Nirav Modi (supra) it would be necessary to hold that in the circumstances of the case, it cannot be said that merely because the Assessing Officer had not specifically mentioned about the claim in respect of the Corporate Social Responsibility, the Assessing Officer had passed the assessment order without making any enquiry in respect of the allowability of the claim of Corporate Social Responsibility. In our view, the provisions of Section 263 of the Act could not have been invoked by the

Commissioner of Income Tax in the circumstances of this case. The Tribunal was not justified in holding that the query under Section 142 (1) of the Act was very general in nature and the reply of the assessee was also very general in nature. In our considered view, the query pertaining to Corporate Social Responsibility was exhaustively answered and the appellant - assessee had provided the data pertaining to the expenditure under each head of the claim in respect of Corporate Social Responsibility, in detail. The Tribunal was not justified in holding that the reply/explanation of the assessee was not elaborate enough to decide whether the expenditure claim was admissible under the provisions of the Income Tax Act. The Assessing Officer is not expected to raise more queries, if the Assessing Officer is satisfied about the admissibility of claim on the basis of the material and the details supplied. In the facts and circumstances of the case, we answer the question of law in the negative and against the Revenue."

16. In view of the above facts and circumstances, we are of the view that the revision order passed by CIT is without any basis and the assessment order does not point out that the same is erroneous or prejudicial to the interest of the Revenue. Even, the CIT could not prove that the assessment order is erroneous or prejudicial to the interest of

revenue in the given facts and circumstances of the case. Respectfully following the above cited case laws of the Hon'ble Bombay High Court and Hon'ble Delhi High court, we quash the revision order and allow the appeal of the assessee.

17. The learned Counsel for the assessee also raise the issue on merits, without prejudice to the above legal issue. The learned Counsel argued that the CIT did not afford an opportunity to cross examine the parties in relation to bogus purchase nor did he provide the report of the investigation wing basis which the CIT is concluding that the parties from whom purchases are made are bogus. He argued that a reasonable disallowance can be estimated in the case of purchases treated as bogus. Since the issue is decided quashing Revision order on jurisdiction, we need not to go into the merits of the case.

18. **In the result, the appeal of the assessee is allowed.**

Order pronounced in the open court on 08-02-2019.

Sd/-	Sd/-
(राजेश कुमार / RAJESH KUMAR)	(महावीर सिंह /MAHAVIR SINGH)
(लेखा सदस्य / ACCOUNTANT MEMBER)	(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 08-02-2019.

सुदीप सरकार, व.निजी सचिव */ Sudip Sarkar, Sr.PS*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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