

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER  
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER**

ITA No.368/LKW/2015  
Assessment year:2010-11

|  |    |                       |
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| M/s Juhi Alloys Pvt. Ltd.,<br>123/360, Fazalganj,<br>Kanpur.<br>PAN:AAACJ3420A | Vs | C.I.T.-II,<br>Kanpur. |
| (Appellant)  |    | (Respondent)          |

|                       |                               |
|-----------------------|-------------------------------|
| Appellant by          | Shri Ashish Jaiswal, Advocate |
| Respondent by         | Shri Sanjay Kumar, CIT, D. R. |
| Date of hearing       | 20/01/2016                    |
| Date of pronouncement | 24/02/2016                    |

**ORDER**

**PER A. K. GARODIA, A.M.**

This is assessee's appeal directed against the order passed by learned CIT-II, Kanpur dated 30/03/2015 for the assessment year 2010-2011 passed by him u/s 263 of the Act.

2. In this appeal the assessee has raised the following grounds:

- "1. *Because on facts and circumstances of the case, the learned CIT has erred in passing order u/s 263 of the I.T. Act.*
2. *Because on facts and circumstances of the case the original assessment order is not erroneous on the issues on which order u/s 263 has been passed by the Id.cit and therefore could not be said to be prejudicial to the interest of revenue.*
3. *Because on facts and circumstances of the case the Id.cit has passed the order u/s 263 mechanically without application of mind.*

4. *That the Id.cit has neither examined the records nor made or cause to be made such inquiry as required to justify the order u/s 263 of the act.*
5. *That the basis on which order u/s 263 of the act is passed was already examined by the Assessing Officer u/s 143(3) of the act.*
6. *That the assessment order passed u/s 143(3) is neither erroneous nor prejudicial to the interest of revenue."*

3. It was submitted by Learned A. R. of the assessee that the notice issued by learned CIT u/s 263 dated 11/02/2015 is available on pages 86 to 88 of the paper book. He also submitted that copy of questionnaire issued by the Assessing Officer u/s 142(1) of the Act is available on pages 151-154 of the paper book and in this questionnaire, query was raised by the Assessing Officer on all the points noted by learned CIT in his notice u/s 263 of the Act. He further submitted that the reply submitted before the Assessing Officer is also available in the paper book along with the enclosures on pages 100 to 145 and on pages 89 to 91 of the paper book.

4. Learned D. R. of the Revenue supported the order of learned CIT.

5. We have considered the rival submissions. We find that in the notice issued by learned CIT on 11/02/2015 u/s 263 of the Act, various points have been raised by him and it is stated in the notice that on these points, the Assessing Officer has not properly examined the case. Hence, it is seen that this is not the allegation of learned CIT that there is no enquiry or that there is no application of mind by the Assessing Officer and his allegation is that the issues were not properly examined by the Assessing Officer. This is a settled position of law by now that lack of enquiry by the Assessing Officer definitely makes the assessment order erroneous and in that situation, learned CIT may invoke the revisionary

powers u/s 263 of the Act but in a case of inadequate enquiry by the Assessing Officer, the revisionary powers cannot be invoked by learned CIT. In the present case, we find that the first objection of learned CIT is that the assessee has debited an amount of Rs.2.80 lac and Rs.2 lac on account of advertisement and publicity expenses without deducting TDS u/s 194 of the Act. In the notice issued by the Assessing Officer u/s 142(1), the Assessing Officer has asked the assessee to furnish the details of expenses incurred under the head advertisement and publicity of Rs.4.90 lac and this is also enquired in the same notice as to whether TDS was deducted or not. Hence, it is seen that on this issue, enquiry was definitely made by the Assessing Officer. The second objection of learned CIT is that certain payments were made by the assessee in cash exceeding Rs.20,000/- in one day and therefore, there is violation of the provisions of section 40A(3) of the Act. On this issue also, we find that in the questionnaire issued by the Assessing Officer u/s 142(1) of the Act, the Assessing Officer has asked the assessee regarding details of the amount inadmissible u/s 40A(3) of the Act. Hence, it is seen that on this issue also, enquiry was made by the Assessing Officer in course of assessment proceedings. The third objection of learned CIT is that there is increase in the quantum of fuel and coal consumed to Rs.747.79 lac in the present year as against Rs.384.79 lac in the preceding year but there is decrease in the turnover and therefore, this is the objection of learned CIT that the overall turnover shown by the assessee looks to be understated. In this regard, we find that in the questionnaire issued by the Assessing Officer u/s 142(1) of the Act, the Assessing Officer has asked the assessee to furnish details of various expenses including power and fuel consumed of Rs.747.79 lac. Hence, it is seen that on this issue also, enquiry was made by the Assessing Officer. Under these facts, we are of the considered opinion that since enquiry was made by the Assessing Officer on all the

points on which objection had been raised by learned CIT in the notice issued by him u/s 263 of the Act, this is not a case of lack of enquiry by the Assessing Officer or lack of application of mind by the Assessing Officer because on all the issues, query was raised by the Assessing Officer and replies were submitted by the assessee and only because the Assessing Officer has reached to a different conclusion and learned CIT has different conclusion, it cannot be said that the assessment order is erroneous and prejudicial to the interest of Revenue and therefore, the invocation of revisionary power u/s 263 of the Act by learned CIT in the present case is not valid and justified.

5.1 The issue in dispute in the present case is covered by the judgment of Hon'ble Allahabad High Court rendered in the case of CIT vs. Krishna Capbox (P.) Ltd. as reported in [2015] 372 ITR 310 (All) and reliance on this judgment was placed by Learned A. R. of the assessee and the copy of this judgment is available on pages 1 to 4 of the judgments paper book. In this case also, it is noted by Hon'ble Allahabad High Court that the assessing authority made certain queries, which were replied by the assessee and after inquiry, the Assessing Officer being satisfied in respect of the queries replied by the assessee, accepted declared income and passed the assessment order and under these facts, it was held by the Tribunal in that case that once enquiry was made by the Assessing Officer then for the reason that there is no discussion or no mention thereof in the assessment order, it cannot be said that the Assessing Officer did not apply his mind or that he had not made enquiry on the subject and this would not justify interference by the learned CIT by issuing notice u/s 263 of the Act. Hon'ble High Court confirmed the Tribunal order in that case. The facts in the present case are similar because in the present case also, queries were made by the Assessing Officer in course of assessment

proceedings and the replies were submitted by the assessee to the Assessing Officer and therefore, in the present case also, learned CIT is not justified in issuing notice u/s 263 of the Act and therefore, the order passed by learned CIT u/s 263 deserves to be quashed. We hold accordingly.

6. In the result, the appeal of the assessee stands allowed.

(Order was pronounced in the open court on the date mentioned on the caption page)

**Sd/.**  
**(SUNIL KUMAR YADAV)**  
**Judicial Member**

**Sd/.**  
**( A. K. GARODIA )**  
**Accountant Member**

**Dated:24/02/2016**  
**\*Singh**

**Copy of the order forwarded to :**

- 1.The Appellant
- 2.The Respondent.
- 3.Concerned CIT
- 4.The CIT(A)
- 5.D.R., I.T.A.T., Lucknow

Asstt. Registrar