

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.241/Del/2016
(Assessment Year: 2011-12)

Reshma,
W/O. Sh. Ravinder Singh, Near
Doon Valley College, Jundia Gate,
Rishi Nagar, Karnal
PAN:ARQPR3918R
(Appellant)

CIT,
Karnal

(Respondent)

Assessee by :	Sh. Gautam Jain, Adv
Revenue by:	Sh. SS Rana, CIT DR
Date of Hearing	16/01/2017
Date of pronouncement	27/02/2017

ORDER

PER PRASHANT MAHARISHI, A. M.

1. The assessee against the order of Id CIT files this appeal, Karnal dated 11.12.2015 for AY 2011-12 u/s 263 of the Income Tax Act, 1961 wherein the order passed by the Id Assessing Officer u/s 143(3) of the Act dated 07.11.2013. The assessee has raised following grounds of appeal:-

"1 That order dated 11.12.2015 u/s 263 of the Act by learned Pr. Commissioner of Income Tax, Karnal has been made without satisfying the statutory preconditions contained in the Act and is therefore without jurisdiction and thus, deserves to be quashed as such.

1.1 That learned Pr. Commissioner of Income Tax has erred both in law and on facts in holding that source of cash deposits of Rs. 42,67,500/- have not been properly explained by the assessee, as the Assessing Officer has not made the requisite enquiries/verifications about the source of these cash deposits of Rs. 11,89,5007-. This finding is factually incorrect

and legally misconceived, contrary to record and untenable.

- 1.2 *That the learned Pr. Commissioner of Income Tax has failed to appreciate that once the learned Assessing Officer on examination of the facts on record and after making all possible enquiries had accepted claim of the appellant then such an order of assessment could not be regarded as erroneous in as much as prejudicial to the interest of revenue merely because the learned Commissioner of Income Tax had a different opinion and that too, without having established in any manner that, view adopted by the learned Assessing Officer was an impossible view.*
- 1.3 *That various findings and observations made by the learned Pr. Commissioner of Income Tax in order are vague, verbose, contradictory based on fundamental misconception of facts and law, arbitrary and unjustified and therefore untenable.*
- 1.4 *That farther the learned Pr. Commissioner of Income Tax has also failed to appreciate that, u/s 263 of the Act, an order of assessment cannot be set-aside to simply to make further enquiries and thereafter pass fresh order of assessment and as such, impugned order is contrary to law and hence, unsustainable."*

2. However, the only issue is that the order passed by the Id CIT(A) is without jurisdiction as there is no error in the assessment order and it is not prejudicial to the interest of revenue. The fact of the case is that the assessee has deposited cash of Rs. 4267500/- in the saving bank account maintained with Oriental Bank of Commerce, Karnal. Therefore, the return of income filed by the assessee on 30.01.2012 declaring total income of Rs. 187480/- was selected for scrutiny. The Id Assessing Officer that the assessee is engaged in the business of trading of milk near Doon Valey College, Karnal and has filed return showing income u/s 44AD of the Income Tax Act noted it. subsequently, assessment u/s 143(3) of the Act was passed on 07.11.2013 by making an agreed addition of Rs. 2 lakhs to the returned income and assessed at Rs. 387480/-. Subsequently, on examination of the records the Id CIT issued show cause notice on 01.09.2015 wherein according to him the order passed by the Id Assessing

Officer is erroneous as the enquiry with respect to cash deposit to the extent of Rs. 1189500/- was not made at all. Therefore, he passed u/s 263 of the Act on 11.12.2015 holding that the order passed by the Id Assessing Officer is erroneous and prejudicial to the interest of revenue for the reasons mentioned in para No. 6 of this order.

3. The Id AR of the assessee submitted that the Assessing Officer has examined the issue during the course of assessment proceedings and for this he referred to query letter dated 02.07.2013 and reply of the assessee dated 29.07.2013. He further referred to submission of various bank accounts before the Assessing Officer. He further referred that a sum of Rs. 545878/- is on account of maturity of fixed deposit and Rs. 9 lakhs and Rs. 1123227/- were received on sale of land and compensation. He further submitted that all remaining deposits have been done from mil trading business run by the assessee. Therefore, according to him the Id Assessing Officer has correctly examined the cash deposited by the assessee. Therefore, according to him the order is correct and it can also not be said to be prejudicial to the interest of revenue. He therefore submitted that Id CIT has erred in assuming the jurisdiction. He also place written synopsis before us for our consideration.

The Id DR submitted that Id Assessing Officer during the course of original assessment proceedings the Id Assessing Officer did not examine the fact of cash deposit of Rs. 48.67 lakhs completely and he has left enquiry with respect to sum of Rs. 11.89 lakhs. Therefore, Id CIT found the assessment order erroneous and prejudicial to the interest of revenue.

4. We have carefully considered the rival contentions. The fact is not disputed that in her return of income the assessee has shown income mainly from Sewing, knitting and trading and during the course of assessment proceeding she submitted that it is engaged in business of

trading of milk and her turnover from trading of milk was Rs. 1978000/- . Thereby she offered an income of Rs. 162400/- from that business. Further during the course of assessment proceeding vide letter dated 28.10.2013 it was submitted that she sold milk of Rs. 3613500/- and purchased milk of Rs. 2738927/-. Further, a sum of Rs. 4267500/- was found to be deposited in cash in her bank account with Oriental Bank of Commerce, Karnal. Vide letter dated 14.10.2015 she submitted that her turnover was Rs. 19.78 lakhs whereas rest of the cash deposited is out of withdrawal. Therefore, the assessee is consistently changing her stand. The Id CIT further held that though the sales of milk per month is ranging from Rs. 1.5 lakhs to Rs. 1.63 lakhs whereas purchases are between Rs. 55000/- to Rs. 1.63 lakhs. This erratic unmatched transaction in a perishable commodity was rejected in view of non-availability of storage capacity and seasonal business. The Id Assessing Officer has obtained the copy of the bank account however, has not fully reconciled to the amount of cash deposit into the bank and sources of such deposits. In fact the Id Assessing Officer has not carried out any enquiry, which can be said to have been conducted to the due application of mind at all. He has merely closed his eyes by making an ad hoc addition of Rs. 2 lakhs and not at all applying his mind to the fact that there is mismatch between the turnover shown by the assessee as well as amount of cash deposited by the assessee. In the present case, the Id Assessing Officer has not made enquiry to the level of satisfaction which would obviously mean that he has conducted the inquiry in a manner whereby he places on record the material enough to reach the satisfaction, which a rational person, being informed of the nuances of tax laws would reach after due appreciation of such material. If this component is missing, it will always be a case of lack of inquiry and not inadequate inquiry. In view of this we are of opinion that Id CIT is correct in assuming jurisdiction u/s 263 of the Act holding that impugned

assessment order passed u/s 143(3) by the Id Assessing Officer is passed without making any enquiry.

5. In the result appeal filed by the assessee is dismissed.

Order pronounced in the open court on 27/02/2017.

-Sd/-

(H.S.SIDHU)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 27 /02/2017

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi