

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER  
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

**I.T.A. No. 288/(Asr)/2016**

Assessment Year: 2011-12

Nittan Aneja,  
Gahoon Road,  
Ward No. 6, Balachaur Distt.  
SBS Nagar [Pb.]  
[PAN: AJIPA 4449G]

**(Appellant)**

Vs. Principal Commissioner of Income  
Tax, Jalandhar-1, Jalandhar

**(Respondent)**

**Cross Objection No. 12/Asr/2016**  
(arising out of I.T.A. No. 288/(Asr)/2016  
Assessment Year: 2011-12

Principal Commissioner of  
Income Tax, Jalandhar-1,  
Jalandhar

**(Cross Objector)**

Vs. Nittan Aneja,  
Gahoon Road,  
Ward No. 6, Balachaur Distt.  
SBS Nagar [Pb.]  
[PAN: AJIPA 4449G]

**(Respondent)**

Appellant by : Sh. Rakesh Joshi (Adv.)

Respondent by: Sh. Bhawani Shankar (D.R.)

Date of Hearing: 18.07.2018

Date of Pronouncement: 31.07.2018

**ORDER**

Per Sanjay Arora, AM:

This is an Appeal by the Assessee challenging the Order u/s. 263 of the Income-tax Act, 1961 ('the Act' hereinafter) dated 14.03.2016 by the Principal Commissioner of Income Tax, Jalandhar-1, Jalandhar ('Pr.CIT' for short), holding his assessment u/s. 143(3) of the Act dated 13.03.2014 for Assessment Year (AY) 2011-12 as erroneous and prejudicial to the interests of the Revenue.

2. Vide his instant appeal, the assessee challenges the invocation of section 263 in his case, which is on account of lack of proper enquiry by the Assessing Officer (AO) in completing the assessment under reference. The assessee does not seriously dispute the assumption of jurisdiction; the thrust of the Id. counsel's, Sh. Rakesh Joshi, Advocate, arguments before us being that there has been proper examination by the AO during assessment *qua* each of the issues raised by the Id. Pr. CIT per the impugned order. It was therefore wrong on the part of the competent authority to have regarded the same as not so. He would, then, painstakingly takes us through each of the specific items considered by the Id. Pr. CIT for lack of enquiry to exhibit that proper enquiry was made in assessment and, consequently, the satisfaction of the AO thus arrived at could not be disturbed through recourse to the revisionary proceedings. The Id. Departmental Representative (DR), Sh. Bhawani Shankar, would, on the other hand, rely on the impugned order, stating that under the given circumstances, no proper enquiry can be said to have been made by the AO, who completed the assessment in haste, and without proper application of mind.

3. We have heard the parties, and perused the material on record.

3.1 The assessee is a dealer in second-hand cars, and returned his income for the year on 01.02.2012, declaring an income of Rs.3,01,200/-, including Rs.36,200/- as income from other sources. The return was selected for being subject to the

verification procedure under the Act on account of cash deposits in his bank account with ICICI Bank, Nawanshahr, even as he admittedly maintains three bank accounts. As the assessee did not admittedly maintain any books of account, he, in explanation of the cash deposits in his bank account/s, furnished a cash flow statement, which was later revised on certain discrepancies being observed by the AO; the assessee explaining the same as not intentional, but occasioned by loss of memory due to lapse of time. It is the validity of the explanation/s furnished by the assessee in substantiation of his cash flow statement (i.e., on the touchstone of its reasonableness and the credibility of the materials led in support), that would determine whether a case for invocation section 263 is, under the facts and circumstances, made out in the present case or not. We say so, as it is trite law that lack of proper enquiry renders an order as erroneous to the extent it is prejudicial to the interests of Revenue, and thus liable for revision.

3.2. Toward this aspect, also touched upon by the ld. counsel, Sh. Mishra, upon enquiry by the Bench in relation to one of the explanations (on merits), adverting to the order by the Tribunal in *Vegetina Kamala v. ITO* [2016] 157 ITD 457 (Vish.), we may, to begin with, state the legal position in the matter with reference to the judicial precedents. We do so as a matter of abundant caution; the case of the assessee before us itself being that there was, in the facts and circumstances of the case, proper enquiry by the AO in the matter in assessment, and that therefore there was no lack of enquiry. In other words, per contra or, admittedly, lack of enquiry is a valid ground for inferring non-application of mind and, thus, assumption of jurisdiction u/s. 263. The tribunal in his cited case held that where the AO had examined an issue, the revisionary authority cannot state that there was lack of enquiry. Lack of enquiry, it is well-settled, is one of the infirmities which renders the subject order erroneous in-so-far as it is prejudicial to the interests of the

Revenue. This is as, as afore-stated, it exhibits lack or non-application of mind by the concerned authority. The Apex Court in *Malabar Industrial Co. Ltd. vs. CIT* [2000] 243 ITR 83 (SC) laid down a four-way test for orders being erroneous in-so-far as they are prejudicial to the interests of the Revenue, liable for revision, viz. incorrect application of law; wrong assumption of fact/s; non-observance of the principles of natural justice; and lack of inquiry. Decades earlier, the Hon'ble Delhi High Court in *Gee Vee Enterprises vs. CIT (Addl.)* [1975] 99 ITR 375 (Del), also relied upon by the Id. Pr.CIT, following two decisions by the Apex court, explained the proposition thus:

*'It is not necessary for the Commissioner to make further inquiries before cancelling the assessment order of the Income-tax Officer. The Commissioner can regard the order as erroneous on the ground that in the circumstances of the case the Income-tax Officer should have made further inquiries before accepting the statements made by the assessee in his return. The reason is obvious. The position and function of the Income-tax Officer is very different from that of a civil court. The statements made in a pleading proved by the minimum amount of evidence may be adopted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which comes before it. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would made such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an enquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct.'* [emphasis, ours]

The principle is well-established, and lack of inquiry renders an order erroneous in-so-far as it is prejudicial to the interests of the Revenue. Case law in the matter is legion, rendered in different fact situations: *Thalibhai F. Jain v. ITO* [1975] 101 ITR 1 (Kar); *CIT (Addl.) vs. Mukur Corporation* [1978] 111 ITR 312 (Guj);

*Swarup Vegetable Products vs. CIT* [1991] 187 ITR 412 (All); *Tarajan Tea Co. (P.) Ltd. vs. CIT* [1994] 205 ITR 45 (Gau); *CIT vs. Active Traders (P.) Ltd.* [1995] 214 ITR 583 (Cal); *CIT vs. Mahavar Traders* [1996] 220 ITR 167 (MP); *CIT v. Everest Cold Storage* [1996] 220 ITR 241 (MP); *K.A. Ramaswamy Chettiar vs. CIT* [1996] 220 ITR 657 (Mad); *CIT v. Kohinoor Tobacco Products (P.) Ltd.* [1998] 234 ITR 557 (MP); *Mofussil Warehouse & Trading Co. Ltd. vs. CIT* [1999] 238 ITR 867 (Mad); *CIT vs. Export House* [2002] 256 ITR 603 (P&H); *CIT vs. Arunaben Sumankumar* [2003] 259 ITR 386 (Guj); *Pt. Lashkari Ram vs. CIT* [2005] 272 ITR 309 (All); *CIT vs. Deepak Kumar Garg* [2008] 299 ITR 435 (MP); *CIT vs. Toyota Motor Corpn.* [2008] 306 ITR 49 (Del) (affirmed by the apex court vide its judgment at [2008] 306 ITR 52 (SC)), on some of which reliance stands placed by the Id. Pr. CIT as well (refer para 6, pgs. 12-13 of his order) (also refer: *Rajalakshmi Mills Ltd. v. ITO* [2009] 121 ITD 343 (Ch)(SB)).

3.3 Lack of enquiry, it may be noted, is principally a matter of fact. That is, whether there indeed was, in the facts and circumstances of a case, ground for reasonable satisfaction available to the assessing authority, or that further probe or enquiry was required, i.e., was necessary or warranted under the circumstances, is essentially a matter of fact, to be determined taking into all the relevant factors, i.e., in the conspectus of the case. The decision in each case, as indeed in *Vegesina Kamala* (supra), would therefore turn on its facts, so that we find nothing amiss in the tribunal in that case stating that it was impermissible to contend lack of enquiry where there has been examination by the assessing authority. This is as, without doubt, the revisionary authority cannot substitute his view for that of the Assessing Officer, as a different view, or a change of opinion, cannot by itself render an order as liable for revision. 'Examination,' however, only implies a proper examination, or else how could it be held as one, i.e., as occasioned under the circumstances, so

as to able to arrive at a reasonable satisfaction on the basis of the explanation/s furnished and the material/s adduced. Whether the enquiry leads to satisfaction, or raises further doubts/questions, requiring clarification, it may be appreciated, is clearly a matter of fact, which led us to state of the matter being essentially factual. The matter, apart from the afore-cited case law, also stands discussed in detail by the tribunal in *New Horizon Investment Co. Ltd. v. CIT* (in ITA No. 1593/Mum/2013, dated 27/6/2014). Why, the ld. Pr. CIT himself refers to the order by the tribunal in *Ninestar Enterprises (P.) Ltd. v. Asst.CIT* [2013] 30 Taxmann. com 57 (Hyd.), besides referring to *Explanation 2* to section 263 (brought on the statute-book w.e.f. 01.06.2015), stating of an order passed without making enquiries or verification which should have been made, as one of the grounds for deeming it as erroneous and prejudicial to the interests of the Revenue.

3.4 The question, however, is whether there has been proper enquiry and verification, leading to the material on record as the basis for the AO's satisfaction, which has to be a reasonable and objective satisfaction. We, accordingly, proceed to examine the facts of the case. In this regard, on the basis of the hearing and the material on record, we consider that proper enquiry, for the reasons stated hereunder, has not been made by the AO *qua* the following aspects of the assessment:

- (a) continuous cash withdrawals by the assessee despite having sufficient cash-in-hand as per his cash flow statement;
- (b) inclusion of cash withdrawn (Rs.1 lac) by one, Yash Pal, on 13.04.2010, in the assessee's cash flow statement;
- (c) cash stated to be received from S/Sh. Vinod Kumar, Gagan Ghai, and Rajan Ghai on 03.04.2010 and 04.04.2010, at an aggregate of Rs.1.70 lacs, as advance for purchase of cars by them.

The findings by the ld. Pr. CIT *qua* each of these are as under:

‘(a) **Now, if the cash flow statement is looked into, it is quite clear that the assessee kept on withdrawing the cash from the bank account/s despite having sufficient cash-in-hand**, for example, if the assessee is having opening cash in hand of Rs.3,56,000/- on 01.04.2010, then why he withdrew Rs.4,000/- and Rs.25,000/- on 02.04.2010 from his bank account. On 13.04.2010 and 16.04.2010, assessee stated to have withdrawn Rs.1,00,000/- and Rs.7,95,000/- from the bank which was made part of the closing cash-in-hand of Rs.3,19,348/- and Rs.8,09,848/- respectively. But with cash-in-hand of more than Rs.8,00,000/-, assessee still withdrew small amounts of Rs.10,000/- and Rs.5,000/- on 20.04.2010, Rs.5,000/- on 22.04.2010 and Rs.5,000/- on 26.04.2010 for which probably no explanation was sought for by the Assessing Officer. Likewise, there are so many such like instances throughout the year which belies the normal human behaviour meaning thereby that if sufficient cash balance is available in hand then there is no occasion to go to the Bank and withdraw even petty amounts there from. The Assessing Officer failed to look into this aspect and to critically analyze the cash flow statement submitted during the course of assessment proceedings.

(b) Similar is a case with an amount of Rs.1,00,000/- which had been shown as cash in hand on 13.04.2010 whereas, as per bank statement, the cash was paid to Shri Yash Pal. The Assessing Officer failed to requisition the bank record - especially the original instrument pertaining to this amount as well as to call Shri Yash Pal for verification purposes. The genuineness of the transaction as well as the contention of Shri Yash Pal needed to be probed which was not done by the Assessing Officer to arrive at the correct state of affairs.

(c) That the Assessing Officer failed to independently verify the genuineness and authenticity of the affidavits filed in the name of Sh. Vinod Kumar, Sh. Gagan Ghai and Sh. Rajan Ghai. The Assessing Officer also missed a specific point of great importance as, as per the affidavits and other papers filed in above cases, the cash had been shown to have been paid to the assessee on 04.04.2010/03.04.2010 whereas, the buyers were shown to be responsible for all the liabilities w.e.f. March, 2011, i.e. after the gap of nearly 11 months. This is quite suspicious as the sale/purchase of car can never take so long.’

No satisfactory answer to any of the foregoing was forthcoming even before us, even as, as explained, it is the non-enquiry by the AO that is the relevant or material. The withdrawal of petty amounts, despite abundant cash-in-hand, only points out to the cash flow statement being not correct or complete, requiring further verification. There is no finding by the AO on this.

Then, without doubt, the assessee’s counsel arguing before us of another (Sh. Yash Pal) being engaged by the assessee to withdraw Rs.1 lac cash from his account for want of time, requires to be examined. In fact, the affidavit from Sh. Yash Pal dated 26.02.2014 (PB pg. 20) states of his having withdrawn the amount,

though unable to purchase the vehicle arranged by the assessee for him. That is, the money was withdrawn by him on own account and not for and on behalf of the assessee. The version before the AO was clearly different. Then, *why would the assessee finance the vehicle purchase of another, even if a friend, when he is financing his own vehicle through a car loan?* Further, if anything, it shows that the assessee wanted to help his friend, so that there is no question of his returning cash, much less on the date of the withdrawal, i.e., 13.04.2010, itself. The matters, in the very least, requires to be looked into.

The third area of enquiry, as pointed out by the Id. Pr. CIT, is most striking. This is as, again, without doubt, purchase of a second-hand car is not generally paid for in advance. It could no doubt be so in a particular case, as where the vehicle is identified, and the proposed buyer apprehends loss of opportunity on account of the car dealer (middle-man) not having enough funds to purchase the vehicle. That is, an advance to facilitate the purchase, closing the deal, while in the instant case the purchase remains pending for over eleven months from the date of advance! Further still, the advance of Sh. Rajan Ghai has not been adjusted against any car purchased by him, but against that by his brother Sh. Gagan Ghai, i.e., as explained. The explanation, on the very face of it, is unconvincing and needs further enquiry, which is what the Id. Pr. CIT has directed. In fact, as it appears, the documents (viz., affidavits and receipts, at PB pgs. 31-35) were given toward the fag end of the assessment proceedings, precluding proper enquiry. The Id. DR would add that all the three (i.e., Sh. Yash Pal, Sh. Gagan Ghai, and Sh. Rajan Ghai) have, in the set aside proceedings, declined to have signed any affidavits or of having any transaction with the assessee. The Id. AR would object, stating of that being a matter subsequent, of which therefore no cognizance could be taken. True, a matter subsequent should not guide us, as indeed it did not the Pr. CIT, who observed that the explanation of car advance needs further inquiry, as the

same outstanding for 11 months was abnormal, and which appealed to us. Further, as the very basis of the revision is lack of enquiry, or absence of proper enquiry, i.e., as warranted in the facts and circumstances, a *volte face*, or surfacing of new facts, on subsequent enquiry would without doubt lend support to the inference of lack of enquiry in the first place. We understand this to be the only purport of the argument of the Id. DR – nothing more and nothing less. Why, as explained by the Hon'ble Court in *Gee Vee Enterprises* (supra), it is because such an enquiry had not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct, that the order becomes erroneous and liable for revision.

3.5 In view of the fore-going, in our view, no infirmity, either on facts or in law, i.e., as regards the final directions issued thereby, attends the impugned order which, accordingly, is upheld. The Revenue's cross objection (CO) is only supportive and, even as observed by the Id. AR, unnecessary. The same gets dismissed as not maintainable. We decide accordingly.

4. In the result, both the assessee's appeal and the Revenue's C.O. are dismissed.

*Order pronounced in the open court on July 31, 2018*

Sd/-  
(N. K. Choudhry)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Date: 31.07.2018

/GP/Sr. Ps.

Copy of the order forwarded to:

- (1) The Appellant: Nittan Aneja, Gahoon Road,
- (2) Ward No. 6, Balachaur Distt.  
SBS Nagar [Pb.]

- (2) The Respondent: Principal Commissioner of Income Tax,  
Jalandhar-1, Jalandhar
- (3) The Pr. CIT-1, Jalandhar
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy

By Order