

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI
BEFORE SH. S. K. YADAV, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 1569/DEL/2016

A.Y. 2011-12

Rakesh Kumar Tongar E-434, Gamma-1 Greater Noida AHAPT0955A (APPELLANT)	Vs	Pr. CIT Aayakar Bhawan, 2D, Block-A Sector-24 Noida (RESPONDENT)
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Appellant by Sh. Sameer Kapoor, CA
Respondent by Smt. Meeta Singh, CIT DR

Date of Hearing 22.05.2018
Date of Pronouncement 23.08.2018

ORDER

PER PRASHANT MAHARISHI A.M.

1. This appeal is filed by the assessee against the order of the Commissioner of Income Tax- Noida [The LD CIT] passed u/s 263 of the Income Tax Act, 1961 [The Act] on 11/2/2016 holding that assessment order passed by the Income Tax Officer, Ward-3(3), Noida [The Ld AO] u/s 143(3) of the Act on 28/2/2014 for Assessment Year [AY] 2011-12 is erroneous and prejudicial to the interest of the Revenue.
2. The grounds of appeal of the assessee challenging the order passed by the CIT are as under :-

“1. Whether the Ld. Pr. CIT has erred in law and circumstances of the case in cancelling the assessment u/s 263 and restoring the case

back to the file of the A.O with the direction to make fresh verification.

2. *Whether the Ld. Pr. CIT has erred in law and circumstances of the case in rejecting the explanation provided by the assessee in the proceedings u/s 263.”*
3. The brief facts of the case show that the assessee is an individual deriving the income from business filed his return of income on 23/3/2012 for Rs.1,59,850/-. Assessment u/s 143 (3) of the Act was passed on 28/2/2014 determining total income of Rs.209850/- whereby only addition made is of Rs. 50,000/- on account of low house hold expenditure. The Ld. Assessing Officer noted that the assessee has deposited Rs. 10,10,000/- in his saving bank account in ICICI Bank. However, no addition was made on account of the above deposit. During the course of assessment proceedings, the assessee was asked by the A.O. vide letter dated 18/11/2013 vide Para No. 4 to show that what is the source of the amount deposited as cash in the bank account. The assessee was also asked to produce books of accounts, cash book etc. The assessee explained to the Ld. Assessing Officer that Rs. 4,10,000/- is received from his various customers and Rs. 5 lacs was received for housing loan from his wife. The assessee explained that Rs. 3 lacs in trenches of Rs. 1 lac each was received on different dates where as Rs. 50,000/- and Rs. 60,000/- was also received for renovation work from various clients. The assessee also explained that he is engaged in renovation work and he receives advances from the customers for raw materials. Such advances are received in cash and some are deposited in his bank account. Thus, the assessment order was passed u/s 143(3) of the act without adjusting income of the assessee on account of cash deposit in the bank account.

4. On examination of the record, the Ld. CIT noted that the assessee has not placed any sufficient material before the A.O. with respect to the advance received of Rs. 4,10,000/- from various customers and Rs. 5 lacs from his wife of the assessee. He further stated that still there is a difference of Rs 1 lakhs for which no explanation is given by the assessee. Hence, show cause notice u/s 263 was issued on 23/6/2015, which was replied to by the assessee on 28/1/2016. The assessee contested that Rs.4,10,000/- was received from various customers and Rs. 5 lacs were received from the wife of the assessee out of the immediate withdrawal from her bank account. The assessee substantiated the same with the cash flow statement of the wife of the assessee and summary of cash deposited and withdrawal in her account. The Ld. CIT stated that the assessee has submitted that Rs. 5,10,000/- received from the customers and is forming part of the gross receipts of the assessee is not acceptable as the amount deposited were not supported by any details including the names of the parties who have given the same. It was further stated that the amount deposited in cash was immediately transferred to PNB Housing Finance Ltd. as investment or as fixed deposit so there was no purchase of material on behalf of the clients. It was further held by him no explanation was given by the assessee about Rs. 1 lac deposited on 16/12/2010. With respect to the deposit of Rs. 5 lacs it was stated that on perusal of the bank account of the wife of the assessee that cash was deposited in the month of January 11/2011 of Rs. 5 lacs In three tranches and on 10/2/2011 Rs. 5 lacs were withdrawn and subsequently on 10/2/2011 Rs. 5,50,000/- was once again deposited by her wife in her bank account. Therefore, it was stated by CIT that wife of the assessee does not have any cash on hand to give to the assessee as she has not made any withdrawal in cash till 7/3/2011 to the date of bank statement made available on record. Therefore, according to him, the cash was not available with the wife of

the assessee. With respect to the deduction under Chapter VI A, assessee has claimed deduction of Rs. 1,97,000/- but has furnished no documentary evidence but before CIT the assessee could produce the details of the premium paid of Rs. 193668/- and, therefore, CIT agreed for deduction of Rs. 1 lacs. However, excess deduction claimed by the assessee of Rs. 97,000/- was held to be wrongly allowed. The Ld. CIT further held that the case of the assessee was selected under scrutiny only to examine the cash deposit of Rs. 10,10,000/- which was not even examined by the A.O. Therefore, he held that the order passed by the Id. Assessing Officer is erroneous and prejudicial to the interest of the Revenue. It was further directed to the A.O. to make fresh verification on the points and decide the issue afresh.

5. By this order, assessee is aggrieved and hence, filed this appeal. Before us, the Ld. AR submitted a paper book containing 34 pages. It was stated that notice u/s 142(1) placed at Page No. 9 & 10 shows that a specific query has been raised by the Assessing Officer vide Para No. 4 of the notice about deposit of cash of Rs.10.10 lacs. The assessee submitted the reply wherein 4,10,000/- stated to have been received from various buyers and Rs. 5 lacs from the wife of the assessee. He submitted that the assessee has shown sales of Rs.14 lacs which is shown in the profit and loss account with ITR-5 filed by the assessee and, therefore, the amount deposited received from customers is part of sale proceed. With respect to the deposit from wife of the assessee, it was stated that she has withdrawn money from her bank account and paid to the assessee. He referred to the cash flow statement at Page No. 18 where gift received from wife has been shown. Thereof, he submitted that cash flow statement of wife was also submitted before the CIT. According to the cash flow statement of the wife, the opening balance of cash available with her was of Rs.8.40 lacs and she has received 15.94 lacs and deposited the cash of Rs.22.44 lacs and, therefore, net cash available in

her hand was Rs. 1,90,000/-. He, therefore, submitted that all these issues were examined by the A.O. during the course of assessment proceedings. He submitted that when the issue has been examined by the A.O during the course of assessment proceedings, Ld. CIT does not have any authority to hold that order passed by the A.O is erroneous and prejudicial to the interest of Revenue.

6. The Ld. DR vehemently contested that the explanation (2) has been inserted in Section 263 of the Act w.e.f 1/6/2015 which provides that any order passed without making enquiries or verification which should have been made and allowing any relief without enquiring into the claim, such orders are erroneous and prejudicial to the interest of the Revenue. He further submitted that assessee has deposited Rs. 10.10 lacs in cash and the Ld. Assessing Officer was explained only the deposited up to Rs.9.10 lacs which itself shows that there is a non application of mind by the Assessing Officer . He further submitted that the query letter dated 18/11/2013 issued by the Ld. Assessing Officer vide Item No. 4 has asked for the detail of Rs. 10.10 lacs where as in an undated letter submitted by the assessee in the paper book explains only the sum of Rs. 9.10 lacs. It has been accepted by the Assessing Officer without looking at the amount asked for and amount replied by the assessee. He further submitted that the assessee has explained in one line that he has received Rs. 5 lacs from Housing Loan from his wife and deposited in bank on 1/3/2011. There is no reference that how his wife got the sum of Rs. 5 lacs, it was not at all enquired. He, therefore, stated that there is no enquiry made by the Assessing Officer during the assessment proceedings. He further submitted that with respect to the deposit of the wife, it is apparent that she does not have the source correlated with the date of the deposit and subsequent deposit of cash by her. The Ld. DR further submitted that cash flow submitted by the assessee also does not support the case of the assessee. He referred to Page No. 18, the has

shown turnover of Rs. 9,73,726/- where as the turnover shown by the assessee in income tax return is Rs. 14 lacs. He further stated that the order of the Ld. Assessing Officer is without making any inquiry but merely collecting the papers. Therefore, the order is passed without application of mind and without doing any enquiry for which the selection of scrutiny was made.

7. In the rejoinder, the Ld. AR submitted that with the new inserted explanation to Section 263 does not authorize CIT unfettered powers to revise each and every order, if in his opinion, the order is passed without making inquiries or verification which he thinks should have been made. He further relied upon the decision of the Coordinate Bench in Narayan Tatu Rane vs. ITO 70 Taxman.com 227.
8. We have carefully considered the rival contentions and perused the orders of the Ld. Assessing Officer and the Ld. CIT , which has held that order passed by the ld A.O is erroneous and prejudicial to the interest of the Revenue. According to the provisions of Section 263 of the Act, the Ld. CIT is empowered to revise the order passed by the Ld. Assessing Officer, if he finds that the order passed is erroneous and as far as prejudicial to the interest of the Revenue. In the present case, the Ld. CIT has held that order passed by the A.O is erroneous on two counts.
 - (i) That the A.O has not examined the source of deposit of Rs. 10.10 lacs in cash in the bank account of the assessee.
 - (ii) The claim of the deduction under Chapter VIA of Rs.1,97,000/- allowed by the A.O without any documentary evidence.

9. Firstly, we come to the issue of cash deposit of Rs 10.10 Lakhs. Apparently, the assessee was asked vide letter dated 18/11/2013 vide Para No. 4 about the cash deposit in bank account of Rs. 10,10,000/-. The A.O. further asked that reply should be made with supporting documentary evidences. The assessee submitted vide letter undated the details of cash deposit of Rs. 4,10,000/- stating that it is received from various customers for renovation work and deposited in the bank account. However, CIT found that it was used for depositing in Housing loan account or investment. Therefore, the submission before the ld AO was found not correct. Further, the assessee submitted that he has received RS. 5 lacs for housing loan from his wife, which is deposited in the bank account. However, no supporting evidences were placed before the Assessing Officer with respect to both the above nature of deposits. Further, out of the 10,10,000/- cash deposit, the assessee gave the cash explanation of only Rs. 9,10,000/-. The Assessing Officer did not make any question on this aspect and absence of any documentary evidence. He did not make any addition on that account. Further, with respect to the cash loan of Rs. 5 lacs from the wife of the assessee, ld A.O did not raise any further question about the capacity of his wife to deposit the above sum. Further, with respect to the loan of the wife, the Ld. CIT has conclusively held that she was not having enough cash with her for deposit with the assessee. With respect to the advances received from the customers, it was also noted by the CIT (A) that the money was not used purchase of material but was deposited with in HDFC Bank Housing loan account or as an investment. As the case of the assessee was selected for scrutiny to examine this aspect only, the ld AO should have at least made enquiries, which a person of reasonable prudence would have made. According to us, the ld AO failed to do so. He even failed to even reconcile the amount deposited with the amount explained by the assessee, which is also found short by Rs 1 lakh. With respect to

non-availability of cash with the wife of the assessee, he did not examine whether such cash is available with her or not. He even did not care to see whether there are such books available with the wife of the assessee or not. Therefore, there is no inquiry from the ld AO on this aspect, which a person of ordinary common sense would have asked.

10. Further, with respect to the deduction under Chapter VIA there is no query raised by the Assessing Officer about the documentary evidence. Before the Ld. CIT, it was found that claim made by the assessee is partially incorrect and not sustainable under the law. Therefore, according to order, the Ld. Assessing Officer has not made any enquiries, which should have been made by the A.O during the course of on this aspect, leave aside adequate inquiry.
11. In view of this, we are of the opinion that the Ld. CIT is correct in invoking jurisdiction u/s 263 of the Act. Coming to the main contention of the assessee with respect to the explanation to introduce u/s 263 of the Act though there cannot be any quarrel that the Ld. CIT cannot revise each and every order, if enquiries are not carried out as per his wisdom. In such cases, it should be the wisdom of the Ld. Assessing Officer, and if the enquiries conducted are reasonable then the Ld. CIT despite explanation (2) to Section 263, cannot revise orders passed by the ld AO. However, if there is no iota of any enquiry made by the Ld. Assessing Officer then it cannot be said that the power of the revision invoked by the Ld.CIT is unsustainable. We have carefully considered the decision cited by the Ld. AR at 70 Taxman.com 227 which in-fact vide Para No. 20 says that the above provision shall apply if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases. In the present case, when the A.O even did not care to obtain necessary documentary evidence to reconcile the amount of cash deposit with the explanation of the assessee where a short fall Rs. 1 lac is shown and accepted the

explanation of receipt of Rs. 5 lacs from the wife of the assessee without any documentary evidence, then, non fault can be found with the order of the Ld. CIT. In view of this, we uphold the order of the Ld. CIT passed u/s 263 of the Act dated 11/2/2016 holding that the assessment order passerby the ld AO u/s 143(3) of the Act on 28/2/2014 is erroneous and prejudicial to the interest of the Revenue.

10. Accordingly, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 23/08/ 2018.

-Sd/-

(S. K. YADAV)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:23/08/2018

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI