

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6187/Del/2015
(Assessment Year: 2011-12)

Rakesh Kumar, C/o. M/s. RRA Taxindia, D-28, South Extension, Part-I, New Delhi PAN: AQFPK7414F (Appellant)	Vs.	CIT, Karnal (Respondent)
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Assessee by :	Shri Ashwani Taneja, Adv Shri Saurabh Goyal, CA
Revenue by:	Smt Paramita Tripathi, CIT DR
Date of Hearing	09/10/2018
Date of pronouncement	20/12/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by assessee against the order under section 263 of the income tax, 1961 passed by the learned Commissioner of income tax, Karnal dated 27/10/ 2015 wherein the order passed by the learned Income Tax Officer, Ward – 3, Panipat under section 143 (3) on 30/12/2013 has been held to be an order erroneous and prejudicial to the interest of the revenue. The assessee has raised the following grounds of appeal:-
 - "1. *That having regard to facts and circumstances of the case, the Id CIT has erred on facts in assuming jurisdiction u/s 263 and has further erred in setting aside the assessment order to be made afresh on the issue of purchase of Rs. 131.24 lacs in cash in violation of section 40A(3) of the Act and for verification of the source of cash deposit of Rs. 103.94 lacs in bank account and has further erred in holding of cash deposit of Rs. 103.94 lacs in bank account and has further erred in holding that assessment order passed in erroneous and prejudicial to the interest of revenue.*
 2. *That having regard to facts and circumstances of the cased, the Id CIT has erred in law and on facts in passing the impugned order u/s 263 which is bad in law in as much as no adequate opportunity of*

hearing was granted and framing the impugned order without considering the principle of natural justice.

3. *That having regard to facts and circumstances of the case, the Id CIT has erred in law and on facts in passing the impugned order u/s 263 which is barred by limitation illegal, without jurisdiction and contrary to law and facts and deserves to be quashed."*
2. The brief facts of the case is that assessee is an individual who filed his return of income for assessment year 2011 – 12 on 24/9/2011 declaring a total income of ₹ 3 01310. The assessee is engaged in the business of retailing of liquor for human consumption. The case of the assessee was also selected through computer aided scrutiny system (CASS). During the course of assessment proceedings, the learned assessing officer issued questionnaires which were replied to by the assessee. The net profit earned by assessee was examined and the addition on the lump-sum basis was made to the total income of the assessee as assessee could not furnish the details of item wise sale of bottles etc. Further only vouchers of total sales of the day have been prepared and stated that the wine is sold in cash and the amount of each item on sale is meager and also varying range. Consequently the total income was assessed at ₹ 421310/- vide order dated 30/12/2013.
3. On 27/7/2015 , a show cause notice under section 263 of the income tax act was issued to the assessee by the principal Commissioner of income tax stating that while perusing the assessment records , it was noticed that assessee has made purchases in cash totaling ₹ 13124334/- in contraventions of the provisions of section 40A (3) of the income tax Act 1961. Hence, the expenditure exceeding ₹ 20,000 incurred in cash in contravention of the above section is not allowable as deduction. It was further noted in the show cause notice that on perusal of the copy of account of the bank filed by assessee during the course of assessment proceedings, it revealed that assessee has made the cash deposits of ₹ 5437000 in the bank account and there is no evidence on record to explain the source of the above cash deposits. Therefore, it was proposed

that the order passed by the learned assessing officer is erroneous and prejudicial to the interest of the revenue in not examining the above claim.

4. Assessee submitted his reply on 18/8/2015 explaining the reasons for deposit of cash in the bank account as well as the payment of purchases. However the learned CIT was not satisfied with the explanation of the assessee and held that ₹ 103.94 lakhs deposited in cash in the bank account of the assessee remain unexplained which were not properly enquired and examine by the assessing officer. It was further held that assessee has made purchases of ₹ 131.24 lakhs in violation of the provisions of section 40A (3) of the income tax Act which was not properly explained before the assessing officer and therefore that issue was also required to be set-aside as the assessment being erroneous and prejudicial to the interest of the revenue. The other contentions raised by the assessee with respect to the revisionary powers of the learned CIT were also rejected. Consequently, the assessment order passed in the case of assessee was set-aside to be made afresh on the issue of purchase of ₹ 131.24 lakhs in cash in violation of section 40A (3) of the income tax Act and for verification of the source of cash deposit of ₹ 1 03.94 lakhs in savings bank account maintained with the Jammu and Kashmir bank, Panipat branch which remained unexplained. Consequently, order under section 263 of the income tax was passed by the learned CIT on 27/10/2015 which is under challenge before us.
5. The learned authorised representative submitted that the learned assessing officer during the course of assessment proceedings has examined all these issues. He referred to the questionnaire dated 25/7/2013 issued by the learned AO and specific very has been raised with regard to the above issue. He further referred to the assessee's reply with respect to the justification of purchases exceeding prescribed limit fixed under the income tax Act as per separate seat attached. He further referred to the detailed note on justification of purchases. With respect to

the second issue of cash deposit in the bank account he submitted that the questionnaire dated 25/7/2013 raised a specific query with regard to the details of bank accounts along with the narration. He further referred that assessee during the course of assessment proceedings stated that sales in cash is deposited in bank account as source of cash deposit is on account of cash collected from retail customer and deposited in the bank account on the same day or alternate day. The cash book of the assessee for the relevant period was also produced. The copy of the bank account of the assessee maintained with the Jammu and Kashmir bank was also filed.

6. He further stated that the proceedings under section 263 of the income tax has been initiated based on the audit objection. He referred page number 34 – 35 of the paper book where there is a notice dated 6/1/2015 issued by the learned assessing officer in pursuance to audit objection. He further stated that assessee submitted a reply dated 27/ 1/ 2015 to the assessing officer wherein written submission of been given with regard to the said two issues along with the several judicial precedents relied upon. In nutshell he was pressing upon the issue that when all the issues as been dealt by the learned assessing officer in the original assessment order passed under section 143 (3) in extensive manner then the order passed by the learned assessing officer cannot be said to be erroneous and prejudicial to the interest of the revenue. Therefore he stated that the proceedings is bad for the reason that it is based on audit objection as is evident from the above correspondence.
7. The learned department and representative also vehemently submitted that revisionary powers of the Commissioner are contained under section 263 of the income tax act are explicitly laid down therein. He further stated that the jurisdiction under section 263 has been correctly assumed by the learned CIT by holding that the order passed by the assessing officer is erroneous insofar as it is prejudicial to the interest of the revenue . In the instant case , there is no enquiry made by the learned

assessing officer, which he should have made. Therefore, the order is erroneous and prejudicial to the interest of revenue as AO failed to carry out due enquiries which he should have carried out. He further stated that it is also borne out by the explicit language of explanation to which has been inserted in section 263 of the income tax by financing 2015 with effect from 01/6/2015. He further relied on several judicial precedents to support the order of the learned CIT.

8. We have carefully considered the rival contention and perused the orders of the learned assessing officer. The order passed by the learned assessing officer is held by the learned CIT is erroneous and prejudicial to the interest of the revenue by passing an order under section 263 , of the income tax Act. It is interesting to note that there was an audit objection by the internal audit party which is placed at page number 30 of the paper book. As per the para number two of that audit note it is mentioned that that the case of the assessee was selected for scrutiny under the CASS with a specific direction that the AO should examine the source of cash deposits in his savings bank account as per AIR information. The audit party further notes that from the perusal of the printouts of the screenshots of the AIR information placed on records, it is transpired that during the year the total cash deposits have been made by the assessee in his bank account maintained with Jammu and Kashmir bank of ₹ 11876000/-. Therefore, it is apparent that selection of the case for scrutiny was with specific aspect of verification of cash deposits in the bank account of the assessee. Now therefore it is required to be seen that whether the learned assessing officer has verified the source of the cash deposits in the bank account of the assessee or not. It is further required to be tested whether the due inquiries have been made by the assessing officer on this aspect or not. The first questionnaire issued by the learned assessing officer on 25/7/2013 to the assessee vide question number 15, the AO asked about the details of the bank accounts maintained by the assessee along with bank statement for the

assessment year. Complete books of accounts were also required along with the bills, vouchers, stock registers, and other relevant records maintained by the assessee for the year. The AO further asked month - wise details of purchases and sales made during the year. As per letter placed at page number 18 of the paper book the assessee submitted the copy of the bank account to the assessing officer. Further vide a letter assessee explained regarding sales and cash deposit in bank accounts submitting that the assessee is holding license and selling liquor for human consumption to retail customers. The products were delivered as a mint, half bottles/BS et cetera whereas the sale price ranges from ₹ 50 to ₹ 1000 depending upon the quantity of liquor. It was further stated that the cash collected from retail customers and deposited in the bank account on the same day or alternate days. Assessee also produced vide same letter the cashbook for the relevant period. Assessee also placed the copy of the bank account with Jammu and Kashmir bank at page number 21 of the paper book, which was submitted along with that letter. Therefore assessee gave complete explanation about the cash deposit in the bank account with the Jammu and Kashmir bank and also demonstrated the cash realized on sale of goods. Undisputedly the sale of goods have also been shown on the credit side of the profit and loss account, the cash has been generated out of the sale and same has been deposited in the bank account. The above fact has been verified by the learned assessing officer with respect to the cashbook, sales book and bank account of the assessee. On perusal of the order under section 263 of the income tax act of the learned principal Commissioner of income tax does not show that what kind of further enquiry the learned assessing officer should have done on the issue of cash deposit into the bank account of the assessee. The learned principal Commissioner of income tax did not say what other enquiry on this aspect the learned assessing officer should have been made. According to us so far as the cash deposit is concerned in the Jammu and Kashmir bank by the assessee. The

learned assessing officer has made all possible enquiries to verify the source of cash deposit. According to us on this account. The order of the learned Commissioner of income tax passed under section 263 of the income tax act is not sustainable.

9. On the 2nd Issue the learned CIT has held that the AO has failed to verify the cash payment made for purchase of goods which are not in conformity with the provisions of section 40A (3) of the income tax act. It is apparent from the audit objection filed before us at page number 30 of the paper book that the case of the assessee was selected for the scrutiny to verify only the cash deposit in the bank account of the assessee. The issue before us is whether assessing officer has made any enquiry with respect to the above purchases. Though, learned assessing officer has obtained the explanation of the assessee with respect to the purchases made by the assessee in cash, whether the learned assessing officer is required to make any such enquiry or not is also an issue. This because of the reason that the learned assessing officer was only required to verify the cash deposit in the bank account of the assessee. In this respect instruction dated 29/12/2015 issued by the central board of direct taxes is very relevant. Apparently the selection of the scrutiny in case of the assessee was also only on the parameters of AIR information. According to para number 2 (iii) the scope of enquiry should be limited only on that aspect only. In such cases, the assessing officer are also directed to confine themselves by questionnaire only to the specific issues pertaining to AIR data and further the wider scrutiny in those cases can only be conducted as per the guidelines and procedures stated in instruction number 7/2014. Therefore according to us when the learned assessing officer was not required to enquire on those issues such as purchases in cash more than specified sum, the learned CIT was not correct in holding that the learned assessing officer has not made due inquiries on that ground as the verification of the purchases exceeding specified limit in cash was not an issue before the assessing officer. Naturally, he should

not have made any enquiry on that aspect. Even though the learned assessing officer has raised the specific questions on that aspect and verified the requisite detail. Therefore, it cannot be said that the order of the learned assessing officer is erroneous and prejudicial to the interest of the revenue on this ground also.

10. In view of this, according to us the order of the learned CIT in assuming jurisdiction under section 263 of the income tax act holding that the order of the learned assessing officer passed under section 143 (3) of the act is erroneous and prejudicial to the interest of the revenue is not correct. Accordingly, the order passed by the learned CIT is unsustainable.

11. Accordingly, appeal of the assessee is allowed.

Order pronounced in the open court on 20/12/2018.

-Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:20/12/2018
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi