

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI O.P. KANT, ACCOUNTANT MEMBER**

I.T.A. No. 3279/DEL/2017
Assessment Year: 2010-11

Asrar Ahmad, C/o. M/s. RRA TaxIndia, D-28, South Extension Part-I, New Delhi.	v.	Pr. CIT, Ghaziabad.
TAN/PAN: AHCPA 4276H		
(Appellant)		(Respondent)

Appellant by:	Dr. Rakesh Gupta, Adv. & Shri Somil Aggarwal, CA		
Respondent by:	Shri Sanjay Goel, CIT-D.R.		
Date of hearing:	17	01	2019
Date of pronouncement:	15	04	2019

ORDER

PER AMIT SHUKLA, JUDICIAL MEMBER

The aforesaid appeal has been filed by the assessee against the impugned order dated 22.03.2017 passed by the Principal Commissioner of Income Tax, Ghaziabad in his revisionary jurisdiction u/s.263 for the Assessment Year 2010-11. In the grounds of appeal, assessee has raised following grounds.

“1. That having regard to facts & circumstances of the case, Ld. Pr. CIT has erred in law and on facts in assuming jurisdiction u/s 263 and has further erred in observing that AO did not examine the issue of cash deposits and further erred in holding the reassessment order dated 30-12-2014 is clearly and apparently erroneous and prejudicial to the interest of revenue.

2. That having regard to facts & circumstances of the case, Ld.

Pr. CIT has erred in law and on facts in assuming jurisdiction u/s 263 and further erred in setting aside the issue to the file of Ld. AO with a direction to examine the issue in the light of observations made in para 1 to 10 of the impugned order and that too without observing the principles of natural justice.”

2. The facts in brief are that assessee is an individual engaged in the business of trading of wood and property dealing, who has filed his return of income on 01.02.2011 declaring income of Rs.1,15,960/-. Thereafter, on the basis of AIR information that assessee has deposited cash aggregating to Rs.33,15,000/- in his Savings Bank Account with Punjab National Bank during the Financial Year 2009-10, a notice u/s.148 was issued to examine the cash deposits.

3. Before us, learned counsel for the assessee, Shri Rakesh Gupta submitted that here in this case, prior to the issuance of notice u/s.148, a query letter was issued by the Assessing Officer on 23.11.2012 regarding source of cash deposit of Rs.33,15,000/-. In response, the assessee had submitted details of Income Tax particulars, PAN and Income Tax Return. Thereafter, notice u/s.148 was issued on 11.07.2013 and the Assessing Officer and in the course of assessment proceedings, from time to time Assessing Officer has raised specific query with regard source of cash deposit in Saving Bank Account with Punjab National Bank along with other details and on various other issues. The specific query raised by the Assessing Officer with regard to each and every entry in the bank account were as under:-

“7. Please explain exact source of cash deposit of Rs. 33,15,000/- into your S.B. A/c with Punjab National Bank as under; Rs.50,000/- on 15.04.2010, Rs 50,000/- on 20.04.2009 Rs. 1,50,000/- on 04.07.2009, Rs.1,00,000/- on 11.07.2009, Rs.10,00,000/- on 11.02.2010, Rs.6,00,000/- on 18.02.2010 and Rs.9,00,000/- on 24.02.2010, Rs.2,30,000/- on 08.03.2010. Rs.2,00,000/- on 19.03.2010. Please explain source of above cash deposit with documentary evidence.

8. Please also explain cash/cheque withdrawal amount of Rs. 1,00,000/- on 24.09.2009, Rs.4,49,784 on 23.10.2010, Rs. 1,12,500/- on 24.02.2010, transfer amount of Rs.1,12,450/- on 02.03.2010 and Rs. 18,00,000/- on 04.03.2010 and Rs.2,00,000/- on 12.03.2010. Please explain where the above amount was invested by you.

9. Please explain your sources of income along with details of family members and withdrawals for house hold expenses.

10. Please provide the detail of all the bank A/c maintained by you.

11. If you have taken unsecured loans then please furnish the Name and complete addresses of money lenders from whom unsecured loans were taken. It should be supported by Identity Proof of money lenders, Confirmations, bank accounts acknowledgement slip of income tax returns of the money lenders of the relevant financial year, if they are filling their income tax return. If money lenders are agriculturist then cogent proof of their agricultural land holdings and agricultural income.

12. Please also furnish Profit and Loss A/c along-with your Balance Sheet as on 31.03.2010 and furnish statement of affairs for the year under consideration. Copy of all bank account statement for the relevant period.”

4. In response, the assessee vide letter dated 14.11.2014 has submitted his reply/explanation as under:-

“2. The assessee is an individual and was engaged in trading of wood during the year under consideration. Besides this he was also doing the business of sale purchase of property on commission basis.

3. During the year under consideration the assessee has deposited total Rs. 33,15,000.00 in cash in his bank account with Punjab National Bank. This amounts includes Rs. 4,50,000.00 out of the sale proceed of wood and Rs. 26,00,000.00 from different persons for purchase of property on their behalf. Rest of the amount Rs. 2,65,000.00 is the re-deposit of cash withdrawn by the assessee during the course of his business.

4. Regarding purpose for withdrawal is concerned it is submitted that it was meant for the purpose of refund of amount to the prospective buyers who had given the amount for purchase of land. Regarding Rs. 1,12,450.00 transfer on 02.03.2010 it was transferred for purchase of draft and deposited the same as plot booking advance with BKDA, Bulandshahr. Later on this amount was refunded because of failure in allotment of plot.

5. The assessee has not taken as unsecured loan from any person during the year.

6. Since the assessee has not maintained any regular books of accounts, he has filed his return of income by showing income u/s 44AF.

7. If any more information is required, the assessee is ready to furnish.”

5. Apart from that assessee has also filed confirmatory letter and affidavits of various persons from whom assessee

has received advances of Rs.26 lacs for dealing in property. The assessee has also filed date-wise cash flow statement including the summary of bank account and income tax returns for various assessment years. In response to Assessing Officer's summon to produce all the persons, the assessee had produced all the persons, whose statement were recorded by the Assessing Officer; and before the Assessing Officer these persons in their statements have also filed their bank statement.

6. It was after considering the entire evidences filed by the assessee and material on record and examining each and every source of the cash deposit and also the assessee's explanation that Rs.26 lac was received by way of advances from various persons as a property dealer, Assessing Officer has completed the assessment after examining each and every person and thereafter has accepted the return of income on the assessee. The relevant observation of the Id. Assessing Officer in the impugned assessment order in this regard reads as under:-

“Deposits Made into the S.B. A/c No.4568000100012533 Punjab National bank- Branch, Yamunapuram, Bulandshahar:- On perusal of the aforesaid Bank A/c it was found that the assessee has deposited total amounts of Rs. 33,15,000/- into P.N.B during the financial year of 2009-10 relevant to the assessment year 2010-11. During the course of assessment proceedings assessee was asked to explain the exact sources of deposits of Rs. 33,15,000/-The assessee vide his reply dt. 05.12.2014 explained the sources of deposits are as follows:-

"That the assessee is an individual and engaged in trading of wood during the year under consideration. Besides this he was also doing the business of sale purchase of property on commission basis. The assessee has deposited total amount of Rs. 33,15,000/- cash in his bank account Punjab National Bank. This amounts includes Rs.4,50,000/- out of the sale proceed of wood and Rs.26,00,000/- from different persons for purchase of property on their behalf. Rest of the amount Rs.2,65,000/- is the re-deposit of cash withdrawn by assessee during the course of his business. Regarding purpose for withdrawal is concerned it is submitted by the assessee that it was meant for the purpose of refund of amount to the prospective buyers who had given the amount for purchase of land regarding Rs.1,12,450/- transfer on 02.03.2010 it was transferred for purchase of deposited the same as plot booking advance with BKDA, Bulandshahr. Later on this amount refunded because of failure in allotment of plot. The assessee has not taken as unsecured loan from any person during the year. Since the assessee has not maintained any regular books of accounts, he has filed his return of income by showing income u/s.44AF.

In support of evidence above person given copy of the bank pass book, confirmatory letters in the form of affidavit along with photo ID as proof of receipt of Rs.26,00,000/- from different persons for dealing in property and other document are place on file.

Considering the above facts the amount of Rs.33,15,000/- is concerned, it is found that Assessee received Rs.4,50,000/- out of the sale proceed of wood Rs.26,00,000/- from different persons for purchase of property, who has accepted in his statement to this amount. Rs.2,65,000/- is re-deposit of cash withdrawn by the assessee during the course of his business. The amount of Rs.26,00,000/- is received by assessee from different persons for purchase of property Rs.9,50,000/- received from Sh. Taiyab

Hasan, Rs. 10,00,000/- received from Sh. Ansar Ahmed, Rs.3,00,000/- received from Sh. Julfikar. Rs.3.50.000/- received from Mohd. Talib. All the above persons has given affidavit and accepted in their statement that they have given above advance through cash for purchase of property, but on failure in getting the deal finalized, they have received back the above amount from Asrar Ahmed during the F.Y. 2009-10 through cash, which is reflected in bank account passbook. On verification it is found genuine and satisfactory explained by proper evidence. Hence the explanation of the assessee is correct.

After discussion income returned by the assessee of Rs. 1,58,960/- is accepted, and assessment is completed on an income of Rs.1,58,960/- u/s. 143(3)/147 of the I.T. Act. Notice of demand and challan issued accordingly.”

7. From the perusal of the impugned order, it seen that Additional Commissioner of Income Tax, Bulandshahr has referred the matter to the Pr.CIT to invoke jurisdiction u/s.263, after receiving such proposal show cause notice was issued by the ld. Pr.CIT only on issue of cash deposit. The relevant contents of show cause notice reads as under:

“SHOW CAUSE NOTICE U/S 263 OF THE I.T. ACT. 1961

Assessment order in this case was passed on 30.12.2014 u/s 143(3)/147 of the I.T. Act, 1961 for A.Y. 2010-11 on returned income of Rs 1,58,960/-by the Income Tax Officer, Ward-1, Bulandshahr.

On perusal of the records, it is noticed that the A.O. failed to examine the creditworthiness of the four persons (brokers) from whom the assessee claimed to have taken advances in cash totaling to Rs. 26,00,000/- for arranging purchase of immovable

properties. The assessee has filed the affidavits of these persons and statements of these persons were also recorded. In the affidavit the four persons were claimed that they are brokers engaged in the trade of sale/ purchase of propertied whereas during the recording of statement they claimed that they are agriculturists and are not assessed to tax. The A.O. did not call for evidences/ documents so as to prove their line of business.

Secondly, in the statement recorded as well as in the affidavit filed by these four persons, there are no details of property, no date on which advances received by no date of repayment of advances against which advances in cash were received by the assessee.

Thirdly, the Assessing Officer has failed to examine how the said cash was utilized by the assessee.

Last but not the least, the A.O. did not raise any query for jurisdiction of giving advances in cash while all the above brokers were having bank account and had been making various transaction through banking channels. In fact the assessee is also maintaining a bank account but the Assessing Officer never enquired as to why the repayments were made in cash.

In view of the above facts, the order passed by the A.O. appears to be erroneous and prejudicial to the revenue. Therefore, why it may not be cancelled or modified by invoking the provisions of section 263 of the I.T. Act, 1961. I have been directed to request you to appear before the Pr. Commissioner of Income Tax, C.G.O. Complex-1, Hapur Chungi, Ghaziabad on 19.01.2017 at 12.30 P.M. either in person or through authorized representative and furnish your explanation with supporting documentary evidences. Please note that in case of non-compliance necessary order will be passed on the basis of material available on record.”

8. In response to the show cause notice, the assessee has filed its detailed reply by submission dated 03.03.2017.

9. Shri Rakesh Gupta pointed out that here in this case, firstly, the entire reopening u/s.147 was done on the basis of information of cash deposits in the bank account and even the reassessment proceedings ensued thereafter was only for the purpose of examining the source of such cash deposit. The Assessing Officer has not only examined the entire debit and credit entries but also examine the source of advance received by the assessee by examining all the persons produced before him. This is evident from the copy of affidavits filed by these persons and the statement recorded by the Assessing Officer, who had even examined their bank statement so as to satisfy himself that the cash advanced by them were from their own sources. Again, in the show cause notice, the only issue raised by the ld. Pr.CIT was with regard to the cash deposit. However in the impugned order, the ld. PCIT without even giving any show cause notice or confronting the assessee has set aside the assessment after giving direction to the Assessing Officer to examine several other issues which were neither covered under show cause notice nor was part of the 'reasons recorded'. Thus, various other issues raised by the ld. PCIT deserve to be quashed.

10. On the issue of cash deposit also, he submitted that, nowhere the ld. PCIT has held that there was any lack of inquiry by the Assessing Officer or proper inquiry has not been done. From the observation made at page 9 of the

impugned order, it can be seen that he has directed the Assessing Officer to re-verify the contention of the assessee regarding receipt of advance from such persons and in case same are not properly explained then it should be treated as unexplained income. Thus, here it not a case of lack of inquiry or verification of material placed on record but to re-verify once again which cannot be the purpose for invoking revisionary jurisdiction u/s.263. Thus impugned order deserves to be quashed.

11. On the other hand, ld. CIT-DR submitted that now in view of *Explanation 2* to Section 263 of the Act, Ld. Pr.CIT can set aside the assessment if the order has been passed without making inquiries or verification which should have been made. He submitted that Assessing Officer should have examined the source of cash deposit taking into consideration, whether the explanation and the contention raised by the assessee is substantiated by any evidence or not, which here in this case Assessing Officer has not conducted proper inquiry, and therefore, such an assessment order has to be held as prejudicial to the interest of Revenue. In support of his contention, he relied upon the following judgment.

Hon'ble Supreme Court in the case of Deniel Merchants Pvt. Ltd. vs. ITO(Appeal No. 2396/2017) dated 29.11.2017. *In this group of cases, Hon'ble Supreme Court has dismissed SLPs in cases where AO did not make any proper inquiry while making the assessment and accepting the explanation of the assessee(s) insofar as receipt of share application money is concerned. On that basis the*

Commissioner of Income Tax had, after setting aside the order of the Assessing Officer, simply directed the Assessing Officer to carry thorough and detailed inquiry. The relevant judgement of Hon'ble Calcutta High Court n r s case s also enclosed.

2. Malabar Industrial Co. Ltd. Vs CIT r20001 109 Taxman 66 (SC)/f20001 243 ITR 83 (SC)/r20001 159 CTR 1 (SC)

where Hon'ble Supreme Court held that where Assessing Officer had accepted entry in statement of account filed by assessee, in absence of any supporting material without making any enquiry, exercise of jurisdiction by Commissioner under section 263(1) was justified."

12. Regarding various other issues raised by the ld. Pr.CIT, he though admitted that, same were not arising out of show cause notice, but Assessing Officer while examining the issue of cash deposit was required to look into various other aspects. Thus, he strongly supported the order of the ld. PCIT.

13. We have heard the rival submissions and also perused the relevant material available on record and the observations and finding given in the impugned order. As stated above, here in this case the proceedings have been initiated u/s.147 solely to examine the cash deposited in Savings Bank Account of the assessee with PNB for sums aggregating to Rs.33,15,000/-. The 'reasons recorded' by the Assessing Officer are reproduced hereunder:-

"I have certain information in my possession, which reveals that during the financial year 2009-10 relevant to the assessment year 2010-11, the above person, Shri Asrar Ahmed S/o Shri khalil Ahmed, has deposited cash amounting to Rs.33,15,000/- on various dates,

into his saving bank A/c with the Punjab National Bank. Hence, this amount of Rs 33,15,000/- represents undisclosed income of the above said person. The above person has also failed to explain the exact source of these deposits of Rs. 33,15,000/-. Hence, income of Rs.33,15,000/- has escaped assessment.

Since, the above person has deposited amount of Rs 33,15,000/- on various dates, through unknown sources of income. Hence, it is clear cut case of escapement of income. Therefore, there is an escapement of income of Rs.33,15,000/- have been made by the above person. In view of the aforesaid facts of the case I have reason to believe that income of Rs 33,15,000/- chargeable to tax has escaped assessment. Accordingly, to assess the escaped income of Rs 33,15,000/- a notice U/s. 148 read with section 147 is being hereby issued.”

14. Thus, the jurisdiction was acquired by the Assessing Officer u/s.147 to reopen the case only for the purpose of examining the cash deposit of Rs.33,15,000/-. For examining the source, as stated above, Assessing Officer has raised pinpoint queries to the assessee. In response to such queries, the assessee had submitted that out of total deposit of Rs.33,15,000/-, the source of cash of Rs.4,50,000/- was out of sale proceed of goods as assessee was trading in wood; sum of Rs.26 lacs have been received from different persons for purchase of property on their behalf; and balance Rs.2,60,000/- was re-deposited out of cash withdrawn by the assessee during the course of his business. In support of the source of the amount of Rs.26 lacs received from four different persons, the assessee had first of all, has filed their affidavits; and when Assessing Officer asked to produced all

the four persons along with their passbook and ID proof. In response, the assessee had produced all the four persons, who had duly appeared before the Assessing Officer and their statement were recorded on oath and have also produced their respective bank passbook before the Assessing Officer. The copies of statement along with their passbook are appearing from pages 29 to 43 of the paper book filed before us. Thereafter, assessee has also filed date-wise cash flow statement along with computation of income and return of income for the earlier years also. After examining all these persons, material placed on record and source of cash deposit, Assessing Officer has accepted it to be genuine.

15. Ld. Pr.CIT has exercised his revisionary jurisdiction u/s.263, based on show cause notice, wherein the only issue raised was with regard to the cash amount of Rs.26 lacs which is evident from the extract of show cause notice incorporated above. In response, the assessee has given his detailed submission once again along with various case laws. Ld. Pr.CIT without rebutting those submissions or finding out any discrepancy or defect in the inquiry carried out in the scrutiny proceedings and verification carried out by the Assessing Officer, has set aside the assessment order not only on the point of cash deposit, but has also raised many other issues not confronted to the assessee at any stage right from show cause notice or during proceedings before him, which according to him needs to be examined by the Assessing Officer, like;

1. To confirm the genuineness of the opening cash-in-hand;
 2. To examine the cash deposit of Rs.50,000/- on 15.04.2009.
 3. To examine the details of sales, profit, opening stock closing stock etc.
 4. To examine the commission amount of Rs.58,500/- received from property dealing business and;
 5. Lastly, he asked the Assessing Officer to verify all the persons who have stated to have given advances to the assessee for the purchase of property.
16. Once, all those issues have neither been raised in the show cause notice nor ever confronted to the assessee during the course of revisionary proceedings, then such a direction to the Assessing Officer cannot be given as it is completely in violation of natural justice and also beyond the scope of proceedings u/s.263. If during the course of revisionary proceedings, Ld. Pr.CIT has noticed any other issue, then he has to confront to the assessee. During the course of hearing, in order to ascertain this fact, we had asked the ld. CIT-DR to produce the order-sheet entry of the proceedings u/s.263. In response, the certified copy of the same has been filed before us. From the perusal of the order sheet entries, it is seen that only effective date of hearing was 03.03.2017, wherein he has noted that Shri P.K. Jain, FCA filed representation and replies

to the show cause notice and case is heard. Thus, nowhere the additional issues raised by him were ever confronted to the assessee. In any case, here scope of entire reassessment was based on the 'reasons recorded' by the Assessing Officer and ld. Pr.CIT cannot travelled beyond the 'reasons' to rope in other issues not falling in the reasons recorded. Thus, we agree with the contention of the learned counsel that any such direction is beyond the scope of re-assessment proceedings as the same cannot be raised in revisionary jurisdiction u/s 263. Hence, all other direction given by the Ld. PCIT is quashed.

17. Even on the issue of cash deposit, as has stated above, Assessing Officer has duly examined not only all the persons who have given the advance to the assessee but also the entire cash flow statement, vis-à-vis the assessee's computation of income and cash flow statement coming from Assessment Year 2009-10. Ld. Pr.CIT without finding any defect in the inquiry conducted by the Assessing Officer has simply cancelled the assessment order which cannot be sustained. In case he is of the opinion that Assessing Officer inquiry and verification is lacking, then it is incumbent upon the ld. Pr.CIT to himself conduct *prima facie* inquiry on his own so as to reach to a conclusion that, either the Assessing Officer's inquiry was not proper or there is any inherent lack of application of mind. The Hon'ble Delhi High Court in the following cases:- i) DIT vs. Jyoti Foundation 357 ITR 388 (Del); ii) CIT vs. Sunbeam Auto Ltd., 332 ITR 167 (Del); and

iii) ITO vs. D.G. Housing Projects Ltd, 343 ITR 329 (Del), has categorically held, the revising authority must make an inquiry before making a believe that assessment order was erroneous and without making any such inquiry he cannot remand back the issue once again to conduct the inquiry when Assessing Officer has conducted inquiry before conclusion of assessment. Thus, on the facts and circumstances of the case, we do not find that it is a fit case for cancelling the assessment for framing fresh even on the issue of examining the source of cash deposit, because what ld. Pr.CIT has directed the Assessing Officer to re-verify the receipt of advance from the persons which has been duly examined by the Assessing Officer in the manner discussed above. Accordingly, the impugned order u/s.263 is quashed.

18. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 15th April, 2019.

Sd/-

[O.P. KANT]

ACCOUNTANT MEMBER

DATED: 15th April, 2019

PKK:

Sd/-

[AMIT SHUKLA]

JUDICIAL MEMBER