



IN THE INCOME TAX APPELLATE TRIBUNAL SURAT BENCH, SURAT

BEFORE SHRI AMARJIT SINGH, JM & SHRI O.P.MEENA, AM

**ITA.No.429/SRT/2018
(Assessment Year.2013-14)**

Tosif Kapadiya 5 th Floor, Riddhi Siddhi Apartment, Chowk Bazar, Surat-395008.	Vs.	PCIT-2 Aayakar Bhavan, Majura Gate, Surat.
PAN/GIR No.CGPNK4030K		
Appellant)	..	Respondent)

**ITA.No.430/SRT/2018
(Assessment Year.2013-14)**

Addil Mohamadeliyas Kapadia C-3, Anupam Chambers, Bhagatalao, Surat-395003.	Vs.	PCIT-2 Aayakar Bhavan, Majura Gate-Surat.
PAN/GIR No.CSBPK5615G		
Appellant)	..	Respondent)

Assessee by	Shri Rasesh Shah
Revenue by	Shri Prasenjeet Singh (DR)
Date of Hearing	23/10/2019
Date of Pronouncement	27/11/2019

ORDER

PER AMARJIT SINGH (J.M):

The above mentioned appeals have been filed by the assessee against the different order passed by the Principal Commissioner of Income Tax –2, Majura Gate, Surat [hereinafter referred to as the “PCIT”] u/s 263 of the Income-tax Act, 1961.

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2. The assessee has filed the present appeal against the order dated 27.03.2018 passed by the Principal Commissioner of Income Tax –2, Majura Gate, Surat [hereinafter referred to as the “PCIT”] in view of the provisions u/s 263 of the Income-tax Act, 1961.

3. The assessee has raised the following grounds: -

1. In view of the facts and circumstances of the case, the Ld. CIT(A) erred in invoking the provisions of S. 263 and thereby passing the order u/s 263 and



hence your Petitioner prays that the order passed by Ld. PCIT-2, Surat on 26th March, 2018 be declared illegal, ultra-wires and be quashed.

2. Such other reliefs to which the appellant may be lawfully entitled us.

3. The brief facts of the case are that the assessee filed its return of income on 02.10.2013 declaring total income to the tune of Rs.26,10,000/- for the A.Y.2013-14. The assessee was in the business of trading and broker of textile material. Thereafter, the assessment of the assessee was completed assessing total income to the tune of Rs.27,10,000/- u/s 143(3) of the I. T. Act, 1961 dated 09.03.2016. On verification, it was noticed that an information received from the ITO (Inv.), Surat that survey action u/s 133A of the I. T. Act was carried out on 10.04.2013 in the case of Shri Harish M. Pherwani who was engaged in the business of cheques discounting in Surat during F.Y.2012-13, under business concerns M/s. Shubham Corporation and Shri Hari Corporation. According to the statement of Shri Harish M. Pherwani, he received payments from several parties through RTGS and after deducting discounting charges, cash was paid back to them. Further, on cross-examination, such parties who made payments to Shri Harish M. Pherwani admitted the fact that payments made through RTGS back in cash and such payments were shown as bogus purchase.

4. The statement of Shri Tosif Kapadia was recorded u/s 131 of the Act on 22.07.2013 in which he admitted that during the F.Y.2012-13 he received certain third party cheques in carrying out his business of Dalali in Textiles and trading in textiles. He further admitted that he discounted cheques of Rs.8.56 crores received by him as trading receipt (total turnover) during the year under consideration. He further disclosed that this business was carried out by him with his brother Aadil Kapadia and they have earned total of Rs.50 lakh out of such trading activities and disclosed Rs.25 lakh as discounted income in each hand i.e. Rs.25 lakh in the name of the assessee Shri Tosif Kapadia and Rs.25 lakh Aadil Kapadia the brother of the assessee. The assessee declared a sum of Rs.26,25,000/- as his net income from A.Y. 2013-14. During the assessment proceeding, the bank-statement of the assessee was also filed which shows deposited of Rs.32.32 lacs. Accordingly, the assessee admitted the cash receipt on



4.28 crores (50% of the 8.56 crores) from Shri Harish M. Pherwani against the cheques received through third party. Thus, the ownership of the cash was admitted. Since the cash transaction was carried out so deposit in the books of account got audited attracted. So no expenses was allowable in view of the Section 115BBE of the Act, therefore, the assessment of the assessee was found erroneous as well as prejudicial to the interest of the revenue. A show-cause notice was given to the assessee and after the reply of the assessee, PCIT invoked the provisions u/s 263 of the Act. Feeling aggrieved, the assessee filed the present appeal before us.

5. We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. We have gone through all the judgments cited by the parties before us. We note that section 263 of the Act enables supervisory jurisdiction to the CIT over the AO. The CIT is empowered to act u/s. 263 of the Act when he considers that AO's order is erroneous in so far as it is prejudicial to the interest of Revenue. It is a settled position of law that the aforesaid twin conditions i.e. AO's order is erroneous and prejudicial to the interest of Revenue is sine qua non for assumption of revisionary jurisdiction by CIT. When we say that lack of inquiry makes an AO's order erroneous, one has to keep in mind the difference between lack of inquiry and inadequate inquiry. Lack of inquiry makes the AO's order erroneous, but inadequate inquiry does not make the order of AO erroneous. If the AO's view is a plausible view on the facts and circumstances of the case, then Pr.CIT cannot exercise the 263 jurisdiction to impose his own view which may be a view possible to be taken in the very same facts of the case. The Hon`ble Supreme Court in CIT v. Max India Ltd. [2007] 295 ITR 282 (SC) reiterated that the phrase "prejudicial to the interests of the Revenue" as used in section 263(1) of the Act must be read in conjunction with the expression "erroneous" and unless the view taken by the Assessing Officer is found to be unsustainable in law, the powers under section 263 of the Act cannot be invoked. The reasons for reopening the assessment in view of the provisions u/s 263 of the Act is hereby reproduced as under:-



“Scrutiny of assessment order and submission available on record revealed that You had received Rs.4.28 crore (50% of Rs.8.56 crore) from Shri Harish Pherwani against the discounting of cheques of the third party, Shri Harish Pherwani also admitted in the statement recorded during survey that the cheques of Rs.8.56 crore was received from you. Your statement was also recorded u/s 131, on 22.07.2013, wherein you accepted that during the F.Y.2012-13, you received certain third party cheques in carrying out his business of Dalali and trading in textiles. You also admitted that this business was carried out by you with your brother Aadil Kapadiya and both of you have earned total of Rs.50 lakhs out of such trading activities and disclosed Rs.25 lakh in the name of yourself and Rs.25 lakhs in the name of your brother Shri Aadil Kapadiya. You also categorically admitted that you have not maintained any records/books of accounts.

2.2 From, the above, it is very clear that you have admitted cash receipt of Rs.4.28 crores (50% of Rs.8.56 crore) from Shri Harish Pherwani against the cheques given to him through third party. Hence during the course of assessment it was established beyond any doubt that your were found to the owner of money which was not recorded in the books of accounts, and even the books of accounts were not maintained by you for any source of income and you could not offer explanation supported by any valid evidence about the nature and source of acquisition of the money. You merely stated that the same was your business income which was done in others name for which no books of accounts were maintained. In the circumstances provision of Section 69A were squarely applicable and required to be invoked treating the same as your income of the assessee for financial year 2012-13. From the above discussion, the following facts emerge, as a result of which the order passed by the AO is found to be erroneous and prejudicial to the interest of revenue.

(i) You admitted the fact that you had received cash of Rs.4.28 crore (50% of Rs.8.56 crore) through discounting of third party cheques. However, no books of accounts are maintained by you.

(ii) As the books of accounts are not maintained, the net profit admitted and disclosed by you is not proved with the documentary evidence.

(iii) On the case record, the AO has not brought the details of names of the persons whose cheques were discounted by you and to whom the cash was returned by the assessee.

(iv) Further as per provisions contained in section 115BBE, you are not entitled to claim any expenses for the income found/disclosed under section 68,69,69A to 69D.”

6. Now it is to be seen whether the AO nowhere examined the issue and the order dated 09.03.2016 passed by AO is erroneous and prejudicial to the interest of the revenue or not. Each and every facts were before the AO, the assessment of the assessee was completed on 09.03.2016 of provisions u/s 143(3) of the Act. A survey action u/s 133A of the Act was taken against Shri Harish M. Pherwani on the basis of the material recovered and on the basis of the statement of Shri Tosif Kapadia recorded on 22.07.2013 u/s 131 of the Act. He admitted that the amount



of Rs. 25 lakhs as income in his name and amount of Rs.25 lakhs with the name of his brother Shri Aadil Kapadia. The AO issued the notice dated 23.02.2016 having same facts and in reply to the notice, the assessee also filed the letter dated 08.03.2016. A show-cause notice as well as in reply have been discussed by AO in his order dated 09.03.2016 passed u/s 143(3) of the Act. After consideration of all the facts and circumstances, raised the addition of Rs.1,00,000/- and assessed the total income in sum of Rs.27,10,000/-. After due application of his mind, a view was taken by AO. In the instant case, there is no material available on record. The addition has been raised on the basis of the statement record u/s 131 of the Act of the assessee. In the instant case, the assessee admitted that he discount the cheques of 8.56 crores received by him. During the year under consideration and admitted the income of Rs.50 lakhs on each turn-over. He was doing the business with his brother Shri Aadil Kapadia. The assessee declared the income of Rs.25 lakhs in his hands as well as 25 lakhs in the brothers hands which has duly been considered by the AO. The PCIT was of the view that the parties whose cheques were not given to the assessee were not examined. In the said circumstances, the case may be if any the lack of inquiry as well as in adequate inquiry. The AO duly considered the issue and applied his mind and taxed accordingly. The case of the assessee is not liable to be reopened for conducting the further verification and to do more investigation if any. In this regard, we also find support of law in the case of **Malabar Industries Co Ltd. Vs. CIT (243 ITR 0083) (SC)**, **Narayan Tatu Rane Vs. ITO (70 taxmann.com 227)** and **Shri Vinodbhai Ranchhodbhai Parekh Vs. The Pr. CIT (2018) (ITA. No.1247/Ahd/2017) Surat Tribunal**. In the case of in-adequate inquiry, the order above by AO nowhere becomes erroneous and prejudicial to the interest of the revenue. One of the possible view has been taken by AO, therefore, in the said circumstances, no provisions u/s 263 of the Act is liable to be invoked in view of the decision of **CIT vs. Max India Ltd. (2007) 295 ITR 282 (SC)** also. No doubt, the DR has also filed the written submission relying upon the decision in the case of **Crompton Greaves Ltd. ITA. No.1994/Mum/2013 vide its order**



dated 01.02.2016 and in view of the decision of Hon'ble Apex Court in the case of CIT(A) Vs. Amitabh Bachchan dated 11.05.2016 in the Civil Appeal No.5009 of 2016. But the facts of the present case are quite distinguishable from these cases.

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7. The facts of the present case are quite similar to the fact of the case as narrated above while deciding the ITA. No.429/SRT/2018, therefore, there is no need to repeat the same. The matter of controversy is also the same. The finding given above while deciding the appeal bearing ITA. No.429/SRT/2018 is quite applicable to the facts of the present case as mutatis mutandis. Accordingly, this appeal is hereby ordered to be allowed on similar lines

8. In the result, the appeals filed by the assessee are hereby ordered to be allowed.

Order pronounced in the open court on this 27/11/2019

Sd/-

Sd/-

(O. P. MEENA)
ACCOUNTANT MEMBER

(AMARJIT SINGH)
JUDICIAL MEMBER

सुरत/ Surat, Dated: 27/11/2019/Vijay Pal Singh, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

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Assistant Registrar, Surat