

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D', NEW DELHI**

**Before Sh. Amit Shukla, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 2804/Del/2014 : Asstt. Year : 2009-10**

Mahesh Mehta, 2042, Katra Tobacco, Khari Baoli, Delhi-110006	Vs	CIT, Central-II, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AGBPM7320C</b>		

**Assessee by : Sh. Suresh Kumar Gupta, CA  
Revenue by : Sh. J. K. Mishra, CIT DR**

**Date of Hearing: 16.01.2020**

**Date of Pronouncement: 12.03.2020**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of the Id. CIT, Central-II, New Delhi dated 27.03.2014.

2. Following grounds have been raised by the assessee:

*"1. The Id. CIT has erred both in law and on facts in setting aside the assessment to the AO with a direction to reframe the same after proper examination, enquiry and verification of the issue of cash payment of Rs.2,00,00,000/- allegedly made to the vendors of the property purchased by the appellant.*

*2. The Id. CIT has erred on the facts and in the circumstances of the case in giving a finding that the Assessing Officer while passing the assessment order under revision has failed to conduct a proper enquiry and verification on the issue of payment of*

*Rs.2,00,00,000/- by the appellant to the vendor of the property.*

*3. The action of the Id. CIT setting aside the order of assessment is based on the allegation by the third party (vendor) that there was cash payment of Rs.2,00,00,000/- by the appellant for purchase of property ignoring the fact there was no corroboration of such payment in the seized documents whereas on the contrary there was noting of the receipt of similar amount from the same vendor in the seized documents which is duly accepted by the appellant and AO. This noting creates serious doubts about the authenticity of the above allegation of the said vendor."*

3. We have gone through the assessment order, order of the Id. PCIT, written submissions of the AR, written submissions of the DR, paper book filed and the judgments relied by both the parties. After culling the entire material, the relevant portion for the purpose of adjudication is being considered in this order.

4. The relevant portion of the order u/s 263 is as under:

*"I have perused the assessment records and submissions made on the assessee in this case. From the fact of this case, it is clear that Shri Uday Kumar was in his statement dated 18.08.2009 has had stated in unequivocal terms that he has received the amount of Rs. 2 crore in cash over and above the price is stated in the deal has purchase consideration from Shri Mahesh Mehta on sale of property at 783/161, DB Gupta Road, Delhi. The sale was made on 17.072008 as per the sale deed. This transaction fell in assessment year 2008-09 relevant to assessment year 2009-10. The relevant part of the statement of Shri Uday Kumar is reproduced below:*

*Q.No. 6: During the course of search and seizure operation at the premises of Shri Mahesh Mehta at BA-17A, Ashok Vihar, DDA flat, New*

*Delhi on 30.06.2009 – 01.07.2009, a Bahi Khata (Handwritten ledger A/c.) was seized. In his statement recorded u/s 132(4) of the I.T. Act, 1961. Shri Mahesh Mehta accepted that the said Bahi Khata reflected the detailed actual transaction undertaken by his family members/group concern (inventorised as party S-2/Annexure A-4). The amounts mentioned therein were coded by suppressing two zeros. The amounts included the complete transactions i.e. cash transactions as well as cheque transactions received from the parties. On page No. 97 of the said Bahi Khata, there is an account of the sale of Building No. 56/7, DB Gupta Road, Karol Bagh. This is the same premise where the current survey operation is being carried out. The entries related to it are being reproduced as per Annexure-A-I of this statement. You are required to explain the same in respect of your part of building purchase by you?*

*Ans.: I have gone through the ledger account shown to me. I verify that the cheques of Rs.50 lacs shown to be paid in the name of M/s Honest Estates Private Limited paid on 8/5/2008 were the banker's cheque two Nos. of Rs.25 lakh each, paid by me as part of the purchase amount of total sale consideration of 3 flats (1<sup>st</sup> Floor, 2<sup>nd</sup> Floor and 3rd Floor) of this premises i.e. 56/7, DB Gupta Road, Karol Bagh, New Delhi. Further, I have sold my property No. 783/161, DB Gupta Road, New Delhi through Mr. Mahesh Mehta and a sum of Rs.2 crores in cash was an on account of part of sale consideration of the above said property which was kept by him as purchase consideration against the newly purchased building at 56/7, DB Gupta Road, Karol Bagh, New Delhi purchased from him. Since the amount was not received by me and was kept by Mr. Mehta himself, I was under the impression no capital gain is to be invoked on this amount which was, thus, not disclosed to the Income Tax Department for advance tax purpose.....*

*This statement of Shri Uday Kumar Vaish was not confronted to Shri Mahesh Mehta during the entire assessment proceedings of assessment year 2009-10. No questions about source of Rs. 2 crores paid in cash were asked during the said proceedings. The AR had mentioned that sum query regarding this issue was made in assessment year 2010-11. This clearly shows non-application of mind and no enquiry in the relevant assessment proceedings of assessment year 2009-10. Raising the query in a year in which the said amount could not be taxed does not absolve the AO from the error in not making enquiry in the year in which received amount could have been rightfully brought to tax. The A.R. has not denied the fact that no enquiry on this issue was made in the relevant assessment proceedings of assessment year 2009-10. The order of the Assessing Officer is, therefore, erroneous and presidential to the revenue to this extent.*

*The major issue in this revisional proceedings u/s 263 of Income Tax Act, 1961 is that assessment on this issues raised in the show-cause notice was made without proper examination, enquiry and verification. It has been held in the following cases that revisional jurisdiction u/s 263 by the Commissioner is warranted in a case where assessments have been made without enquiry or verification:*

*Assessment originally made without enquiry - Can it be revised - Failure of the Assessing Officer to make an enquiry before granting deduction would render the assessment erroneous and prejudicial to the interest of revenue. CIT Vs Seshasayee Paper & Boards Limited (2000) 108 Taxman 464*

*Where the Assessing Officer had accepted entry in the statement of account filed by the assessee showing certain income as agricultural income, without making any enquiry, the exercise of Jurisdiction by the*

*Commissioner u/s 263(1) would be justified. - Malabar industrial Company Limited Vs CIT (2000) 109 Taxman 66 (SC)*

*Where the Assessing Officer completed assessment proceedings u/s 143(3) and admitted that he could not make proper enquiries as assessment was becoming time-barred, there is valid assumption of Jurisdiction u/s 263 by the Commissioner, in setting aside the assessment and directing the Assessing Officer to make a fresh assessment - Jagdish Kumar Gulati Vs CIT (2004) 139 Taxman 369.*

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*Further, it has been held in the case of Indian Textiles Vs CIT 157 ITR 112 (Madras) that if at least in respect of one item ITO's order was found to be prejudicial to revenue, initiation of proceedings by Commissioner u/s 263 could not be questioned by observing as under:*

*"it is significant to note that the assessee's claim for weighted deduction in respect of freight charges falling under sub-clause (iii) has been set aside by the Commissioner and that view has been accepted by the Tribunal and it is only in respect of other matters, the Tribunal has remitted the matter to the ITO. If at least in respect of one item, the ITO's order is found to be prejudicial to the revenue, the initiation of the proceeding by the Commissioner u/s 263 cannot be questioned. We are not, therefore, inclined to direct a reference in this case. This petition is, therefore, dismissed."*

*From the above discussion, it is clear that the Assessing Officer has failed to conduct proper enquiry and verification on the issue of payment of Rs.2 crores by the assessee to Shri Uday Kumar Vaish and Smt. Maya Vaish. As has been brought out above, in various judicial pronouncements, it has*

*been held at where enquiry or verification is warranted, but not done, it would certainly cause prejudice to revenue and the Commissioner shall be justified in remanding the matter back to the Assessing Officer for making such enquiry. Hence, the assessment made by Assessing Officer, Central Circle-3, New Delhi u/s 143(3)/153A dated 30.12.2011 is erroneous and prejudicial to the interest of revenue. Invoking the provisions of section 263 of the Income Tax Act, 1961, I hereby set aside the assessment proceedings with the direction to the Assessing Officer to frame the assessment afresh after proper examination, enquiry and verification on the issues cited above."*

5. The relevant derivation from the above order is as under:

- The issue involved two properties namely, 56/7, DB Gupta Road, Karol Bagh and 783/161, DB Gupta Road, Karol Bagh
- The property 56/7, Karol Bagh has been sold by the assessee group company namely, Honest Estates Pvt. Ltd. to one Mr. Uday Vaish
- The property no. 783/161, DB Gupta Road, Karol Bagh was sold by Sh. Uday Vaish to the assessee
- Sh. Uday Vaish is supposed to receive an amount of Rs. 2 crores in cash as a sale consideration of the property 783/161 from the assessee and the amount was kept by him against the purchase consideration of the property 56/7, DB Gupta Road, Karol Bagh
- It is undisputed that there has been a transaction of Rs.2 crores between the assessee and Sh. Uday Vaish
- The seized document namely, Annexure A-4, Party S-2 contains clearly a transaction of receipt of Rs.2 crores from Sh. Uday Vaish to the assessee. There was no seized document showing any payment by the assessee to Sh. Uday Vaish.
- Even the statement of Sh. Uday Vaish did not mention the receipt of money from the assessee

6. The Id. PCIT held that the AO failed to conduct proper enquiry and verification on the issue of payment of Rs.2 crores by the assessee to Sh. Uday Vaish.

7. We find that the case of the assessee and the group concerns have been centralized and assessed in the same Central Circle-03. All the cases of subject matter of assessment u/s 153A and 153C which comprised the assessment for the six previous years from the date of the search. We find from the assessment order in the case of M/s Honest Estates Pvt. Ltd., the amount of Rs.2 crores which has been received by the assessee from Sh. Uday Vaish based on the seized material Annexure A-4, Party S-2 has been duly offered to tax and assessment has been completed by adding the amount of Rs.2 crores to the sale consideration received in cash over and above the value reflected in the books.

8. The Id. PCIT observed that the enquiry ought to have been made in connection with the assessment year 2010-11 but not in connection with assessment year 2009-10. We hold that such observation that the query has to be raised in the relevant assessment year doesn't materially change the nature of enquiry in the post search assessments, where in the entire material found and seized at different places is considered comprehensively and apportioned to each assessment year and to each assessee as relevant. Thus, we are unable to support the Id. PCIT's observation that the AO failed to make enquiry in connection with proceedings for the relevant assessment year. It is also on record that the proceedings in the case of Sh. Uday Vaish initiated u/s 263 to assess the income paid to the assessee having subjected to further appellate proceedings. Thus, from the facts of the record considering the assessment of M/s Honest Estates Pvt. Ltd. wherein the amount of Rs.2 crores stands assessed to tax and keeping in view that there was no

seized material to demonstrate payment of Rs.2 crores by the assessee to Sh. Uday Vaish (rather it is reverse) and keeping in view the issue has already been a subject matter before the Id. CIT (A) wherein the Id. CIT (A) has issued a notice on 18.02.2004 for enhancement and dropped the proceedings after due enquiry in the case of Sh. Uday Vaish, and keeping in view the fact that the order of the Id. PCIT could not prove how the enquiries conducted for the assessment year 2010-11 are not considered relevant for the assessment year 2009-10 and also keeping in view the moot fact that no loss of revenue could be arrived at by the Id. PCIT owing to the said lack of enquiry during the current year, we hereby hold that the order u/s 263 cannot be held to be legally valid.

9. In the result, the appeal of the assessee is allowed.  
Order Pronounced in the Open Court on 12/03/2020.

Sd/-

**(Amit Shukla)**  
**Judicial Member**

**Dated: 12/03/2020**

\*Subodh\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**