

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

Before Sh. Sudhanshu Srivastava, Judicial Member

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

(Through Video Conferencing)

ITA No. 327/Del/2020 : Asstt. Year : 2009-10

Sharda Sharma, 240, Sector Beta 2, Greater Noida, Gautam Budh Nagar, Uttar Pradesh-201308	Vs	Pr. Commissioner of Income Tax, Noida
(APPELLANT)		(RESPONDENT)
PAN No. AMLPS4170L		

Assessee by : Sh. Saurabh Gupta, CA

Revenue by : Sh. H. K. Choudhary, CIT DR

Date of Hearing: 22.10.2020

Date of Pronouncement: 05.11.2020

ORDER

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

The present appeal has been filed by the assessee against the order of the Id. PCIT, Noida dated 29.03.2019.

2. Following grounds have been raised by the assessee:

"1. For that in the facts and circumstances of the case, the Id. CIT erred in violating the principles of natural justice by not mentioning the grounds for initiating action u/s 263 Income Tax Act, 1961 in the show cause notice issued. As such, the order passed u/s 263 is void ab-initio. The action of the Id. CIT was wholly unreasonable, uncalled for and bad in law.

2. For that in the facts and circumstances of the case, the Id. CIT erred in not passing a speaking order against the submissions of your appellant. As

such, the order passed u/s 263 is void ab-initio. The action of the Id. CIT was wholly unreasonable, uncalled for and bad in law.

3. For that in the facts and circumstances of the case, the order u/s 263 is merely 'change in opinion'. The order u/s 143(3) passed by the Id. AO does not in any way represent erroneous order. The action of the Id. CIT was wholly unreasonable, uncalled for and bad in law.

4. For that in the facts and circumstances of the case, the Id. CIT erred in dropping and quashing the assessment proceedings on the basis of show cause notice in which irrelevant details are there and even in the order also material facts are wrongly quoted."

3. The case of the assessee for AY 2009-10 was reopened u/s 147 of the Income Tax Act, 1961 on the basis of the reason that the assessee had deposited cash of Rs.22,35,000/- into her bank account. However, after scrutiny of the case, the Income Tax Officer, Ward-3(4), Noida by an order (in the order sheet itself) dated 15.12.2016 dropped the assessment proceedings initiated u/s 147 of the Act.

4. The Id. PCIT, on subsequent examination of the assessment records for the year under consideration, opined that the source of cash deposit of Rs.22,35,000/- was not properly explained by the assessee as sale proceeds from sale of property situated at Plot No. 172, Sector-64, Faridabad and the assessee did not furnish any other document, such as copy of sale deed/agreement to sale to prove the claim. The Id. PCIT opined that the cash deposit of Rs.22,35,000/-, thus remained unsubstantiated. Since, the Assessing Officer accepted the claim of the assessee without conducting any enquiry in the matter, the Id. PCIT held that order of the Assessing Officer is

erroneous and prejudicial to the interest of revenue. Owing to initiation of proceedings u/s 263, a notice was issued to the assessee by the Ld. PCIT vide letter F.No.Pr.CIT/Noida/ITO (T)/Review-u/s 263/2018-19/11601 dated 14.03.2019. The said notice reads as under:

"On an examination of your assessment records for the year under consideration, it is seen that you had deposited cash of Rs.22,35,000/- in your savings bank account and the source thereof was explained by you as the sale receipts of the property situated at Plot No. 172, Sector-64, Noida. In support of the claim, you had furnished final transfer letter dated 27.04.2010. However, no other document, such as copy of sale deed/agreement to sale was furnished by you in the absence of which the receipt of cash of Rs.22,35,000/- remained unsubstantiated. In such a situation, the action of the Assessing Officer in accepting your claim was not justified."

5. Before us, during the hearing, the Id. AR reiterated the argument taken up before the Id. PCIT which finds mention at para 5.0 of the order u/s 263 of the Id. PCIT reads as under:

"With reference to above, I want to say that assessee had deposited the cash and explain the same, but Sir, might be here is some confusion because the property mentioned in notice was not belong to us and either we sold that property. And also, there was no order passed under any section of Income Tax Act, 1961 for the relevant assessment year i.e. 2009-10 for revision u/s 263."

6. The Id. DR argued that the word "Noida" in the show cause notice may be read as "Faridabad" and argued that the order of the Id. PCIT is correct on substance.

7. Heard the arguments of both the parties and perused the material available on record.

8. The issue before us is whether a wrong show-cause notice can lead to a right action. The obvious answer would be "No". In the instant case, when the assessee brought to the notice of the Id. PCIT that there was no such sale of property situated at Noida, the Id. PCIT in all fairness and fitness of things ought to have issued a right show-cause notice instead of continuing the proceedings with a wrong show-cause notice. It demonstrates that the revenue has no unambiguous idea as to the reason of invocation of Section 263. Hence, the order passed subsequently u/s 263 by the Id. PCIT is liable to be dismissed.

9. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 05/11/2020.

Sd/-

(Sudhanshu Srivastava)
Judicial Member

Sd/-

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

Dated: 05/11/2020

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR