



**IN THE INCOME TAX APPELLATE TRIBUNAL  
VARANASI CIRCUIT BENCH, VARANASI**

[Through Virtual Hearing]

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT  
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.06/VNS/2021  
Assessment Year: 2017-18

Vishal Kumar Mansinghka B-38/47, K-8, Gokul Nagar Motijhil, Mahmoorganj Varanasi	v.	The Principal CIT Allahabad
TAN/PAN:AJCPM34548		
(Appellant)		(Respondent)

Appellant by:	Shri V. K. Jindal, C.A.		
Respondent by:	Smt. Abha Kala Chanda, CIT (DR)		
Date of hearing:	12	08	2021
Date of pronouncement:	01	09	2021

**ORDER**

**PER A.D. JAIN, V.P.:**

This is assessee's appeal against the order of the Id. Pr. CIT, Varanasi, dated 03.02.2020 for the assessment year 2017-18, raising the following grounds:

1. That on the facts and circumstances of the case and in law the order dated 22.03.2021 passed by the Pr. Commissioner of Income-tax, u/s 263 of the Income-tax Act, 1961 ('the Act') setting aside the assessment framed u/s 143(3) of the Act as erroneous and prejudicial to the interest of the revenue is without jurisdiction, bad in law and void ab-initio.
2. That the assumption of jurisdiction by the Id. PCIT in the instant case being without satisfaction of pre-requisite twin conditions of the law, the same is bad in law and

consequently, the impugned order passed in pursuance thereto is liable to be cancelled.

3. That the AO had accepted the returned income of the assessee after making due and specific enquiries and finding a reasonable view on the issues, hence, the order of assessment dated 21.05.2019 cannot be regarded as erroneous in as much as prejudicial to the interest of revenue merely because Id Pr. CIT held a different opinion on the scope of such enquiries

4. That Id. Pr. CIT also failed to appreciate that, u/s 263 of the Act, an order of assessment cannot be set-aside to AO to simply to make further enquiries and thereafter pass fresh order of assessment. Therefore, and as such, impugned order and directions issued u/s 263 for de-novo assessment are untenable, contrary to law and unsustainable.

5. That the impugned order passed is vague, non-speaking, unreasoned and without dealing with the submissions of the appellant and judicial pronouncement relied upon by the assessee and hence, the impugned order is bad in law and liable to be quashed.

2. The brief facts of the case are that the assessee is an individual and derives income from business and profession from his proprietorship concern, namely M/s Mansinghka Jewellers, which is engaged in the trading of silver ornaments. The assessee had filed the return of income for the year under consideration on 24.05.2017 declaring an income of Rs.21,71,150/- . The case of the assessee was selected for complete scrutiny and the assessment u/s 143(3) of the Income Tax Act was completed on 21.05.2019, accepting the returned income of the assessee. The Ld. Pr. CIT initiated revisional proceedings under section 263 of the Act and passed the order dated 22.03.2021, setting aside the

original assessment order of the Assessing Officer for de-novo assessment.

3. The ld. Counsel for the assessee has contended that the notice was issued u/s 263 of the Act by considering the assessment order passed u/s 143 (3) of the Act to be erroneous and prejudicial to the interest of Revenue, on the grounds that the assessee has deposited cash of Rs.60,00,000/- in his bank account during the period of demonetization; that there is no cash sales before 21.10.2016 as is evident from the sales register; that moreover, the cash sales after 05.11.2016 is also very nominal; that all cash sales have been shown at a sale price less than Rs.50,000/- to avoid the requirement of PAN and other details; that inspite of having huge cash balance, the same was not deposited during the period from 01.11.2016 to 08.11.2016; that the Assessing Officer has neither verified the trend of sale from VAT returns, nor from the books of account of the preceding previous year; that the assessee does not have large cash expenses; and that the payments for purchases have been made through cheques.

4. The ld. Counsel for the assessee further contended that in compliance to notice issued for revisional proceedings, the assessee had submitted that during the assessment proceedings, the ld. Assessing Officer had issued a detailed questionnaire with regard to cash deposit during the period of demonetization; that the assessee submitted a detailed reply during the assessment proceedings substantiating the cash deposits with his audited books of account; that the copy of financial statements of the year under consideration was submitted, which was having figures of the preceding years; that all the necessary ledgers, complete cash book, stock details, etc.

were submitted during the assessment proceedings; that it was only after making all the necessary verifications, that the returned income of the assessee was accepted by the Assessing Officer; that thus, proper enquiry has been made by the Assessing Officer; that therefore, it was not a case of non-enquiry, or negligence or non-application of mind by the Assessing Officer; and that the Assessing Officer had called for various details and the assessee has supplied the same during the course of hearing and after being satisfied with this information and the facts, the Assessing Officer had accepted the returned income of the assessee.

5. The Id. Counsel for the assessee further submitted that besides, the Assessing Officer has passed the order acting in accordance with law, therefore, the same cannot be branded as erroneous; that again, any and every erroneous order cannot be the subject matter of revision, because the second requirement also must be fulfilled, i.e., it is prejudicial to the interests of the Revenue; that the words 'prejudicial to the interest of the Revenue', mean that every loss for the Revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the revenue; that for example, when an Assessing Officer has adopted one of the courses permissible in law and it has resulted into loss to the Revenue, or where two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue, unless the view taken by the Assessing Officer is unsustainable in law.

6. The Id. Counsel for the assessee accordingly submitted that from the above discussion based on the facts of the case, it

is apparent that a thorough and detailed enquiry was made by the Assessing Officer and the assessee furnished detailed written submissions, alongwith documents, such as copy of account, bank statements, desired evidences, etc. in compliance to the queries raised from time to time during the assessment proceedings; and that thereby, the order passed after making of a detailed enquiry by the assessing officer cannot be held as erroneous and prejudicial to the interest of the Revenue.

7. It was next submitted on behalf of the Assessee that moreover, the Pr. CIT had cast doubt on the cash sales made by the assessee as shown, amounting to Rs.57 lakhs during the period from 21.10.2016 to 05.11.2016; that the said doubt has been cast on the assessee on the basis of presumption only; that the assessee is regularly engaged in the trading of silver and silver ornaments; that in India, people purchase new items of silvers on the occasion of Diwali; that the Diwali festival was on 30<sup>th</sup> October in the year 2016 and the said Diwali festival ended with Chhath Puja on 06/7 November, 2016; that therefore, it is only logical that the sale of silver is higher in the month of October, in comparison to such sale in other months, and the same cannot be doubted merely on the basis of surmises and conjectures; and that a month-wise chart of quantity and value of the stock was duly submitted before the assessing officer (APB:229-231).

8. With regard to the doubt raised by the Pr. CIT regarding variation in the quantum of cash sales before 21.10.2016 and after 05.11.2016 and during the period from 21.10.2016 to 05.11.2016 and regarding the non-deposit of cash from 01.11.2016 to 08.11.2016, the ld. Counsel for the assessee submitted that the Income-tax authorities cannot step into the

shoes of a businessman, so as to determine how the business is to be conducted; and that moreover, it is a well-known fact that there is heavy rush in jewellery shops during the period of Diwali and all the staff are engaged, therefore, the assessee did not get time to deposit the cash balance in the bank.

9. Apropos the Pr. CIT's observation that the Assessing Officer has not verified the sales trend from VAT returns and from the books of account of the preceding year, the Id. Counsel for the assessee submitted that first of all, the assessee had submitted financial statements of the year under consideration, which were having the figures of sales of preceding years also (APB:268-281); that thus, it cannot be said that the Assessing Officer has not verified the figures of sales from preceding years; that merely because from a perfectionist point of view, it is felt that some more enquiries and verifications could have been made by Assessing Officer while making assessment, the assessment order cannot be declared to be erroneous and prejudicial to the interests of the Revenue; and that since the Assessing Officer has verified the sales from cash books, sales register, stock register and other necessary ledgers, figures of sales of year, quantitative details maintained and furnished in 3CD report etc., therefore, it cannot be said that the Assessing Officer has not made proper enquiry while passing the assessment order.

10. It was also contended that moreover, the assessee has regularly filed VAT Returns and has never revised the said returns; that the assessment under VAT has also been completed in the assessee's case; and that the VAT assessment order as passed in the case of the assessee has also been filed before us (at APB 256-267).

11. The ld. Counsel for the assessee further argued that the Ld. Pr. CIT has not made any comment on the case laws cited and the arguments tendered by the assessee in support of the claim that the present revisional proceedings are invalid and illegal, since the Assessing Officer has passed the order after due enquiry; that however, the Ld. Pr. CIT has set aside the original assessment order passed by the Assessing Officer for de-novo assessment on the ground that he feels that more enquiry should be conducted in the case of the assessee, which is unsustainable in the eye of the law; and that hence, the order passed by the Pr. CIT is liable to be quashed.

12. Reliance was placed on the order of the ITAT, Visakhapatnam Bench in the case of 'ACIT vs. M/s Hirapanna Jewellers', in ITA No.253/Viz/2020, dated 12.5.2021 (copy placed on record).

13. The ld. D.R., on the other hand, placing strong reliance on the impugned order, has contended that the assessee did not elaborate before the ld. PCIT, the issue raised by him; that there was no cash sale before 21.10.2016; that however, huge sale is shown during the period from 21.10.2016 to 05.11.2016 and all the sales are of less than Rs.50,000/- and, therefore, not identifiable; that the amounts against the sales shown in the cash book for the period from 01.11.2016 to 08.11.2016 were not deposited in Bank; that all these facts needed to have been examined by the Assessing Officer along with the sales pattern in the VAT return, which obviously was not done; that the assessee, in its reply, has not thrown light on these aspects and rather relied on various case laws; that therefore, the Assessing Officer has not examined/enquired into the details of the facts of the case and the assessment order passed u/s 143(3) of the Act is

erroneous insofar as it is prejudicial to the interests of the Revenue as per explanation 2 to Section 263 of the Income Tax Act, 1961; and that therefore, the assessment framed by Assessing Officer was liable to be cancelled and to be framed de-novo as per law after giving reasonable opportunity to the assessee, which has rightly been ordered by the Id. CIT.

14. We have heard the parties and have perused the material placed on record. The assessee filed submissions dated 19.2.2020 (APB:112-225) and reply dated 20.2.2019 (APB:226-255) before the Assessing Officer.

15. As seen from APB:111, the reason for selection of the case of the assessee under scrutiny was abnormal increase in cash deposit during the demonetization period, as compared to the pre-demonetization period. The rationale given was that there was abnormal increase in cash deposit during the demonetization period as compared to the average rate of cash deposit during the pre-demonetization period.

16. In the reply dated 19.2.2019, the assessee, inter alia, contended that the assessee had made cash sale. The details (APB:113), as maintained by the assessee firm, were furnished before us. These details were filed at pages 93 to 112 of the reply before the Assessing Officer.

17. In the assessment proceedings, the assessee had submitted due reply to the questionnaire raised. The cash deposits were substantiated with the assessee's books of account, and financial statement of the year under consideration, containing the figures of the preceding years was submitted. Necessary ledgers, complete cash book, stock details, etc., were filed. These facts are undisputed. The Assessing Officer

accepted the income returned. The ld. CIT also does not state it to be a case of no enquiry. In his opinion, the Assessing Officer did not examine/enquire into the details of the facts of the case. These details, as per the ld. CIT, are that there was no cash sale before 21.10.2016, though huge sale was shown for the period from 21.10.2016 to 5.11.2016 and all sales were of less than Rs.50,000/- and, thus, not identifiable; and that the amounts representing sales shown in the cash book for the period from 1.11.2016 to 8.11.2016 were not deposited in the Bank. According to the ld. CIT, these facts ought to have been examined by the Assessing Officer along with the sales pattern in the VAT return.

18. Thus, it was not a case of lack of enquiry, but a case of inadequate enquiry, in the opinion of the ld. CIT.

19. In 'Narayan Tatu Rane vs. ITO', [2016] 70 taxmann.com 227 (Mumbai – Trib.), it has been held that the ld. CIT(A) has no unfettered powers to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made.

20. In 'PCIT vs. Mere Baba Reality Association Pvt. Ltd. (Delhi)', ITA No.637/2017, the Hon'ble Delhi High Court has held that there is a distinction between 'lack of enquiry' and 'inadequate enquiry'; and that if the Assessing Officer has called for the necessary details and the assessee has furnished the same, the fact that the Assessing Officer is silent in the assessment order does not mean that he has not applied his mind so as to justify the exercise of revisional powers by the ld. CIT under section 263 of the Act.

21. In 'Salora International, Ltd. v. Addl. CIT', [2005] 2 SOT 705 (Delhi - Trib.), it was held that merely because from a perfectionist point of view, it is felt that some more enquiries and verifications could have been made by the Assessing Officer while making assessment/assessment order cannot be declared to be erroneous and prejudicial to interest of revenue.

22. In 'Amrik Singh v. ITO', [2003] 127 Taxman 87 (Mag.) (Chd. - Trib.), it was held that while making the assessment order, it is the satisfaction of the Assessing Officer who makes enquiry which should be the touch stone to test the validity of the assessment order passed by the Assessing Officer; and that the Commissioner cannot substitute his subjective view in place of the findings of the Assessing Officer.

23. Rather, in the case at hand, as seen hereinabove, the Assessing Officer conducted enquiry and passed the assessment order after considering the reply filed on behalf of the assessee.

24. Regarding the observations of the Id. CIT, doubting the cash sales made by the assessee (amounting to Rs.57 lakhs) for the period from 21.10.2016 to 5.11.2016, it has not been disputed, when contended that the Diwali festival for the year under consideration fell on 30.10.2016 and the Diwali season ended with Chhath Puja on 6/7.11.2016. It has also not been challenged that the sale of silver is higher during this period. Thus, the doubt entertained by the Id. CIT is based on merely surmises and conjectures. It again does not stand disputed that a month-wise chart of quantity and value of stock was duly submitted by the assessee before the Assessing Officer in the assessment proceedings. This is an annexure to the trading account and monthly salaries of silver ornaments and silver for

the period from 1.4.2016 to 31.3.2017. These are contained at pages 229 to 231 of the assessee's paper book.

25. So far as regards the observation concerning non-deposit of cash from sales made from 1.11.2016 to 8.11.2016, it is trite that this is the prerogative of the assessee and the Department cannot step into the shoes of the businessman to determine such a matter as the time of deposit of money in the bank.

26. Concerning the observation that the Assessing Officer did not verify the sales trend from VAT returns and from the books of account of the preceding year, the assessee had submitted financial statements of the year under consideration (APB:268-281) before the Assessing Officer. These financial statements contained the figures of sales of the preceding years also. This also points to the fact that it was not a case of no enquiry. Rather, the view of the CIT is that adequate enquiry was not carried out by the Assessing Officer. This, to reiterate, is not the purpose or purport of proceedings under section 263 of the Act. The Assessing Officer, obviously, had verified the sales from the financial statements and the books of account and, as such, it cannot be said that proper enquiry had not been made by the Assessing Officer. The assessee's VAT assessment order for the year under consideration is at APB:256-267.

27. In 'ACIT vs. M/s Hirapanna Jewellers', vide order dated 12.5.2021, passed in ITA No.253/VIZ/2020 and C.O. No.02/VIZ/2021, for assessment year 2017-18 (copy at APB:282-299), it has been held by the Visakhapatnam Bench of the ITAT that cash receipts on account of sales cannot be doubted if the assessee has sufficient stock. In the present case, no case of

insufficient stock has been made against the assessee and that being so, the doubt on account of sales is unsustainable.

28. In view of the above, finding the grievance of the assessee to be justified, the same is accepted. The order under appeal is quashed.

29. In the result, the appeal is allowed.

Order pronounced in the open Court on 01/09/2021.

Sd/-  
[T. S. KAPOOR]  
ACCOUNTANT MEMBER

Sd/-  
[A. D. JAIN]  
VICE PRESIDENT

DATED:01/09/2021

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar