

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "F": NEW DELHI]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No. 7891/Del/2018
(Assessment Year: 2014-15)

Shri Varun Khandelwal, 4/22, Ground Floor, WEA, Karol Bagh, Delhi – 110 006. PAN: AOBPK7023C	Vs.	Pr. CIT, Delhi : 24, New Delhi.
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(Appellant)		(Respondent)
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Assessee by :	Shri Hiren Mehta, C. A.;
Department by:	Shri T. Kipgen, [CIT] – D. R.;
Date of Hearing :	22/11/2021
Date of pronouncement :	27/01/2022

ORDER

PER AMIT SHUKLA, J. M.

The aforesaid appeal has been filed by the assessee against the impugned order dated 16.08.2018, passed by the ld. Pr. Commissioner of Income Tax, Delhi-24, New Delhi [hereinafter referred to as ('Pr. CIT')] passed under Section 263 of the Income Tax Act, 1961 (the Act) for assessment year 2014-15.

2. In the grounds of appeal the assessee has challenged the impugned order under Section 263 of the Act on the following grounds:-

“1. That the order passed by Pr. Commissioner of Income Tax, New Delhi (hereinafter referred to as Pr. CIT), u/s 263 of the IT Act is contrary to the facts and bad in law;

2. That on the facts and circumstances of the case and in law, the Pr. CIT, New Delhi has erred in passing the order u/s 263 as the assessment order passed u/s 143(3) is not erroneous.

3. That the Pr. CIT has erred in not considering the submission made by the appellant that appellant during the course of assessment proceedings, has submitted all the necessary details/confirmations in respect of persons from whom the amount was received, therefore, the order passed by the AO can not be considered as erroneous.

4. That the Pr. CIT has erred in passing the order u/s 263 directing the AO to examine the cash amounting to Rs.64,88,000/- received during the relevant assessment year and treating the same as unexplained cash credit by ignoring the fact that the said amount is in respect of amount received from various parties / relatives as gifts/ against sale of agricultural products. “

3. The facts in brief are that the assessee is an Individual, who has filed return of income on 12.08.2014 declaring total income of Rs.5,50,610/-. The case of the appellant was selected under CASS for limited scrutiny, to examine large cash deposit in Saving Bank Accounts. Accordingly asked specific query to justify the cash deposits and source thereof in the bank accounts in his notice us/ 142(1) and notice u/s 143(2). The assessee in compliance to such notice filed his explanation and gave evidences for the source of deposits. Assessing Officer after considering the replies and evidences accepted the source of deposit and assessment order u/s 143(3) was passed on 27.09.2016 accepting the returned income of Rs.5,50,610/-.

4. Thereafter, Pr. CIT, Delhi - 24, issued a show-cause notice u/s 263 of the I.T. Act dated 13.06.2018 providing an opportunity to the

appellant to file an explanation. In the said show cause notice it was inter-alia stated as under:-

a) In the assessment order the A.O. has accepted returned income of Rs.5,50,610/- whereas the case was selected for limited scrutiny under cash with the reason "large cash deposit in the bank account".

b) Perusal of records reveals that the assessee deposited Rs.54,96,000/- and Rs.21,10,000/- in bank account with PNB and ICICI bank respectively during the period 01.04.2013 to 31.03.2014. The assessee had furnished on record during the assessment proceedings that amount of Rs.11,00,000/- in cash was received as rent and remaining cash of Rs.64,88,000/- was received from various persons/relatives as gifts and against sale of agricultural products.

c) Perusal of records also reveals that the assessee furnished handwritten confirmations from 12 persons to confirm the genuineness of cash deposit of Rs.64,88,000/- only and no other details like PAN/ITRs of these persons were available on record.

d) In view of the perusal of assessment records, it is apparent that the A.O. has simply accepted the submissions of the assessee without making proper inquiry regarding the identity, genuineness and creditworthiness of the persons from whom the assessee has taken cash deposited in bank accounts. Hence, it is apparent that income of Rs.64,88,000/- has escaped assessment on account of unexplained cash deposit in bank account and the same is

needed to be added in the total income of the assessee.

e) In view of the above, the A.O. has erroneously failed to make addition of Rs.64,88,000/- on account of unexplained cash credit in bank account. Therefore, the order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue.

5. In reply to the same, a letter dated 06.07.2018 was filed by the assessee contending as under:-

a) The proposed issue for which notice u/s 263 has been issued was examined by the A.O. during assessment after which the A.O. reached a conclusion that the confirmations filed duly explained the source of deposit of cash in the bank. Hence, it cannot be said that the issue of source of cash deposit remained not properly examined.

b) It is the satisfaction of the A.O. which matters on the basis of material before him. The A.O. being satisfied with the material filed by the assessee explaining the source of cash deposit, the assessment order can not be said to be erroneous or prejudicial to the interest of Revenue.

c) It was not the case of "no inquiry" and it has been held by various courts that in the case of "inadequate inquiry" revision of order u/s 263 is not permissible.

d) Section 263 cannot be invoked in case where two views are possible or for change of opinion.

6. The Id. PCIT rejected the reply of the assessee and observed as under:-

“2. On perusal of the record it has been observed that the case of the assessee was selected under limited scrutiny for the reason “Large cash deposits in saving bank accounts” during the F.Y. 2013-14. During the year assessee had deposited cash amounting to Rs. 75.98.000/- in his saving bank accounts. During the assessment proceedings, the assessee explained that Rs. 11,10,000/- was rent received in cash which was included in his ITR and remaining cash amounting to Rs. 64,88,000/- were received from various persons/relatives as gifts/against sale of agricultural products. In support of his claim assessee had filed only some hand written confirmations. No other details like PAN/ITRs of those persons' were filed so as to establish identity and creditworthiness of the persons from whom cash was received. Therefore, the assessee failed to prove identity and creditworthiness of parties as well as genuineness of transaction was also not established. The AO should not have accepted the reply of the assessee and un-explained cash deposit of Rs. 64,88,000/- should have been treated as un-explained income of the assessee.

3. In response to notice u/s 263, the assessee submitted reply through letter dated 06.07.2018 & 6.08.2018 stated therein that all the necessary details/ confirmations from the persons from whom the amount was received have been filed during the course or assessment proceedings. The claim of the assessee is not admissible as no proper details/ confirmations / creditworthiness of the parties as well as genuineness of the transactions was not established.

4. In the wake of the above, it is apparent that the assessee failed to prove identity and creditworthiness of parties as well as genuineness of the transaction. Hence, the case is restored back to AO for passing fresh assessment order u/s 263 rws 143(3) of the Income Tax Act, 1961, after proper examination and investigation of issues mentioned in the reason of Limited Scrutiny and issues mentioned above. “

7. Before us the ld. Counsel for the assessee submitted that during the course of assessment proceedings there was a specific

questionnaire based by the Assessing Officer on 2.08.2016 enquiring about the source of deposit in the bank account with Punjab National Bank and ICICI Bank. In response to the same, assessee vide letter dated 16.08.2016 filed his explanation about the source of cash, which was stated to be from the agricultural income from the land situated at Alwar, and also cash was received from farmers on account of cultivation of agricultural produce received as advance and gifts from relatives/ farmers who in turn were deriving income from agricultural produce or were running small business in Alwar and surrounding villages. A list of parties along with cash received and explaining the nature of receipt along with confirmation letters executed by all such parties was also filed along with the letter. A copy of the above referred letter dated 16.08.2016 is enclosed at Page 12 to 13 of the Paper Book and the confirmation letters are enclosed at Page 14 to 24 of the Paper Book. This fact has also been acknowledged in the impugned order passed under Section 263, where it is stated that, the assessee had filed handwritten confirmations before the Assessing Officer.

8. Ld. Counsel submitted that the reasoning given in the revision order is that other details like PAN / ITRs of the persons from whom cash was received were not filed to establish the identity and creditworthiness. While holding so, the Pr. CIT lost sight of the fact that cash was received from relatives and agriculturists who were either deriving income from agricultural produce or running small time business in Alwar and surrounding villages having income below the taxable limit and therefore not liable to file ITR.

9. The ld. Counsel submitted that it is not a case of lack of enquiry and the only case of the ld. Pr. CIT in the order under Section 263 is

that the Assessing Officer should have made further enquiry rather than accepting the assessee's explanation. Thus, it cannot be held that there was a case of lack of enquiry. In support he relied upon the decision of Hon'ble Delhi High Court in the case of **CIT Vs. Sunbeam Auto Ltd. 189 Taxman 436 (Del.)** and **CIT Vs. Vikas Polymers 194 Taxman 57 (Del)**. It was further submitted that the ld. Pr. CIT himself should have carried out any enquiry to dislodge the facts and the material filed by the assessee during the assessment proceedings and he simply cannot submit the case to the Assessing Officer which has been based after proper examination and investigation of the issue for which it was selected for scrutiny. At least Ld. PCIT should have carried out some minimum enquiry to show that the Assessing Officer should have undertaken any enquiry to bring any material to discredit the assessee's explanation. In support he relied upon the following decisions:-

- (a) CIT Vs. Delhi Metro Express Pvt. Ltd.,
ITA No. 705/2017 (Del.) - (Para 10);
- (b) ITO Vs, D.G. Housing Projects Ltd.,
20 Taxmann.com 587 (Del.) (Para 16 & 17)
- (c) Globus Infocom Ltd. Vs. CIT
50 Taxmann.com 100 (Del.) - (Para 17)
- (d) CIT Vs. Nagesh Knitwears Pvt. Ltd.,
22 Taxmann.com 309 (Del.) (Para 36).

10. Another important contention raised by the Ld. Counsel is that, in the entire order of the ld. Pr. CIT there is no whisper about holding that assessment order is erroneous in any manner or prejudicial to the interest of Revenue to the pre-requisite condition of having jurisdiction under Section 263 of the Act. Apart from that he submitted that Explanation 2(a) to Section 263 which has

been introduced by the Finance Act, 2015 with effect from 1.06.2016 and, therefore, would not apply to assessment year 2014-15.

11. On the other hand, the ld. [CIT]-D.R. strongly relying upon the order of the ld. Pr. CIT submitted that the order of the Assessing Officer is very cryptic and has not given any reason as to how the assessee's explanations are acceptable. Once there was a huge cash deposit received from various persons and there were no details of PAN / ITRs of the persons, who had filed the confirmation, then it was difficult to prove the identity and creditworthiness of the persons from whom cash was received. Therefore, Pr. CIT has rightly cancelled the order and in asking the Assessing Officer to carry out proper enquiry and pass the order.

12. We have heard the rival contentions and perused the material placed on record and the order of the ld. Pr. CIT. Undisputedly, the case of the assessee was selected under CASS for limited purpose, that is, to examine the large cash deposits in the Savings Bank Accounts. The ld. Assessing Officer specifically raised a query vide questionnaire dated 2.08.2016 enquiring into the source of cash deposit in Punjab National Bank and ICICI Bank. In response the assessee has filed a detailed reply vide letter dated 16.08.2016 giving entire details of source of cash deposit, which was stated to be from the agricultural land in Alwar district at Rajasthan and also received cash from farmers who have source from cultivating their lands and had given advance to the assessee from their agricultural income. They have also filed their confirmations and the details. The ld. Assessing Officer accepted the assessee's explanation filed along with the documentary

evidence and accepted the cash deposits and the source thereof. The only allegation made by the Id. Pr. CIT that the Assessing Officer should not have accepted the assessee's reply. Nowhere Ld. PCIT had himself tried to carry out some enquiry at his level so as to prima facie indicate that the explanation as well as the evidences filed by the assessee are not reliable and cannot be accepted specifically when the cash was stated to be received from relatives and agriculturists. The Assessing Officer has accepted certain explanation and was satisfied with the evidence in the form of confirmations from the parties, then it was incumbent upon the Id. Pr. CIT to dislodge and explanation carrying out some verification and enquiry from any of the parties which could have been the basis for justifying that there was lack of enquiry by the Assessing Officer. The assessment order passed after due verification and examination simply cannot be set aside on the ground that some more or further enquiry should have been done.

13. Apart from that, one very glaring fact which is evident from the impugned order of the Id. Pr. CIT, (the whole of which has been reproduced above) is that, nowhere the Id. Pr. CIT has held that the assessment order passed by the Assessing Officer is erroneous or prejudicial to the interest of Revenue. The basic requisite condition for acquiring the jurisdiction under Section 263 and cancelling the assessment order is that, the Id. Pr. CIT has to give categorical finding as to how the assessment order is erroneous and not only that, he has to show that it is also prejudicial to the interest of Revenue. Both the conditions have to be satisfied and is to be specified by the Ld. PCIT, in case he intends to set-aside the assessment order. Once the Assessing Officer has taken a view based on the explanation as well as evidence filed by the assessee, it cannot be the case of lack of

enquiry. At the best, it is inadequate enquiry and, therefore, in such a situation the assessment order cannot be cancelled or set aside. Accordingly, we hold that in absence of any charge by the Id. Pr. CIT that assessment order is erroneous and prejudicial to the interest of Revenue, assessment order cannot be set aside and accordingly, the order passed by the Id. Pr. CIT is set aside and the order of assessment is restored.

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

Order pronounced in the open court on : **27/01/2022.**

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Dated : 27/01/2022.

MEHTA

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	20.1.2022
Date on which the typed draft is placed before the dictating member	21.1.2022
Date on which the typed draft is placed before	27.1.2022

the other member	
Date on which the approved draft comes to the Sr. PS/ PS	27.1.2022
Date on which the fair order is placed before the dictating member for pronouncement	27.1.2022
Date on which the fair order comes back to the Sr. PS/ PS	27.1.2022
Date on which the final order is uploaded on the website of ITAT	27.1.2022
date on which the file goes to the Bench Clerk	27.1.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	