

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH, "A", CHANDIGARH

BEFORE SHRI N.K. SAINI, VICE PRESIDENT &  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 277/CHD/2021

निर्धारण वर्ष / Assessment Year : 2011-12

Sh. Bhagat Ram Kaushal, C/o Rajiv Goel and Associates SCO 823-824, Sector 22A, Chandigarh	बनाम	Pr. Commissioner of Income Tax, Panchkula
स्थायी लेखा सं./PAN NO: BREPK2050A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

**Hearing though video Conferencing**

निर्धारिती की ओर से/Assessee by : Sh. Rohit Goel, CA

राजस्व की ओर से/ Revenue by : Sh. Vivek Nangia, CIT DR

सुनवाई की तारीख/Date of Hearing : 14.12.2022

उदघोषणा की तारीख/Date of Pronouncement : 28.02.2022

**आदेश/Order**

**Per Sudhanshu Srivastava, Judicial Member:**

This appeal is preferred by the assessee against the order dated 19.03.2021 passed by the Ld. Principal Commissioner of Income Tax (Appeals), Panchkula [hereinafter referred to as 'PCIT'] for assessment year 2011-12.

2. Brief facts of the case are that the assessee had retired from the Postal Department and derived income from pension. The return of income was filed declaring income of Rs. 1,75,880/-. Subsequently, the case was reopened u/s 148 of the Income Tax Act, 1961 (hereinafter called 'the Act'), as the assessee had made Time Deposits of Rs. 11,85,000/- with Punjab National Bank. During the course of assessment proceedings, the daughter of the assessee Ms. Renu Sahni stated that the Time Deposits made by her father were from the renewal of the Fixed Deposits already made from the retirement benefits. The re-assessment proceedings were completed by accepting the returned income.

2.1 Subsequently, the Ld. PCIT issued show cause notice on 24.02.2021 mentioning alleged instance of failure on the part of the Assessing officer (AO) and after considering the reply of the assessee thereto, reached the conclusion that the assessment proceedings completed u/s 143(3) read with section 147 of the Act were erroneous in so far as prejudicial to the interest of Revenue in terms of provisions of section 263 of the Act including Explanation 2. The Ld. PCIT proceeded to cancel the assessment dated 31.10.2008 and directed the Assessing officer to pass an order afresh.

2.2 Against this cancellation of assessment, the assessee has now approached this Tribunal challenging the action of the Ld. PCIT by raising following grounds of appeal:-

1. *That the Ld. PCIT has erred on facts and in law in exercising revisionary powers u/s 263 of the Act while passing the order dated 19.3.2021.*
2. *That the appellant craves leave to add, alter, amend or to substitute the above grounds of appeal either before or at the time of hearing of case.*

3.0 At the outset, the Ld. Authorised Representative (AR) submitted that there was a delay of 147 days in filing the appeal. He drew our attention to the affidavit of the applicant for condonation of delay in this regard, wherein, it has been stated that the assessee's wife Mrs. Shashi Kanta had been taken seriously ill and the assessee could not approach the counsel's office for filing of appeal and signing of necessary papers. It has also been stated that his wife passed away on 07.04.2021. A copy of the Death Certificate of Mrs. Shashi Kanta has also been enclosed. It has been further stated that, thereafter, there was onset of second wave of COVID- 19 resulting in lock down in Haryana in the months from April to June 2021. It has also been stated that the assessee himself was bed ridden due to his old age of 90 years and, subsequently, only when the assessee's daughter visited him in

September 2021, the appeal could be filed when she could contact the assessee's counsel. It has been prayed that the delay due to the aforesaid reasons may kindly be condoned and the appeal be admitted for hearing.

4.0 Per contra, the Ld. CIT DR took no objection to the condonation of delay.

5.0 Having heard both the parties and considering the factual matrix which led to delay in filing the appeal and also considering the fact that the assessee would not get any benefit from a delay in filing the appeal to protect his interest, we deem it appropriate to condone the delay of 147 days and admit the appeal for hearing.

6.0 The Ld. AR submitted that the assessee is a Senior Citizen aged 90 plus and had retired as a Section Officer from the Postal Department and his major source of income throughout his working life was salary income and, later on, pension. It was submitted that he had accumulated such earning by way of fixed deposits and recurring deposits which he maintained with various banks and was earning interest from the same. It was submitted that during the year under consideration some fixed deposits and recurring deposits got matured and the assessee withdrew these maturity proceeds in

cash from the Post Office and the saving bank account with State Bank of India and deposited in a newly opened account with Punjab National Bank for making fresh FDRs. the Ld. AR referred to the assessment order and submitted that these facts were duly brought to the notice of the Assessing officer during the course of assessment proceedings and the explanation of the assessee was accepted by the Assessing officer after due examination. The Ld. AR submitted that no fresh fixed deposits had been made during the year under consideration and it was only old deposits which had been used to make new FDRs. He drew our attention to the summary of cash deposits and withdrawals made during the year under consideration as well as to copy of the bank statement which have been filed before the Assessing officer as well as Ld. PCIT and have now been filed before us in the form of paper book and submitted that these documents had duly considered by the Assessing officer before accepting the returned income of the assessee. The Ld. AR, referring to the observation of the Ld. PCIT that there was two or three months gap between cash deposits and withdrawals, submitted that there was a gap of only 2 months between June and August 2010 while the remaining deposits had been made immediately after withdrawals. It was further submitted that even where there has been a gap in deposit of cash, there is no

allegation of any foul play by the Ld. PCIT nor has there been any evidence on withdrawn cash having been used for any other purpose other than for being deposited for the purpose of making the FDRs. The Ld. AR reiterated that the Assessing officer had accepted the assessee's return of income after verification of bank statements and submissions of the assessee and had, thereafter, reached the conclusion that the contention of the assessee was correct, whereas, the Ld. PCIT had held the assessment order to be erroneous and prejudicial to the interest of Revenue without providing any reason and even without conducting any inquiry in this regard. The Ld. AR also placed reliance on numerous judicial precedents, which have been stated in the written submissions and have been taken on record.

7.0 Per contra,, the Ld. CIT DR vehemently supported the Revision proceedings and submitted that there was a complete lack of inquiry at the end of the Assessing officer as he had failed to inquire into the source of deposits. The Ld. CIT DR harped upon the observation of the Ld. PCIT that there was delay in deposit after alleged withdrawals by the assessee and further there was no evidence that the withdrawals and deposits were linked. The CIT DR also submitted that the Ld. PCIT had rightly invoked

Explanation 2 to section 263 of the Act as it was squarely covering the facts of the case. The Ld. CIT DR also relied on numerous judicial precedents in support of his contention and prayed that the order passed u/s 263 be upheld.

8.0 We have heard the rival submissions and have also perused the material on record. We have also gone through the bank statement of the assessee which have been filed in support of the contention that most of the deposits had been made on the same day of withdrawals from the bank account. We find that the contention of the Ld. AR that except for the months of June to August 2010, where there was a gap, most of the deposits found in the bank account were after making the withdrawals on the same day. This leads credence to the contention of the Ld. AR that deposits in the bank were made from the withdrawals from the Post office account and the account with State Bank of India. Of course, there is no bar in depositing or withdrawing the amount unless and until some foul play has brought on record, which is not the case here. We also note that although the Assessing officer might not have written it in as many sentences and phases about the documents he had verified during the course of assessment proceedings for the purpose of reaching the conclusion that the bank deposits were

indeed out of withdrawals from the bank, there is no prescribed format for writing an assessment order and a perusal of the assessment order would show that the Assessing officer has duly mentioned that the required documents were examined and that the daughter of the assessee Ms Renu Sahni has explained that the Time Deposits made by her father were from renewal of FDRs already made from the retirement benefits. So, in our considered opinion, the Assessing officer did conduct proper inquires, as warranted on the facts of this case, and we do not agree with the contention of the Ld. CIT DR that there was any lack of inquiry by the Assessing officer. It is the argument of the Ld. CIT DR that the source of deposits was not examined by the Assessing officer but we again note that this contention of the Ld. CIT DR is fallacious, in as much as, the deposits were linked to the bank account and the cash deposits in the bank were linked to the cash withdrawals. Therefore, it cannot be said that there was any lack of inquiry on the part of the Assessing officer.

8.1 The Hon'ble Delhi High Court in the case of CIT Vs. Sunbeam Auto Ltd reported in [2011] 332 ITR 167 (Del.) in paragraph 17 has ruled that one has to keep in mind the distinction between 'lack of inquiry' and 'inadequate inquiry' and further if there was any

inquiry, even inadequate, that would not by itself give occasion to the Commissioner to pass orders u/s 263 of the Act, merely because he has a different opinion in the matter. It was further held by the Hon'ble Delhi High Court that if any Assessing officer, acting in accordance with law, makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately.

8.2 Similar were the observation of the Hon'ble Delhi High Court in the case of ITO Vs. DG Housing Projects Ltd [2012] 343 ITR 329 (Del). In this case, the Hon'ble Delhi High Court went on to observe that in case where there is in-adequate inquiry but no lack of inquiry, the CIT must give and record a finding that the order / enquiry made is erroneous and that this can happen only if an inquiry and verification is conducted by the CIT. The Hon'ble Delhi High Court in the case of ITO Vs. DG Housing Projects Ltd (supra) also held that in most cases of alleged 'inadequate inquires' it will be difficult to hold that the order of the Assessing officer, who had conducted enquiries and had acted as a Investigator, is erroneous, without the CIT conducting verification /inquiry himself. However, in the case, no such inquiry has been carried out

by the Ld. PCIT and he has simply directed the Assessing officer to carry out detailed inquires.

8.3 In our considered opinion, the Ld. PCIT, without making further inquiry on his own account, has simply stated in the impugned order that the Assessing officer was required to make more inquiries. The Ld. PCIT has not pointed out as to what further inquiry was the Assessing officer required to make and as to how without those inquires the order of the Assessing officer was erroneous in so far as prrejudicial to the interest of the Revenue.

8.4 As per the provisions of section 263(1) of the Act, after getting the explanation of the assessee to the show cause notice, the Ld. PCIT is supposed to examine the contention of the assessee and before passing an order cancelling the assessment, he is supposed to conduct an inquiry himself or cause to make such an inquiry, as he deems fit / necessary.

8.5 As far as the invocation by the Ld. PCIT of Explanation 2 to section 263 of the Act is concerned, the Delhi Bench of the ITAT had an occasion to consider this aspect in the case of Amira Pure

Foods Pvt. Ltd Vs. Principal CIT (2017) 51 CCH 0473 (Delhi-Tribunal) wherein, the Delhi Bench, while relying upon the judgement of the Hon'ble Delhi High Court in the case of PCIT Vs. Delhi Airport Metro Express Pvt Ltd (ITA No. 705/2017) has held that Explanation 2 cannot be stated to have overridden the law as interpreted by various High Courts, where the High Courts have held that before reaching the conclusion that the order of the Assessing officer is erroneous and prejudicial to the interest of Revenue. The Commissioner himself has to undertake some enquiry to establish that the assessment order is erroneous and prejudicial to the interest of Revenue. Similarly, the Coordinate Bench of ITAT, Mumbai in the case of Narayan Tatu Rane reported in TS-290-ITAT 2016 (Mumbai) has held that Explanation 2 to section 263 does not provide unfettered right to the PCIT to revise each and every order. It was held that it is the responsibility of the PCIT to show that the enquiry for verification conducted by the Assessing officer was not in accordance with the enquires or verification that would have been carried out by a prudent officer.

8.6 Therefore, on an overall view of the facts of the case, we are of the considered opinion that the exercise of revisional jurisdiction by the Ld. PCIT is without any justification. The Ld. PCIT has

sought to reappraise the evidence in the garb of revisional jurisdiction. Accordingly, we set aside the order passed u/s 263 of the Act and allow the appeal of the assessee.

9.0 In the final result, the appeal of the assessee stands allowed.

Order pronounced on 28.02.2022.

Sd/-  
( N. K. SAINI)  
Vice President  
Dated : 28.02.2022  
“आर.के.”

Sd/-  
(SUDHANSHU SRIVASTAVA)  
Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,  
सहायकपंजीकार/ Assistant Registrar