



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

**ITA No.64/CTK/2021**

Assessment Year : 2013-14

B.Gupteswar Patra, M/s. Jai Hanuman Distributors, Gulipatna, Umerkote, Nabarangpur	Vs.	Pr. CIT, Sambalpur
PAN/GIR No.AWCPP 3854 H		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri N. Anand Rao, AR  
Revenue by : Shri Manoj Kumar Goutam, CIT (DR)

**Date of Hearing : 3 /2/ 2022**  
**Date of Pronouncement : 6 /4/2022**

**ORDER**

**Per C.M.Garg, JM**

This is an appeal filed by the assessee against the order of the Pr. CIT, Sambalpur dated 25.2.2021 under section 263 of the Act for the assessment year 2013-14.

2. In this case, the Assessing Officer completed the assessment u/s.143(3) r.w.s 147 of the Act on 29.11.2018 determining the total income at Rs.11,81,290/- as against returned income of Rs.3,50,350/-. The

Assessing Officer has considered the entire cash deposit of Rs.1,57,85,860/- as sale proceeds of the assessee and determined the profit @ 8% thereon.

3. Thereafter, the Pr. CIT called for the assessment records by virtue of powers conferred on him u/s.263 of the Act. On perusal of assessment records, he noticed that the assessee had made cash deposits of Rs.1,57,85,860/- but filed the return of income in response to notice u/s.148 of the Act disclosing gross turnover at Rs.54,93,040/- computing the total income at Rs.3,50,350/- on presumptive basis taking into account 8% of the disclosed gross receipts. Ld Pr. CIT noticed that even after issue of notice u/s.148 of the Act, the assessee has shown gross receipts of Rs.54,93,040/- as against the cash deposit of Rs.1,57,85,860/- in bank accounts thereby suppressing the material facts in the return of income. However, the AO without appreciating these facts, has accepted the unsubstantiated explanation of the assessee and treated the entire cash deposits of Rs.1,57,85,860/- as the business receipts of the assessee and estimated profit @ 8% on Rs.1,57,85,860/-. It was in backdrop that the Pr. CIT observed that the AO has accepted the bland statement of the assessee without any corroborative evidence. Therefore, he observed that the differential amount of Rs.1,02,92,820/- is the income of the assessee as undisclosed sources. Hence, non consideration of the differential amount of Rs.1,02,92,820/- makes the assessment order erroneous and prejudicial to the interest of the revenue within the meaning of section 263 of the Act. In

view of above, the Ld Pr. CIT issued show cause notice to the assessee on 16.12.2020 to explain the same. In response to show cause notices, there was no response from the sides of the assessee. Accordingly, the Pr. CIT passed the revisionary order u/s.263 treating the assessment order as erroneous and prejudicial to the interest of the revenue. He directed the AO to add back the amount of Rs.1,02,92,917/- to the returned total income of the assessee u/s.69A of the Act.

4. Ld counsel for the assessee submitted that the return of income was filed in response to notice u/s.148 of the Act u/s. 44AD of the Act and during the course of assessment proceedings, the assessee clearly submitted that the deposits are sale proceeds of the business and withdrawals are made for purchase of goods out of the cash credit and savings bank account of SBI, Umerkote. Ld A.R. further submitted that the Pr. CIT has observed that the action of the AO is without any enquiry and assessment is made in estimating the income u/s. 44AD of the Act for the deposit of Rs.1,02,92,820/- @ 8%. Ld counsel vehemently submitted that the allegation made by the Pr. CIT are unjust and not tenable because the assessment order has been passed after issue of notices and statements and purchases and sales registers are produced during the course of assessment proceedings and there can be no sales without purchases, therefore, the AO took a plausible view that the sales proceeds/turnover has to be taxed @ 8% profit. Ld counsel submitted that the AO has taken a

reasonable and plausible view as per provisions of the Act including Section 44AD of the Act and when there are two views possible to determine the income of the assessee, and one view which was taken by the AO, which the CIT does not agree then the order of the AO cannot be treated as erroneous and prejudicial to the interest of the revenue. Ld counsel relied on the decision of Hon'ble Supreme Court in the case of **Malabar Industrial Co. Ltd. Vs. Commissioner of Income Tax, 243 ITR 81 (SC)** and this proposition has also been reiterated in the following judgments:

- i) CIT vs Maxmedia ltd (2008) 295 ITR 282
- ii) Ultratech Cement Ltd vs State of Rajasthan (2020) 117 Taxmann.com 807 (SC)
- iii) CIT vs Nirav Modi (2016) 71 Taxmann./com 272 (Bom)

5. Ld counsel further submitted that the AO has conducted sufficient enquiry as per the requirements of Explanation 2(a) of Section 263 of the Act, hence, invocation of jurisdiction under section 263 of the Act is unjustified in view of the decision of Hon'ble Karnataka High Court in the case of **K.R.Satyanarayana vs CIT, 126 Taxmann.com 22 (kar)** and Hon'ble Bombay High Court in the case of **CIT vs Nirav Modi, (2016) Taxmann.com 272 (Bom)**. Ld counsel further drew our attention to page 4 of the order of the CIT u/s.263 of the Act and submitted that the Pr. CIT has issued notice that why the differential amount of Rs.1,02,92,917/- shall not be treated as

undisclosed/unexplained income, for which, the assessee appeared on 29.11.2018 and submitted written submissions which was perused and discussed with the assessee and then came to a conclusion that the deposits are sale proceeds and income is estimated u/s.44AD of the Act under presumptive scheme, hence, it cannot be considered as erroneous and prejudicial to the interest of the revenue. Ld counsel submitted that since the assessee has filed return of income u/s.44AD of the Act, which is allowed for small business entrepreneur and could not able to maintain the books of account, therefore, same rate applicable to such provision was applied by the AO to the differential amount. He also submitted that it is pertinent to mention that for achieving higher sale turnover, the assessee is required to reduce its percentage of profit but the AO has applied 8% profit rate for entire turnover, which is obviously higher than the profit earned by the small entrepreneur, therefore, estimation made by the AO cannot be alleged as erroneous and prejudicial to the interest of the revenue.

6. Ld counsel lastly submitted that the bank deposits cannot be treated as income if they are treated as income, then what about the withdrawals. He further explained that there can be no sales without purchases and withdrawals are made for the purchase of goods, which was clearly demonstrated before the AO during the course of assessment proceedings as emanated from page 2 of the assessment order. Ld counsel submitted that ITAT Cuttack Bench has also taken similar view in ITA Nos. 228 &

229/CTK/2009 in the case of Sibopada Goldar, wherein, the Co-ordinate Bench has concluded that income @ 8% is to be estimated on deposits and not the entire deposit be added to the return income of the assessee as undisclosed income. Ld counsel submitted that the bank account clearly shows the name of the dealer from whom the goods have been purchased and the payment is made through banking channel, hence, the purchase and sales cannot be brushed aside and the differential amount of Rs.1,02,92,827/- cannot be treated as undisclosed income u/s.69A of the Act. He submitted that when the assessee has explained properly before the AO the deposits of Rs.1,57,85,860/- and income was estimated u/s.44AD of the Act under the presumptive scheme @ 8% on sales/turnover, then the assessee cannot be expected to explain each and every entry in the bank statements, which facts have been ignored by the pr. CIT while passing the order u/s.263 of the Act. Therefore, the impugned order is not reasonable and sustainable. Ld counsel submitted that the concept of real income has been ignored and not considered by the Pr. CIT while passing the revisionary order and, therefore, the entire deposits cannot be treated as undisclosed income of the assessee. Therefore, the impugned order is also not sustainable on this count. Ld counsel has also submitted that Pr. CIT could not have passed exparte order during corona virus pandemic specially in Sambalpur, which on

merits of the case also the impugned order has been passed in violation of principles of natural justice, which is not sustainable in the eye of law.

7. Ld A.R. has placed reliance on the decision of ITAT Bangalore 'C' Bench in the case of 3M India Ltd vs CIT, (2021) 131 taxmann.com 240 (Bang) and submitted that where the Commissioner invoked section 263 by finding fault with assessment order passed for earlier assessment year 2009-10, since he was revising assessment order passed for assessment year 2010-2011, and he had not actually pointed out any error in said assessment order, order passed by the Commissioner could not be sustained. Ld counsel has placed reliance on the decision of Hon'ble Bombay High Court in the case of CIT vs Future Corporate Resources Ltd ,284 Taxman 122 (Bom) to submit that the Commissioner invoked revision jurisdiction and set aside the order of AO on the ground that the AO failed to make disallowance u/s.14A r.w 8D. Therefore, the assessment order cannot be treated as erroneous and prejudicial to the interest of the revenue. Ld counsel submitted that in this case, the ITAT had set aside the order of the Commissioner passed u/s.263 of the Act, by observing that when the AO has taken a view then the pr. CIT cannot substitute the same imposing his own view to revise the order u/s.263 of the Act. Ld counsel drew our attention towards para 7 of order of Hon'ble Bombay High Court and submitted that if one out of two possible view was taken, the Pr. CIT

could not have exercised his power u/s.263 of the Act for imposing his own view by substituting the view taken by the AO.

8. Replying to above, Id CIT DR submitted that the assessee did not file return of income for relevant assessment year 2013-14 and he filed the return in response to notice u/s.148 of the Act dt 12.9.2018. Id CIT DR submitted that the AO has made the addition of Rs.8,23,426/- on account of business profits and determined profit @ 8% on total turnover, which was calculated on the differential amount of turnover of Rs.1,02,92,820/- which is discernible from the bank account of the assessee. Further, drawing our attention towards page 4 Para 6 of the impugned revisionary order u/s.263 of the Act, Id CIT DR submitted that during assessment proceedings, in response to notice issued by the AO, the assessee replied that inadvertently he disclosed sales of Rs.54,93,043/- and remaining deposits into his bank account may be accepted as sales turnover and the assessee requested the AO to estimate the profit thereon @ 5% as he was a wholesaler cum retail trader. Id CIT DR submitted that it is a clear case of non-application of mind where the AO has accepted the explanation of the assessee without verifying the nature of the deposits and relevant documentary evidence, therefore, the pr. CIT was right in revising the assessment order u/s.263 of the Act. Id CIT DR placing reliance on the decision of Hon'ble Gujrat High Court in the case of CIT vs Sarwankumar Sharma (2014) 227 Taxman 34 (Guj) submitted that where the assessee declaring income from salary and

interest, was found in possession of certain cash, in view of fact that assessee failed to bring any evidence on record in support of his explanation that said amount belonged to his business transactions, the AO was justified in adding same to assessee's taxable income as unexplained money.

9. On careful consideration of the rival submissions, first of all, from para 3.2 of the impugned revisionary order u/s.263 of the Act, we note that Pr. CIT has taken up the sole issue of taxing differential amount of gross receipts disclosed by the assessee and amount of cash deposit made to his bank account during relevant financial period. Thereafter, Pr. CIT observed that the AO without bringing the facts of the case has accepted the unsubstantiated explanation of the assessee and treated the amount as business receipts/gross turnover. Therefore, the assessment order is erroneous and prejudicial to the interest of the revenue. In para 3.3, the Ld Pr. CIT has alleged that the AO's action in considering the entire deposits as business proceeds, without any enquiry or investigation, has made the impugned assessment order both erroneous and prejudicial to the interests of the revenue within the meaning of section 263 of the Act. From the last operating para of said order, we observe that the Id Pr.CIT modified the assessment order dated 19.12.2018 and directed the AO to add back the amount of Rs.1,02,92,917/- to the returned income of the assessee u/s.69A of the Act.

10. At the same time, from the impugned assessment order dated 19.12.2018 u/s.143(3)/147 of the Act, we observe that after filing the return of income on 12.9.2018, the notice u/s.143(2) and 143(1) was served on the assessee. Thereafter, the assessee appeared before the AO and furnished bank statements, purchase and sale register and written submissions. The AO in para 2 further noted that the copies of bank accounts statements, purchases and sales register and written submissions were verified and examined and discussed. Thereafter at top para page 2 , the AO also observed that in response to letter/show cause notice dated 24.10.2018, the assessee was asked to explain the source of said cash/cheque deposit into his different bank accounts. The assessee filed written submission on 29.11.2018, which is also reproduced by the AO in para 2 page 2 of the assessment order. Thereafter, the AO after considering the written submissions of the assessee and all relevant bank statement, purchase and sales register and written submission of the assessee concluded that since the assessee has not maintained books of account and had disclosed net profit u/s.44AD of the Act on the disclosed turnover of Rs.54,93,040/- and has not been able to produce the books of account of his business for verification, therefore, he proceeded to estimate the profit @ 8% on total deposits made into different bank accounts of the assessee treating the same as sale proceeds/turnover of the assessee. In view of above, we are satisfied that the AO has made adequate and

sufficient enquiry with regard to the amount of deposits to the different bank account of the assessee. We are in agreement with the contention of Id counsel for the assessee that the bank account clearly shows the payments are made through cheques and banking channel with regard to purchase, therefore, the AO after considering the entire documentary evidences placed before him including bank statements, sales and purchases register, took a plausible view that the amount of cash deposit is nothing but sale proceeds/turnover of the assessee. Thereafter, the AO considered the fact that the assessee has submitted the return u/s.44AD and declared the profit @ 8% of total turnover. From the explanation of the assessee, we note that the assessee requested to estimate 5% of net profit whereas the AO took higher net profit @ 8% on total turnover treating the entire cash/cheque deposits to the various bank account of the assessee as sale proceeds/turnover. It is a well known principle that when turnover increases or enhances, then the profit percentage goes down but the AO estimated the net profit @ 8% without further rebate or deduction. In view of above, we are compelled to hold that the AO has made sufficient, proper and adequate enquiry in regard to amount of cash/cheque deposits to the different bank accounts of the assessee and the AO made enquiry by issuing notice, taking on record copies of bank statement of the assessee, purchase and sales register and explanation of the assessee and, thereafter, made addition in the hands of the assessee by estimating net profit @ 8%,

which is a plausible and reasonable view as per relevant provisions of the Income tax Act, 1961. Therefore, we decline to agree with the contention of Id Pr. CIT that the AO has not made any enquiry with regard to differential amount of cash/cheque deposits to the various bank accounts of the assessee and he was not correct in accepting the contention of the assessee by estimating the net profit @ 8% u/s.44AD of the Act. Our conclusions gets further support from the decision of Hon'ble Bombay High Court in the case of Hon'ble Bombay High Court in the case of CIT vs Nirav Modi, Hon'ble Karnataka High Court in the case of K.R.Satyanarayana (supra) and order of ITAT Cuttack bench in the case of Shibapada Golder (supra)

11. Ld counsel also referred to the decision of ITAT Cochin Bench in the case of Thomas Eapen vs ITO, (2020) 113 taxmann.com 268 (Coch), wherein, it was held that where the assessee, a small trader in medicines falling under section 44AD, offered income on presumptive taxation basis, provisions of section 69A could not be applied to make addition in respect of undisclosed cash credits found in assessee's bank account. The benefit of this is also available in favour of the assessee in the present case.

12 As regards to reliance placed by Id CIT DR in the case of Sarwankumar Sharma (supra), we are not in agreement with Id CIT DR that the facts of that case are similar to the present case. Therefore, we

respectfully observe that the benefit of this judgment is not available in favour of the revenue.

13. In view of above, we reached to a logical conclusion that when the AO out of two possible view has taken one view after making adequate, sufficient and proper enquiry on the assessee's bank account on which Pr. CIT is not agreeing with the view taken by the AO, then revisionary powers u/s.263 cannot be invoked for substituting the view of the AO. We also observe that the assessment order clearly reveals the exercise undertaken by the AO, therefore, it is not a case of inadequate and insufficient enquiry. We may also point out that the assessee has demonstrated by way of submitting copies of bank accounts, sales and purchase register and explanation of the assessee and on consideration of the same, the AO estimated the net profit @ 8% as against the 5% claimed by the assessee. Hence, the AO has taken a plausible view, which cannot be substituted by the Pr. CIT. We, accordingly, quash the impugned revisionary order u/s.263 of the Act by the Pr. CIT..

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

Order pronounced on 6 /4/2022.

Sd/-  
**(Arun Khodpia)**  
**ACCOUNTANT MEMBER**

sd/  
**(Chandra Mohan Garg)**  
**JUDICIAL MEMBER**

Cuttack; Dated 6 /04/2022

B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant : .Gupteswar Patra,  
M/s. zJai Hanuman Distributors, Gulipatna,  
Umerkote, Nabarangpur
2. The Respondent. Pr. CIT, Sambalpur
3. The CIT(A)-, Sambalpur
4. DR, ITAT, Cuttack
5. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**