

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

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT  
AND  
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.530/Del/2021  
Assessment Year: 2015-16

Sh. Rajiv Jain, 9 <sup>th</sup> KM, Bhopa Road, Muzaffarnagar, Uttar Pradesh	<b>Vs.</b>	Pr. CIT, Muzaffarnagar
<b>PAN :ACAPJ7851J</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Anil Jain, Advocate
Respondent by	Sh. T. Kipgen, CIT(DR)

Date of hearing	23.03.2022
Date of pronouncement	29.04.2022

**ORDER**

**PER SAKTIJIT DEY, JM:**

The present appeal has been filed by the assessee assailing the order dated 18.03.2021 passed by learned Principal Commissioner of Income Tax (PCIT), Muzaffarnagar, under section 263 of the Income-tax Act, 1961 (for short 'the Act') for the assessment year 2015-16.

**2.** The assessee has raised the following grounds:

1. *The Ld. Pr. CIT(A) has erred in passing order u/s 263 and holding that the order of the AO is erroneous and prejudicial to the interest of revenue.*
2. *The order passed u/s 263 is time barred as per section 263(2) and can be passed up to 31.03.2020 being two years from the end of the year in which the AO passed the order i.e. 3.11.2017.*
3. *The order of the Pr. CIT is against law and facts of case.*
4. *The appellant craves the right to add, amend or withdraw any grounds of appeal at the time of hearing.*

**3.** At the time of hearing before us, the learned counsel appearing for the assessee has argued the appeal on merits. In view of the aforesaid, we hold that ground no. 2 is deemed to have not been pressed, hence, dismissed.

**4.** As regards ground no. 1, briefly the facts are, the assessee is a resident individual stated to be engaged in the business of manufacturing of pipes. For the assessment year under dispute, the assessee filed its return of income on 29.09.2015 declaring income of Rs.21,79,850/-. The return of income filed by the assessee was selected for scrutiny and the assessment proceeding in case of the assessee was completed under section 143(3) of the Act vide order dated 03.11.2017 determining the total income at Rs.22,85,950/-.

**5.** After completion of the assessment, learned PCIT called for and examined the assessment records of the assessee for the impugned assessment year. On examining the records, she found

that the Assessing Officer has not properly examined the genuineness of the sundry creditors. Further, she observed, the Assessing Officer has not made proper enquiry and examined the genuineness of loans availed from family members. Thus, she was of the view that due to lack of proper enquiry and verification of the genuineness of the sundry creditors and loan transaction by the Assessing Officer, the assessment order is not only erroneous but prejudicial to the interest of Revenue. Accordingly, she issued a show-cause notice, purportedly, under section 263 of the Act to the assessee to explain, who the assessment order should not be revised. In response to the show-cause notice, the assessee filed a detailed submission stating that in course of assessment proceeding, the Assessing Officer had thoroughly examined the issues for which the case was selected for scrutiny. It was submitted, after proper enquiry and application of mind, the Assessing Officer having passed the assessment order, it cannot be subjected to proceeding under section 263 of the Act. Learned PCIT did not find merit in the submissions of the assessee. He observed, the Assessing Officer has not ascertained whether the creditors are related to the business of the assessee and whether the identity of the creditors and genuineness of the transaction

are established. Further, she observed, the Assessing Officer did also examine the genuineness of the unsecured loans availed by the assessee. She observed, though, the assessee filed a detailed reply, however, no supporting documentary evidences were furnished. Thus, she ultimately held that the assessment order is erroneous and prejudicial to the interest of the Revenue, as, the Assessing Officer has not conducted proper enquiry, which he should have done as per Explanation 2(a) of Section 263(1) of the Act. Accordingly, she set aside the assessment order with a direction to the Assessing Officer to pass a fresh assessment order after due verification of the issues, on which, the assessment order was revised.

**6.** Reiterating the objections made before learned PCIT, learned counsel for the assessee submitted, in course of assessment proceeding, the Assessing Officer has issued notices under section 142(1) and 143(2) of the Act with detailed questionnaire. He submitted, all the issues on which the assessment was selected for scrutiny were enquired into and examined by the Assessing Officer. In this context, he drew our attention to the observations made by the Assessing Officer in the assessment order as well as the notice issued under section 143(2) of the Act

and the reply furnished in response thereof. Thus, he submitted, the allegation of learned PCIT that the Assessing Officer has not properly enquired into and examined the issues is without basis. He submitted, in course of assessment proceeding, the Assessing Officer has made specific enquiry with regard to sundry creditors and unsecured loans and only after making necessary enquiry and being satisfied with the explanation and supporting evidences furnished by the assessee, had completed the assessment by adding back a part of the sundry creditors. Thus, he submitted, in the circumstances, the assessment order could not have been revised by learned PCIT. In support of such contention, he relied upon the following decisions:

1. *Malabar Industrial Company Ltd. Vs. CIT 243ITR 83 SC*
2. *ITO Vs. DG Housing Projects Ltd. 343 ITR329 Del.*
3. *Surya Merchants Ltd. Vs. DCIT Manu/ID/0628/2016 dated 8-7-16 ITAT Del.*
4. *CIT Vs. Max India Ltd. (2007) 295 ITR 282 SC*
5. *Shivalaya construction Co. Pvt. Ltd. Vs. Pr. CIT Manu /ID/0265/2017 dated 16.8.2017 (TTATDelhi).*
6. *Braham Dev Gupta Vs. Pr. CIT (2017) 187 TTJ (Delhi) 001.*
7. *Mrs. Khatiza Vs. ITO 100 ITD 173 (Mum)*
8. *Dhruv n. Shah Vs. DCIT (2004) 82 TTJ (Mum.) 369*
9. *Ashok Maniklal Thakkar Vs. ACIT, 97 ITD 361 (Ahd.)*

10. *CIT Vs. Fine Jewellery (India) Ltd.*, 372 ITR 302 (Bom.)

11. *CIT Vs. Sunbeam Auto Ltd.*, 332 ITR 167 (Del.)

**7.** Learned Departmental Representative submitted, in course of assessment proceeding, the Assessing Officer has not enquired into all the issues for which the assessment was selected for scrutiny. He submitted, the Assessing Officer did not take the enquiry to its logical end and has only made half-baked enquiry. He submitted, by virtue of Explanation 2(a) of section 263(1) of the Act, the Revisionary Authority has power to revise the assessment order, in case, he feels that the enquiry ought to have been conducted by the enquiry officer was not conducted. Thus, he submitted, learned PCIT having exercised her jurisdiction correctly and passed the order under section 263 of the Act, it should be upheld.

**8.** We have given a thoughtful consideration to the submissions made by the parties in the light of the decisions relied upon and perused the materials on record. The factual matrix reveals that assessee's case was selected for limited scrutiny to examine the following issues:

- (1) Large increase in sundry creditors with reference to the turnover.

- (2) Mismatch in sales turnover reported in Audit Report and the return of income.
- (3) Substantial increase in capital during the year and unsecured loans.

**9.** A perusal of the assessment order would reveal that for verifying the issues for which the case was selected for scrutiny the Assessing Officer, from time to time, had issued notices under section 143(2) as well as section 142(1) of the Act with detailed questionnaire. The Assessing Officer has also observed that in response to the statutory notices issued, the assessee had filed detailed reply with supporting evidences. It is also evident, to verify the genuineness of the sundry creditors, the Assessing Officer had conducted independent enquiry by issuing notices under section 133(6) of the Act and in response to such notices many of the parties furnished account confirmation. On verifying the information received, he found that in some of the cases outstanding balance shown by the assessee did not match with the balance shown by the parties in the account confirmation. Therefore, the differential amount of Rs.95,900/- was added back to the income of the assessee. Since, in one of the instances of the sundry creditors the notice issued under section 133(6) was

returned back unserved, the Assessing Officer added back an amount of Rs.10,200/-. Thus, the aforesaid facts clearly reveal that in course of assessment proceeding, the Assessing Officer did examine and enquire into the sundry creditors appearing in the balance-sheet of the assessee.

**10.** Insofar as unsecured loan availed by the assessee, the facts on record reveal that in course of assessment proceeding the Assessing Officer not only called upon the assessee to furnish the necessary details to prove the genuineness of the transaction but the assessee did furnish all supporting evidences to establish the genuineness of the loan transaction. This fact is evident from the supporting evidences furnished by the assessee before the Assessing Officer which are placed in the paper-book. On examination of these evidences placed in the paper-book, it is observed that not only the identity of the creditors have been established but their creditworthiness was also proved. Further, there cannot be any doubt regarding the genuineness of the transaction as it was done through banking channel. The assessee had also furnished the confirmations as well as return of income and copies of the creditors in course of the assessment proceeding. In fact, on a careful reading of the impugned order of

learned PCIT, it is evident, learned PCIT does not dispute the fact that the Assessing Officer had enquired into the sundry creditors, however, the only doubt she has expressed is though, the sundry creditors are located at different places, however, their reply were sent from the same post office of Muzaffarnagar. This, in our view, cannot be the sole reason to hold that the assessment order is erroneous and prejudicial to the interest of Revenue.

**11.** As regards the unsecured loan, though, learned PCIT does not deny the fact that confirmation and other supporting evidences have been furnished by the assessee, however, interpreting the reference made by the bank to certain transaction in their own code, she has held that the persons who advanced the loans were having two accounts in the same bank and money has been transferred from one account to the other account through cheque after which the balance has been forwarded to the assessee. Thus, from the aforesaid discussions made by learned PCIT, the fact which emerges is, in course of assessment proceeding the Assessing Officer did make enquiry with regard to the issues for which the assessee's case was selected for limited scrutiny. However, since in the opinion of learned PCIT the inquiry conducted by the Assessing Officer is not enough or

should have been made in a different manner, she has invoked jurisdiction under section 263 of the Act to revise the assessment order.

**12.** In our view, this is not the intent and purpose for which section 263 was brought to the statute. A reading of section 263 of the Act would reveal that the basic conditions which require to be fulfilled are, the order sought to be revised must be erroneous and at the same time it must be prejudicial to the interest of the Revenue. Unless, these two basic conditions are satisfied, the Revisionary Authority cannot invoke his power under section 263 of the Act. The only reason for which the learned PCIT has invoked her power under section 263 of the Act is, the Assessing Officer did not make enquiry, which, in the opinion of learned PCIT, he should have made. In this context, learned PCIT has referred to Explanation 2(a) of Section 263(1) of the Act. In our considered opinion, Explanation 2(a) to section 263(1) of the Act does not confer unbridled power at the hands of the Revisionary Authority. Explanation 2(a) to section 263(1) is also subject to fulfillment of basic conditions of section 263(1) of the Act that the order sought to be revised must be erroneous and at the same time should be prejudicial to the interest of Revenue. If facts on

record reveal that the Assessing Officer has made proper enquiry and has passed the order with proper application of mind, it cannot be said that the enquiry which should have been made, was not made. As held by the Hon'ble Delhi High Court in case of CIT Vs. Ashish Rajpal (2010) 320 ITR 674 (Del.), if a query was raised by the Assessing Officer in course of assessment proceeding which was satisfactorily answered by the assessee but did not get reflected in the assessment order, that by itself would not lead to a conclusion that there was no enquiry by the Assessing Officer. The same view was expressed by the Hon'ble Jurisdictional High Court in case of CIT Vs. Vikas Polymers (2012) 341 ITR 537 (Del.).

**13.** In the facts of the present appeal, undoubtedly, in course of assessment proceeding the Assessing Officer had made enquiries in respect of all the issues on which the case was selected for scrutiny. Therefore, even if the Assessing Officer has not made any observations with regard to some of the issues in the body of the assessment order, that by itself, would not lead to the conclusion that the Assessing Officer has not made any enquiry while completing the assessment.

**14.** In any case of the matter, learned PCIT does not say that the Assessing Officer has not made any enquiry. What she says is, the Assessing Officer has not made the enquiries or verification which he should have made in terms of Explanation 2(a) of section 263(1) of the Act. In the facts of the present appeal, it is established that the Assessing Officer did make the enquiries. The grievance of the Revisionary Authority is only with regard to the mode and manner of enquiry conducted by the Assessing Officer. This, in our view, cannot be a factor for invoking the jurisdiction under section 263 of the Act. If such arbitrariness is allowed, in every given case the Revisionary Authority can invoke jurisdiction under section 263 of the Act by simply taking recourse to Explanation 2(a) to section 263(1) of the Act by saying that the Assessing Officer has not made enquiries or verification which he should have made. This, in our view, is impermissible. Whether the Assessing Officer has made enquiries before passing the assessment order will depend upon the facts of each case. If the facts on record reveal that the Assessing Officer did make the enquiry on the issues on which the revisionary power under section 263 of the Act is invoked and has carried such enquiry to its logical end, then, it has to be held that the order passed

cannot be held to be erroneous and prejudicial to the interest of Revenue, only because, the revisionary authority feels that the enquiry which should have been made was not made.

**15.** Thus, on overall consideration of facts and materials available on record and applying the ratio laid down in the decisions cited before us, we hold that the assessment order passed in the instant case cannot be held to be erroneous and prejudicial to the interest of Revenue on the ground that proper enquiries were not made. Accordingly, we set aside the impugned order of learned PCIT passed under section 263 of the Act and restored the assessment order.

**16.** In the result, the appeal is allowed, as indicated above.

***Order pronounced in the open court on 29<sup>th</sup> April, 2022***

***Sd/-***  
**(G.S. PANNU)**  
**PRESIDENT**

***Sd/-***  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Dated: 29<sup>th</sup> April, 2022.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi