

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER

ITA No. 138/DEL/2022 [A.Y. 2017-18]

M/s APC Books
1002-03, FAIZ Road
Karol Bagh, New Delhi

Vs.

The A.C.I.T
Circle -51(1)
New Delhi

PAN : AAMFA 1936 D

(Applicant)

(Respondent)

Assessee By : Shri G.S. Girewal, CA
Ms. Reema Girewal, CA

Department By : Shri Ishtiyaque Ahmed, CIT- DR

Date of Hearing : 23.05.2022
Date of Pronouncement : 26.05.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

With this appeal, the assessee has challenged the assumption of jurisdiction by the PCIT-10, Delhi u/s 263 of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] wherein the PCIT has held that the

assessment order dated 14.12.2019 framed u/s 143(3) of the Act is erroneous and prejudicial to the interest of the Revenue.

2. Before us, the ld. counsel for the assessee vehemently stated that the Assessing Officer, during the course of assessment proceedings u/s 143(3) of the Act, has raised specific queries relating to the cash deposit after demonetization and has made detailed enquiries, for which the assessee has submitted detailed reply alongwith supporting documentary evidences.

3. It is the say of the ld. counsel for the assessee that not only the Assessing Officer had made enquiries but has also considered the relevant documentary evidences submitted by the assessee for verification and after due verification/examination, the Assessing Officer did not take any adverse view and therefore, the assessment order is neither erroneous and prejudicial to the interest of the Revenue and the assumption of jurisdiction by the PCIT is bad in law.

4. Per contra, the ld. DR strongly supported the order of the PCIT. It is the say of the ld. DR that the assessment order is not only erroneous but also prejudicial to the interest of the Revenue. The ld. DR vehemently stated that merely by raising queries does not mean that the Assessing Officer has made sufficient enquiry.

5. We have given thoughtful consideration to the orders of the authorities below. Documents on record show that vide notice dated 02.09.2019 u/s 142(1) of the Act the Assessing Officer has raised specific queries. Query Nos. 13 to 16 are most relevant which read as under:

"13. Please furnish the details of Cash Deposited in various bank accounts during the F.Y 2016-17. Also segregate between pre-demonetization period (01.04.2016 to 08.11.2016) and during demonetization period (08.11.2016 to 31.03.2017).

14. Please furnish the source of the cash deposited along with supporting evidences.

15. Please furnish the detailed cash flow statement for
A.Y 2017-18.

16. Please furnish the copy of bank statement in which cash deposits made during the A.Y 2017-18."

6. In response to the aforesaid queries, the assessee, vide letter dated 29.11.2019, replied as under:

"Vide reply dated 29.11.2019, you have stated that there is a cash deposit of Rs. 1,08,82,500/- during demonetization period. However, in your ITR you have shown a cash deposit of Rs. 2,73,92,500/- in your Indian Bank Account. Explain the discrepancy and attach a copy of complete bank statement."

7. Summary of cash book was submitted which is as under:

ANNEXURE - 4

Ass. Year 2017-18
PFY of 31-03-2017

APC BOOKS
1002 Park Road, Karol Bagh, New Delhi-110005

Summary of Cash Book (for use cash book of the year)
For the years from 05.11.12 to 08.11.13
05.11.13 to 08.11.14
05.11.14 to 08.11.15
and 05.11.15 to 08.11.16

Particulars	Year 2012-13	Year 2013-14	Year 2014-15	Year 2015-16
	05.11.12 to 08.11.13	05.11.13 to 08.11.14	05.11.14 to 08.11.15	05.11.15 to 08.11.16
Opening Cash Balance (including cash in chest)	9,289,768	9,374,239	8,622,250	6,924,827
Receipts during the year				
- Shri Ganesh J. Mahara	11		11	11
- Sales in cash	11,476,613	13,494,415	10,353,551	10,703,372
- Debtors-Receipts in cash	30,486,512	32,574,728	25,886,234	25,724,981
- Partner's contribution	1,250,000	-	204,000	67,661
- Fixed Assets Sale		12,600	-	15,000
Total receipts (including Op. balance)	52,545,793	51,435,982	47,056,084	41,335,462
Payments during the year				
- Bank cash deposited	27,957,000	24,985,000	20,020,000	7,180,000
- Partner's withdrawals (cash)	2,788,000	2,578,000	2,877,306	3,144,820
- Cash for routine expndt (After adjustment of balance at the year end received back from routine cash book)	9,819,570	11,303,580	12,536,859	18,760,576
- Salary-Interest in cash	3,863,500	3,859,000	4,158,000	2,365,500
- Donus	445,200	252,400	4,200	557,500
- Trav. Advances & Expenses (Net of travelling advances adjustments on incurring expenses out of revenue)	2,189,351	2,483,059	2,949,541	1,581,711
- Other expenses	376,124	518,301	397,822	473,135
- Leave encashments		-	-	123,399
- Exports	-	-	-	300,000
- Fixed Assets (purchased in cash)	52,500	65,387	18,300	26,959
- Security Loan		25,000		
Total Payments in	47,175,455	44,789,727	41,741,263	29,151,828
Closing Balance (F - B)	5,374,240	6,622,250	5,324,825	12,179,634

Balance of cash as on 08.11.16

cash as per cash book 573,624

cash in chest 11,650,000

Total 12,173,324

Note

In the above summary of cash book, routine cash given for cash expenses is net amount after adjustment of cash balance at the routine cash book at the year end, which is transferred to the receipt side of the main cash book.

8. It can be seen from the above queries and reply that the Assessing Officer had raised specific queries relating to the cash deposited between pre-demonetization period and during demonetization period. Reply of the assessee is also specific with documentary evidences which are on record.

9. Observations of the PCIT in his order relating to the reconciliation of cash entry in ITR for Assessment Year 2017-18 and cash actually deposited during demonetization period was not properly examined by the Assessing Officer is factually incorrect. Vide notice dated 09.12.2019 u/s 142(1) of the Act, the Assessing Officer had raised the following query:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE 51(1), DELHI

To, AFC BOOKS 1002-03, FAIZ ROAD KAROL BAGH NEW DELHI 110005, Delhi India	
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PAN: AAMFA1938D	AY: 2017-18	Date: 09/12/2019	Notice No : ITBA/AST/F/142(1)/2018-20/1021959186(1)
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Notice under sub-section (1) of Section 142 of the Income Tax Act, 1961

Sir/ Madam/ Ms.

In connection with the assessment for the assessment year 2017-18 you are required to:

- a) Furnish or cause to be furnished on or before **11/12/2019** at **11:45 AM** the accounts and documents specified overleaf.
- b) Furnish and verified in the prescribed manner under Rule 11 of I.T. Rules 1962 the information called for as per annexure and on the points or matters specified therein on or before **11/12/2019** at **11:45 AM**.
- c) The above mentioned evidence/information is to be furnished online electronically in 'E-Proceeding' facility through your account in 'e-filing' website of Income Tax Department.
- d) Para(s) (a) to (c) are applicable if you have an account in e-filing website of Income Tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available).
- e) In cases where order has to be passed under section 153A/153C of the Income Tax Act, 1961 read with section 143(3) assessment proceedings would be conducted manually.

Yours faithfully

SMRITI KRISHNIA
CIRCLE 51(1), DELHI

Note: If digitally signed, the date of digital signature may be taken as date of document.
CIVIC CENTRE, MINTO ROAD, MINTO ROAD, NEW DELHI, NEW DELHI, Delhi 110002
Email: DELHI.DCIT61.1@INDOMETAX.GOV.IN,

* The Notice/Letter/Order No. mentioned above may be treated as DIN for the purpose of procedure for issuance of Income Tax Notice prescribed by Circular No.19/2019 dt. 14 August 2019

10. In response to the aforesaid query, the assessee had replied as under:

To

The ACIT Circle 51(1),
New Delhi

Reg : M/s APC Books 1002, Faiz Road Karoi Bagh,
New Delhi-110005.

PAN : AAMFA1936D

Sub : Assessment proceedings for the Asst. Year 2017-18

Madam,

In connection with the Assessment Proceedings of the above mentioned assessee, as required, it is respectfully submitted as under :-

The assessee deposited a total cash of demonetized currency amounting to Rs. 1,08,82,500/- between 09.11.16 to 30.12.16 in its Bank A/c with Indian Bank, Karol Bagh, New Delhi A/c No.715751693 The details of the same have already been given in our written submissions vide letter dated 25.11.2019 & 29.11.2019 In this connection, it may please be mentioned that the assessee has two more A/cs - another A/c with Indian Bank (A/c No,6282332973) and one with SBI (No.30959030894). The details of both the A/cs have already been submitted for your kind perusal No cash was deposited in these two A/cs during the said period For your kind perusal, the Bank Statements of all the three Banks for the period from 01.11.16 to

3112,16 are appended. In these statements, cash deposited in demonetized currency are highlighted A date wise summary of cash deposited is also attached to it for your ready reference From this summary and statements, the above facts may please be verified

In this respect, it is to submit that while filing the return of income, in the details of Bank A/cs. Cash deposited between 09.11.16 to 30.12.16 is erroneously mentioned to be Rs,2,73,92,500/- as against the correct figure of Rs.1,08,82,500/- inadvertently It is a clerical error and how it has crept in, is beyond our imagination. On scrutinizing the A/cs, it has come to our notice that a sum of Rs. 1,65,10,000/- was transferred from one A/c to the other A/c with Indian Bank, wherein demonetized currency was deposited. While reporting the figure of cash deposited in this A/c (No 715751693), the amount transferred to this A/c from the other A/c was probably also got added inadvertently. It is perhaps because of this that the figure of Rs.2,73,92,500/- (Rs. 1,08,82,500/- + Rs.1,65,10,000/-) was wrongly mentioned in the Return. A detail of these transfers from other A/c is also appended for your ready reference. From all these details, it may please be appreciated that cash of Rs.1,08,82,500/- only is deposited in the A/c No.715751693 in demonetized currency. It is therefore requested that in the return, the figure of Rs.1,08,82,500/- may please be substituted for Rs.2,73,92,500/- in item No. 13 of Part B - TTI of Return of Income on Form ITR-5, and the return may please be treated to have been revised to this effect. The inconvenience caused to you in this respect is deeply regretted.

Thanking you,

Yours faithfully,
For APC Books

(Ashok Gupta)
Counsel for the Assessee

11. Considering the facts of the case in light of the documentary evidences, we are of the considered view that the basis for assuming jurisdiction u/s 263 of the Act was very much examined by the Assessing Officer while framing the assessment order u/s 143(3) of the Act and, therefore, it cannot be said that there was no application of mind by the Assessing Officer.

12. In our humble opinion, the Assessing Officer has taken a plausible view after going through various submissions made by the assessee. Therefore, the assessment order dated 14.12.2019 cannot be said to be erroneous and prejudicial to the interest of the Revenue.

13. The Hon'ble Supreme Court in *Malabar Industrial Co. Ltd.*, 243 ITR 83, has laid down the following ratio:

"A bare reading of [section 263](#) of the Income-tax Act, 1961, makes it clear that the prerequisite for the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is

erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent--if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue-- recourse cannot be had to [section 263\(1\)](#) of the Act. The provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous ".

14. We find that the Hon'ble Delhi High Court in the case of CIT Vs. Anil Kumar reported in 335 ITR 83 has held that where it was discernible from record that the A.O has applied his mind to the issue in question, the ld. CIT cannot invoke section 263 of the Act merely because he has different opinion.

15. We further find the Hon'ble Delhi High Court in the case of Vikas Polymer reported in 341 ITR 537 has held as under:

"63. We are thus of the opinion that the provisions of s. 263 of the Act, when read as a composite whole make it incumbent

upon the CIT before exercising revisional powers to : (i) call for and examine the record, and (ii) give the assessee an opportunity of being heard and thereafter to make or cause to be made such enquiry as he deems necessary. It is only on fulfilment of these twin conditions that the CIT may pass an order exercising his power of revision. Minutely examined, the provisions of the section envisage that the CIT may call for the records and if he prima facie considers that any order passed therein by the AO is erroneous insofar as it is prejudicial to the interest of the Revenue, he may after giving the assessee an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify. The twin requirements of the section are manifestly for a purpose. Merely because the CIT considers on examination of the record that the order has been erroneously passed so as to prejudice the interest of the Revenue will not suffice. The assessee must be called, his explanation sought for and examined by the CIT and thereafter if the CIT still feels that the order is erroneous and prejudicial to the interest of the Revenue, the CIT may pass revisional orders. If, on the other hand, the CIT is satisfied, after hearing the assessee, that the orders are not erroneous and prejudicial to the interest of the Revenue, he may choose not to exercise his power of revision. This is for the reason that if a query is raised during the course of scrutiny by the AO, which was answered to the satisfaction of the AO, but neither the query nor the answer were reflected in the assessment order, this would not by itself lead to the conclusion that the order of the AO called for

interference and revision. In the instant case, for example, the CIT has observed in the order passed by him that the assessee has not filed certain documents on the record at the time of assessment. Assuming it to be so, in our opinion, this does not justify the conclusion arrived at by the CIT that the AO had shirked his responsibility of examining and investigating the case. More so, in view of the fact that the assessee explained that the capital investment made by the partners, which had been called into question by the CIT was duly reflected in the respective assessments of the partners who were I.T. assesseees and the unsecured loan taken from M/s Stutee Chit & Finance (P) Ltd. was duly reflected in the assessment order of the said chit fund which was also an assessee.”

64. *Since in the instant case the A.O after considering the various submissions made by the assessee from time to time and has taken a possible view, therefore, merely because the DIT does not agree with the opinion of the A.O, he cannot invoke the provisions of section 263 to substitute his own opinion. It has further been held in several decisions that when the A.O has made enquiry to his satisfaction and it is not a case of no enquiry and the DIT/CIT wants that the case could have been investigated/ probed in a particular manner, he cannot assume jurisdiction u/s 263 of the Act. In view of the above discussion, we hold that the assumption of jurisdiction by the DIT u/s 263 of the Act is not in accordance with law. We, therefore, quash the same and grounds raised by the assessee are allowed.”*

16. The Hon'ble Bombay High Court in the case of Gabriel India Ltd 203 ITR 108 has held as under:

"The power of suo motu revision under subsection (1) is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision under this sub-section, viz., (i) the order is erroneous; (ii) by virtue of the order being erroneous prejudice has been caused to the interests of the Revenue. It has, therefore, to be considered firstly as to when an order can be said to be erroneous. We find that the expressions "erroneous", "erroneous assessment" and "erroneous judgment" have been defined in Black's Law Dictionary. According to the definition, "erroneous" means "involving error; deviating from the law". "Erroneous assessment" refers to an assessment that deviates from the law and is, therefore, invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the Assessing Officer in fixing the amount of valuation of the property. Similarly, "erroneous judgment" means "one rendered according to course and practice of court, but contrary to law, upon mistaken view of law; or upon erroneous application of legal principles".

12. From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax 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. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. It may be said in such a case that in the opinion of the Commissioner the order in question is prejudicial to the interests of the Revenue. But that by itself will not be enough to vest the Commissioner with the power of suo motu revision because the first requirement, viz., that the order is erroneous, is absent. Similarly, if an order is erroneous but not prejudicial to the interests of the Revenue, then also the power of suo motu revision cannot be exercised. Any and every erroneous order

cannot be the subject-matter of revision because the second requirement also must be fulfilled. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed. We, therefore, hold that in order to exercise power under sub-section (1) of [section 263](#) of the Act there must be material before the Commissioner to consider that the order passed by the Income-tax Officer was erroneous in so far as it is prejudicial to the interests of the Revenue. We have already held what is erroneous. It must be an order which is not in accordance with the law or which has been passed by the Income-tax Officer without making any enquiry in undue haste. We have also held as to what is prejudicial to the interests of the Revenue. An order can be said to be prejudicial to the interests of the Revenue if it is not in accordance with the law in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised. There must be material available on the record called for by the Commissioner to satisfy him prima facie that the aforesaid two requisites are present. If not, he has no authority to initiate proceedings for revision. Exercise of power of suo motu revision under such circumstances will amount to arbitrary exercise of power.

It is well-settled that when exercise of statutory power is dependent upon the existence of certain objective facts, the authority before exercising such power must have materials on record to satisfy it in

that regard. If the action of the authority is challenged before the court it would be open to the courts to examine whether the relevant objective factors were available from the records called for and examined by such authority.

The Income-tax Officer in this case had made enquiries in regard to the nature of the expenditure incurred by the assessee. The assessee had given detailed explanation in that regard by a letter in writing. All these are part of the record of the case. Evidently, the claim was allowed by the Income-tax Officer on being satisfied with the explanation of the assessee. Such decision of the Income-tax Officer cannot be held to be "erroneous" simply because in his order he did not make an elaborate discussion in that regard. Moreover, in the instant case, the Commissioner himself, even after initiating proceedings for revision and hearing the assessee, could not say that the allowance of the claim of the assessee was erroneous and that the expenditure was not revenue expenditure but an expenditure of capital nature. He simply asked the Income-tax Officer to re-examine the matter. That, in our opinion, is not permissible. Hence the provisions of section 263 of the Act were not applicable to the instant case and, therefore, the commissioner was not justified in setting aside the assessment order."

17. Considering the facts of the case in hand, as discussed elsewhere, and in light of the judicial decisions discussed hereinabove, we are of the considered opinion that the assessment order dated 14.12.2019 framed u/s 143(3) of the Act is neither erroneous nor prejudicial to the interest of the Revenue. Therefore, the assumption of jurisdiction u/s 263 of the Act by the Id. CIT is bad in law. We, accordingly, set aside the order of the Id. CIT dated 23.12.2011 and restore that of the Assessing Officer dated 14.12.2019.

18. In the result, the appeal of the assessee in ITA No. 138/DEL/2022 is allowed.

The order is pronounced in the open court on 26.05.2022 in the presence of both the rival representatives.

Sd/-

[N.K. CHOUDHRY]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 26th May, 2022.

VL/

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	