

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

**BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 2014/MUM/2021
Assessment Year: 2011-12**

Mahesh Arvind Tilve, Flying Kite 204, B Wing, Neptune Living Point, LBS Marg, Bhandup (West), Mumbai - 400078 PAN: AAAPT1010B	Vs.	Principal Commissioner of Income Tax, Mumbai -17, Room No. 120, 1 st Floor, Kautilya Bhavan, C-41 to C-43, G Block, Bandra Kurla Complex, Bandra (East), Mumbai - 400051
(Appellant)		(Respondent)

Assessee by : Shri Vimal Punmiya (AR)

Revenue by : Shri Surendra Kumar (CIT DR)

Date of Hearing : 26/04/2022
Date of Pronouncement: 03/06/2022

ORDER

PER S. RIFAUR RAHMAN, AM

This is an appeal filed by the assessee against the order dated 26.02.2021 of Learned Principal Commissioner of Income Tax (Appeals)-54, Mumbai [hereinafter in short 'Ld. PCIT'] for the assessment year 2010-11.

2. Brief facts of the case are that the Ld. PCIT, Mumbai – 17 while verifying the assessment order passed u/s 143(3) read with Section 147 of the Income Tax Act, 1961 (in short 'Act') observed that as per the assessment order dated 14.12.2018 determined the total income of Rs. 20,52,430/-. He observed that during the assessment, assessee has paid an amount of Rs. 3,75,000/- in cash for purchase of residential and commercial premises on 16.09.2010 during the

financial year 2010-11. He observed that during the course of search and seizure action conducted u/s 132 of the Act, on M/s Neptune Venture and Development Pvt. Ltd., it was established that such payments made in cash for purchase of properties by buyers is on money payment which is not recorded in the books of accounts. However, he observed that the AO had merely accepted the justification of cash payments on the basis of cash ledger, without making any link to bank account or any other reliable documents. He observed that the above issue was not considered by the AO while framing assessment order in this case. Therefore, the AO has passed the assessment order without making necessary enquiries and verification in these aspects which have been made to ascertain the relevant facts for the purpose of deciding the issue . Accordingly, he invoked Explanation 2 to sub-section 1 of Section 263 of the Act and treated the assessment order as erroneous in so far as it is prejudicial to the interest of the revenue. Accordingly, Ld. PCIT issued notice u/s 263 of the Act and in response, the assessee submitted that an amount of Rs. 3,75,000/- from cash in hand and during the assessment proceedings, the cash ledger showing opening balance of the cash in hand and withdrawal from banks were placed before the AO and revision proceedings u/s 263 of the Act is not justified after considering the submissions of the assessee.

3. Ld. PCIT observed that assessee has shown opening balance of Rs. 2,73,710/- and no documentary evidence was furnished to substantiate the above said opening cash balance and neither the AO has called for any details regarding the above. Further, he observed that during the assessment year, assessee has shown drawing of merely Rs. 75,400/- for the entire year. Therefore, by relying on several judicial decisions and justified the revision proceedings and he observed that the failure of the AO with regard to determining correct cash in hand without enquiry into the insufficient drawing of the assessee and accepted cash ledger without necessary investigation has to be recorded as erroneous in so far as it is prejudicial to the interest of the

revenue. Accordingly, he directed the AO to conduct the requisite enquiries to arrive at the correct conclusion as per law and frame the assessment order *denovo*.

4. Aggrieved, assessee is in appeal before us arising following grounds of appeal:

- “1. *The Learned Pr. CIT, Mumbai-17 has erred in law and on facts and circumstances of the case in exercising its revisionary powers by passing Order u/s. 263 of the Act, in set aside the Assessing Officer’s Order dated 14-12-2018 passed w/s. 143(2) r.w.s. 147 of the Act, in respect of cash payments of Rs.3,75,000/made by the Appellant towards purchase of Car Parking Place from M/s. Neptune Ventures & Developers Pvt. Ltd.*
2. *The Learned Pr. CIT, Mumbai-17 has erred in law and on facts and circumstances of the case in coming to conclusion that the Assessing Order had merely accepted the justification of cash payments of Rs.3,75,000/- on the basis of cash ledger, without making link to bank account or other reliable documents.*
3. *The Learned Pr. CIT, Mumbai-17 has erred in law and on facts and circumstances of the case in coming to conclusion that the Assessing Officer has passed the order without making the necessary enquiries and verification in these aspects which should have been made to ascertain the relevant facts for the purpose of deciding the issue.*
4. *The Learned Pr. CIT, Mumbai-17 has erred in law and on facts and circumstances of the case in not accepting the details / information and explanation furnished by the Appellant, that was accepted by the Assessing Officer, without making any concrete findings and pointing out any mistakes or fallacies committed by the Assessing Officer.*
5. *The learned Pr. CIT, Mumbai-17 differed in her opinion with that of Assessing Officer, without furnishing any reasons or findings.*

6. *The Learned Pr. CIT, Mumbai-17 has erred in law and on facts and circumstances of the case in not serving the order passed u/s. 263 to the Appellant.*
7. *The Appellant craves leave to add to alter or modify any of the above Grounds of Appeal.”*

5. At the time of hearing, Ld. AR brought to our notice page 2 of paper book, it is return of income filed by the assessee and further he brought to our notice page 16 of the paper book which is revised return of income filed by the assessee against the notice issued u/s 148 of the Act, he submitted that the AO accepted the revised return of income. He submitted that Ld. PCIT initiated proceedings u/s 263 of the Act with the reasons that AO has not considered Rs. 3,75,000/- paid to the builder. In this regard, he brought to our notice page 10 of paper book which is 148 notice issued by the AO along with Annexure in which he submitted that the re-assessment proceedings were initiated only to investigate on money payment made to M/s Neptune Venture and Development Pvt. Ltd. and in reference to Annexure which is specifically asked by the AO regarding the cash payment of Rs. 3,75,000/-. Further, he brought to our notice page 27 of paper book which is 142(1) notice and along with the notice Annexure was sent to the assessee with the specific enquiry about the purchase of immovable property during this year. Further, assessee was asked for prove details of sources of cash credit paid amounting to Rs. 3,75,000/-. Further, he brought to our notice at page 22 of the paper book in which assessee has filed a letter dated 22.04.2018 in response to notice issued u/s 148 of the Act, in which assessee has explained the reason for making the cash payment. Further, he brought to our notice at page 26, 27, 28 and 32 of the paper book to submit that assessee had filed copies of the ledger copy of cash book to prove the availability of cash of Rs. 3,75,000/- before the AO. He further, submitted that AO has verified all the issue relating to the cash availability of Rs. 3,75,000/- in detail and accepted the same. He brought to our notice at page 73 of the paper book which is notice u/s 263 of the Act and submitted that

exactly the same issue was raised by the Ld. PCIT. He prayed that the assessee has already explained availability of cash balance before AO and AO has verified the same had taken one of the possible view and now PCIT cannot take a different and divergent view to the AO and treating the assessment order as erroneous and prejudicial to the interest of the revenue.

6. On the other hand, Ld. DR relied upon the order passed by the Ld. PCIT.

7. Considered the rival submissions and material placed on record. He observed that the assessment was reopen specifically to verify the cash transactions and cash payment made by the assessee to the builder as on money and assessee has filed all the relevant information before the AO to explain the availability of cash and sources of the cash. AO has accepted the detailed submissions made by the assessee. On going through statements submitted by the assessee, we observed that assessee explained the source of cash even though drawings are less but still assessee has sufficient cash to make on money payment. Therefore, AO has accepted the submissions of the assessee and took the one of the possible view and there is no requirement of making further investigation and assessee has correlated the bank drawing in the cash book. Therefore, Ld. PCIT has initiated proceedings to verify the same issue, there is no substance in the views expressed by Ld. PCIT and merely relying in explanation to section 263(1) for substituting his other possible view, will not render the assessment order erroneous. We do not find any reason to upheld the revision proceedings and accordingly 263 order is set aside.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 03.06.2022.

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 03.06.2022
Alindra, PS

आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.
सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai