

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Ms. Madhumita Roy, Judicial Member**

**ITA Nos. 664/Ahd/2019 & 118/Ahd/2018
Assessment Year 2014-15**

Shri Bhogilal Kesharbhai Patel, A/6, Madhavkunj Society, Polytechnic Road, Himatnagar-383001 PAN No: AZQPP5297F (Appellant)	Vs	The Pr. Commissioner of Income-tax-2, Ahmedabad & ITO S.K. Ward-4, Himmatnagar (Respondent)
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**Appellant by : Shri P.F. Jain, A.R.
Respondent by : Shri Ajai Pratap Singh, CIT/D.R.
& Shri Mukesh Kumar Sharma, Sr. D.R.**

Date of hearing : 05-04-2022
Date of pronouncement : 24-06-2022

आदेश/ORDER

PER : ANNA PURNA GUPTA, ACCOUNTANT MEMBER:-

The present appeals relate to the same assessee and pertain to the same assessment year (A.Y) 2014-15 ,against orders passed by the Ld. Pr. Commissioner of Income Tax -2, Ahmedabad, (in short referred to as PCIT), dated 22-03-2019, in revisionary proceedings u/s. 263 of the Act and against the order of the Ld. CIT(A)-2, Ahmedabad u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the "Act") in appeal against the

order passed by the Assessing Officer in consequential proceedings to the revisionary order.

2. Since both the appeals are inter-related they were heard together and are being dealt with by this common consolidated order.

2.1 We shall first be dealing with appeal of the Assessee against the order passed by the Ld. PCIT u/s. 263 of the Act in **ITA No. 664/Ahd/2019**.

3. The grounds raised by the Assessee read as under:

- 1. The Id.Pr.C.I.T.-2, Ahmedabad has erred in law and on facts in initiating proceedings u/s.263 against the assessee in respect of order passed u/s. 143(3) of the Act.*
- 2. The Proceedings u/s.263 are bad in law and on facts and] without jurisdiction inasmuch as that the issue under consideration was already under appeal which has been duly adjudicated by the CIT(A).*
- 3. The order passed u/s.143(3) by the A.O. was after considering various submissions of the assessee and] hence, there was no justification for resorting to proceedings u/s.263 of the Act.*
- 4. On the facts of the assessee, no proceedings u/s.263 ought to have been initiated.*

3.1. As transpires from the order of the Ld. PCIT before us, the proceedings u/s. 263 of the Act were initiated by the Ld. PCIT finding that the assessment order had been passed without making necessary enquiries regarding the genuineness of the agricultural income Of Rs.39,56,250/- returned as exempt by the assessee. The Ld. PCIT noted that despite the assessee's case being selected for limited scrutiny for examining agricultural income returned and the genuineness of the agricultural income having

been doubted in the preceding assessment year i.e. A.Y. 2013-14 and addition made of the entire agricultural income so returned in that year, the A.O. had failed to examine the agricultural income returned by the assessee during the impugned year from the aspect of the genuineness of the same. That the Assessing Officer had finalized the assessment and worked out the quantum of agricultural income and related expenses based on the bills submitted before him without doubting its genuineness.

Para 2 of the Ld.PCIT's order narrates the above as under:

2. On verification of records, it is seen that despite granting multiple opportunities during the assessment proceeding requesting him to submit the documentary evidences to prove the genuineness of agricultural income, the assessee submitted skeleton details in piecemeal only on 25/11/2016, 21/12/2016 and 26/12/2016 thereby depriving the assessing officer to have a fullfledged verification regarding genuineness of agricultural income disclosed by the assessee and the expenses claimed against such agricultural income. Due to the imminent time barring nature of the assessment proceedings, the Assessing Officer proceeded for finalising the assessment within the available time, based on what was submitted by the assessee. Accordingly, the Assessing Officer worked out the quantum of agricultural income and related expenses based on the bills submitted before him without doubting its genuineness. What is important here is the fact that in the preceding year, i.e. AY 2013-14, the verifications of bills were made by the then Assessing Officer and the sale bills of agricultural produce were found to be fake due to which the Assessing Officer had treated the so claimed agricultural income as non-genuine and had taxed it as "income from other sources". In view of the findings arrived at during AY 2013-14, it was incumbent upon the Assessing Officer to make enquiries about the genuineness of bills for AY 2014-15 also instead of accepting these without ascertaining their genuineness, especially when the case was selected for scrutiny to verify/examine the Large Agricultural Income. Looking to the facts and circumstances of the case, it is clear that the impugned order was passed without making proper inquiries or verifications and based on whatever limited information furnished by the assessee, under the belief of their being true and correct. Therefore, in view of the Explanation 2(a) of section 263 of the Act, the order passed by the Assessing Officer was become erroneous in so far as it is

prejudicial to the interest of revenue and requires to be revised u/s 263 of the Act.

4. We have further noted that during proceedings before the Ld. PCIT, it was pointed out that the agricultural income returned by the assessee for A.Y. 2013-14 had been accepted in appeal by the Ld. CIT(A).

4.1 We have gone through the order of the Id. CIT(A) for A.Y. 2013-14 placed before us at paper book page no. 20 to 35 and have noted for the same that during appellate proceedings, the assessee had filed additional evidences submitting copies of sales bills of agricultural produce and records of land ownership to substantiate the genuineness of his claim of agricultural income. The same was forwarded to the A.O. for his comments by the Ld. CIT(A) and copy of the remand report of the A.O. obtained was forwarded to the assessee for his comments on the observations made by the A.O. After considering all of the above, the Ld. CIT(A) held that the agricultural income returned by the assessee to the extent of Rs. 31,54,832/- to be genuine noting the very vital fact that the assessee was owner of the 32 acres of land and had submitted sales bills of agricultural produce in which no infirmity had been pointed out by the A.O. The relevant findings of the Ld. CIT(A) at para 5.7 of his order is as under:

5.7. I have carefully considered the facts of the case, assessment order submission, remand report and rejoinder filed by the appellant. The appellant has shown agriculture income of Rs.29,87,600/-. The AO during the assessment proceedings called for the sales bill and found that the bills submitted were non-genuine, and therefore, added the entire agriculture income as income from other sources. The appellant during appellate proceedings has submitted that the accountant has submitted the manipulated bill before the AO without his

knowledge. The appellant submitted evidence of ownership of land and sales bill of the agriculture produce which was forwarded to the AO for his comments. The AO without examining" the bills have stated that new bill submitted is only thwart the result of inquiry conducted by the AO which cannot be allowed.

5. It is evident therefore that the very basis of the Id. PCIT for finding the assessment order erroneous, on account of no enquiry having been conducted by the A.O. on the genuineness of the claim of agricultural income during the impugned year despite adverse findings by the AO in this regard in the assessment framed for the preceding year, was demonstrated to have not existed at all. The findings of the A.O. in the preceding year that the agricultural income was bogus and in genuine already stood reversed by the Id. CIT(A) who found the claim to be genuine. Therefore the very basis for the findings by the Id. PCIT that the assessment order was erroneous did not survive.

6. The Ld.PCIT has dealt with aspect at para 3.3 of his order dismissing it as inconsequential since as per the Ld.PCIT the decision of the Ld.CIT(A) was not accepted by the department but no appeal was filed on account of the bar to the same by the CBDT because of the low tax effect involved.

6.1 We are not impressed with the same. The fact as it stands is that the very basis with the Ld.PCIT for holding the assessment order erroneous was the lack of inquiry regarding the genuineness of the agricultural income returned despite the AO having found agricultural income returned in the preceding year to be not genuine. Evidently the Ld.CIT(A) examined all

documents in the preceding year ,confronted them to the AO also for verification and comments and thereafter gave a categorical finding that the income was genuine. He also took note of the fact of ownership of agricultural land by the assessee. This decision of the Ld.CIT(A) prevailed at the time the proceedings u/s 263 of the Act in the present case were undertaken. The assessment order was merged in the CIT(A)'s order . The agricultural income was found to be genuine. Therefore there was no error in the assessment order of the impugned year for not having examined the genuineness of the agricultural income.

7. For the above reason alone we hold that there being no error in the order of the AO accepting the genuineness of the agricultural income returned by the assessee without inquiry, the Ld.PCIT had no power to revise the same.

8. The order passed by the Ld.PCIT u/s 263 of the Act is therefore set aside.

9. Appeal of the Assessee is allowed in above terms.

ITA No. 118/Ahd/2018 for A.Y. 2014-15

10. Since the present appeal is in the context of proceedings initiated in pursuance to the direction of the Ld. PCIT in his order passed u/s. 263 of the Act which order we have held above is not sustainable in law and has been set aside, the consequential order passed u/s. 143(3) of the Act also

does not survive. The additions made therefore in the consequential order passed u/s. 143(3) of the Act r.w.s 263 of the Act does not survive.

11. The appeal of the assessee is therefore is allowed in above terms.

12. In effect, both the appeals field by the Assessee are allowed in above terms.

Order pronounced in the open court on 24-06-2022

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER True Copy
Ahmedabad : Dated 24/06/2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद