

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DLEHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 1149/Del/2020
Assessment Year: 2016-17**

Avnish Chandra (HUF), vs. Pr. C.I.T.,
Moh. Shree Narayananj, Moradabad.
Ujhani, Budaun.

PAN : AAAHA6924M
(Appellant)

(Respondent)

Appellant by : ShriVivekAgarwal, CA
Respondent by : Ms.ShefaliSwaroop, CIT/DR

Date of hearing : 05.05.2022
Date of order : 30.05.2022

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Assessee against the order dated 31.01.2020 impugned herein, passed by the learned Principal Commissioner of Income-tax, Moradabad (in short 'Id. Commissioner') u/s. 263 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2016-17.

2. Brief facts, relevant for adjudication of this appeal, are that the Assessee by declaring an income of Rs.8,78,090/- had filed its return of income on dated 27.07.2016. Subsequently, the case of the Assessee was selected for scrutiny on the reason "large cash deposit in saving bank account(s), whether cash deposits have been made from disclosed sources". The AO by passing the assessment order dated 24.08.2017 accepted the returned income of the Assessee.

3. Subsequently, the Id. PCIT scrutinized the assessment order and while exercising the powers entrusted u/s. 263 of the Act, issued notice dated 16.10.2019 to the Assessee against which the Assessee filed its reply and thereafter considering the reply of the Assessee and Assessment record, revised the assessment order u/s. 263 of the Act by observing that during the year under consideration the Assessee had deposited cash of Rs.68,15,000/- in his saving bank accounts. It has been claimed by the Assessee that these deposits were made out of trading receipts and Girvi receipts. During the assessment proceedings, no specific questionnaire was issued. Even the bank account and reconciliation account were not obtained. Simply, the submissions and documents furnished by the Assessee were accepted and assessment was completed on returned income. Genuineness of deposits of Rs.68,15,000/- were not properly examined. No cash book/bank book was filed during the assessment proceedings, money lending license is also not on record, no KYC documents of the borrowers are available at present as stated by Assessee. Copies of Form 8 are stated to have been returned to borrowers and corresponding copies have not been maintained. The Assessing Officer has passed the assessment order in a very routine and casual manner even without making required enquiry. Thus, on-going through the record, on facts of the case, the conclusion drawn by the then Assessing Officer on the issue involved is not in accordance with the provisions of law and the assessment order dated 24.08.2017 for A.Y. 2016-17 is erroneous and bad in law in so far as prejudicial to the interest of Revenue.

4. The Assessee, being aggrieved, is in appeal before us and in support of its case mainly focussed that from the assessment order it clearly reflects that the books of account maintained were produced during the course of assessment proceedings and they

were test checked whereas in the impugned order, in para No. 6, it is mentioned that no cash book/bank book was filed during the assessment proceedings. Therefore, the fact goes contrary and shows that the order impugned herein has been passed in haste manner and without analysing and considering the particular facts and circumstances of the case.

The Assessee in support of its case also relied upon the judgment passed by Hon'ble Bench at Agra in the case of M/s. Hardik Resort Pvt. Ltd. vs. PCIT {ITA NO. 358/Agra/2019 decided on 14-06-2021} and specifically emphasised on para 9 and 10 of the order, wherein it was observed by the Hon'ble Tribunal:

“IX. The proceedings u/s 263 were invoked by the Pr. Commissioner of Income tax arbitrarily, without any justified basis and the same are totally unwarranted and illegal. In order to invoke the provisions of section 263 two conditions are essential i.e., order should be erroneous and prejudicial to the interest of the revenue. In the instant case the order is neither erroneous nor prejudicial to the interest of revenue. In fact the assessing officer had completed the assessment keeping in view the guidelines instructions issued by the CBDT and making thorough inquiries in respect of issues covered under Limited Scrutiny. In the instant case the Ld. Principal Commissioner of Income tax had no jurisdiction within the meaning of section 263 to invoke the said provisions. The Ld. Pr CIT has neither demonstrated incorrect assumption of facts nor alleged the incorrect application of law successfully.

X. The Revisional Commissioner is expected to show that the view taken by the AO is wholly unsustainable in law before embarking upon exercise of revisionary powers. The revisional powers cannot be exercised for directing a fuller inquiry to merely find out if the earlier view taken is erroneous particularly when a view was already taken after inquiry. If such course of action as interpreted by the Revisional Commissioner is permitted, Revisional Commissioner can possibly find fault with each and every assessment order without himself making any inquiry or verification and without establishing that assessment order is not sustainable in law. This would inevitably mean that every order of the lower authority would thus become susceptible to Section 263 of the Act and, in turn, will cause serious unintended

hardship to the tax payer concerned for no fault on his part. Apparently, this is not the intent of legislature. It is only in a very gross case of inadequacy in inquiry or where inquiry is per se mandated on the basis of record available before the AO and such inquiry was not conducted, the revisional power so conferred can be exercised to invalidate the action of AO. The AO in the present case has not accepted the submissions of the assessee totally and has passed the order in after making several additions and disallowances on the issues involved impliedly after due application of mind. Hence, the very foundation for exercise of revisional jurisdiction is sorely missing in the present case. Reliance is placed on Torrent Pharmaceuticals Ltd. Vs. CIT (ITAT Ahmedabad) (2018) 173 ITD 0130”

5. On the contrary the Ld. DR vehemently supported the impugned order and submitted that the order under challenge is a reasoned, logical and appropriate order under the facts and circumstances of the case.

6. Heard the parties and perused the material available on record. The case of the Assessee was opened for scrutiny on the reason 'large cash deposit in saving bank account(s) and whether cash deposits have been made from disclosed sources.' The Assessee claimed to be into the business of 'Money lending' and during the year under consideration had deposited cash of Rs.68,15,000/- in his saving bank account, out of trading receipts and Girvi receipts.

6.1 The Assessee before us contended that detailed and proper enquiry was done by the AO in this case and therefore the impugned order is liable to be set aside. We find that the Assessing Officer has simply written in its order *that during the assessment proceedings, the Assessee submitted that he has deposited cash in bank during F.Y. 2015-16 for Rs.68,15,000/- out of trading receipts of*

*Rs.31,68,203/- and Girvi receipts of Rs.71,48,230/- and total receipts were Rs.1,03,16,433/-. This fact has duly been examined from the books of account produced by the Assessee.*Hence we are in concurrence with the observation of the Ld. PCIT that there is nothing which can suggest that the Assessing Officer has verified the claim of opening balance of advances given and its return by the borrowers in cash qua deposits in bank account. Even no enquiry qua KYC documents of the borrowers was made to verify claim of GIRVIRECEIPS and the AO also failed to enquire about reconciliation of Bank accounts.

6.2 The Assessee before us also placed details/receipts for the period 01.04.2015 to 31.03.2016 which claimed to be 'GIRVI receipts' and submitted that the Assessee had deposited the cash in his bank out of trading receipts of Rs.31,68,203/- and Girvi receipts of Rs.71,48,230/-. We have perused the said receipts and find that nothing appears and clear from the said documents. We observe that basic foundation of doing money lending business is 'Money Lending License', which the AO was supposed to take on record for consideration of the claim qua 'GirviReceipts' but the AO failed to get and verify the requisite Licence'. Once the basic foundation i.e. 'Lending License ' for doing money lending and taking 'GIRVI' , is missing then Girvi receipts have no value .

6.3 It was also contended by the Assessee that the observation of Ld. PCIT in para no. 6 of the impugned order that no cash book/bank book was filed during the assessment proceedings, is contrary to the facts as mentioned in the assessment order wherein it is clearly mentioned that the books of account maintained were produced during the course of assessment proceedings and they

were test checked, therefore the impugned order is liable to be set aside. We have given thoughtful considerations to the contention of the Assessee and realize that the AO has failed to verify the basic foundation i.e. Licence for doing the business of money lending by the Assessee, on the basis of which the Assessee claimed to have deposited the amount under consideration. Hence the contention of the Assessee is untenable.

6.4 The order passed by the Hon'ble Bench at Agra in the case of M/s. Hardik Resort Pvt. Ltd. vs. PCIT(supra) relied upon by the Assessee is factually dissimilar hence not useful to the case of the Assessee .

6.5 All the facts enumerated above goes to show that foundation of enquiry qua claim of the Assessee is missing and the AO made the assessment order in cursory manner by conducting farce enquiry, which infact can not be termed as enquiry, hence we are of the considered view that in the instant case no enquiry qua issue involved , was done by the AO and therefore the Ld. PCIT was fully justified to reopen the case of the Assessee u/s 263 of the ACT by holding the assessment order dated 24.08.2017 for A.Y. 2016-17 as erroneous and bad in law in so far as prejudicial to the interest of Revenue.

6.5 Considering the conclusion drawn by Ld. PCIT and peculiar facts and circumstances of the case narrated above, we do not find any substantive reason and justification to interfere in the impugned order as the same do not suffer from any perversity or impropriety or illegality, consequently no interference is warranted.

7. In the result, the appeal filed by the Assessee is dismissed.

Order pronounced in the open court on 30/06/2022

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

Dated:
'aks'