

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESEIDENT
AND
SHRI PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.386/Bang/2022
Assessment year : 2017-18

Arjuns Megharajasa Khatwate, No.1, Vinay Wines, Hubli-Bellary Road, 1, Gadag – 582 101. PAN : ADDPK 6603R	Vs.	The Principal Commissioner of Income Tax, Hubli.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravi Shankar, Advocate
Respondent by	:	Smt. Susan Dolores George, CIT(OSD)

Date of hearing	:	20.07.2022
Date of Pronouncement	:	27.07.2022

ORDER

Per Padmavathy S., Accountant Member

This appeal by the assessee is directed against the order of the Principal Commissioner of Income Tax, Hubli [PCIT] dated 30.03.2022 for the assessment year 2017-18 on the following grounds:-

- “1) The order of the learned Principal Commissioner of Income-tax Hubli, passed under section 263 of the Act in so far as it is against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.

- 2) The notice issued for initiation of proceedings under section 263 of the Act, is bad in law.
- 3) The learned PCIT is not justified in law in invoking the jurisdiction under section 263 of the Act and setting aside the order of the AO, as being "erroneous and prejudicial to the interest of the revenue", which is contrary to fact, on the facts and circumstances of the case.
- 4) The learned PCIT is not justified in law in holding that the order passed by the Assessing officer is bad in law, without appreciating that there was no error in the order passed, much less prejudicial to the interest of revenue, on the facts and circumstances of the case.
- 5) The learned PCIT was not justified in appreciating that the provisions of section 263 of the Act shall be attracted only when the order is both erroneous and prejudicial to the interest of revenue and since the order passed under section 143(3) of the Act was not erroneous, much less prejudicial, the invoking of section 263 was not warranted, on the facts and circumstances of the case.
- 6) The learned PCIT was not justified in appreciating that the appellant does not carry on any business and the cash deposited was out of the turnover of the partnership and considered in the hands of the firm, consequently, there could be no inference that the cash deposited was belonging to the appellant, on the facts and circumstances of the case.
- 7) The learned CIT was not justified in making a revision on the premise that the appellant has not filed any documents to demonstrate that the error of PAN linking, when the letter to the bank was filed within the financial year and much before assessment, on the facts and circumstances of the case.
- 8) The appellant craves leave to add, alter, amend, substitute, change and delete any of the grounds of appeal.
- 9) For these grounds that may be urged at the time of hearing of appeal, the appellant prays that appeal may be allowed

for the advancement of substantial cause of justice and equity.”

2. The brief facts of the case are that assessee is an individual earning business income, interest income and partners salary from a partnership, which is in the retail business of liquor, by the trade name, M/s Vinay Wines, apart from income from other sources. He has returned income of Rs. 3,61,710/-. The case has been selected for scrutiny under CASS. Notice U/s 143(2) was issued dated 24/09/2018 and Notice U/s 142(1) of the Act also issued, for which the Assessee filed details from time to time.

3. The AO issued a detailed enquiry seeking clarification in respect of the cash deposits during the demonetisation period, which the appellant has explained by stating that the cash deposits were in fact the deposits of the firm and the PAN of the appellant was inadvertently filed as part of KYC and the necessary corrections have been filed with the bank to treat the PAN of the firm and not the firm of the appellant partner, which has been filed during the assessment proceedings and the source of the cash was also explained and the AO has accepted the explanation offered that the cash deposits as per the information with the department, was the business receipts of the firm and the return of income of the assessee was accepted.

4. The AO has also verified the turnover of the firm, the purchases and the bank accounts of the assessee, which has been considered in finalising the accounts for the year and thus accepted that the cash deposited into the bank account of the firm was erroneously reported as

that of the appellant and that the appellant does not carry on any separate business apart from the partnership.

5. The Current Account No.00000030443930110 at State Bank of India, Gadag Branch is in the name of Partnership Firm viz., VINAY WINES, Gadag. The appellant has also filed a copy of the letter filed with the bank, instructing them to remove the PAN of the appellant and record the PAN of the firm, which is available on the record and not in dispute.

6. The AO upon verification of the details filed, has accepted the return of income and passed an order under section 143(3) of the act.

7. The PCIT has issued a proposal notice seeking to revise the order under section 263 of the Act, on the premise that the cash deposited in the firm was in fact the deposits of the appellant and thus the order passed under section 143(3) of the Act was erroneous and prejudicial to the interest of revenue.

8. The appellant has filed a reply and submitted that the order of the AO was proper and that the proposal to revise the order of assessment was required to be dropped.

9. The PCIT, however, proceeded to hold that the order passed was prejudicial to the interest of revenue and set aside the order of assessment and directed the Assessing officer to pass an order afresh. The relevant observations of the PCIT are as follows:-

“6. As discussed above, the assessee has failed to furnish a satisfactory explanation regarding the source of cash deposits, abnormal increase in sales during the period from 1.11.16 to 8.11.16 compared to other parts of the year and genuineness of the cash in hand as on 9.11.16. He has failed to explain the source cash deposits, increase in sales from 1.11.16 to 8.11.16 and cash in hand as on 9.11.16, not only during assessment proceedings, but even in response to the notice u/s 263. The amount of unexplained cash deposits should have been added to the assessee's income, but the Assessing Officer has not made any such addition. When the case was selected for scrutiny specifically for examining the cash deposited during demonetisation, it was necessary for the Assessing Officer to examine the source of cash deposited and carry out necessary inquiries in accordance with law and CBDT guidelines. The Assessing Officer has not conducted necessary inquiries and has not made the additions required as per law. Considering these facts, the assessment order is erroneous and prejudicial to the interests of Revenue in terms of section 263.”

10. Aggrieved, the assessee is in appeal before the Tribunal.
11. The Id. AR submitted that the order passed must be both erroneous and prejudicial to the interest of revenue. The learned PCIT in the order passed under section 263 of the Act, has held primarily that:-
 - i. The assessing officer has not made enquiries if the opening cash was genuine.
 - ii. If the cash was unexplained, the same was to be added U/s 68 and the AO has not made additions required as per law.
12. The Id. AR further submitted PCIT has proceeded on the premise that the assessing officer has not made an enquiry into the source of the cash deposits, which in the belief of the PCIT was

presumably unexplained. The PCIT, has also inferred that the cash deposits if unexplained, the same ought to have been added as unexplained income by invoking section 68 of the Act.

13. It was submitted that the assessee has in the revision proceedings filed details of queries made by the assessing officer and also submissions made in the assessment proceedings, along with a submission that there was no error in the order passed and that the assessing officer has made proper enquiry and verification of documents and thus there was no error in the order of assessment, much less prejudicial to the interest of revenue.

14. The Id. AR submitted that the assessee has also attached the entire documents filed during the assessment proceedings for the benefit of the PCIT, which would demonstrate that the assessing officer has made enquiry as required under section 142(1) of the act and the explanation offered was accepted as being true and correct. Thus, there was no instance of inadequate enquiry by the assessing officer and the revision proceedings were not called for.

15. The PCIT failed to appreciate that the AO has considered the fact that cash deposited was the business receipts of the partnership firm and not belonging to the assessee. The AO has verified the bank account of the firm, financials, letter filed with the bank for change of PAN of partner etc. and arrived at a satisfaction that the assessee does not carry on any business and the deposits belonged to the firm. Thus the order of the AO was on appreciation of the clarification offered by

the assessee in respect of source of cash deposited as being out of business turnover.

16. The Id AR submitted that the PCIT is restrained from revising assessment in a routine manner based on his only belief that the order was erroneous and prejudicial to the interests of the revenue on the difference of opinion and where there are two opinions possible, it is beyond the scope of revision. The revision of assessment cannot be made on the mere non-mentioning or inference of any particular issue in the assessment order. The AO is not required to mention each and every detail and revision cannot be made on the sole reason that certain point has not been discussed at length or it does not find specific mention. Reliance was placed on the decisions of *Malabar Industrial Co. Ltd. v. CIT* [2000] 243 ITR 83 (SC) and *CIT v. Sunbeam Auto Ltd.* [2011] 332 ITR 167 (Del).

17. The Id. AR drew our attention to the evidence submitted before the AO (placed on record in the PB) to substantiate that the impugned credits are made into the bank account of the firm and the PAN was wrongly linked to the assessee's account.

18. The Id. DR vehemently supported the order of the PCIT and submitted that there is nothing in the AO's order about a proper enquiry into the cash deposits and the AO has passed a cryptic order without mentioning the details of documents submitted before him. He relied on the para 4 of the PCIT's order which is reproduced below :-

“In view of these facts, the assessment order was considered to be erroneous and prejudicial to the interests of revenue, in terms of Sec. 263. It was therefore, proposed to pass an order u/s. 263 in this case. A show cause notice was issued giving the assessee an opportunity to explain why the assessment order be not revised u/s. 263. The notice was sent by e-mail and was duly delivered. In response, the assessee filed his submissions online in which he has stated that his PAN was wrongly linked to that of the firm M/s. Vinay Wines. He has claimed that all the cash deposits during the demonetization period belong to the firm. The submissions of the assessee have been carefully considered. The assessee has not furnished any evidence to substantiate his claim that his PAN was wrongly linked to that of the firm M/s. Vinay wines. The assessee has not explained the issues discussed above and has not filed necessary evidence along with its above reply, to substantiate his claims. In the absence of necessary evidence, the assessee's reply is not acceptable without further verification. In view of these facts, the assessee's reply cannot be accepted. As discussed in the last para, the AO shall give the assessee an opportunity to furnish necessary evidence to establish his claim and explain why the proposed additions be not made to income. The AO shall consider the facts, and the results of any enquiries made, as well as the explanation furnished by the assessee, and make a fresh assessment in accordance with law.”

19. We have considered the rival submissions and perused the material on record. The assessee is a partner in a firm under the name, Vinay Wines. The PCIT in his order has mentioned the details of cash deposited on various dates and has stated that the AO has not verified these credits which should have been brought to tax u/s. 68. On perusal of the details at pages 59 to 61 of assessee's PB, we notice that these cash deposits were made in the State Bank of India [SBI] into the account No.00000030443930110 in the name of the firm, Vinay Wines. It is the contention of the Id. AR that the assessee has inadvertently mentioned his personal PAN instead of the firm's PAN

while submitting the details to the Bank which fact is evidenced in the communication (Cash Transactions 2016) from the Income Tax Department at page 35 of the PB where the Response is mentioned as “*The account does not relate to this PAN*” which is as under:-

PAN :ADDPK6603R

Transaction Number :3636931491

Cash Transactions 2016		
INCOME TAX DEPARTMENT		
Information from Bank/Institution		
1.	Bank/Institution	SBI
2.	Account Number	36443930110
3.	Transaction	Cash Deposit
4.	Amount	4040900
5.	Response	The account does not relate to this PAN

20. It is also brought to our notice that the assessee has written to the SBI stating that personal PAN details are submitted in the transaction by oversight instead of the firm’s PAN. This fact of wrong tagging of the personal PAN in the firm’s transaction is mentioned in the letter submitted to the AO at page 49 of the PB and is also recorded in para 4 of the PCIT’s impugned order. The Id. AR also submitted that similar details were called for in the previous year i.e. AY 2016-17 also and the assessee made similar submissions that the account belonged to the firm which was accepted by the department. We also notice that the assessee has submitted various details including the cash deposits into the bank account of the firm to the AO during the course of assessment proceedings. Thus, upon consideration of the various details, evidence and submissions of the assessee, we are convinced that the impugned

deposits belonged to the firm, Vinay Wines, in which the assessee is a managing partner. Therefore, in our considered view, the order of the AO is not erroneous and prejudicial to the interests of the revenue. Though the AO has not brought out these facts clearly in his order, taking into account the overall facts and circumstances of the case, we set aside the impugned order of the PCIT passed u/s. 263 of the Act and restore the assessment order.

21. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 27th day of July, 2022.

Sd/-

(N V VASUDEVAN)
VICE PRESIDENT

Sd/-

(PADMAVATHY S)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 27th July, 2022.

/Desai S Murthy /

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.