

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI PRAMOD KUMAR, VP AND SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.413/Mum/2022

(निर्धारण वर्ष / Assessment Years: 2015-16)

Natik Isharat Khan Flat No.501, H. No.1255 Khairane Naka, Koparkhairane, Navi Mumbai-400709.	बनाम/ Vs.	PCIT-27 R. No.401, 4 th Floor Tower No.6, Vashi Railway Station Complex Vashi, Navi Mumbai- 400703.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BJJP3723M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Shashank A. Mehta
Revenue by:	Dr. Mahesh Akhade (DR)

सुनवाई की तारीख / Date of Hearing: 28/06/2022

घोषणा की तारीख /Date of Pronouncement: 05/08/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Principal Commissioner of Income Tax-27 [hereinafter referred to as the "PCIT"], Mumbai dated 17.03.2021 for assessment year 2015-16 passed under section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. First of all, we will examine the legal ground (i.e, Ground No. 2) where in the assessee has raised the ground that the AO in the facts and circumstances of the case have taken a plausible view in respect of the income declared by the assessee and therefore, the invocation of revisional jurisdiction by the Ld. PCIT was untenable.

3. Brief facts as discerned from the assessment order is that the assessee had filed the return of income on 10.12.2016 declaring total income of Rs.2,91,890/-. The AO noted that assessee claimed to have



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income from business and from other sources. Further the AO notes that the case of the assessee was selected for “*limited scrutiny*” for the reason (i) Cash deposits for demonetization period (9th November to 30th December) as reported by SFT reporting. And thereafter, the AO noted that the assessee is an individual and claimed to have income from business of trading of fruits at APMC fruit market, Vashi and income from other sources. According to the AO, the assessee had declared turnover of Rs.28,53,500/- and declared profit of Rs.2,75,485/- u/s 44AD of the Act. In response to the AO’s show-cause notice, the assessee claimed that even though in the return of income, he mentioned to have earned income as General Commission Agent but he discontinued the same and in this assessment year (FY.2014-15, i.e, AY. 2015-16), he has carried out sales of fruits and attached the list of parties to whom purchases/sales were carried out by him. And it was brought to the notice of the AO that the purchases were from local selling agents and the same were cash transaction. The AO acknowledges in his assessment order that the assessee had provided the APMC license of his father Mr. Ishrat Yakub Khan to prove his business of trading fruits at APMC fruit market, Vashi, and even though assessee gave the name of parties to whom sales have been made, but according to AO the details of them were not forthcoming from him. The AO took note of the assessee’s bank account, and noticed that during the year total credit was to the tune of Rs.7,28,536/- and debit was to the tune of Rs.3,00,272/-. And taking note of the difference of Rs.4,28,264/- (Rs. 7,28,536 – Rs.3,00,272/-) the AO was pleased to reject the estimation of profit made by the



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assessee u/s 44AD of the Act and added the excess amount of Rs.4,28,264/- in his bank account as income from other sources. This action of the AO has been interdicted by the Ld. PCIT in exercise of his power u/s 263 of the Act. According to the Ld. PCIT, the case of the assessee was selected for “limited scrutiny” under CASS to verify whether the cash deposited has been made from disclosed sources (which factual assertion itself is erroneous as noted infra). Therefore, according to the Ld. PCIT, even though the AO added Rs.4,47,660/- as income from other sources, it should have been added u/s 68 of the Act and brought to tax by applying section 115 BBE of the Act. According to the Ld. PCIT, since the AO has not verified the details during the assessment proceedings, therefore has passed an erroneous order which was prejudicial to the interest of the revenue. Therefore, he issued show cause notice dated 04.03.2021 directing the assessee to furnish the explanation on 10.03.2021. According to the Ld. PCIT, the assessee did not comply with the show cause, therefore, he presumed that the assessee has nothing to say in respect of show cause notice issued to him. Therefore, he was pleased to set aside the assessment order dated 18.12.2017 and directed the AO to conduct proper inquiries de-novo and pass the assessment order. Aggrieved, the assessee is before us.

4. We have heard both the parties and perused the records. We note from perusal of the assessment order for AY. 2015-16 dated 18.12.2017 that the AO acknowledges that the “*the assessee’s case was selected for limited scrutiny for the reason (i) Cash deposits for demonetization period (9th November to 30th December) reported as*



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per SFT reporting”. However, the Ld. AR brought to our notice that there is ex-facie error on the issue flagged/selected for limited scrutiny itself because it says about scrutiny of cash deposits during demonetization period which happened between 08.11.2016 to 30.12.2016, whereas the assessment year under consideration is AY. 2015-16 i.e. period between 01.04.2014 to 31.03.2015 and therefore there was no question of demonetization during the relevant AY under consideration. Therefore, according to him, the issue on which limited scrutiny was invoked itself was not existing in the case of assessee for AY 2015-16. Be that as it may, it is noted that the AO had conducted inquiry in respect of the return filed by the assessee declaring total income of Rs.2,94,890/- which assessee claimed to have earned from business of trading of fruits at APMC fruit market, Vashi and income from other sources. The AO took note that the assessee has declared turnover of Rs.28,53,500/- and declared profit of Rs.2,75,485/- u/s 44AD of the Act. The AO had acknowledged that the assessee had filed the copy of the license of his father who had APMC license at Vashi Market. The AO noted from the current account of the assessee at Syndicate Bank, Vashi Branch that the assessee had total credit to the tune of Rs.7,28,536/- and debit to the tune of Rs.3,00,272/-. And therefore, after inquiry the AO added the difference of Rs.4,28,264/- which was treated as income from other sources and in that process he rejected the assessee’s computation of income u/s 44AD of the Act. This action of AO has been interdicted by the Ld. PCIT exercising his revisional jurisdiction u/s 263 of the Act. According to the Ld. PCIT, the return of income of the assessee was selected for scrutiny by CASS



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to verify the cash deposit from un-disclosed sources, which factual assertion itself was erroneous as discussed (supra). Further according to Ld PCIT, the addition made by AO to the tune of Rs.4,28,264/- as income from other sources, ought to have been added u/s 68 of the Act & taxed applying section 115BBE of the Act. Since AO has not done so (made addition u/s 68 of the Act), he concluded that the AO has not made proper inquiry during the assessment proceedings which makes the order of the AO erroneous as well as prejudicial to the revenue. Therefore, he issued one (1) show cause notice on 04.03.2021 and directed the assessee to furnish the explanation on 10.03.2021 and thereafter has passed ex-parte impugned order on 17.03.2021. According to the assessee, this order of the Ld. PCIT is bad for violation of natural justice. And has raised ground no. 1 against the action of Ld PCIT not granting proper opportunity to the assessee. In this regard, we note that the Ld. PCIT has issued show cause notice only on 04.03.2021 and has directed the assessee to furnish the reply by 10.03.2021 and finding no response has passed the ex-parte order on 17.03.2021. This action of Ld. PCIT cannot be countenanced because no reasonable opportunity has been granted to the assessee before passing the impugned order, Further, after hearing the Ld AR, we find force in the ground no. 2 raised by the assessee that the AO has taken a plausible view in the facts and circumstances of the case after conducting inquiry, so the Ld PCIT could have interfered only if he could hold that the action of AO to be un-sustainable in law. We note that the AO enquired about the cash deposit in assessee's bank account and in response to his notice the assessee brought to the notice



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of the AO that he was a trader of fruits and was conducting the business at APMC fruit market Vashi by using his father's license. And he has furnished the list of parties to whom he made the purchases/sales. And has brought to the notice of the AO that he has total turnover of Rs.28,53,500/- and declared profit of Rs.2,75,485/- u/s 44AD of the Act which was rejected by the AO and the AO having taken note of the difference of sum of money in the bank account to the tune of Rs.4,28,264/- (total credit minus debit) was brought to tax as income from other sources. According to Ld PCIT it should have been added u/s 68 of the Act. First of all it should be borne in mind that section 68 of the Act does not mandatorily requires the AO to add the cash credits found in the books of an assessee and that is precisely the reason why Parliament has used the phrase in section 68 *....the sum so credited may be charged to income tax*, instead of *shall be charged to income tax*. The AO if he is satisfied with the nature and source of credit entry has a discretion vested with him to make the addition u/s 68 or not. In this case, the AO after enquiry has not added Rs.4,28,264/- u/s 68 of the Act and instead added it as income from other sources after rejecting the books, which action in the facts and circumstances discussed (supra), according to us is a plausible view. In this regard we note that AO found that the assessee was a trader of fruits at APMC market Vashi and while doing the said business, the assessee claimed to have transacted in cash. So, the presumption in such factual back ground is that deposit of cash found in his bank account may be from the sale/purchase/business of fruits and the balance amount found in the bank the AO was of the opinion that it is



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from other sources, which is a plausible view, unless the Ld PCIT had shown/discussed about some material in his impugned order to upset the action of AO and thereby hold that [after inquiry by himself] that the view adopted by AO was un-sustainable in law. In the light of the aforesaid facts and circumstance, the AO after inquiry has treated the difference of amount (balance amount) in his bank account to the tune of Rs.4,28,264/- as income from other sources, which is a plausible view. We thus find that the Ld. PCIT on wrong assumption of facts have passed the impugned order, which cannot be sustained. And it is settled position of law that after inquiry, if the AO has taken a plausible view, then Ld PCIT while exercising the revisional jurisdiction cannot substitute his view unless the view taken by the AO is held to be unsustainable in the law, which is not the case of Ld PCIT [Refer Malabar Industries Vs. CIT 243 ITR 83 (SC)]. Therefore, in the facts and circumstances of the case, the impugned action of the Ld. PCIT is wholly without jurisdiction and therefore need to be interdicted and so, we are inclined to quash the impugned order.

5. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 05/08/2022

Sd/-

(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

Mumbai; Dated 05/08/2022.
Vijay Pal Singh, (Sr. PS)



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आदेश की 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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