

THE INCOME TAX APPELLATE TRIBUNAL
“A” Bench, Mumbai
Shri B.R. Baskaran (AM) & Smt. Kavitha Rajagopal (JM)

I.T.A. No. 793/Mum/2022 (A.Y. 2017-18)

Abhushan Jewellery (India) Pvt. Ltd. Office No.4, 2 nd Floor Building No. 74A, Sheikh Memon Street, Zaveri Bazaar, Mumbai-400 002. PAN : MUMM18849F (Appellant)	Vs.	PCIT-4 Room No. 629 6 th Floor Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Devendra Jain
Department by	Smt. Shailja Rai
Date of Hearing	13.07.2022
Date of Pronouncement	12.08.2022

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 28.03.2022 passed by Ld PCIT-4, Mumbai and it relates to the assessment year 2017-18. The assessee is challenging the validity of revision order passed by Ld PCIT.

2. The facts relating to the case are stated in brief. The assessment in the hands of the assessee for the year under consideration was completed by the assessing officer u/s 143(3) of the Act on 19-12-2019. On examination of assessment records, the Ld PCIT noticed that the assessee has deposited cash of Rs.1,03,50,000/- into its bank account during demonetization period. The Ld PCIT took the view that the assessing officer has not properly examined this issue and the same has resulted in making the impugned assessment order erroneous and prejudicial to the interests of revenue. Accordingly, he initiated revision proceedings u/s 263 of the Act.

3. The assessee objected to initiation revision proceedings, submitting that the assessing officer has made proper enquiries in respect of above said issue by raising various types of queries several times and thus, he has extensively examined the details of cash deposits made during demonetization period. The assessee submitted that the assessee has furnished the details of sales, stock details, purchase details and details of cash deposits before the AO during the course of assessment proceedings. Accordingly, it was submitted that the AO has accepted the explanations of the assessee after due application of mind. The assessee has relied upon the decision rendered by Hon'ble Supreme Court in the case of Max India Ltd (2007)(295 ITR 282)(SC) and submitted that the AO has taken a possible view and hence the impugned revision proceedings should be dropped. However, rejecting objections raised by the assessee, the Ld PCIT passed the impugned revision order holding that the assessment order passed by the Assessing Officer is rendered erroneous in so far as it is prejudicial to the interests of Revenue. Accordingly, he set aside the assessment order dated 19.12.2019 passed by the Assessing Officer and directed him to examine the sources of cash deposits made during demonetization period and redo the assessment.

4. Aggrieved by the order so passed by PCIT, the assessee has filed this appeal before the Tribunal.

5. The Learned AR submitted that the Assessing Officer has made extensive enquiry in respect of cash deposits made by the assessee into its bank account during demonetization period. The Ld A.R narrated the details of enquiries made by the AO as under:-

(a) The AO issued summons dated 24.03.2017 calling for various details. The AO has particularly asked for cash book and bank book for the period from 1.4.2016 to 8.11.2016 and from 9.11.2016 to till date. The assessee furnished those details before the AO on the very same day.

(b) The assessee furnished further details, vide its letter dated 17.3.2017 as per the instruction given by the AO. The details so given included the audited financial statements for the assessment year 2015-16 and the details of cash book and bank book for the period from 1.1.2017 to 24.3.2017.

(c) The AO issued a notice dated 18.01.2019 u/s 142(1) of the Act, wherein the AO, inter alia, asked the reasons for abnormal increase in cash deposit during demonetization period as compared to the pre-demonetization period. The assessee furnished a detailed reply dated 08-02-2019 before the AO, wherein the assessee furnished the details of bank accounts, purchase register, sales register, stock register and cash book for the period from 1.4.2016 to 31.12.2016; copies of purchase invoices for FY 2016-17; sales invoices for the period from 1.09.2016 to 31.12.2016; details of cash deposits.

(d) The AO issued another notice dated 13.5.2019 u/s 142(1) of the Act, wherein he, inter alia, called for details of comparison of cash sales during the period October and November of the year under scrutiny and previous two years. The assessee furnished the required details before the AO.

(e) The AO issued another notice dated 17-10-2019 u/s 142(1) of the Act, wherein he, inter alia, called for details of comparative sales figures of AY 2015-16, 2016-17 and AY 2017-18. The assessee furnished the details before the AO. The assessee also furnished another reply to the AO, wherein it gave the details of cash deposited into the bank accounts during the FY 2014-15 to 2018-19; copies of cash book & stock register; comparative GP and NP ratios for FY 2014-15 to 2018-19; monthwise stock position for FY 2014-15 to 2018-19; details of sales above Rs.2,00,000/-.

(f) The AO issued another notice dated 12.12.2019 u/s 142(1) of the Act, wherein he asked the assessee to explain abnormal sales made in the month of October, 2016 compared to the sales made in October,

2015. He also asked the assessee to furnish sales made in October, 2017 and October, 2018. The assessee duly furnished the details to the AO.

The Ld A.R submitted that the above queries raised by the AO would substantiate the contentions that the AO has made detailed enquiries with regard to the cash deposited into the bank account. The Ld A.R submitted that the learned PCIT has taken the view that the AO, after having called for details, has not acted upon the same diligently. In this connection the learned PCIT has expressed the view that the AO has neither made any addition towards cash deposit in the assessment order nor has applied case law for the year, i.e., the view of the Learned PCIT is that the AO should have made addition in respect of cash deposits. Mere forming of a different view by Ld PCIT would not give him power to revise the assessment order u/s 263 of the Act. The Ld A.R submitted that the AO has taken one of the possible views of the matter and accordingly contended that the impugned revision order is liable to be set aside.

6. The Learned A.R. further submitted that the Ld PCIT has taken the view that the AO has not conducted enquiry as required and in this regard, he has taken support of Explanation (a) to sec. 263. He submitted that the above said view of the Learned PCIT is proved to be wrong, when one examine the detailed enquiries carried on by the assessing officer, which was explained by him earlier. The Ld A.R further placed his reliance on the following case law in support of his submissions:-

- (a) Narayan Tatu Rane vs. ITO (2016)(70 taxmann.com 227)(Mum-Trib).
- (b) JRD Tata Trust vs. DCIT (2020)(122 taxmann.com 275)(Mum-Trib)
- (c) Dena Bank vs. PCIT (2020)(114 taxmann.com 639)(Mum-Trib)
- (d) PCIT vs. Shreeji Prints (P) Ltd (2021)(130 taxmann.com 294)(SC).
- (e) PCIT vs. Deccan Jewellery (P) Ltd (2021)(132 taxmann.com 73)(AP)
- (f) CIT vs. Gabriel India Ltd (1993)(71 taxman 585)(Bom).

Accordingly, he submitted that the impugned revision order is liable to be quashed.

7. On the contrary, the learned DR submitted that the Assessing Officer has accepted the submission of the assessee with regard to the source of cash deposits made during demonetization period without application of mind. Hence, learned PCIT has come to the conclusion that the Assessing Officer has not conducted adequate inquiry as required. He submitted that the Assessing Officer has merely sought information from the assessee with regard to cash deposits and it is not discernible from the assessment order that the Assessing Officer has actually applied his mind before accepting the claim of the assessee. The Ld D.R submitted that the sales of the assessee have increased from Rs.2.84 crores in AY 2016-17 to Rs.4.27 crores during AY 2017-18. She submitted that the abnormal increase in sales should have triggered further enquiry by the AO. Similarly, there was substantial increase in the cash deposits made into the bank account. The assessee has sold gold bars, but quantity details appear to have not been given. All these aspects would show that the assessing officer has not properly applied his mind on the issue of cash deposits made into the bank account. Accordingly, the Ld D.R submitted that the order passed by the Assessing Officer without application of mind is susceptible to revision proceedings under section 263 of the Act. In support of this proposition, learned DR placed reliance on the following case laws :

- Sesa Starlite Ltd. Vs. CIT (2021) 123 taxmann.com 217 (Bom)
- Jeevan Investment & Finance (P) Ltd. (2017) 88 taxmann.com 552
- PCIT Vs. Zuari Maroc Phosphates Ltd. (2021) 126 taxmann.com 170 (Bom)

8. In the rejoinder, the Ld A.R submitted that the increase in sales achieved in AY 2017-18 has been maintained in the succeeding year also. Hence, it is not a case of abnormal sales in AY 2017-18 alone. He further submitted that the cash deposits made into the bank accounts of various years are very much comparable to each other, i.e., there is no abnormal increase in cash deposits. He submitted that the quantity details of sales of gold bars are given in the tax

audit report. Accordingly, he submitted that the AO has conducted proper enquiries in respect of cash deposits from almost every possible angle and has accepted the same. Hence, the action of the AO cannot be found fault with. In any case, the view taken by the AO was a possible view and merely because the Learned PCIT has got different view of the matter, the same would not give him jurisdiction to revise the assessment order u/s 263 of the Act.

9. We have heard rival contentions and perused the record. The scope of revision proceedings initiated under section 263 of the Act was examined by Hon'ble Bombay High Court, in the case of *Grasim Industries Ltd. V CIT* (321 ITR 92) by taking into account the law laid down by the Hon'ble Supreme Court. The relevant observations are extracted below:

Section 263 of the Income-tax Act, 1961 empowers the Commissioner to call for and examine the record of any proceedings under the Act and, if he considers that any order passed therein, by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue, to pass an order upon hearing the assessee and after an enquiry as is necessary, enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment. The key words that are used by section 263 are that the order must be considered by the Commissioner to be "erroneous in so far as it is prejudicial to the interests of the Revenue". This provision has been interpreted by the Supreme Court in several judgments to which it is now necessary to turn. In *Malabar Industrial Co. Ltd. v. CIT* [2000] 243 ITR 83, the Supreme Court held that the provision "cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer" and "it is only when an order is erroneous that the section will be attracted". The Supreme Court held that an incorrect assumption of fact or an incorrect application of law, will satisfy the requirement of the order being erroneous. An order passed in violation of the principles of natural justice or without application of mind, would be an order falling in that category. The expression "prejudicial to the interests of the Revenue", the Supreme Court held, it is of wide import and is not confined to a loss of tax. What is prejudicial to the interest of the Revenue is explained in the judgment of the Supreme Court (headnote) :

"The phrase 'prejudicial to the interests of the Revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law."

The principle which has been laid down in *Malabar Industrial Co. Ltd.* [2000] 243 ITR 83 (SC) has been followed and explained in a subsequent judgment of the Supreme Court in *CIT v. Max India Ltd.* [2007] 295 ITR 282.”

The principles laid down by the courts are that the **Learned CIT cannot invoke his powers of revision under section 263 if the Assessing Officer has conducted enquiries and applied his mind and has taken a possible view of the matter.** If there was any enquiry and a possible view is taken, it would not give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter. The consideration of the Commissioner as to whether an order is erroneous in so far it is prejudicial to the interests of Revenue must be based on materials on record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to start fishing and roving enquiries in matters or orders which are already concluded.

10. The Learned PCIT has taken support of clause (a) of Explanation given under sec. 263 of the Act to come to the conclusion that, according to him, the AO has not conducted enquiries, which should have been made. The (a) of Explanation was examined by the co-ordinate bench in the case of *Narayan Tatu Rane (supra)* and it was held that this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases. Hence Explanation (a) cannot be invoked as a casual manner by Ld PCIT, i.e., he has to show that the enquiries or verification conducted by the AO was below the standard of a reasonable and prudent officer. In the case of *JRD Tata Trust (supra)*, the co-ordinate bench has held that the true test for finding out whether Explanation 2(a) has been rightly invoked or not is, therefore, not simply existence of the view, as professed by the Commissioner, about the lack of necessary inquiries and verifications, but an objective finding that the Assessing Officer has not

conducted, at the stage of passing the order which is subjected to revision proceedings, inquiries and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant that the Assessing officer is expected to be. The Hon'ble Gujarat Court, in the case of Shreeji Prints (P) Ltd (2021)(130 taxmann.com 293)(Guj) has expressed the view that the clause (a) of Explanation 2 would cover cases of 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 the AO.

11. In the instant case, we have noticed that the AO has called for various details during the course of assessment proceedings with regard to the cash deposits made during the demonetization period through various notices issued both u/s 131 of the Act and u/s 142(1) of the Act. The assessing officer has called for various details such as, copies of cash book, bank book, stock details, purchases details, sales details, Explanations for increase in cash deposits, comparison of sales of the current year with past year etc. The Ld A.R took us to the replies given by the assessee to the AO to the various queries raised by him. Thus, we notice that the AO has examined the issue of cash deposits from various angles and hence his enquiries or verifications, in our view, cannot be considered to be inadequate or not up to the required standard. Accordingly, we are of the view that the clause (a) to Explanation-2 to sec. 263 shall not apply to the facts of the present case.

12. There is no dispute with regard to the fact that the impugned cash deposits have been made out of cash balance available in the books of accounts. The said cash balance has been accumulated out of past cash balance and sales made by the assessee. The quantity details of purchases and sales have been accepted and hence sales made by the assessee cannot be doubted with. We also notice that the said books of accounts have not been rejected. Under these set of facts, the sources of cash deposits would get

stand explained by the books of accounts itself. Hence the AO has taken the view that no addition in respect of cash deposits is warranted in the facts and circumstances of the case. Hence the view so taken by the AO is a possible view in this matter.

13. We noticed that the Learned PCIT has expressed the view that the AO has neither made any addition nor has applied his mind, meaning thereby, it is the view of the Learned PCIT that the AO should have made addition to the total income in respect of cash deposits. In our opinion, the view so entertained by learned PCIT cannot be the basis for initiating revision proceedings. At the cost of repetition, we may extract below the view expressed by Hon'ble Supreme Court in the case of Malabar Industrial Co (supra) with regard to the scope of revision proceedings:-

“.....for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law”.

In the facts and circumstances of the case, the view taken by the AO is one of the possible views and it cannot be said that his view is no sustainable in law.

14. We have gone through the various decisions relied upon by Learned D.R. All those decisions deal with the nature of enquiries and application of mind by the assessing officer. There cannot be any dispute with regard to those legal propositions. However, in view of the foregoing discussions, in the instant case, we are of the view that the AO has conducted proper enquiries and there was proper application of mind on the part of the AO in respect of cash deposits and he has taken a possible view in respect of the same.

15. Accordingly, we are of the view that the impugned revision order passed by Learned PCIT is not sustainable in law on both the issues. Accordingly we quash the impugned revision order passed by Learned PCIT.

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

Order pronounced in the open court on 12.08.2022.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 12/08/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS