

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

**आयकर अपील सं./ITA No.127/SRT/2021**

**Assessment Year: (2016-17)**

**(Physical Court Hearing)**

A. R. and Co., Stall No.7/8, Opp. Laxmi Petroleum, Umarwads-395010.	<b>Vs.</b>	The Principal Commissioner of Income-Tax-1, Surat, Income Tax Office, Aaykar Bhavan, Majura Gate, Surat-395001
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AALFA2767 P</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	Shri Sapnesh R. Sheth, CA
<b>Revenue by</b>	Shri H. P. Meena, CIT-DR
<b>Date of Hearing</b>	08/07/2022
<b>Date of Pronouncement</b>	22/08/2022

**आदेश / O R D E R**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to the assessment year (AY) 2016-17, is directed against the order passed by the Learned Principal Commissioner of Income Tax -1, Surat [in short “the ld. PCIT”], under section 263 of the Income Tax Act, in Appeal No. ITBA/REV/F/REV5/2020-21/1031529211(1), vide order dated 16.03.2021.

2. Grounds of appeal raised by the assessee are as follows:

*“1. On the facts and circumstances of the case as well as law on the subject, the learned Pr. Commissioner of Income-tax has erred in passing revisionary order u/s 263 of the I.T. Act setting aside the order of ld. Assessing officer passed u/s 143(3) of the Act dated 28.11.2018 for the year under consideration although said order is neither erroneous nor prejudicial to the interest of revenue.*

*2. On the facts and circumstances of the case as well as law on the subject, the learned Pr. Commissioner of Income-tax has erred in observing that order passed by assessing officer u/s 143(3) of the Act is erroneous on the ground that assessing officer ought to have examined the huge closing cash balance, violation of section 40(A)(3) of I.T. Act, 1961, genuineness of creditors as well as non filling of tax audit report within the time allowed as per section 139(1) of Act.*

3. *On the facts and circumstances of the case as well as law on the subject, the learned Pr. Commissioner of Income-tax has erred in holding assessment order to be erroneous & prejudicial to the interest of revenue although the same is neither erroneous nor prejudicial as the case was selected for 'limited scrutiny' & the issue has been properly examined by assessing officer.*

4. *It is therefore prayed that order passed by Pr. Commissioner of income-tax u/s 263 of the I.T. Act setting aside the order of assessing officer and directing assessing officer to frame assessment De Novo may please be quashed.*

5. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal."*

3. By way of this appeal, the assessee has challenged correctness of the order dated 16.03.2021 passed by the Learned Principal Commissioner of Income Tax (PCIT).

4. Succinct facts are that assessee Firm, M/s A R and Company, had filed its return of income for assessment year 2016-17, declaring total income of Rs.5,51,980/-. The case of the assessee was selected for scrutiny assessment through CASS. The assessment was finalized u/s 143(3) of the Income Tax Act, 1961 (herein after referred to as 'the Act') on 28. 11. 2018 accepting return of income.

5. Later on, the ld. PCIT has exercised his jurisdiction under section 263 of the Act. It was observed by ld PCIT that assessment year 2016-17, the firm was engaged in the business of trading of seasonal fruits. During the year under consideration, the total turnover from the business was shown at Rs,5,55,09,855/-, whereas in the immediate preceding assessment year, the assessee has shown only Rs.3,26,400/- from fruit commission income. It was noticed by ld PCIT that in spite of having turn over exceeding Rs.1 Crore, no tax Audit report was filed before the due date of filing the return of income. In other words, the Audit Report along with return of income was filed on 09.01.2017 i.e. after the demonetization period and huge cash balance of Rs.21,16,625/- was shown in the balance sheet for the year ending on 31.03.2016. Further, on perusal of the submission, it was noticed by ld PCIT that almost all the payments for purchase of goods were made in cash in excess of Rs.20,000/-, violating the provisions of section 40A(3) of the Act. Similarly, the sales were also made in cash. As per assessee`s submission, the

most of cash purchases were made from dealers based in Shimla and the assessee claimed that cash payment was made directly into their bank account. During the course of scrutiny assessment proceedings, the copy of ledger account of these dealers in the books of accounts of the assessee were furnished. The Id PCIT observed that Assessing Officer has finalized the case without making independent enquiry on the veracity of cash transactions with the alleged parties based at Shimla. Apart from the above, as per cash book, assessee has also made cash payment more than of Rs.20,000/- against his purchase from other parties. In view of the above facts, a show cause notice bearing No. IT8A/REWREV1/2020-21/101029424260(1) dated 01.01.2021 was issued to the assessee to explain the transaction.

6. In response to this show-cause notice dated 01.01.2021, the assessee submitted its reply through ITBA system. The assessee replied that partners of the firm are less educated and not aware of the provisions of the section 44AB of the Act, hence could not file Audit report in due time. Further, the assessee firm stated that it has given name and address of all suppliers to the Assessing Officer and the Assessing Officer has examined the matter during assessment proceedings, therefore initiation of revision proceedings u/s 263 of the Act is bad in law. The assessee further submitted that as per nature of business, provisions of Rule 6DD of the Income Tax Rules (herein after referred to 'the Rule') is not applicable in its case. The assessee also relied upon decision of the Hon'ble ITAT, Bangalore Bench in the case of Sri Renukeswara Rice Mills vs ITO as reported in 93 IDT 263 and decision of the Hon'ble ITAT, Jodhpur Bench in case of M/s. Meditech vs the JCIT (ITA Mo.404/Jodh/2014).

7. However, the Id PCIT, has rejected the contention of the assessee and held that order passed u/s 143(3) of the Act, dated 28.11.2018 is erroneous and prejudicial to the interest of revenue as the order was passed without making inquiries or verification which should have been made by the Assessing Officer.

8. Aggrieved by the order of Id. PCIT, the assessee is in appeal before us.

9. Shri Sapnesh Sheth, Learned Counsel for the assessee, begins by pointing out that assessee's case was reopened for limited scrutiny only for verification of closing cash in hand. However, Id. PCIT has exercised his jurisdiction on a different issue and on different footing to examine the requirements of section 40A(3) of the Act. Whereas the assessee's case was reopened for limited scrutiny only for verification of closing cash in hand, hence jurisdiction exercised by Id PCIT is not in accordance with law. The Ld. Counsel further stated that in case of limited scrutiny, the Assessing Officer has to examine only the issue or item for which assessment was selected for scrutiny purpose. The case of limited scrutiny was to examine closing cash in hand and the Assessing Officer has examined the same, therefore order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of revenue.

10. The Id. Counsel further pointed out that Assessing Officer has not converted limited scrutiny case into full scrutiny case by taking appropriate permission from higher authorities. The Ld. Counsel relied on the CBDT Circular No.13/2015 regarding limited scrutiny assessment, wherein the CBDT has explained the scope of limited scrutiny. The Ld. Counsel also relied on the CBDT Circular No. 5/2016 dated 14.07.2017 and submitted that while converting the cases from limited scrutiny to full scrutiny, the Assessing Officer has to record his findings and as per Ld. Counsel, such findings of the Assessing Officer is absent and therefore order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of Revenue.

11. The Ld. Counsel took us through paper book page no.28, wherein, during the assessment stage, the assessee has submitted its reply to the Assessing Officer. Moreover, Ld. Counsel also submitted that during the assessment stage, the assessee has replied to assessing officer through letter dated 17.09.2018 and letter dated 26.11.2018, which are placed at paper book page nos. 13 to 18 and stated

that whatever query raised by the Assessing Officer, has been replied by assessee during the assessment stage, therefore, Assessing Officer made adequate inquiry during the assessment proceedings, hence order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of Revenue.

12. On the other hand, Learned CIT-DR for the Revenue submitted that Assessing Officer has power to convert the limited scrutiny case into full scrutiny case and this was only the mistake on the part of the Assessing Officer that he is not converted the limited scrutiny case into full scrutiny case, therefore order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue and hence order of Id PCIT may be upheld.

13. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. PCIT and other material brought on record. We note that assessee's case was reopened for limited scrutiny only for verification of closing cash in hand, however, Id. PCIT has exercised his jurisdiction on a different issue and on different footing to examine the requirements of section 40A(3) of the Act. As mentioned in the circular issued by the CBDT, vide CBDT Circular No.13/2015, in case of limited scrutiny, the Assessing Officer has to examine only the issue or item for which assessment was selected for limited scrutiny purpose. The case of limited scrutiny, was to examine closing cash in hand and the Assessing Officer has examined the same, therefore we find merit in the submission of Id Counsel that order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of revenue. We also note that Assessing Officer has not converted limited scrutiny case into full scrutiny case by taking appropriate permission and recording reasons for this purposes, vide CBDT Circular No. 5/2016 dated 14.07.2017, that is, Assessing Officer has to record his findings to do so. The Assessing Officer has examined the issue relating to limited scrutiny assessment. We have examined the assessee's paper book, vide page no. 28, wherein, during the assessment stage, the assessee has submitted its reply relating to closing cash

in hand. We note that Assessing Officer issued notice to the Assessing Officer and in response to the said notice, the assessee has replied to Assessing Officer through letter dated 17.09.2018 and letter dated 26.11.2018, which are placed at paper book page nos. 13 to 18 respectively. Thus, it is vivid that Assessing Officer has raised query during the assessment proceedings and assessee has replied and submitted written submission before the Assessing Officer. The Assessing Officer, after conducting necessary examination in respect of item of limited scrutiny, has passed the assessment order, hence such assessment order should not be erroneous and prejudicial to the interest of revenue. In this regard, reliance is also placed upon decision of Hon`ble Rajasthan High Court in case of CIT vs. Ganpat Ram, Bishnoi [296 ITR 0292] wherein it was held that “ *no presumption can be drawn that the Assessing Officer had not applied his mind to various aspects of the matter. Once enquiry in fact has been conducted and the Assessing Officer has reached a particular conclusion, though reference to such enquiries has not been made in the order of the assessment, the invocation of jurisdiction by CIT is not sustainable. If a query is raised during the course of scrutiny by the assessing officer, which was answered to the satisfaction of the assessing officer, but neither the query nor the answer was reflected in the assessment order, this would not by itself lead to the conclusion that the order of the assessing officer called for interference and revision*”.

14. On the similar facts, the reliance is placed on the decision of Hon`ble Delhi High Court in the case of CIT vs. Vikas Polymers [341 ITR 537] (Del). The Assessing Officer has made the proper inquiry which was adequate. If there was any inquiry even inadequate that by itself would give no occasion to the CIT to pass orders u/s 263 of the Act, merely because he has a different opinion in the matter. Based on the above discussion on assessee`s facts as well as on various precedents applicable to assessee`s facts, we are of the view that revisionary jurisdiction exercised by the Ld. Pr. C.I.T. u/s. 263 of the Act was not in tune with the facts and evidences on record duly explained to the Assessing Officer and verified by him and that being so the order passed u/s. 263 of the Act on such

erroneous stand is liable to be quashed. Therefore, we quash the order of the ld. PCIT u/s 263 of the Act.

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

Order is pronounced in the open court on 22/08/2022 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

सूरत /Surat

दिनांक/ Date: 22/08/2022

SAMANTA

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

**// TRUE COPY //**

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat