

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 320/Asr/2019  
Assessment Year: 2009-10**

Sh. Mohammad Shahnawaz Beigh, Mandibal, Nowshehra Srinagar [PAN:-AFUPB0694N] <b>(Appellant)</b>	<b>Vs.</b>	ITO Ward-3 (2), Srinagar, Kashmir.  <b>(Respondent)</b>
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<b>Appellant by</b>	<b>Sh. None.(Written Submission)</b>
<b>Respondent by</b>	<b>Sh.Balvinder Kaur, CIT. DR.</b>

<b>Date of Hearing</b>	<b>10.08.2022</b>
<b>Date of Pronouncement</b>	<b>24.08.2022</b>

**ORDER**

**Per:Anikesh Banerjee, JM:**

The instant appeal was filed by the assessee against the order of the Id. Pr. Commissioner of Income Tax (J & K), Jammu [in brevity the PCIT] bearing appeal F. No. PCIT/JMU/ITO(T)/263/18-19-9207, dated of order 07.03.2019, the order passed u/s 263 of the Income Tax Act, 1961, [in brevity the Act] for A.Y.2009-10. The impugned order was originated from the order of the Id. Income

tax Officer, Ward-3(2), Srinagar (in brevity AO), passed u/s 143(3)/147 of the Act, date of order 21/11/2016.

2. Brief facts of the case are that the assessment of the assessee was completed u/s 143(3)/147 of the Act for A.Y. 2009-10. The ld. AO verified the detailed documents, books of accounts and passed the order very precise way. The notice u/s 263 of the Act was issued by the PCIT for setting aside the order of the AO. The questions were formed by the PCIT covering the following issues; -i) low net profit @ 0.77% considering the trade of business and similar practice, ii) difference in contractual receipts, declared in the 26AS & the books of accounts of assessee. In 26 AS the contractual receipts are Rs.4,34,29,212/- but the assessee had declared receipts amount of Rs.5,14,25,603/-, and iii) cash deposit Rs.5,50,000/- in the bank account. In reply of the notice the assessee had explained the issues before the PCIT. The deposit amount of Rs.5,50,000/- was from the sale proceeds which was clarified. Related difference in revenue receipts, the issue was explained which was declared more by the assessee. Related to low net profit the assessee explain that they are maintaining the same net profit year after year. No other variance was submitted by the ld. PCIT in comparison with the assessee's submission. Accordingly, the ld. PCIT had set aside the order of the assessing authority on the ground of erroneous and prejudicial to the interest of the revenue.

3. Being aggrieved assessee filed an appeal before us.

4. On behalf of the assessee none was present during the proceeding. With the consent of the ld. Sr. DR, the matter was taken up for adjudication. The observation of the ld. AO in point no. 2 in assessment order u/s 143(3)/147 is extracted as below:

*"2. In response, the assessee submitted a copy of return already filed on 29-09-2009 to be treated as return filed against notice u/s 148. Notice u/s 142(1) and 143(2) dated 11-04-2016 and 17.10.2016 were issued for hearing on 03-05-2016 and 26.10.2016. In response to the notices, Sh. Ab. Majid Zargar, CA, counsel of the assessee attended the proceedings and also filed / furnished details / information as called for vide this office questionnaire. The case of the assessee was discussed in details and necessary details i.e. bank statement and other relevant documents were called for and examined and placed on file. In view of the above, no adverse view is being drawn."*

5. The ld. CIT. DR argued and relied on the order of the PCIT.

6. We considered the rival submission and relied on the orders of both the authorities. The ld. PCIT had set aside the order of the ld. AO on basis of the lower net profit declared by the assessee, cash deposit and excess turnover declared in form no. 26AS. The data of 26AS is not sacrosanct. The assessee had declared higher value of turnover in comparison with Form 26AS, the assessee had declared more income before the revenue authorities. Related to cash deposit, the issue was

already clarified by the assessee before the Id. PCIT. The assessing authority had assessed, verified the books of accounts and accepted the net profit of the assessee. The difference of opinion cannot be the basis of setting aside of the order of the Id. AO u/s 263. The various bank statement and other relevant documents were also examined. So, there is no question of non-verification of the documents of the assessee by the AO. The assessee had produced documents before the Assessing Officer who had scrutinized the same and accepted the genuinity of the claim and granted the benefit. The PCIT had set aside the order of AO on the ground that the AO did not make an in depth inquiry. A similar finding was tested for its correctness by the High Court of Delhi in the case of **CIT v. Sunbeam Auto Ltd. [2011] 332 ITR 167** and it was held that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was an inquiry, even adequate that would not by itself give occasion to the Commissioner to pass orders under section 263 of the Act merely because he has a different opinion in the matter and it is only in cases of lack of inquiry that such a course of action would be open. As mentioned by us in the preceding paragraphs, the assessee has responded to the notice issued by the AO and also by PCIT Therefore, in our considered view the finding rendered by the PCIT was perverse for the reason that there was no specific lacuna was found out related lower net profit & higher value of revenue receipt, declared by the assessee. The PCIT could not have revised the assessment by

invoking section 263 of the Act. The order cannot be as erroneous on the point of verification. Accordingly, the order u/s 263 is liable to be quashed.

7. In the result, the appeal of the assessee in **ITA 320/Asr/2019** is allowed.

**Order pronounced in the open court on 24 .08.2022**

**Sd/-**

**(Dr. M. L. Meena)**  
**Accountant Member**

**Sd/-**

**(ANIKESH BANERJEE)**  
**Judicial Member**

**AKV**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By Order