

**IN THE INCOME TAX APPELLATE TRIBUNAL “RANCHI” BENCH: RANCHI
VIRTUAL HEARING AT KOLKATA**

[Before Shri Rajesh Kumar, Accountant Member& Shri Sonjoy Sarma, Judicial Member]

**I.T.A. Nos. 13 & 14/Ran/2021
Assessment Year : 2012-13**

Shri Satendra Kumar Jalan (PAN: ACJPJ 8188 M)	Vs.	PCIT, Central-Patna
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

**I.T.A. No. 15/Ran/2021
Assessment Year : 2012-13**

Babita Jalan (PAN: AGFPJ 1192 P)	Vs.	PCIT, Central-Patna
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing	14.07.2022
Date of Pronouncement	30.08.2022
For the Appellant	Shri R.R. Mittal, CA
For the Respondent	Shri Saumyajit Das Gupta, CITDR

ORDER

Per Shri Rajesh Kumar, AM:

These three appeals preferred by the different assessee against the orders of the Ld. Principal Commissioner of Income Tax, Central, Patna [hereinafter referred to as ‘Ld. PCIT’] passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) dated 15.06.2020& 16.06.2020 for the assessment year 2012-13.

2. Though the Registry has pointed out that the appeal is barred by limitation, however, in view of the decision of the Hon’ble Supreme Court in Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020, the period of filing appeal during the COVID-19 pandemic is to be excluded for the purpose of counting the limitation period. In view of this, the appeal is treated as filed within the limitation period.

3. Though the issues are common in all the appeals however we are taking up ITA No. 13/Ran/2021 for adjudication. The assessee has raised following grounds:

i) On the facts and circumstances of the case, the order passed by the Ld. Principal Commissioner of Income Tax, Central is bad in law, void ab-initio without jurisdiction as the order u/s 263 is passed by the Ld. CIT on the basis of Audit Objection and not the independent view of the Pr. CIT.

ii) On the facts and circumstances of the case, the order passed u/s 263 by Ld. PCIT, Central may be quashed and set aside on the ground that the Ld. PCIT did not consider the argument taken by the appellant that the order passed by the AO u/s 143(3)/153A is neither erroneous nor prejudicial to the interest of the revenue.

iii) That on all the issues raised by the Ld. PCIT, a possible view has been taken by the AO while passing the order u/s 143(3)/153A. Hence neither the order is prejudicial nor erroneous to the interest of the revenue.

iv) the Ld. PCIT ought to have held that the order passed by the AO was neither erroneous nor prejudicial of the interest of Revenue in respect of the issues in the light of details/documents and submissions made before him during the 263 proceedings.

4. The issue raised in ground no. 1 by the assessee is against the exercise of jurisdiction u/s 263 by PCIT mainly on the basis of audit objection without independent application of mind whereas the issue raised in ground no. 2 is against the order of PCIT wrongly exercising the revisionary jurisdiction without the assessment order passed u/s 153A read with 143(3) of the Act not being erroneous and prejudicial to the interest of the revenue.

5. Facts in brief are that the search and seizure action u/s 132 of the Act was conducted on 22.07.2015 on the premises of assessee. The assessee filed original return of income u/s 139 of the Act declaring total income of Rs. 4,19,390/- on 18.03.2013. A notice u/s 153A of the Act was issued on 4.02.2016 which was complied with by the assessee by filing return of income on 19.02.2016 declaring total income of Rs. 4,19,390/-. Thereafter the statutory notice was duly issued and served upon the assessee fixing various dates for furnishing various details/explanation. The

Ld. A.R represented the assessee before the AO from time to time and the necessary details were filed. Ultimately the assessment was framed u/s 153A read with 143(3) of the Act vide order dated 22.12.2017 accepting the returned income of Rs. 4,19,390/-. Pertinent to state that undisputedly this is an unabated assessment year on the date of search as per the provisions of Section 153A of the Act and any addition/ disallowance could only have been made to the income of the assessee based upon the incriminating searched material and not otherwise. The PCIT upon perusal of the assessment records came to the conclusion that the order passed by the AO u/s 153A read with 143(3) of the Act is erroneous and prejudicial to the interest of the revenue for the reason that the assessee has shown investment at Nil in column no. 2 of part A-BS of the ITR-4 on one hand. On the other hand, M/s Sri Krishna Nutrition (I) Pvt. Ltd. which belonged to Sahu Group of cases, which was also subjected to search on 22.07.2015 shown an investment of Rs. 1,06,50,000/- by the assessee representing 1065000 equity shares at face value of Rs. 10/- each. The Ld. PCIT noted that the investment made by the assessee in the said company as on 31.03.2011 was only Rs. 25,000/- whereas available bank statement of the assessee with Canara Bank, Ranchi exhibited the payment of Rs. 81,50,000/- made by the assessee to M/s Sri Krishna Nutrition (I) Pvt. Ltd. during the FY 2011-12 and also that the assessee did not furnish other bank statement with Bank of Baroda from 08.04.2011 to 07.09.2011. The Ld. CIT noted that source of investment made by the assessee could not be traced and therefore the investment to the tune of Rs. 1,06,25,000/- [1,06,50,000/- - 25,000/-] remained unexplained and unverified and accordingly held that the assessment framed by the AO is erroneous as well as prejudicial to the interest of the revenue. Consequently a show case notice u/s 263 of the Act was issued on 29.12.2017 calling upon the assessee to show cause as to why the assessment framed u/s 153A read with Section 143(3) of the Act should not be revised on account of being erroneous and prejudicial to the interest of the revenue which was replied by the assessee through e-mail on 16.03.2020 filing a detailed submission. The Ld. PCIT, after rejecting the submission of the assessee, invoked the explanation 2of Section 263 of the Act and cancelled the

assessment order and directed the AO to - the income of the assessee after making necessary enquiry as discussed in the revisionary order.

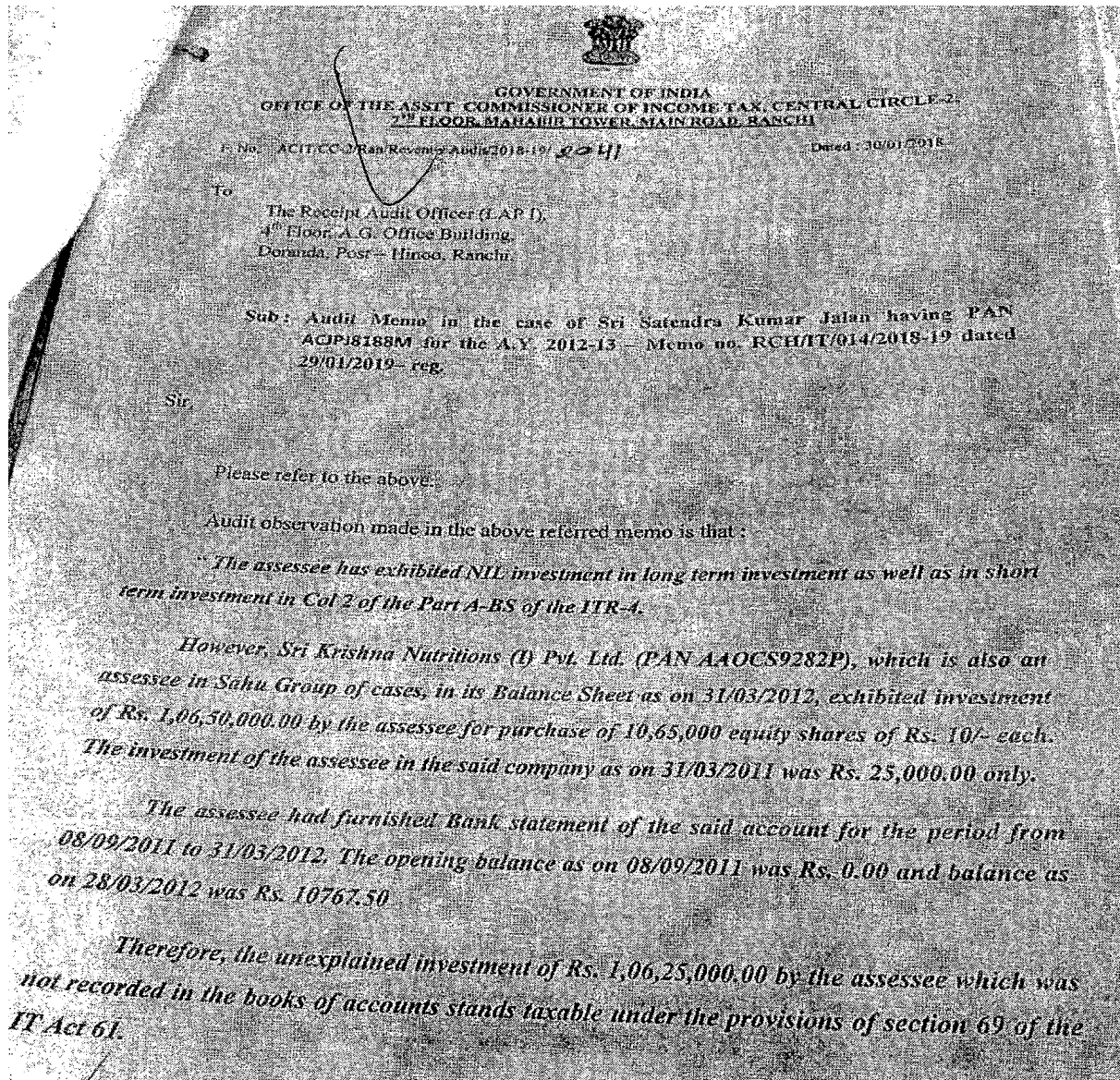
6. The Ld. Counsel for the assessee submitted that it is undisputed that the assessment in this case was unabated on the date of search as time limit of issuing notice u/s 143(2) had already expired on the date of search. The Ld. Counsel of the assessee submitted that the AO framed the order u/s 153A read with Section 143(3) of the Act dated 22.12.2017 in accordance with the provisions of Section 153A of the Act accepting the returned income as there was no incriminating material found and seized during the course of search. The ld AR argued that in any case addition, if any, could have only been made had there been any incriminating material found against the assessee during the search. The Ld. Counsel submitted that the assessment framed by the AO u/s 153A read with section 143(3) of the Act dated 22.12.2017 is correct and is in accordance with the provisions of Act and therefore cannot be termed as erroneous insofar as prejudicial to the interest of revenue. The Ld. Counsel of the assessee submitted that ld. PCIT has merely acted on the objection of the audit party which was noted by the audit party on the wrong appreciation of facts by referring to the letter dated 30.01.2018 by ACIT, Central Circle-2, Ranchi as well as letter dated 02.08.2019 addressed to the Deputy Director (Audit) respectfully pointing out in the said letters that there was no mistake in the investments shown by the assessee and the note of the audit party is based upon incorrect appreciation of facts. The copies of these two letters are placed at page 15 to 19 of the paper book. The Ld. Counsel for the assessee submitted that even the Ld. PCIT has not formed an independent opinion as to how the investment shown by the assessee has remained unverified and unexplained and merely issued a show cause notice u/s 263 of the Act on the basis of audit objection which was wrong and without any correct basis. The Ld. Counsel submitted that in order to exercise the revisionary jurisdiction the Ld. PCIT has to record a satisfaction that the assessment order framed by the AO is erroneous as well as prejudicial to the interest of the revenue. The Ld. Counsel for the assessee submitted

that even absence of one of the conditions would not entitle the PCIT to invoke the jurisdiction u/s 263 of the Act by referring to the decision of Hon'ble Supreme Court in *Malabar Industrial Co. Ltd. vs. CIT reported in [2000] 243 ITR 83 (SC)*. The Ld. Counsel for the assessee submitted that even on the assessment framed u/s 153A read with Section 143(3) of the Act where the AO has limited jurisdiction to make addition based on the incriminating material is not shown by the Ld. PCIT as to how it is erroneous and prejudicial to the interest of the revenue and how the PCIT has exercised the revisionary jurisdiction cancelling the said assessment.

7. The Ld. D.R on the other hand relied on the order of Ld. PCIT by submitting that the AO has failed to examine these issues in the proceedings u/s 153A of the Act and therefore the jurisdiction of PCIT was validly exercised to annul a wrong order which is prejudicial to the interest of the revenue.

8. After hearing the rival parties and perusing the material available on record, the undisputed facts as coming out of the records are that the assessee was subjected to search on 22.07.2015. Simultaneously Sahu Group of companies at Ranchi was also subjected to search u/s 132(1) of the Act. The assessment was framed u/s 153A read with Section 143(3) of the Act vide order dated 22.12.2017 in the case of the assessee accepting the return by AO as there was no incriminating material found during the course of search in the light of the fact that this being an unabated assessment year. We note that the audit party from A.G. Office raised audit objection that there were unexplained investments to the tune of Rs. 1,06,25,000/- which are not recorded in the books of accounts of the e and are taxable u/s 69 of the Act. The audit party noted from the examination of balance sheet as on 31.03.2011 of M/s Krishna Nutrition (I) Pvt. Ltd. PAN No. AAOCS9282P which belonged to Sahu group of cases that investment of Rs. 1,06,50,000/- was made by the assessee by purchasing 10,65,000/- equity shares whereas investment shown by the assessee in its books of accounts as on 31.03.2011 was only to the extent of Rs. 25,000/-. The Audit party further noted that the assessee has furnished the bank account for the period commencing from

08.09.2011 to 31.03.2012 with opening balance of Zero and closing balance as on 28.03.2012 of Rs. 10,767.50/-. The said audit objection was found to be incorrect by the AO who happened to be Assistant Commissioner of Income Tax, Central Circle-2, Ranchi and he addressed two letters dated 30.01.2018 and letter dated 02.08.2019 to Deputy Director (Audit) explaining investments of Rs. 1,06,25,000/- were fully accounted for in the books of accounts and the said objection by the audit party is based upon the incorrect appreciation of facts on record. For the sake ready reference the copies of the said letters are extracted below:



On perusal of the assessment record, it is found that :

- (i) As per return, assessee disclosed income from business u/s. 44AD.
- (ii) As per ITR-4 of the relevant year Part-A/BS, assessee is required to file balance sheet of the proprietary business only and not his personal balance sheet.
- (iii) However, assessee filed the balance sheet for the AY 2010-11 to 2016-17 in course of assessment proceedings which are kept in the record for the AY 2016-17 since assessment of all such years was done simultaneously.
- (iv) As per balance sheet for the AY 2012-13, value of investment as at 31-03-2013 is Rs. 1,11,50,000/- against M/S. Krishna Nutrition (India) Pvt. Ltd.
- (v) Notice u/s. 142(1) of the Act was issued on 13/09/2017 in which specific question was asked regarding source of investment in movable/immovable assets vide para (f) of the questionnaire.
- (vi) Assessee furnished reply on 24/10/2017, in which the source of all such investment including investment in shares of M/S. Krishna Nutrition (India) pvt. Ltd. was explained.
- (vii) Notice u/s. 133(6) of the Act was issued on 16/11/2017 to Manager, bank of Baroda, Ratu Road, Ranchi requiring to furnish statement with respect to account no. 29170200000508 and the same was furnished on 29/11/2017. As per such statement account was opened on 09/09/2011.
- (viii) All the noting of receipt and payment in the bank statement noted in the audit observation are considered in the Balance Sheet as receipt of loan from various family members and payments to M/S. Krishna Nutrition (India) Pvt. Ltd.


On perusal of the assessment record, accounts of the assessee, and Audit Observation, it is found that:

- (i) Explanation regarding investment in share and receipt of unsecured loan was asked and the same was submitted in course of assessment proceedings. The explanation was found satisfactory and hence no adverse inference was drawn regarding the source of such investment;
- (ii) Impugned bank statement was collected from the bank authority and it was found that such account was opened on 09/09/2011. Hence of question of statement for the period from 01/04/2011 to 07/09/2011 does not arise.

In view of the above discussion, it appears that the observation made is factually incorrect and misconceived which occurred due to non-consideration of the document available in record. Hence, the audit observation being wrong is not accepted.

As such, it is requested to drop the observation.

Yours faithfully,


(Ashis Chakraborty)
Asstt. Commissioner of Income-tax,
Central Circle-2, Ranchi.





GOVERNMENT OF INDIA
OFFICE OF THE ASSTT. COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-1
7TH FLOOR, MAHABIR TOWER, MAIN ROAD, RANCHI

F. No. ACIDCC-2/Ran/Revenue Audit/2019-20/369

Dated: 02/08/2019

To
The Deputy Director (Audit),
Central Lucknow Branch - Jharkhand, Ranchi,
4th Floor, A.G. Office Building,
Doranda, Post - Himra, Ranchi.

Sub: Observation in the case of Sri Satendra Kr. Jalan having PAN ACIPJ8188M
for the A.Y. 2012-13 - Para no. IT/II/009 in LAR no. RCH/CA/2018-
19/27/2019-20/10 dated 16/04/2019 - reg.

Sir,

Kindly refer to the above.

Audit observation made in the above referred para is that:

"As per Computation of Income and Return filed in IR-4 for the AY 2012-13, assessee has exhibited NIL investment as well as in short term investment in Col 2 of the Part A-BS of the ITR-4. However, Sri Krishna Nutritions (I) Pvt. Ltd., which is also an assessee in Sahu Group of cases, in its Balance Sheet as on 31/03/2012, exhibited investment of Rs. 1,06,50,000/- by the assessee for purchase of 1065000 equity shares of Rs. 10/- each. The investment of assessee in the said company as on 31/03/2011 was Rs. 25,000/- only. Statement of account bearing no. 0377101907139 of Canara Bank exhibit payment of Rs. 81,50,000/- to Sri Krishna Nutrition (I) Pvt. Ltd. in the F.Y. 2011-12 and the assessee did not furnish bank statement of the account bearing no. 29170200000508 of Bank of Baroda, Ratu Road Branch for the period from 01/04/2011 to 07/09/2011. The assessee paid Rs. 81,50,000/- only to Sri Krishna Nutrition (I) Pvt. Ltd. from these two accounts. Source of the rest amount invested could not be traced. The AO also did not discuss the same in the Assessment Order. Therefore, the unexplained investment of Rs. 1,06,25,000/- by the assessee which was not recorded in the books of accounts stands taxable under the provisions of Section 69 of the IT Act."

The fact of the case is that :-

As per Balance Sheet as at 31/03/2011, investment of the assessee with M/S. Shree Krishna Nutrition (I) Pvt. Ltd. was Rs. 30,00,000/- and as per Balance Sheet as at 31/03/2012, investment of the assessee with M/S. Shree Krishna Nutrition (I) Pvt. Ltd. was Rs. 1,11,50,000/-. As such, during the financial year 2011-12, fresh investment made by the assessee to such company amounts to Rs. 81,50,000/-.

Then as per ledger of 'Share Application Money' of the assessee in the books of Shree Krishna Nutrition (I) Pvt. Ltd for the FY 2011-12, opening balance as on 01/04/2011 was Rs. 29,75,000/-. This is due to the fact that, assessee paid Rs. 30,00,000/- to the company during the financial year 2010-11 for purchase of share out of which share of Rs. 25,000/- was allotted during the FY 2010-11 and balance amount of Rs. 29,75,000/- remain pending for allotment. And during the financial year 2011-12, assessee further paid Rs. 76,50,000/- for purchase of share and share of Rs. 1,06,25,000/- (Rs. 29,75,000/- + Rs. 76,50,000/-) was allotted in that financial year. Hence, total investment in share of such company as at 31/03/2012 amounts to Rs. 1,06,50,000/- (Rs. 25,000/- + Rs. 1,06,25,000/-). M/S. Shree Krishna Nutrition India (I) Pvt. Ltd. Copy of the edger is enclosed for reference.

Then as per ledger of 'Unsecured Loan' of the assessee in the books of Shree Krishna Nutrition (I) Pvt. Ltd for the FY 2011-12, assessee given loan of Rs. 5,00,000/- to such company in that year. Copy of the edger is enclosed for reference.

As such total investment of the assessee in M/S. Shree Krishna Nutrition India (I) Pvt. Ltd. as at 31/03/2012 on account of share and unsecured loan amounts to Rs. 1,11,50,000/- (Rs. 1,06,50,000/- + Rs. 5,00,000/-). Hence, there is no discrepancy regarding investment in M/S. Shree Krishna Nutrition India (I) Pvt. Ltd. as shown by the assessee vis-à-vis as reported by such company.

In consideration of the above fact, it is evident that, during the FY 2011-12 assessee paid total of Rs. 81,50,000/- to such company out of which Rs. 76,50,000/- was paid for purchase of share and Rs. 5,00,000/- paid as loan. Hence, there is no discrepancy between investment declared by the assessee and quantum of payment made.

In view of the above, the objection should be dropped and the para may be treated as settled.

(Ashis Chakraborty)

Asstt. Commissioner of Income-tax,
Central Circle-2, Ranchi.

Encl. A.A.

We note that the Id. PCIT invoked the jurisdiction u/s 263 of the Act by holding the assessment framed by the AO u/s 153A read with Section 143(3) of the Act was

erroneous based on the audit objection on the ground that the investments to the tune of Rs. 1,06,25,000/- remained unexplained and unverified whereas the facts on record testifies to the contrary. We have examined the documents/records and found that there is no mistake in assessment order as framed by the AO u/s 153A read with Section 143(3) of the Act and exercise of jurisdiction u/s 263 by PCIT is done in a mechanical manner without application of mind. So on this score only, the order passed u/s 263 of the Act is not sustainable. Even considering the fact of present assessment year as unabated on the date of search, there was no incriminating material found against the assessee during the course of search, there is not mistake in the order. We do not find any reason as to how the assessment framed by the AO u/s 153A read with 143(3) of the Act is erroneous and prejudicial to the interest of the revenue. In our opinion, the assessment has been framed by the AO strictly in accordance with the provisions of the Act with respect to unabated assessment years where no incriminating material found during the course of search as noted above. We are of the considered view that no addition could be made in an unabated assessment year unless the incriminating material is found during the course of search. The case of the assessee find support from the following cases namely *PCIT vs. Meeta Gutgutia* (2018) 96 taxmann.com 478 (SC), *CIT vs. Gurinder Singh Bawa* (2017) 79 taxmann.com 398 (Bombay), *CIT vs. Deepak Kumar Agarwal* (2017) 86 taxmann.com 3 (Bombay) and *CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd.* (2015) 58 taxmann.com 78 (Bombay). In view of these facts and decisions as cited above, we hold that the assessment framed by the AO is correct and is in consonance with the provisions of Act and Id. PCIT has exercised jurisdiction invalidly u/s 263 of the Act. Accordingly we quash the order u/s 263 of the Act and restore the assessment framed by the AO. The appeal of the assessee is allowed.

9. The issues raised in the other two appeals are similar as decided by us in ITA No. 13/Ran/2021 for AY 2012-13 supra. Accordingly our finding in ITA No.

13/Ran/2021 would *mutatis mutandis* apply to these appeals as well. Accordingly these appeals are also allowed.

10. In the result, all the three appeals are allowed.

Order is pronounced in the open court on 30th August, 2022

Sd/-

(Sonjoy Sarma / संजय शर्मा)
Judicial Member /न्यायिक सदस्य

Sd/-

(Rajesh Kumar / राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 30th August, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- i) Shri Satendra Kumar Jalan, Cart Sarai Road, Upper Bazar, Ranchi-834001 & ii) Babita Jalan, S.N.Ganguly Road, Ranchi-834001.
2. Respondent – PCIT, Central-Patna
3. DR, Ranchi Bench, Ranchi.

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata