

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No. 560/Ind/2019
Assessment Year: 2014-15

Dr. Sapna Mangal Ujjain	<u>बनाम</u>	Pr. CIT Ujjain
(Appellant / Assessee)	<u>/Vs.</u>	(Respondent/ Revenue)
PAN: AKNPM6788L		
Assessee by	Shri Ashish Goyal & Shri N.D. Patwa, ARs	
Revenue by	Shri P.K. Mitra, CIT-DR	
Date of Hearing	18.07.2022	
Date of Pronouncement	22.07.2022	

आदेश / ORDER

Per B.M. Biyani, A.M.:

1. This appeal filed by the assessee is directed against the revision-order dated 27.02.2019 passed by learned Pr. Commissioner of Income-Tax, Ujjain [**"Ld. PCIT"**] u/s 263 of the Income-tax Act, 1961 [**"the Act"**] by which the order of assessment dated 11.05.2016 passed by learned ITO-1(1), Bhopal [**"the Ld. AO"**] u/s 143(3) for Assessment-Year 2015-16 was set aside on the ground of being erroneous as well as prejudicial to the interest of revenue and the Ld. AO was directed to make a fresh assessment.

2. The assessee has raised following grounds:

"1. The order of the ld. PCIT is bad in law as well as facts on record.

2. The ld. PCIT has erred in holding the assessment-order passed by the ld. AO to be erroneous and prejudicial to interest of revenue.”

3. The assessee is an individual engaged in medical profession. A survey u/s 133A of the act was conducted at the business place of assessee on 06.01.2014 falling within the previous year 2013-14 relevant to the assessment year 2014-15 under consideration. The assessee submitted income-tax return of assessment-year 2014-15 on 05.01.2005 declaring a total income of Rs. 7,70,530/- inclusive of undisclosed income on account of excess-cash of Rs. 3,00,000/- found during survey. The return was initially processed u/s 143(1) but subsequently selected for compulsory scrutiny u/s 143(3) due to survey-action. Accordingly, notice u/s 143(2) was issued on 15.09.2015. Thereafter notice u/s 142(1) dated 12.04.2016 was also issued which stands duly complied with by the assessee. Finally, the Ld. AO completed assessment on 11.05.2016 at a total income of Rs. 7,84,530/-, after making an addition of Rs. 14,000/- on account of income from private professional practice carried on by assessee.

4. Thereafter the records of assessment were examined by Ld. PCIT, who was of the view that there were following errors in the aforesaid order of assessment passed by Ld. AO:

“2. In this case, assessee filed return of income for the A.Y. 2014-15 on 05.01.2015 declaring total income of Rs. 7,70,530/-. The case was selected for scrutiny through CASS. Assessment was completed u/s 143(3) on 11.05.2016 by the AO, Ujjain at total income of Rs. 7,84,530/-, which is considered erroneous and prejudicial to the interest of revenue for the following reasons:

1. On perusal and examination of records, it is noticed that during the year consideration a survey action u/s 133A was conducted in the case of assessee. The case was selected for scrutiny, as the books of accounts and other material impounded during the course of survey action. However, there is nothing on the file to suggest that the AO has made any verification of such impounded material. The AO made addition of Rs. 14,000/- on lump sum basis on income of private practice disclosed by the assessee at Rs. 1,26,000/-. It is observed that the AO has

not made any attempt to investigate on this issue. No books of accounts seem to have been maintained by the assessee for this private practice.

In the light of entire fact discussed above, I am of the considered view that the assessment order passed u/s 143(3) on 11.05.2016 for the A.Y.2014-15 in your case is erroneous as well as prejudicial to the interest of revenue, which required to be revised u/s 263. However, before I proceed to invoke the powers u/s 263 and pass an appropriate order. I deem it proper to give you an opportunity of being heard in the matter.”

5. Accordingly, Ld. PCIT initiated revision-proceeding by issuing a show-cause notice dated 18.02.2019 to the assessee. In reply the assessee made following submission:

“With reference to the above subject, please note that I am in receipt of your notice u/s 263 dated 18.2.2019 on 22.2.2019 fixing the case on today for revision of the assessment order passed u/s 143(3) dated 11.05.2016. I have gone through the facts narrated in the annexure to the notice and submit my reply as under:-

- 1. At the outset, please note that the assessment order passed u/s 143(3) dated 11.5.2016 is neither erroneous nor prejudicial to the interest of revenue, because the Ld. AO has made full verification of the material which was impounded during the course of survey action and based upon the same, he has carried out the assessment for the year under consideration.**
- 2. During the course of the survey action, my statement was recorded and the question were asked covering the contents of the impounded material and based upon the same, I also offered incomes in the return filed as details below:**

S.No.	A.Y.	Nature of Income offered	Amount of Income offered (Rs.)
1	2011-12	Share of plot no. 85 at Alkapuri Ujjain	213083
2	2012-13	Share in House No. 64 at Alkapuri, Ujjain	622000
3	2014-15	Excess cash found	300000

- 3. The Ld. AO has gone through the impounded material and the survey statement recorded and then he has cross verified the incomes offered in the return of income and was fully satisfied. He has mentioned the facts about the impounded materials in the assessment orders passed and accepted the incomes offered.**
- 4. I attach the survey statement, Income Tax Returns filed and the assessment order passed for your kind consideration and your honour will observe that the ld. AO has duly considered the impounded materials in framing the assessment orders.”**

6. Having considered the above submission of assessee, the Ld. PCIT made observations and conclusions as under:

“3.2 A survey action u/s 133A was carried out in the business premises of the assessee on 06.01.2014. Various loose papers, diaries, cash book etc. were found during the course of survey having noting of investment in purchase of plot, house etc. During the course of survey proceedings, the assessee did not able to explain the source of investment. Accordingly, the assessee surrendered following amount as her undisclosed income:

S.No.	A.Y.	Nature of Income offered	Amount of Income offered (Rs.)
1	2011-12	Share of plot no. 85 at Alkapuri Ujjain	213083
2	2012-13	Share in House No. 64 at Alkapuri, Ujjain	622000
3	2014-15	Excess cash found	300000

3.3 the assessee filed return of income for the A.Y.2014-15 on 05.01.2015 declaring total income of Rs. 7,70,530/- which included the undisclosed income on account of excess cash found during the course of survey of Rs. 3,00,000/-

3.4 The AO while finalizing the assessment on 11.05.2016, did not consider the books of account impounded during the survey, nor any discussion about the same in the assessment order. The AO only made a lump sum addition of Rs. 14,000/- on account of income from private practice. Therefore, the was required to examine these issues in detail in order to ascertain true state of the facts. Hence, the assessment order is erroneous and prejudicial to the interest of revenue.

4. The relevant explanation to section 263 is reproduced as under:

Explanation 2 - "For the purpose of this section, it is hereby declared that an order passed by the Assessing officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if in the opinion of the Principal Commissioner or Commissioner-

(a) The order is passed without making inquiries or verification which should have been made

(b) The order is passed allowing any relief without inquiring into the claim

As such the provisions of section 263 are applicable on the issues of the case.

5. Therefore, the order is erroneous and prejudicial to the interest of revenue in respect of the above issues.

6. The order of the AO is therefore, set aside to the file of the AO with direction to examine the issues as discussed above and after affording proper opportunity to the assessee. The order dated 11.5.2016 passed u/s 143 is accordingly, set aside."

7. This way, the Ld. PCIT held that order passed by Ld. AO was erroneous in so far as it is prejudicial to the interest of assessee. Holding so, the Ld. PCIT set aside the order passed by Ld. AO with a direction to make assessment afresh. Aggrieved by this order of Ld. PCIT, the assessee has filed the present appeal and now before us.

8. Ld. AR appearing on behalf of assessee submitted that during the course of survey conducted u/s 133A on 06.01.2014, the statements of assessee were recorded wherein the assessee was confronted on the undisclosed incomes found during survey-proceeding. Ld. AR drew our attention to the copy of the Statement placed in Paper-Book. Referring to Question No. 23 of the same, the Ld. AR argued that the only undisclosed income of the assessment-year 2014-15 under consideration, found during survey was the excess-cash of Rs. 3,00,100/-. Ld. AR, then, referred to the Income-tax Return filed by the assessee, placed at Page No. 20 and 21 of the Paper-Book and demonstrated that the assessee has voluntarily included the

impugned income of Rs. 3,00,000/- in the return of income and paid tax as applicable even before start of assessment-proceeding u/s 143(3). Ld. AR submitted that once the income of Rs. 3,00,000/- found during survey was already offered in the return, there was no scope for the Ld. AO to make any further assessment on the basis of survey-action. Ld. AR submitted that the Ld. AO has nevertheless scrutinized the case of assessee fully in a judicious manner and that is why an addition of Rs. 14,000/- in respect of private practice was made. Ld. AR submitted that the assessment-order passed by Ld. AO has fully secured the interest of revenue and therefore, there is no error in the order passed by Ld. AO much less prejudicial to the interest of revenue. With these submissions, Ld. AR requested to set aside the revision-order passed by Ld. PCIT.

9. Per contra, the Ld. DR made a forceful submission and argued that the assessment-order is totally silent over the documents and material found during survey. Referring to Para No. 2 of the assessment order, the Ld. AR contended that the Ld. AO has just perused the return of income filed by the assessee, proceeded with the income shown by assessee therein and made a meagre addition of Rs. 14,000/- on account of private practice. Ld. DR submitted that the assessment-order nowhere demonstrates that the Ld. AO has made any examination or analysis of the material found during the survey. Ld. AR submitted that the case was selected under compulsory-scrutiny and the very objective of survey-action is frustrated by non-consideration of the material found therein by the Ld. AO at the time of making assessment. According to Ld. DR, the assessment-order does not transpire that the Ld. AO has made any attempt to analyse the material found during survey and hence the assessment-order is not only erroneous but also prejudicial to the interest of revenue. With these submissions, the Ld. DR requested that the Ld. PCIT was fully justified in making revision u/s 263.

10. We have considered submission of both sides and perused the records held on record. On perusal of assessment-order passed by Ld. AO, we observe that the Ld. AO has stated only an opening-sentence about survey in the

whole body of assessment-order which reads “A survey u/s 133A of the I.T. Act was carried out at the business premise of the aforesaid assessee on 06.01.2014” and thereafter the Ld. AO has not uttered a single word about the survey or the material found in survey. We further observe that the case was picked under compulsory-scrutiny for the reason of survey and therefore it was imperative for the Ld. AO to make an adequate analysis of the documents / material found during the course of survey. Needless to mention that the assessment is a sacred function and the order of assessment needs to address the concerns of exchequer adequately. The job of the AO is to function as investigator as well as adjudicator. But contrary to this, the order of assessment does not demonstrate that the Ld. AO has made any attempt to deal with the material found in survey. Coming to the submission of Ld. AR that the assessee has voluntarily disclosed the excess-cash of Rs. 3,00,000/- admitted during survey while filing the return of income, although we appreciate this action of assessee yet it does not mean that the Ld. AO should not have examined the material found in survey at the time of making assessment. From assessee’s side, no convincing submission has been made before us to prove that the Ld. AO has explicitly or implicitly considered the material found during the survey or the Ld. AO has applied mind on the issues unearthed during survey. On perusal of assessment-order, we observe that the Ld. AO has maintained total silence over the issue of undisclosed income found during survey and disclosed by the assessee in the return. Referring to Q.No. 23 of the Statement heavily relied upon by Ld. AR in his arguments, we observe that although the assessee admitted excess-cash of Rs. 3,00,100/- in Statement but offered income of Rs. 3,00,000/- in the Return but even this point, though the difference is a petty sum of Rs. 100/-, has not been analysed by Ld. AO. Therefore it is much apparent, without speaking anymore, that the Ld. AO has failed to take into account the outcome of survey while passing assessment-order. We are, therefore, of the considered view that by non-consideration of the outcome of survey-action while finalizing assessment, the Ld. AO has passed an order which is erroneous in as much as it is prejudicial to the interest of revenue. Therefore,

we do not find any ambiguity in the order passed by Ld. PCIT and he has passed a reasoned and detailed order and the order passed by Ld. PCIT u/s 263 of the Act is a valid order in the circumstances and we are inclined to uphold the same.

11. In the result, this appeal of assessee is dismissed.

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 22.07. 2022.

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 22.07.2022

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Benches, Indore

1.	Date of taking dictation	19.7.22
2.	Date of typing & draft order placed before the Dictating Member	19.7.22
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the fair order is placed before the Dictating Member for pronouncement	
5.	Date on which the file goes to the Bench Clerk	
6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	
8.	Date of dispatch of the Order	