

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.52/RJT/2022
Assessment Year: 2017-18**

M/s. Avadh Petroleum,
Kalpesh S. Doshi & Co.
Chartered Accountants,
1006-09, The Spire 2,
Near Sheetal Park BRTS Stop,
150 Ft. Ring Road,
Rajkot – 360 005.
[PAN – ABDFA 0390 D]
(Appellant)

vs.

Principle Commissioner of
Income Tax, Rajkot.

(Respondent)

Appellant by : Shri Kalpesh Doshi, Ld. AR
Respondent by : Ms. Bhavna Yashroy, Ld. CIT(DR)

Date of hearing : 27.07.2022
Date of pronouncement : 31.08.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the assessee against the order dated 17.01.2022 passed by the PCIT, Rajkot-1 for the Assessment Year 2017-18.

2. The assessee has raised the following grounds of appeal:

- “1. That the Ld. PCIT has wrongly invoked provision of Section 263 of the I.T. Act and wrongly held that order passed by the AO is erroneous and prejudicial to the interest of the Revenue. The Ld. PCIT has travelled beyond jurisdiction and wrongly passed order u/s. 263 of the I.T. Act.
2. The Ld. PCIT has erred in invoking the revisionary powers by stating that the AO has failed to enquire and examine the cash deposits and failed to comply with the SOP issued by CBDT related to cash deposits during demonetization period.
3. The Ld. PCIT has wrongly invoked explanation-2 to Section 263 of the I.T. Act.

4. *That, the Revision u/s. 263 is made on the basis of incorrect legal provisions and therefore the order u/s.263 is bad-in-law."*

3. The assessee is a firm engaged in trading. The assessee firm filed return of income on 05.11.2017 declaring total income of Rs.22,83,450/-. The Assessing Officer completed the assessment under Section 143(3) of the Income Tax Act, 1961 accepting the return of income of Rs.22,83,450/-. The Principle Commissioner of Income Tax (PCIT) observed that during the period under consideration, the assessee had deposited cash of Rs.1,32,11,370/- in old currency in the bank account and not submitted any justification or source of cash which was deposited in the Bank. In the absence of any explanation the cash was required to be added to the total income of the assessee under Section 69A of the Act. The Assessing Officer has also failed to consider the related applicability of Section 115BBE of the Act on such addition. The PCIT issued show cause notice dated 09.07.2021 proposing to subject the Assessment Order to revision under Section 263 of the Act. The PCIT again issued notice for which no reply was filed before the PCIT. The PCIT thereby vide order dated 17.01.2022 passed under Section 263 of the Act directed the Assessing Officer to consider the assessment only after taking proper enquiries/verification on the issue involving as this is a fit case for invoking Section 263 of the Act as it is erroneous and prejudicial to the interest of the Revenue.

4. Being aggrieved by the order under Section 263 of the Act, the assessee is before us.

5. The Ld. AR submitted that the assessee is a partnership firm and engaged in the retail business of petrol and diesel having Petrol Pump of Bharat Petroleum Corporation Limited (BPCL). Since the assessee is engaged in the Petrol Pump of BPCL, a Government Undertaking, the assessee is covered by list of 23 categories of business exempted by RBI during the demonetisation period are duly allowed to collect old SBN/old currency of Rs.500 and Rs.1000 notes on sales at Petrol Pump. The relevant extract of RBI notification is as under:-

“Government had also permitted various exemptions for certain transactions and activities wherein payment could be made through old Rs.500 and Rs.1000 notes. It has been decided that all these exemptions, with the additions and modifications as detailed below, may be continued for a further period from the midnight of 24.11.2016 upto and inclusive of 15.12.2016:-

For purchase of petrol diesel and gas at the stations operating under the authorisation of Public Sector Oil and Gas Marketing Companies”

6. Therefore, as per the above notification the assessee was allowed to accept the SBN's. The Ld. AR further submitted that revision proceedings were initiated on the ground that the Assessing Officer has failed to properly examine the issue with respect to cash deposits in Bank Account. The Ld. AR further submitted that during the course of assessment proceedings, the Assessing Officer issued notice under Section 142(1) of the Act dated 20.07.2019 thereby calling upon the details in respect of cash deposits made in the Bank account. More specifically, in paragraph no.25, calling upon details of cash deposits during the demonetisation period in the prescribed format. Thus, during the course of assessment proceedings, specific queries were raised for verification of source of cash deposits in the Bank account during the demonetisation period. The assessee has submitted all the relevant details related to the said cash deposits and its genuineness. Therefore, the Ld. AR submitted that PCIT has wrongly contended that neither the assessee proved the genuineness of cash deposits nor the Assessing Officer examined the source of cash deposits in the assessment proceedings. Therefore, the Ld. AR submitted that the invocation of Section 263 of the Act is not just and proper.

7. The Ld. DR submitted that the PCIT has invoked the explanation-2 to Section 263 of the Act as the order is deemed to be erroneous in so far as it is prejudicial to the interest of the Revenue. The Ld. DR submitted that the assessee has not filed any submission before the PCIT during Section 263 proceedings. In the Paper Book, the assessee claimed that the Assessing Officer has called for the details and followed the procedure laid down for verification of cash deposits but the assessee failed to demonstrate as to what kind of enquiries they have conducted. The assessment order does not detail any enquiries being conducted and there is no mention of material

examined or verified. The assessee furnished details dated 27.11.2019 and order was passed on 13.12.2019 and the assessment order did not mention the date of submission in the dates of hearing. As per the assessment order, the last date of hearing was 15.11.2019. Therefore, there was no verification or enquiry conducted by the Assessing Officer on the details filed thereafter. The Ld. DR relied upon the decision of Hon'ble Delhi High Court in the case of Gee Vee Enterprises vs. Addl. CIT (1975), 99 ITR 375 as well as the decision of the Hon'ble Rajasthan High Court in the case of Renu Gupta vs. CIT, 301 ITR 45. The Ld. DR also relied upon the decision of Hon'ble Madhya Pradesh High Court in the case of CIT vs. Deepak Kumar Garg, 299 ITR 435 and Hon'ble Calcutta High Court in the case of CIT vs. Maithan International, 56 taxmann.com 283. The Ld. DR also relied upon the decision of Delhi Tribunal in the case of NIIT vs. CIT, 60 taxmann.com 313.

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the questionnaire issued by the Assessing Officer along with notice under Section 142(1) of the Act includes the details of cash deposits during the demonetisation period as well the contention of the Ld. DR that submissions of the assessee filed after the conclusion therein which appears to be not in consonance with the facts on record. The details related to cash deposits in respect of demonetisation was very much before the Assessing Officer. The PCIT has not given proper opportunity for filing reply on behalf of the assessee and without giving hearing or any opportunity to file any details before him has passed the order under Section 263 of the Act. Besides this, the PCIT has not taken cognisance of the assessment proceedings wherein the details were called related to demonetisation period and related cash deposits. The CBDT circular in respect of cash deposits in Rs. 500 and Rs.1000 denomination notes are permissible and, therefore, the assessee has justified his conduct in relation to cash deposits during demonetisation period. Therefore, the Assessing Officer has rightly accepted the contention without giving any details thereto in the assessment order. Once the Assessing Officer is satisfied, it is not necessary to comment on the same in the assessment order. Thus, the assessment order was neither erroneous nor prejudicial to the interest of the Revenue. Therefore, invocation of Section 263 provisions are not just and proper as the PCIT has not looked into the assessment proceedings and the documents filed

before the Assessing Officer. Therefore, the order under Section 263 of the Act passed by the PCIT is set aside. Appeal of the assessee is thus allowed.

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

Order pronounced in the open Court on this 31st day of August, 2022.

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 31st day of August, 2022

PBN/*

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

By order

Assistant Registrar
Income Tax Appellate Tribunal
Rajkot Bench, Rajkot