

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER,
And
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 177/Rjt/2022

निर्धारण वर्ष/Asstt. Years: 2016-2017

Ketan Balvantbhai Bhatt, Vatsalya, Navyug Society, Rameshwar Chowk, Bh. Amrapali Cinema, Rajkot. PAN: AKSPB8822H	Vs.	The Principal Commissioner of Income Tax-1, Rajkot.
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Assessee by	:	Shri Chetan Agarwal, A.R
Revenue by	:	Shri Aarsi Prasad, CIT. D.R

सुनवाई की तारीख / **Date of Hearing** : **06/07/2022**
घोषणा की तारीख / **Date of Pronouncement**: **14/09/2022**

आदेश/ORDER

PER BENCH:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Principal Commissioner of Income tax , Rajkot, dated 23/01/2021 arising in the matter of assessment order passed under s.263 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2016-17.

2. The only interconnected issue raised by the assessee is that the learned Principal CIT erred in holding the assessment framed under section 143(3) of the Act as erroneous insofar prejudicial to the interest of Revenue under the provisions of section 263 of the Act.

3. The brief facts are that the assessee is an individual and filed his return of income declaring income of ₹ 12,89,130.00 which was accepted in the assessment framed under section 143(3) of the Act vide order dated 24 September 2018. However, the Id. PCIT, on the proposal received from the Range Head, examined the case records of the assessee and found that the assessee has taken loan from various parties through banking channel as well as in cash. The PCIT was of the opinion that the AO has not verified the details of the loan parties with respect to the identity, creditworthiness of the parties and the genuineness of the transactions in the manner provided under section 68 of the Act. At the same time, the assessee has accepted loan in cash amounting to ₹ 5,26,000 which is in contravention to the provisions of section 269SS of the Act but no penalty proceedings under section 271D of the Act has been initiated. Based on the above, the PCIT concluded that the assessment has been framed without necessary verification. Therefore, the same is erroneous insofar pre-judicial to the interest of revenue.

4. Being aggrieved by the order of the learned PCIT, the assessee is in appeal before us.

5. The learned AR before us contended that the proceedings were initiated by the learned PCIT at the instance of the Range Head. As such there was no application of mind of the learned PCIT and therefore on this count only the revised order passed by the learned PCIT under section 263 of the Act is not sustainable.

6. On the contrary, the learned DR vehemently supported the order of the Id. PCIT.

7. We have heard the rival contentions of both the parties and perused the materials available on record. On perusal of the revised order under section 263 of the Act, we find that the learned PCIT has observed as under:

Accordingly, a proposal was received from the Range Head for considering the case for action u/s. 263 of the I.T. Act.

7.1 From the above observation of the learned PCIT, there remains no ambiguity to the fact that the proceedings were initiated under section 263 of the Act at the behest of the range head as observed hereinabove which is contrary to the provisions of section 263 of the Act. As such, the language used under the provisions of section 263 of the Act requires that satisfaction of the learned PCIT is mandatory for initiating the proceedings under section 263 of the Act.

7.2 The tribunal in the case of Shantai Exim Ltd versus CIT reported in 88 Taxman.com 361 has observed as under:

Held that the action under section 263 initiated on the basis of recommendation by the concerned Assessing Officer/Joint Commissioner. The said Assessing Officer has categorically held that the order of his predecessor is erroneous and prejudicial to the interest of the revenue. Thereafter the case record was called for by the Commissioner. If the recommendation would not have received from the successor. The Assessing Officer, then the Commissioner would even not have initiated the proceedings under section 263. Therefore, it could not be termed that the Commissioner himself has called for the records. In this case, the record has been called for only after the recommendation received from the successor Assessing Officer. In similar situation, the ITAT, Mumbai "A" Bench in the case of Ashok kumar Shivpuri v. CIT dated 07-11-2014, in ITA No.631 (M) of 2014, held that the revision proceedings simply on the basis of proposal from the Assessing Officer is not valid, because section 263(1) says that proposal for initiation of revision proceedings must be initiated by the Commissioner. It is the Commissioner who has to call for and examine the records; but in the instant case the proposal came from the Assessing Officer and on receipt of the proposal, the Commissioner initiated revision proceedings, which is not justified.

7.3 In view of the above and after considering the facts in totality, we hold that the proceedings under the provisions of section 263 of the Act has not been initiated within the framework of the law and therefore the revisional order passed by the

learned PCIT is not sustainable and therefore we quash the same. Hence the ground of appeal of the assessee is allowed.

8. In the result, the appeal filed by the assessee is **allowed**.

Order pronounced in the Court on 14/09/2022 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER
(True Copy)

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 14/09/2022
Manish