IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" DELHI

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

I.T.A. No.663/DEL/2022
Assessment Year 2017-18

Sanjiv Kumar Mittal, House No.1666, Sector No.13, Hisar.	v.	Principal Commissioner of Income Tax PCIT, Rohtak.
TAN/PAN: AJUPM9771B		
(Appellant)		(Respondent)

Appellant by:	Shri Salil Kapoor Adv. Shri Tarun Chanana Adv.		
Respondent by:	Ms. Sapna Bhatia, CIT-DR		
Date of hearing:	11	10	2022
Date of pronouncement:	19	10	2022

O R D E R

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed at the instance of the Assessee against the order of the Principal Commissioner of Income Tax, Rohtak ['PCIT' in short] dated 19.03.2022 passed under Section 263 of the Income Tax Act, 1961 (the Act) whereby the assessment order passed by the Assessing Officer (AO) dated 04.11.2019 under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2017-18 was sought to be set aside for reframing assessment in terms of supervisory directions.

2. As per its grounds of appeal, the assessee has challenged the revisional action of the PCIT whereby the Assessing Officer (A.O.) was directed to pass the assessment order *de novo* after

making enquiries on the points set out in the show cause notice and the revisional order. The assessee has challenged the assumption of jurisdiction by the PCIT under section 263 of the Act on the ground that the Assessment Order under revision is neither erroneous nor prejudicial to the interest of the Revenue.

3. Briefly stated, the assessee filed return of income declaring total income at Rs.83,11,070/-. The return filed was subjected to limited scrutiny through CASS [Computer Aided Scrutiny Selection] on the following issue *'Payment of tax in cash during demonetization period'*. The income offered by the assessee was assessed under Section 143(3) of the Act without any adjustments.

4. Thereafter, the PCIT in exercise of revisionary powers, issued show cause notice dated 21.01.2022 to show cause why the assessment so framed under section 143(3) should not be modified/set aside on the ground that such order is erroneous in so far as prejudicial to the interest of the Revenue.

5. As per the show cause notice, it was alleged that the AO has failed to examine the levy of tax @60% under Section 115BBE of the Act on the income surrendered amounting to Rs.50 lac, having regard to the unexplained nature of income detected in the course of survey proceedings. The PCIT observed that the surrendered income represented 'undisclosed income' of the assessee on which the Assessing Officer failed to inquire as to why the assessee had not declared the surrendered income as deemed income under 'income from other sources' chargeable to tax under Section 115BBE of the Act. The PCIT thus observed that the Assessing Officer failed to inquire as to why the assessee had paid taxes at normal tax rate instead of maximum marginal rate chargeable

under Section 115BBE of the Act on such undisclosed income. Hence, the action of the Assessing Officer in determining the tax liability on assessed income is clearly erroneous and prejudicial to the interest of the Revenue. The PCIT accordingly exercised its jurisdiction conferred under Section 263 of the Act and directed the Assessing Officer redo the assessment afresh having regard to the observations made in the revisional order.

6. Aggrieved by the revisional order passed by the PCIT, the assessee preferred appeal before the Tribunal to challenge the supervisory jurisdiction usurped by the PCIT under section 263 of the Act.

7. We have heard the rival submissions on the issue. On a broader reckoning, the contentions of the assessee are:

i) The case was selected for 'limited scrutiny' and therefore the scope of the assessment was confined to the points noted in the scrutiny notice issued under s.143(2) of the Act read with CBDT Instruction No.5/2016 dated 14th July, 2016. As per the aforesaid notice, the solitary issue identified for examination was on account of '*payment of tax in cash during the demonetization period*'.

ii) The Assessing Officer duly complied with the requirement of issue raised in limited scrutiny and after considering the replies and documents submitted during the course of assessment proceedings and framed the assessment on returned income.

iii) On facts, no payment of tax in cash as alleged was made during the demonization period as pointed out by assessee in the

course of assessment proceedings as well as revisional proceedings. The Assessing Officer thus has rightly worked out tax liability within the domain of limited scrutiny set out by the CBDT Instruction No.5/2016 dated 14.07.2016 and rightly confined himself to examine the issue as identified for issuance of notice under Section 143(2) dated 10.08.2018. Thus, the Assessing Officer cannot be faulted for not travelling beyond the issues determined for the purposes of limited scrutiny. Thus, the action of the Assessing Officer cannot be regarded as erroneous *qua* the scope of limited scrutiny.

8. A reference was made to the decisions of the Co-ordinate Benches of Tribunal in the case of *Meena Choudhary vs. Pr.CIT in ITA No.70/RPR/2020 order dated 12.10.2021; M/s. Su-Raj Diamond Dealers Pvt. Ltd. vs. PCIT in ITA No. 3098/Mum/2019 order dated 27.11.2019; Balvinder Kumar vs. PCIT (2021) 125 taxmann.com 83 (Delhi-Trib.) & Hill Queen Investment (P.) Ltd. vs. PCIT (2021) 127 taxmann.com 682 (Kolkata- Trib.)* and was submitted that the co-ordinate bench of Tribunal have uniformly held that where the scope of scrutiny is limited to the issues raised, the revisional authority is not entitled under s.263 of the Act to examine the issue not specified in the limited scrutiny assessment.

9. On appraisal of the evidences placed before us, we find that vide notice dated 10.08.2018 specific queries were raised by the AO in relation to the issue raised for the purposes of limited scrutiny, i.e., *'Payment of tax in cash during demonetization period'*. In response, the assessee has filed replies explaining the relevant facts in this regard. The Assessing Officer was satisfied

with the answers made available in response to allegation towards payment of tax in cash. Thus, in the absence of any error in the action of the Assessing Officer *qua* the issue of limited scrutiny, the revisional action in the instant case is unsustainable in law.

10. We also find merit in the plea of the assessee that having regard to CBDT instruction Nos. 7/2015, 20/2015 & 5/2016 and also CBDT letter dated 30.11.2017, the AO was not entitled to go beyond the reasons for selection of matter for limited scrutiny. As a corollary, it is not open to the PCIT to pass revisionary order and remit the matter to the Assessing Officer on other aspects by rendering assessment order as erroneous and prejudicial to the interest of the Revenue. This is the view consistently taken by the co-ordinate benches in several decisions, some of which are noted earlier. The action of the PCIT under Section 263 of the Act thus cannot be approved on this parameter also.

11. Noticeably, it is also the case of Assessee that the error alleged by the PCIT on the touchstone of Section 68 is fundamentally incorrect where the Assessee has owned up and surrendered the amount of investment in firm as its investment and contribution. In the absence of any credit in the books of assessee partner, the provisions of Section 68 has no application on which the allegation is based. In such factual matrix, we find merit in defense of the assessee that chargeability of tax with reference to Section 115BBE is not permissible in the present case towards purported undisclosed income declared by the assessee in the course of survey. As pointed out, the assessee being partner of the firm, claims to have invested the impugned amount in the partnership firm and surrendered as its undisclosed income. The

Pr.CIT in the revisional proceedings could not have invoked Section 68 of the Act towards such unexplained investments in the firm in the absence of any credit in the books of assessee *per se* and the right course, possibly, could be Section 69 of the Act at best for which no case has been made out by the Pr.CIT. As contended, the Tribunal cannot uphold the revisional action of the Pr.CIT on a different ground then what is alleged in the revisional proceedings as held in *CIT vs. Jagadhri Electric Supply and Industrial Company, 140 ITR 490/P & H*. We thus find traction in the contention that where Section 68 as alleged and invoked by the Pr.CIT is not applicable, Section 115BBE could not be triggered by modifying the premise of revisional directions. The revisional action of the Pr.CIT thus fails on this count also.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 19/10/2022.

Sd/-
[NARENDER KUMAR CHOUDHRY]
JUDICIAL MEMBER

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER

DATED: **/10/2022**

Prabhat