

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No.709/Del./2022  
(ASSESSMENT YEAR : 2016-17)**

Shri Mohit Gupta, vs. PCIT (Central),  
Haveli Gaindamal Sukhbir Singh, KNP at Meerut.  
Mandi Jawahar Ganj,  
Shamli – 247 776 (Uttar Pradesh).  
**(PAN : AEZPG0976J)**

**ITA No.710/Del./2022  
(ASSESSMENT YEAR : 2016-17)**

Shri Ashish Gupta, vs. PCIT (Central),  
Haveli Gaindamal Sukhbir Singh, KNP at Meerut.  
Mandi Jawahar Ganj,  
Shamli – 247 776 (Uttar Pradesh).  
**(PAN : ACRPG3086D)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri P.C. Padwal  
REVENUE BY : Shri P. Praveen Sidharth, CIT DR

Date of Hearing : 13.10.2022  
Date of Order : 01.11.2022

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

These are two appeals by two assesseees against respective orders of Id.  
Pr.CIT passed under section 263 of the Income-tax Act, 1961 (for short 'the

Act'). Since the facts are identical and the appeals were heard together, they are disposed off by this common order.

2. For the sake of reference, we are referring to the case of Ashish Gupta in ITA No.710/Del/2022. The grounds of appeal read as under :-

“1. Under the facts and circumstances of the case, order passed by the Ld. PCIT u/s 263 is illegal & bad in law. He has further erred in exceeding his jurisdiction in passing the order u/s 263 ignoring that an order passed u/s 143(3) r/w sec. 153D cannot be revised without revising the approval of the Addl. CIT.

2. The Ld. PCIT has erred on facts and in law in holding that the order passed by AO is erroneous and prejudicial to the interest of revenue as per clause (a) of Explanation 2 to section 263 as there is non application of mind on part of the AO since he has not made necessary verification of facts/enquiries with reference to:-

(i) difference between the stamp duty value of land purchased by the firm M/s Gupta Sons & M/s Agarwal Sons and actual sales consideration with reference to the assessee's share in these firms which is assessable u/s 56(2)(vii)(b) of the Act ignoring that this issue has been examined by the AO in detail in course of assessment proceedings

(ii) variation of Rs.1,49,000/- between the return filed u/s 139(1) & 153 A ignoring that the difference is on account of claim of deduction u/s 80C of the Act on account of tuition fees of child duly reflected in the return filed u/s 153A of the Act.

3. The Ld. PCIT has erred on facts and in law in passing the order u/s 263 without rebutting the various contentions raised by the assessee.

3. Brief facts of the case are that the assessee filed his return of income on 30.08.2016 having total income of Rs.5,52,640/- u/s 139 (1) of the Act. A search and seizure operation was carried out by the Investigation Wing in the

case on 30.11.2017 at the residential premises of the assessee at Haveli, Jawahar Ganj, Mandi, Shamli. Thereafter on 19.12.2019, order u/s 143(3) / 153A of the IT Act was passed by ACIT, Central Meerut and two additions on account of unexplained investment of Rs.5,54,000/- and on unexplained expenditure of Rs.2,00,000/- were made in the total return income of Rs.4,03,640/-, assessing it on Rs. 11,57,640/-.

4. Later on order u/s 263 of the Act was passed by PCIT mainly on account of following reasons :-

- a) Firms M/s. Gupta Sons and M/s. Agarwal Sons had purchased land in the F.Y. 2015-16. The said land is part of an orchard which was already in possession of Gupta family (Shri Rahul Gupta & others). Shri Ashish Gupta and other family members of the entire Gupta family have 38% share in the Bagh, and the land has been registered a much below value of the market value as per land registry office. Apart from using these firms to acquire the said bagh, no other business is carried out by these firms till date. The total share of different members of Gupta Family in land deal of Sir Shadi Lal Garden is 38 % of total land area of 40.201 Hect.
- b) M/s Gupta Sons was created on 15.10.2015 and M/s Agarwal Sons was created on 11.02.2015.
- c) Total stamp duty value of the land purchased by the firm Gupta Sons is Rs.3,96,95,560/-. Shri Ashish Gupta has 5% share in the said firm, M/s Gupta Sons. Thus, the deemed contribution of Shri Ashish Gupta is Rs.19,84,778/-. Since, it was found that the firms

were created for the purpose of only registering the land as no business activities have been carried out, the amount that was received by seller of land may be treated as received by the partner of the firm i.e. the transaction was carried out not between the firm and the individuals but between the two individuals only. Hence, the section 56(2)(vii)(b) is applicable in the case of individual. Total sales consideration is Rs.19,00,000/- and stamp duty value is Rs.3,96,95,560/-. Difference between stamp duty value and sale consideration is Rs.3,77,95,560/-. The 5% of this value of Rs.3,77,99,560/- come to Rs.18,89,778/-.

Further, the total stamp duty value of the land purchased by the firm Agarwal Sons is Rs.28,03,94,000/- and total sales consideration is Rs.1,00,00,000/-. Difference between stamp duty value and sale consideration is Rs.27,03,94,000/-. Shri Ashish Gupta has 1% share contribution in M/s Agarwal Sons. The 1% this value of Rs.27,03,94,000/- comes to Rs.27,03,940/-.

The total of Rs. 45,93,718/- (1889778+2703940) is deemed income of the assessee as per provision of section 56(2)(vii)(b) of the Act.

- d) The assessment considering the addition u/s 56(2)(vii)(b) of the Act has already been passed by the assessing the officer in the cases of Shri Shashi Bala partner in the firm M/s Agarwal Sons and M/s Goel Sons, Manisha Gupta partner in the firm M/s Gupta Sons and M/s Agarwal sons in the cases of Yogesh Bindal, Sushil Garg, Dr. Anguri Gard & Narandra Kumar Mittal partner in the firm M/s Agarwal Sons.

- e) Further, on perusal of records difference of income amounting to Rs.1,49,000/- was also left out from assessment as mentioned in the show cause.

4. After the above observation, Id. Pr.CIT invoked the provisions of clause (a) of Explanation 2 to section 263 of the Act and held that there is lack of verification and enquiries which were required to be made. He further observed that the assessee is liable to be taxed as per section 56(2)(vii)(b) in respect of his share of land computed on the basis of his profit sharing ratio in the two firms, namely, M/s. Aggarwal Sons and M/s. Gupta Sons. That Explanation 2 enjoins upon the AO to conduct necessary enquiries and verification before passing an assessment order and the failure to do so, would lead to invocation of provisions of section 263 of the Act. That the failure of AO to do so has rendered the assessment order passed to be erroneous insofar as it is prejudicial to the interest of Revenue. Thereafter, Id. Pr.CIT referred to case laws for the proposition that lack of proper enquiry can give rise to exercise of jurisdiction u/s 263 of the Act. He concluded as under :-

“In view of the discussion above, it is clear that there is non-application of mind on the part of the Assessing Officer inasmuch as the necessary verification of facts/enquiries which should have been made, have not been made, making the order erroneous and prejudicial to interest of revenue within the meaning of section 263 read with Clause (a) of Explanation 2 thereunder. I, therefore, under the powers conferred u/s 263 of the Income Tax Act, 1961, hereby set aside the order passed by Assessing Officer u/s 153A/143(3) for A.Y. 2016-17 with direction to pass fresh order after conducting proper

enquiries, and considering discussion in paras above, after providing opportunity to the assessee also.”

5. Against the above order, assessee has filed appeal before us. We have heard both the parties and perused the records.

6. Ld. Counsel of the assessee stated that due enquiry has been made by the AO and assessee has duly given explanation. That upon acceptance of assessee's explanation, no addition in this regard has been made. Ld. Counsel further placed reliance on the following case laws :-

- (i) ITAT, Mumbai Bench in case of Sir Dorabji Tata Trust vs. DCIT (E) (2021) 188 ITD 38;
- (ii) ITAT, Delhi Bench in case of Brahma Center Development (P) Ltd. vs. PCIT (2020) 185 DTR 353/77 ITR (Trib.) 156;
- (iii) ITAT, Delhi Bench in case of ETT Ltd. vs. CIT (2019) 177 DTR 313;
- (iv) ITAT, Delhi Bench in case of Amira Pure Foods Pvt. Ltd. vs. PCIT (2017) 51 CCH 473/63 ITR (Trib.) 355;
- (v) ITAT, Surat Bench in case of Nilkanth Stone Industries vs. PCIT (2021) 189 ITD 718;
- (vi) Hon'ble Karnataka High Court in case of CIT vs. International Society for Krishna Consciousness (2020) 272 taxman 534;
- (vii) Hon'ble Andhra Pradesh High Court in case of PCIT vs. Deccan Jewellers Pvt. Ltd. (2021) 206 DTR 257/283 taxman 578; and
- (viii) ITAT, Delhi Bench in case of Smt. Abha Bansal vs. PCIT (2021) 208 DTR 265.

7. Per contra, ld. DR for the Revenue relied upon the order of ld. Pr.CIT.

8. As regards ground no.1, ld. DR for the Revenue referred to the decision of the coordinate Bench of the ITAT in the case of Kapil Mehta in ITA No.533/Del/2021 order dated 11.01.2021. ITAT has rejected similar argument in this regard as under :-

“6.11 On a plain reading of the section, we do not find that there is any fetters on the powers of PCIT or CIT for revising ‘ any order passed by the AO “except as provided in explanation 1(c)” of the section.

6.12 However, here the argument of the assessee is that powers granted to the PCIT and CIT u/s 263 becomes otiose if the authority below the rank of PCIT/ CIT i.e Joint Commissioner of Income tax, has approved the order u/s 153D of the Act. The natural corollary of the argument is that if the lower authority, u/s 153D, has approved the order, the Higher Authority i.e., PCIT and CIT lose their power to revise such orders. . It is obvious and as glaring as the day light that Pr. Commissioner of Income Tax is way high above the Joint Commissioner of Income Tax. Reference to section 116 of the Income Tax Act, where the Income Tax authorities in their hierarchial order are listed, clears any doubt about it.

6.13 The Hon’ble Delhi High Court in NIIT Ltd. Vs. Union of India in WPC No. 172–179/2009 dated 11th December, 2009 in para No. 20 has categorically held that:-

“20. The legal position which cannot be disputed is that when a particular authority is vested with the power to discharge statutory function, like the Commissioner who is empowered to pass orders under Section 263 of the Act, it is that authority which is to apply its independent mind and arrive at its own conclusion without being influenced by any other authority, much less the higher authority. Unfettered discretion lies in the Commissioner of Income Tax to pass orders under Section 263 of the Act. He is supposed to examine the records produced before him to arrive at a conclusion whether the assessment order passed by the AO suffers from infirmities and needs to be revised under Section 263 of the Act. The parameters which are laid down in Section 263 of the Act need to be fulfilled in

exercising such a discretion. It is the Commissioner who has to satisfy himself, on the basis of available records, that in a given case the conditions stipulated under Section 263 of the Act are satisfied. In arriving at this conclusion, he is not to be controlled even by a higher authority. Likewise, the higher authority is not to interfere with the independence of his unfettered discretion which is statutorily conferred upon the Commissioner.”

6.14 Thus, even the authority above PCIT and CIT cannot deprive the powers of the revision and thus there is no reason that lower authority exercising powers granted to it can prevent the PCIT or the CIT to exercise revisionary powers. Therefore, it is apparent that none of the lower authorities or even a superior authority cannot put spokes in exercising the power of the Pr. Commissioner of Income Tax. Such is the mandate of the Hon’ble Delhi High Court.

6.15 Now we come to the decision of the Hon’ble Supreme Court in T.N. Civil Supplies Corpn. Ltd Vs Commissioner of Income-tax [2003] 260 ITR 82 (SC) wherein the Assessing Officer passed an order on the direction of the Inspecting Assistant Commissioner under Section 144B of the Act, which was subject to revision under Section 263 of the Act. The Hon’ble Supreme Court in that particular case has categorically held that the orders to be revised are orders passed by the Income Tax Officer. Hon’ble Supreme Court further held that provisions of Section 263 did not exclude ‘orders passed by the Assessing Officer on the direction of a superior authority either under Section 144A or Section 144B of the Act. The Hon’ble Supreme Court held that :-

“2. The power to revise orders of the Income-tax Officer under section 263 of the Income-tax Act, 1961 was sought to be limited by the appellant-assessee by contending that the phrase "order passed by the Income-tax Officer" in section 263 excluded those orders passed by the Income-tax Officer pursuant to the directions of the Inspecting Assistant Commissioner under section 144B which was then included in the Act.

3. The High Court in its decision has followed its earlier decision in which it had referred to and relied upon the reasoning of several other High Courts on the same issue to negative the contentions of the assessee.

Given the uniformity of interpretation by the several High Courts, it would not be appropriate to interfere with the decision of the High Court.

4. In any event we are of the view that having regard to the subsequent amendments to the Act issued from time to time there was no scope for limiting the phrase 'order passed by the Income-tax Officer' in section 263 to exclude orders passed by the Income-tax Officer on the directions of a superior authority either under section 144A or 144B.”

6.16 Categorically here the orders are not passed even under the instructions of the superior authority or under the direction of the superior authority, but merely an approval was granted by the Joint Commissioner of Income Tax under Section 153D of the Act to pass the orders. Provisions of Section 153D speak about “prior approval for assessment in the case of search”. They also provide for obtaining the prior approval of the Joint Commissioner for merely passing an order. Therefore, the decision of the Hon’ble Supreme Court clearly lays down that ‘any order passed by the Assessing Officer’ can be revised under Section 263 of the Act irrespective of the fact that any authority has granted any direction to the Assessing Officer.

6.17 Therefore, natural corollary would be show that all orders of search and seizure passed under Section 153A or under Section 153C of the Act are required to be passed after prior approval of the Joint Commissioner except as provided under Section 154BA(12). Therefore, if the argument of the Ld. AR is to be accepted then in such cases where the assessment has been framed under Section 153A or Section 153C, the same will go out of the ambit of the provisions of Section 263 of the Act and such a view is directly contrary to the decision of the Hon’ble Supreme Court in T.N .Civil Corporation Vs. CIT 260 ITR 82, Hon’ble Punjab & Haryana High Court Osho Forging Ltd. Vs. CIT (supra) and Hon’ble Delhi High Court in NIIT Ltd. Vs. Union of India (supra).

6.18 The power of the Commissioner under Section 263 of the Act is in the nature of supervisory jurisdiction. This power is granted to correct an error, which is prejudicial to the interest of the Revenue in the order of the Assessing Officer, even if it is approved by the Joint Commissioner, who is also falling below the rank of the Pr. Commissioner. If the argument of the Id. AR is accepted then the

supervisory authority of the Pr. Commissioner granted under the Act is hampered.

6.19 Therefore, on provisions of Section 263 of the Act give unfettered right to the Commissioner of Income Tax to revise any order passed by the Assessing Officer. Whatever was to be excluded by the law has already been provided under that Section and the only exception are the issues 'decided and considered' in the appellate orders. Therefore, the reasoning of the arguments advanced by the Ld. AR on this line also fails and we dismiss the same."

9. We find that the above proposition is duly applicable in the ground raised by the assessee in this regard wherein it is urged that the jurisdiction exercised by Pr.CIT is wrong inasmuch as that is without revising the approval of the Addl. CIT. As already held by the ITAT above, there are no such fetters to the powers of Id. Pr.CIT and more so for the officer who is below in rank to the Pr. Commissioner. Hence, ground no.1 stands dismissed.

10. Now, we come to order passed under section 263 of the Act. In this regard, in the order passed u/s 263 of the Act, Id. Pr.CIT has already made a computation of addition which as per him should have been made. But in the same breadth, he is invoking the provisions of clause (a) of Explanation 2 to section 263 of the Act holding and directing the AO to make proper enquiry. We find that this is quite contradictory on the part of the Id. Pr.CIT. In one part of the order, he is computing the addition which should have been done in the hands of the assessee. Thereafter, he is stating that there is lack of further enquiry and hence he is invoking the provisions of section 263 and directing the

AO to make proper enquiry. In our considered opinion, such contradictory order is not legally sustainable. We note that in the case of Kapurchand Shrimal vs. CIT 131 ITR 451, Hon'ble Supreme Court has held that it is the duty of appellate authority to correct the errors in the orders of the authorities below and remand the matter back to them with or without direction unless prohibited by law. In the present case, we find that the above said ratio is fully applicable and the order passed by the Id. Pr.CIT is contradictory in itself. Hence, we remit the issue back to the file of Id. Pr.CIT to consider the issue afresh after giving an appropriate opportunity of being heard to the assessee and in the light of our observation hereinabove.

11. In the result, this appeal filed by the assessee is partly allowed for statistical purposes.

12. Our above order applies mutatis mutandis to both the appeals.

13. In the result, both the appeals are partly allowed for statistical purposes.

**Order pronounced in the open court on this 1<sup>st</sup> day of November, 2022.**

**Sd/-**  
**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

**sd/-**  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

**Dated the 1<sup>st</sup> day of November, 2022**  
**TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.Pr.CIT
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.