

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.205/Ind/2021

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ITANo.119/Ind/2020

Assessment Year: 2011-12 & 2016-17

Kishoree Lal Prajapati Bhopal	<u>बनाम /</u> Vs.	Pr. CIT-2 Bhopal
(Appellant / Assessee)		(Respondent / Revenue)
PAN: APIPP 5636 G		
Assessee by	Shri Sumita Nema Sr. Adv. And Shri Gagan Tiwari, Adv.	
Revenue by	Ms. Simran Bhullar, CIT- DR	
Date of Hearing	29.09.2022	
Date of Pronouncement	14.10.2022	

आदेश / O R D E R

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

Feeling aggrieved by revision-Order dated 25.11.2019 and 29.02.2020, both passed by learned Pr. Commissioner of Income-Tax-2, Bhopal [**Ld. PCIT**] u/s 263 of the Income-tax Act, 1961 [**the Act**], which in turn arise out of assessment-orders dated 14.12.2018 and 21.11.2018 passed by learned ITO-5(1), Bhopal [**Ld. AO**] for Assessment-Year [**AY**] 2016-17 and AY 2011-12 respectively, the assessee has filed these Appeals on various grounds as mentioned in the Appeal-Memos.

2. Both of these appeals have been argued by the same counsel and the issues involved are also similar, hence they were taken together and being disposed of by this common-order for the sake of brevity.

3. Heard the learned Representatives of both sides and perused the relevant material held on record referred to by learned Representatives during hearing.

4. We would first take up ITA No. 119/Ind/2020 relating to AY 2016-17.

ITA No. 119/Ind/2020 – AY 2016-17:

5. Briefly stated the facts are such that the assessee filed return of relevant assessment-year declaring a total income of Rs. 3,59,970/-, which was subjected to limited scrutiny for the reason of “large cash deposits in saving bank account(s)”. During assessment-proceeding, the assessee did not comply with statutory notices issued by Ld. AO. Therefore, the Ld. AO made assessment u/s 144 after examining the relevant evidences, as under:

“3. The case of the assessee was selected under CASS for the reasons Large cash deposits in saving bank account(s)”. As per the AIR information available the assessee has deposited cash amount to Rs. 76,16,000/- in his two bank accounts, however, the assessee in his return had shown his Gross receipts of business at Rs.37,37,410/- only for A.Y.2016-17. The assessee had offered his business income u/s 44AD and shown his total income at Rs. 3,32,730/- which is 8.9% of his gross receipts of Rs. 37,37,410/-. The case was selected for scrutiny to verify whether the cash deposit has been made from disclosed sources.

4. During the assessment proceedings the bank accounts of the assessee were called u/s 133(6) of the IT Act, 1961. On perusal of bank accounts it was revealed that the assessee had made cash deposits as well as other credit entries in his bank accounts details of which are as under:

A/c No./Name of Bank	Total credits/Cash Deposit		
	By CLG	By Cash	Total Rs.
ICICI Bank-	6,11,628/-	53,40,780/-	59,52,408/-

028301000515			
PNB- 0054000100236863	5,95,000/-	22,75,220/-	28,70,220/-
ICICI- 028301509752 (Joint Account held by Assessee with spouse)	2,36,400/-	4,66,640/-	7,03,040/-
Total Rs.			95,25,668/-

4. The Joint Account maintained by the assessee with his spouse has also similar transaction pattern and the transactions made through these accounts reveal the fact that the assessee has not correctly shown his turnover in his Return of Income. The assessee had used all his bank accounts for his routine business transaction and has under reported his gross receipts in his return of Income wherein he has shown it at Rs.37,37,410/-. The total credits in the bank accounts of the assessee is arrived at Rs.95,25,668/-.

5. The estimate turnover/receipts arrived at Rs.95,25,668/- and looking at the nature of business carried out by the assessee which was ascertained by verifying the available papers on record, also the fact that the assessee himself has declared his net profit @ 8.9% of his gross receipt in his ITR, it would be fair and reasonable to estimate the net profit of the assessee @10% of his total credit of Rs.95,25,668/-. Thus the net profit of the assessee is estimated at 10% of total receipts which is Rs. 9,52,567/-. Hence, the difference between business profit estimated of Rs.9,52,567/- and profit shown from business of Rs.3,32,730/- which is Rs. 6,19,837/- is added to total income of the assessee.”

6. Subsequently, Ld. PCIT examined the record of assessment-proceeding and observed that the assessment-order passed by Ld. AO is erroneous-cum-prejudicial to the interest of revenue, due to the following reason mentioned in show-cause notice dated 19.09.2019 issued u/s 263:

“On perusal of assessment-order, it is observed that the assessee has filed the return of income for A.Y. 2016-17 on 18.09.2017 declaring the total income at Rs. 3,59,970/- and total gross receipts at Rs. 37,37,410/-. During the course of assessment proceedings the total cash deposits made by the assessee was found at Rs. 95,25,668/- and the assessee was asked to submit his reply/response in this regard. The assessee did not make any compliance and accordingly the assessment proceedings were completed ex-parte u/s 144 of the IT Act, 1961 by estimating his income @ 10% of total cash

deposits made by him.

The income was assessed at 10% of total receipts instead of treating the cash deposit of Rs. 57,88,258/- (Amount deposited in bank accounts but not taken as receipts as the gross receipts shown by assessee in his ITR is only Rs. 37,37,410/-) as unexplained cash credit.

Assessment in the said case u/s 144 of the IT Act, 1961 dated 14.12.2018, was finalised without considering the above mentioned facts. This omission on part of the AO, renders the order erroneous as well as prejudicial to the interests of revenue. Therefore, I propose to invoke powers vested u/s 263 of the Income-tax Act, 1961 in respect of the order referred to above.”

In short, Ld. PCIT was of the opinion that the assessee had declared gross-receipts of Rs. 37,37,410/- only in the income-tax return, but during assessment-proceeding the Ld. AO found cash-deposits of Rs. 95,25,668/- in the bank account and accepted the same as gross-receipts of business. According to Ld. PCIT, the Ld. AO has taxed only 10% of Rs. 57,88,258/- (being the difference of Rs. 95,25,668/- and Rs. 37,37,410/-) as income of assessee and not taxed the entire receipt of Rs. 57,88,258/- as unexplained income, which has rendered the assessment-order as erroneous in so far as it is prejudicial to the interest of revenue.

7. By the aforesaid show-cause notice, the assessee was asked to explain as to why the assessment-order may not be revised. In response thereto, the assessee made a detailed submission to Ld. PCIT vide reply dated 13.11.2019, which is placed in the Paper-Book.

8. However, Ld. PCIT was not satisfied with the submission of assessee. Ld. PCIT also observed that the section 263 has been amended and Explanation 2, as reproduced below, had been introduced therein, therefore the assessment-order is deemed to be erroneous and prejudicial to the interest of revenue if the same had been passed without inquiries or verification which should have been made:

“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 interest of 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;*
- (c)*
- (d) ...”*

9. Finally, Ld. PCIT passed revision-order whereby the assessment-order was set aside to the file of Ld. AO with a direction to make a de novo assessment. Aggrieved by such revision-order, the assessee has filed this appeal.

10. Having considered submission of both sides, we observe that the facts and issues involved for our adjudication can be fit in a very narrow compass. To resolve the controversy involved in the present-appeal, we would first like to ascertain from the record whether or not the Ld. AO has made “enquiry or verification”? This question is aptly answered by the assessment-order itself (relevant portion of assessment-order is already re-produced in foregoing paragraph) wherein the Ld. AO has himself called the bank-statements of assessee and made a meticulous working to find that the assessee had made a total deposit of Rs. 95,25,668/- in all bank accounts. Thereafter, Ld. AO has also observed that the assessee had declared only Rs. 37,37,410/- as gross-receipts of business. Thereafter, he found that looking to the nature of business carried on by assessee ascertained by him after verifying the available papers on record, the gross receipts are taken at Rs. 95,25,668/- and 10% net profit is taken as earned therefrom. We find that these observations and findings made by Ld. AO clearly demonstrate that the Ld. AO has examined the facts and figures cautiously, made his own analysis, and thereafter completed assessment. Therefore, the revenue could hardly claim that it is a case of “no enquiry or verification” done by Ld. AO. Having said so, we would further like to see whether the action of Ld. AO in assessing 10% as net profit of business can be said be faulty? We observe that the assessee derives income from business-activity, which is not only mentioned by assessee in the return of income but also a fact ascertained by

Ld. AO. We observe that the Ld. AO has also given a categorical finding that the assessee had not correctly shown his “turnover” in the return of income. Ld. AO has also observed that the assessee had used all his bank accounts for his routine business transactions and the total credits in the bank accounts were Rs. 95,25,668/-, which are business turnover. These findings made by Ld. AO clearly demonstrate that the deposits of Rs. 95,25,668/- in the bank account were gross-receipts of business and not “income” itself. It is with these findings that the Ld. AO has assessed 10% of Rs. 57,88,258/- as taxable income. Ld. AR has also filed copies of bank accounts and a licence issued by the office of Krishi Mandi, Bhopal dated 15.10.2014 having validity upto 31.03.019 in the Paper-Book. During hearing, Ld. AR made a test-check of these documents and successfully demonstrated that the facts noted by Ld. AO are well-corroborated. We also observe that the Ld. PCIT has not disputed the findings of Ld. AO, rather he has simply proceeded that that the difference of Rs. 57,88,258/- must have been fully assessed as income of assessee, which shows that the Ld. PCIT is simply wishing to substitute his own thinking in place of the analysis and conclusions carefully arrived at by Ld. AO. It is vehemently held in numerous decisions that section 263 does not contemplate such an action. For these reasons, we are of the considered view that the assessment-order passed by Ld. AO is neither erroneous nor prejudicial to the interest of revenue. Hence, the present case does not warrant invocation of section 263. The revision-order passed by Ld. PCIT is therefore unsustainable. We quash the same and restore the original assessment-order passed by Ld. AO. **Thus, the assessee succeeds in ITA No. 119/Ind/2020.**

ITA No. 205/Ind/2021 – AY 2011-12:

11. The issue involved in this appeal is also identical but there is a serious difference in facts. The facts culled out from case-records indicate that the revenue took action u/s 147 on the basis of AIR information about cash-deposits made by assessee in his bank account. In the proceeding, the assessee filed return declaring business income of Rs. 96,600/- on a

turnover of Rs. 12,05,659/- u/s 44AD. The assessee claimed to have been earning income from the business of commission and retail trading of fresh vegetables. Ld. AO passed assessment-order by observing as under:

“4. During the course of assessment proceedings the assessee was asked to clarify the cash deposited of Rs. 38,27,009/- in bank account of ICICI bank. The assessee submitted that the he was also engaged in the work of commission agent and the cash deposit was made out of commission business of the assessee and he has incurred loss during the year. However, the Mandi License submitted by the assessee pertains to F.Y.2014-15 which was not related to A.Y. 2011-12. In absence of cogent documentary evidence the claim of assessee cannot be accepted. In absence of documentary supported submission and looking into the fact that the assessee had offered his income u/s 44AD for estimation of his Net profit the estimation of his gross receipts is done accordingly in following para.

5. The said estimation is being made in absence of documentary evidence provided in support of commission receipts. The total cash deposit made by the assessee during the year is Rs. 50,32,578/-. Thus, estimate turnover/receipts at Rs.50,32,578/- (Total cash deposits is two bank accounts) and net profit is proposed to be estimated @ 8% on this turnover/receipts of Rs.50,32,578/- i.e. Rs. 4,02,606/-. This amount of Rs. 4,02,606/- is calculated as his net income from Business. Thus the difference between Rs. 4,02,606/- and Rs.96,600/- (Net profit declared u/s 44AD) which is Rs. 3,06,006/- is added to total income of the assessee.”

12. Subsequently, Ld. PCIT took action u/s 263 through show-cause notice dated 31.12.2019. In response thereto, the assessee filed a written-submission claiming that all deposits in bank were from gross-receipts of business. The assessee also filed a Certificate dated 14/02/2020 issued by “Thok Sambji Vikreta Kalyan Sangh” Bhopal wherein the Chairman of the association has confirmed that the assessee was doing business since 2007-2008. On perusal of revision-order, it is observed that the Ld. PCIT has passed revision-order mainly harping upon the following observation made by him:

“6. I have carefully perused the facts of the case, the order of assessment and the submission made by the assessee. The fact of the matter in my considered view is that the AO, in assessment proceedings

clearly became aware of the unaccounted SB Account and refers to the same in para 4 of his assessment order. However, in spite of noting that Mandi License pertain to a different FY and also giving the finding that there is no cogent documentary evidence to establish the claim of the assessee, applied NP rate of 8 per cent. This completely defies logic and law, is unwarranted by facts, goes against the concept of preponderance of probability, shows complete lack of enquiry into the source of these deposits and thereafter exhibits incorrectly applied law....”

13. On perusal of Mandi licence placed in the Paper-Book, we observe that it was issued by “Krishi Upaj Mandi Samiti, Bhopal” on 15.10.2014 authorizing the assessee to carry on business w.e.f. 15.10.2014. We further observe that the Certificate filed to Ld. PCIT and copy placed in the Paper-Book, which confirms that the assessee was engaged in business from year 2007-08, is a new document dated 14/02/2020 and have been issued by “Thok Sambji Vikreta Kalyan Sangh” Bhopal, which was not before Ld. AO at the time of making assessment. Therefore, the Ld. PCIT is right in concluding that the Ld. AO had “.... *in spite of noting that Mandi License pertain to a different FY and also giving the finding that there is no cogent documentary evidence to establish the claim of the assessee, applied NP rate of 8 per cent*”. Thus, in principle we agree that the Ld. PCIT was very much justified in holding the assessment-order as erroneous-cum-prejudicial to the interest of revenue. We, accordingly, uphold the order passed by Ld. PCIT. **Thus, the assessee fails in ITA No. 119/Ind/2020.**

14. However, we would like to make it clear that we have tested and decided the validity of revision-proceeding alone. We are not making any observation, either in favour or against, the admissibility or significance of the said Certificate dated 14/02/2020 in consequential assessment-proceeding of assessee. The assessee shall be at liberty to substantiate his business activity on the basis aforesaid Certificate dated 14/02/2020 or any other evidence in consequential assessment-proceeding, which shall be

independently viewed by revenue-authorities in accordance with law.

15. In the result, ITA No. 119/Ind/2020 is allowed and ITA No. 205/Ind/2021 is dismissed.

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 14 /10 / 2022.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 14.10.2022

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 Bench, Indore

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
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	