

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH**  
**BENCH 'B' CHANDIGARH**

**BEFORE: SMT. DIVA SINGH, JUDICIAL MEMBER &**  
**SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No. 406/CHD/2022**  
Assessment Year. : 2011-12

Shri Rajbir Singh, VPO – Kakaut, Kaithal.	बनाम VS	The Pr.CIT, Kaithal.
स्थायी लेखा सं./PAN /TAN No: CUBPS4877G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sanjay Kumar Singla, Advocate  
राजस्व की ओर से/ Revenue by : Shri Sarabjeet Singh, CIT-DR  
तारीख/Date of Hearing : 07.09.2022  
उद्घोषणा की तारीख/Date of Pronouncement : 21.11.2022

**आदेश/ORDER**

**PER DIVA SINGH**

The present appeal has been filed by the assessee assailing the correctness of the order dated 10.03.2021 of Pr.CIT, Rohtak pertaining to 2011-12 assessment year on the following grounds :

- 1. That the Ld. Commissioner of Income Tax has wrongly assumed jurisdiction under section 263 of the Act to set-aside the assessment order dated 10.03.2021 passed by the Assessing Officer in as much as the order is neither erroneous nor prejudicial to the interest of Revenue and as such the assumption of jurisdiction under section 263 of the Act is beyond his competence.*
- 2. That the notice issued u/s 263 by the Principal Commissioner of Income Tax (hereinafter referred to as "Pr CIT") and the order passed u/s 263 is illegal, bad in law and against the facts of the case.*
- 3. That the proceeding and the order passed by the Ld. Pr. CIT u/s 263 is perverse as it is based on general observation and not specific to the facts of the case.*

4. *That the Ld. Pr. CIT has passed the order u/s 263 of the Act on surmises and conjectures and therefore is liable to be set aside.*
5. *That the appellant seeks leave to add, amend, alter, abandon or substitute any of the above grounds during the hearing of the appeal.*

2. At the time of hearing, ld. CIT-DR submitted that in the filing of the present appeal, there is a delay which has not been pointed out by the Registry.

2.1 The ld. AR in response invited attention to his letter dated 02.09.2022 addressed to the Registry. Referring to the same, it was his submission that the assessment order was not served upon the assessee till 05.04.2022 and it came to the notice of the assessee only on 05.04.2022 when he received the consequential order passed by NFAC u/s 144 pursuant to the impugned order. It was only after receiving notice from the IT Department that he became aware of the impugned order passed by ld. PCIT, Rohtak u/s 263. Relying upon the written submissions of the assessee, the ld. AR submitted that certified copy of the assessment order was received on 26.04.2022 and immediately thereafter the appeal was filed on 05.05.2022. In the said background, it has been pleaded on the basis of the decision of the Apex Court in M.A. NO. 21 of 2022 of suo-moto Writ Petition (C) No.3 of 2020 that there is no delay. Reliance was placed upon the following pronouncement made in the aforesaid judgement :

*“III. “In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”*

2.2 The ld. CIT-DR Shri Sarabjeet Singh considering the facts has agreed that the delay is explained and he would have no objection in the light of the facts as pleaded if the delay is condoned.

2.3 We have heard the rival submissions and perused the material available on record including the legal position argued. On a consideration of the same, we find that the delay stands addressed. It is further seen that even otherwise no advantage can be said to have been derived by the assessee by filing the appeal late and no disadvantage has been visited upon the Revenue in case the delay is condoned as no vested right of the Revenue can be said to be disturbed if the delay is condoned. Ordered accordingly.

3. The ld. AR inviting attention to the impugned order submitted that the order was passed ex-parte without hearing the assessee. Attention was invited to the Show Cause Notice extracted in the impugned order. For ready reference, same is extracted hereunder :

*"Facts of the case is that you had deposited cash of Rs. 15,05,000/- in saving bank account No. SB- 2892 maintained with Kaithal Central Co-op Bank Ltd. Kaithal during FY 2010-11 but did not file your ITR for the relevant AY.*

*Therefore, notice u/s 148 was issued and further, assessment was completed u/s 143(3)/147 of the IT Act at returned income. You were required to explain the source of cash deposits of Rs. 15,05,000/- which was replied by you as under:*

- 1. Agricultural land- Rs. 3,37,500/- dated 14/12/2009*
- 2. Gift received from brother Vikas Kumar of Rs. 3,37,500/-*
- 3. Ancestral house sold situated at Kakout of Rs. 5,50,000/- on 14/05/2010*
- 4. Three buffalos sold of Rs. 1,48,500/- dated 10/05/2010*
- 5. Withdrawals of Rs. 8,38,000/- from 31/05/2010 to 29/07/2010 and re-deposited in bank account of Rs. 1,20,000/-*

*2. From the perusal of record, following discrepancies were noticed:*

*i) You had stated that you had deposited a sum of Rs. 3,37,500/- out of sale of agricultural land and Rs. 3,37,500/- out of gift received from the brother in the month of December, 2009. However, the cash has been deposited in May, 2010 after a gap of 5 months. The AO did not investigate this matter to ascertain the exact availability of cash before depositing because there was a sufficient gap of time.*

*ii) Regarding the sale of buffalos, you had stated in your written reply dated 19.09.2018 that buffalos were sold on 10.05.2010 whereas as per affidavit of Sh. Satish Kumar, purchaser, the date of sale is mentioned as October, 2010.*

*1. The AO accepted the submission filed by you but there is no office note with the assessment order explaining the version of accepting the submission made by you.*

*2. You had stated that you had sold an ancestral house for sale consideration of Rs.5,50,000/- on 14.05.2010 situated at Vill.-Kakout. Affidavit of the purchaser Sh. Attar Singh was furnished by you during the course of assessment proceedings vide which Sh. Attar Singh deposed to have purchased the residential house from you in May 2010. On the basis of Sarpanch's report, affidavit of purchaser and your statement, AO has accepted your version as such. The AO had not made detailed enquiries in this regard, no verification of water and electricity bills and other relevant documents was made.*

*3) Further, no computation of capital gain has been furnished against the sale of above residential house. The AO did not raise any query regarding this capital gain”.*

3.1 Referring to the impugned order, it was his submission that the order dated 30.10.2018 passed by the AO was set aside by the Id. PCIT holding that it has been passed in

undue haste. For ready reference, para 5 of the impugned order is extracted hereunder :

*“5. Keeping in view of facts and circumstances of the case as discussed above, it is concluded that the assessee has nothing to say in his defense and it is observed that the AO has passed the order dated 30.10.2018 in undue haste and in a very casual manner without due diligence and without conducting any worthwhile enquiries. Therefore, it is very clear that assessment proceedings completed under section 143(3) /147 of the Act are erroneous in so far as prejudicial to the interest of the revenue in terms of provisions of section 263 of the Act including Explanation 2 inserted by the Finance Act, 2015 w.e.f. 01.06.2015. Accordingly, the assessment order passed by the AO on 30.10.2018 under section 143(3)/147 of the Act for the A.Y. 2011-12 is cancelled with the direction to pass an order afresh in accordance with law keeping in view the observations made in the above paras and after affording reasonable opportunity of being heard to the assessee.”*

3.2 Referring to the assessment order dated 30.10.2018 set aside by Id. PCIT, it was his submission that the order had been passed after making proper and full enquiries. All facts were explained before the said authority.

3.3 Supporting documents placed before the AO at pages 19 to 29 were relied upon. It was highlighted that the AO had considered the copy of the Sale Deed as well as the Affidavit filed by Mr. Vikas Kumar. Apart from that, the AO also recorded his statement. Copy of the same is available on record.

3.4 It was argued that all relevant facts were taken into consideration by the AO before the passing of the order.

3.5 Inviting attention to Paper Book page 30 and 31, it was submitted, that the sources of the deposits explained by the

assessee filed before the AO have been included. These were relied upon.

3.6 Paper Book page 32 to 35 were referred to in order to draw attention to the copy of reply dated 19.09.2012 including copy of statement recorded of Mr. Satish Kumar which had also been considered by the AO. Shri Satish Kumar, it was submitted, had purchased the buffaloes and he had also explained the source of his moneys. Statement of this person had been recorded by the AO.

3.7. Referring to pages 36 to 43 of the Paper Book it was submitted that the AO had also considered the Ikrarnama entered into by the assessee for sale of ancestral property to Shri Attar Singh. These evidences supported by copy of Sale Agreement, PAN Card, Affidavit, copy of statement recorded by the AO of Mr. Attar Singh are all supporting evidences available to the ld. PCIT and were relied upon herein also.

3.8 Referring to Paper Book page 44, attention was invited to the Death Certificate of Shri Sat Parkash, father of the assessee.

3.9 In the said factual background, it was submitted that all facts stood enquired into by the AO in depth before the passing of the order. Relying on judgements of the ITAT Chandigarh in ITA No.1464/CHD/2018 in the case of M/s

Venkatesh Technokraft Pvt. Ltd. V ITO (dated 19.04.2021) & ITA No.104/CHD/2022 in the case of Smt.Sunita Goyal Vs Pr. CIT (order dated 06.07.2022) it was submitted that the impugned order may be quashed.

4. The ld. CIT-DR Mr. Sarabjit Singh relying upon the impugned order submitted that AO has accepted the explanation of the assessee without carrying out any enquiries. Even in the evidences filed before him, it was submitted, the AO has not noticed the gap of few months in the deposit of the money. The AO has failed to enquire into it. Apart from that, as per the assessee's explanation, the buffaloes were sold on 10.05.2010 and as per the affidavit of Shri Satish Kumar, purchaser of the buffaloes, the date is mentioned as October 2010. Accordingly, it was his submission that where is the problem to the assessee as a result of the set aside. On the issues an in-depth enquiry was warranted. It was his submission that the assessee can very well explain these again before the AO as it was only a set aside and not an order where issues stood concluded against the assessee. It was his submission that the assessee was still free to argue.

5. The ld. AR in reply submitted that consistently the assessee has been arguing that the assessee is an

agriculturist drawing income from sale of milk from buffaloes etc. The amounts deposited have been explained at the assessment stage as coming from a gift received of Rs.3,37,500/- from his brother. The availability of funds in his hands by way of agricultural land sold and affidavit and statement of the brother stood recorded by the AO. Sale of ancestral house situated at Kakout explained by the purchaser and the documents in support of the sale remained unrebutted on record. The sale of buffaloes to Shri Satish Kumar has been affirmed by Shri Satish Kumar. None of these evidences have been upset by the ld. PCIT. The enquiry to ascertain whether the buffaloes were sold in October, 2010 or on 10<sup>th</sup> May,2010 cannot be the reason for 263 proceedings. Accordingly, it was his prayer that the order may be quashed.

6. We have heard the rival submissions and perused the material available on record. It is seen that considering the evidences which have been stated at length in the earlier part of this order for the deposit of Rs.15,05,000/-. The AO recording statements of Shri Vikas Kumar (brother of the assessee) who gifted amount of Rs.3,37,500/- to the assessee and Shri Attar Singh who has paid an amount of Rs.5,50,000/- for purchasing ancestral house of the assessee and has also recorded the statement and looked into the

evidences of the payment of money from Shri Satish Kumar who has purchased three buffaloes for Rs.1,48,500/- and considering the withdrawals of Rs.8,38,000/- from 31.03.2010 to 29.07.2010 wherefrom Rs.1,20,000/- is stated to have been deposited, passed the following order:

2. निर्धारण प्रक्रिया के दौरान निर्धारिती के प्रवक्ता से वित्तीय वर्ष 2010-11 के दौरान बैंक में उपरोक्त जमा नकद राशि के स्रोत का लिखित दस्तावेजों सहित स्पष्टीकरण पूछा गया। इस सन्दर्भ में निर्धारिती के अधिवक्ता ने दिनांक 29.10.2018 को लिखित में जवाब पेश किया और और जो नकद राशि बैंक में जमा कराई गई है, उसका स्रोत निर्धारिती द्वारा व उसके भाई श्री विकास द्वारा बेची गई कृषि भूमि से प्राप्त रकम व गांव काकौत में लाल डोरे के अन्दर वाला प्लाट के बेचने से प्राप्त रकम से है। प्रमाण में सर्व/श्री विकास कुमार, सतीश कुमार व श्री अतर

सिंह की स्टेटमेंट व उनके ब्यान हल्फी दिनांक 01.02.2018 व 29.10.2018 और गांव काकौत के सरपंच से लाल डोरे की जमीन का प्रमाण भी मंगवाया गया और जांच के बाद रिकार्ड पर लगा दी गई।

3. निर्धारिती की ओर से की गई उपरोक्त गन्तुति एवं प्रमाणों सहित मामले की जांच के बाद व मंत्रणा उपरान्त निर्धारिती द्वारा घोषित आय रुपये 1,51,640/- की विवरणी को स्वीकार्य पाया गया। अतः एतद् द्वारा निर्धारिती की कुल आय रुपये 1,51,640/- निर्धारित की गई।

इस आदेश की एक प्रति मांग-पत्र एवं कर-गणना सहित निर्धारिती को प्राप्त कराने हेतु जारी है।

6.1 It is seen that the said order is faulted with on the ground that Rs.3,37,500/- has been deposited after a gap of few months and the discrepancy in the date on which the buffaloes were sold which as per reply of the assessee has been noticed to be 10.05.2010 and as per the affidavit of Shri Satish Kumar is alleged to be October,2010. It is also seen that the ld. PCIT has adversely noticed the fact that the

AO has not maintained any Office Note. Addressing the lack of Office Note first, we find that the absence of an Office Note made by the AO by itself cannot be said to be valid reason warranting the exercise of the Revisionary powers in the facts of the present case. The ld. PCIT fails to bring out the fact what he would have wanted to be included in the Office Note, the absence of which can lead to the conclusion that the order is erroneous and prejudicial to the interests of the Revenue. Accordingly, we find that nothing much turns on this alleged shortcoming noticed by the ld. PCIT in the facts of the present case. We further on a careful consideration of facts as set out in the impugned order and hold that the delay in depositing the money admittedly received as a gift from his brother by the assessee where the gift and source of the gift is not disturbed even today, the assessment order cannot be considered to be either erroneous or prejudicial to the interests of the Revenue. We further hold that enquiries whether the buffaloes were sold in October,2010 or on 10.05.2010 where Shri Satish Kumar the purchaser has affirmed the purchase and payment on this possible typographical errors, nothing much turns. We have seen that his source of payment stands examined by the AO and is not rebutted by the ld. PCIT in the facts of the present case. These facts available to the Revisionary

Authority remain unrebutted on record. The assessment order passed cannot be upset without pointing to such an error which can be termed to be prejudicial to the interests of the Revenue. Considering the doubts raised by the ld. PCIT and considering the evidences on record, we find that the impugned order fails to point out the error which is seen to be erroneous as well as prejudicial to the interests of the Revenue. The manner in which the assessment order is written and the Office Note is required to be maintained are procedures which are internal to the Tax Authorities wherein the assessee has no role to play. Thus, merely because the AO has not maintained any Office Note, the assessee cannot be burdened for the said lapse. It is for the Tax Authorities to put their house in order and ensure that as per the settled standard procedures, orders are passed. For exercising the Revisionary Powers, the ld. PCIT necessarily needs to meet the twin conditions of pointing out the error in the order sought to be set aside or the prejudice caused to the Revenue by the said assessment order. In the facts of the present case, we find no such effort. On facts we find that the issues have been enquired into at length by the AO and the orders cannot be set aside on mere whims and fancies of the Revisionary Authority. The Revisionary

Authority is mandated to set out the error and that too such an error which is prejudicial to the interests of the Revenue as in the absence of the said factual finding, the legal mandate is very clear as then the order is an arbitrary exercise of power and cannot be sustained.

7. Before parting, we would like to address the argument advanced on behalf of the Revenue namely that it is mere set aside of the assessment order and no prejudice can be said to be caused to the assessee as he is still free to argue his case before the AO. We find that such a submission on facts cannot be accepted. The Tax Authorities cannot expect the citizens/taxpayers to set aside their daily engagement with life and everything else which is involved therein and to run and ensure that they are present before the authorities to defend a validly passed assessment order. Once an assessment order is passed after due enquiries, a vested right is created in favour of the assessee. The said vested right can be upset by the Revisionary Authority only after fulfilling the legal mandate and following due procedures of law. The mandate is very clear. In order to exercise the power to set aside the order, the Revisionary Authority necessarily ought to show that the order passed is erroneous as well as prejudicial to the interests of the Revenue. On a careful consideration of the macro and the micro view, we

believe that the time has come when we cannot avoid a serious introspection. With utmost humbleness and humility at our command, we suggest that the Tax Authorities should stop functioning with the colonial mindset dispensing justice to the colonies. The exercise of powers specifically the Revisionary Powers are expected to be used with utmost care and attention as the vested right of the citizen/taxpayer cannot be permitted to be impacted adversely by an order passed on whims. The assessee in the facts of the present case is seen to be an agriculturist drawing income from sale of milk of buffaloes at the relevant point of time and like any other citizen of the country deserves to be considered fairly. The authorities including the Tax Authorities under the Government of India exist in a republican democracy function for the benefit of the citizens. The mindset of working under a colonial Rule administering the colonies is no longer acceptable. An assessee who is in possession of a validly passed assessment order cannot be required to again face the AO to support the return filed.

8. The impugned order on a consideration of the peculiar facts and circumstances of the present case for the reasons herein above is quashed and the appeal of the assessee is allowed.

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

Order pronounced in the Open Court on 21<sup>st</sup> November,  
2022.

**Sd/-**  
**(VIKRAM SINGH YADAV)**  
**लेखा सदस्य/ Accountant Member**

**Sd/-**  
**(DIVA SINGH)**  
**न्यायिक सदस्य/ Judicial Member**

“Poonam”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाइल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar