

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR**
(through web-based video conferencing platform)

BEFORE SHRI SANJAY ARORA, HON'BLE ACCOUNTANT MEMBER &
SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER

I.T.A. No. 43/JAB/2022
(Asst. Year: 2017-18)

Devendra Singh Jadaun, 10/41, Vidhya Dhar Nagar, Jaipur (Rajasthan). [PAN : ARJPJ 5713 D]	vs.	Pr.CIT-1, Jabalpur.
(Appellant)		(Respondent)

Appellant by : None
Respondent by : Smt. Neeraja Pradhan, CIT-DR

Date of hearing : 09/11/2022
Date of pronouncement : 29/11/2022

ORDER

Per Manomohan Das, JM:

This is an Appeal filed by the Assessee directed against the Order dated 02-03-2022 passed by the Principal Commissioner of Income Tax, Jabalpur-1 ('Pr. CIT') under section 263 of the Income Tax Act, 1961 ('the Act' hereinafter) in respect of his assessment dated 15/11/2019 for Assessment Year (AY) 2017-18.

2. The brief facts of the case are that the assessee filed his return of income for the AY 2017-18 declaring total income at Rs. 21,06,330/-, which was selected for complete scrutiny under CASS so as to examine the reason of:

- (i) High value receipt of cash shown from third parties in response data, and
- (ii) Abnormal increase in cash deposits during demonetization period as compared to pre-demonetization period.

The Assessment Officer (AO), vide order dated 15-11-2019, accepted the reply of the assessee. However, the ld. PCIT vide order dated 01-03-2022 passed under section 263 of the Act observed certain deficiencies in the assessment order passed by the AO and accordingly set aside the assessment order dated 15-11-2019 with a direction to the AO to pass a fresh assessment order after making proper investigation and enquiries and applying the correct provisions of the Act. The ld. PCIT observed that, the assessment order as passed by the AO is prejudicial to the interest of the Revenue.

3. Feeling aggrieved and dissatisfied with the order dated 01-03-2022 passed by the ld. PCIT, the assessee preferred the present appeal before the Tribunal raising the following issues:

- 1) That the order u/s. 263 passed by the learned Pr. Commissioner of Income Tax Jabalpur-1 is unlawful.
- 2) That the learned Pr. Commissioner of Income Tax, Jabalpur-1, was also not justified in law and on facts in denying adequate opportunity to the appellant to produce the relevant documentary evidences in support and the order of the learned Pr. Commissioner of Income Tax Jabalpur-1 was passed in breach of principles of natural justice.
- 3) On the facts and in the circumstances of the case, the Ld. Pr. Commissioner of Income Tax Jabalpur-1 has erred in holding the assessment order passed by the Learned A.O. on 15.11.2019 as erroneous and prejudicial to the interest of revenue as the A.O. has raised specific query regarding this and was considered by the A.O. after due application of mind. Thus the order u/s 263 passed by the Pr. Commissioner of Income Tax Jabalpur-1 is against the provisions of law.
- 4) The appellant reserves the right to add, amend or alter any ground of appeal at any time of hearing.

4. We have heard the ld. DR, and perused the material on record. The assessee remained absent despite getting adequate opportunity for pleading his case. Hence, the Tribunal proceeded with the hearing *ex parte* the assessee-appellant.

5. The issues arising in the instant case before the Tribunal are whether the Id. Pr. CIT did not afford adequate opportunity to the assessee and whether the order passed by the Id. Pr. CIT u/s. 263 of the Act is erroneous and prejudicial to the interests of the Revenue.

6. As regards the allegation of non-grant of adequate opportunity to the assessee by the Id. Pr. CIT, we observe that the Id. Pr. CIT issued show cause e-notice dated 13-07-2021 through ITBA with DIN fixing date of hearing on 27-07-2021, but the said notice was not complied with by the assessee. Further e-notices dated 10-08-2021, 11-11-2021 and 04-01-2022, fixing dates of hearings on 20-08-2021, 16-11-2021 and 11-01-2022 respectively, were issued by the Id. Pr. CIT to the assessee as mentioned at para 4 of his order dated 02-03-2022.

7. At para 5 of his order, the Id. Pr. CIT states that all the e-notices u/s.263 were sent at the e-address as available on the e-portal being last known/last updated/latest available address of the assessee and according to the track-report, said notices were delivered to the assessee, but no compliance by the assessee. Thus we find the allegation as to the non-grant of adequate opportunity to the assessee by the Id. Pr. CIT as untrue and baseless, and we decide this ground against the assessee.

8. Our observations on the other grounds of the assessee are that the assessee, in response to the notices of the AO, vide e-reply, replied that he had deposited a total cash of Rs. 53,66,500/- during the demonetization period, and which in turn was received from DS & Co., a partnership firm in which the assessee is a partner, as withdrawal of capital. The details of cash deposited by the assessee in the bank accounts are as under:

Bank A/c	Bank Branch & Name	A/c Type	Name of the A/c holder	Amount of cash deposited during the F.Y.	Cash deposited during demonetization period.

6811656467	Kotak Mohindra Bank, Sarra Branch	Current A/c	Devendra Singh	71,46,500/-	53,66,500/-
197202000001052	Bank of Baroda, Katni Branch	Current A/c	Devendra Singh	57,75,000/-	Nil

The AO did not find any infirmity in the said reply of the assessee. The AO vide his order dated 15-11-2019 accepted the aforesaid reply of the assessee. His observations at para No. 3.1 of his order dated 15-11-2019 reads as under:

“On observation of the above chart and submission given by the assessee it was found that during the demonetization period the assessee deposited cash of Rs. 53,66,500/- was actually received from DS & Company (Partnership Firm) as withdrawals of capital. The copy of withdrawals of capital placed on record and no adverse inference was drawn on this issue”.

9.1 The aforesaid observation of the AO was reviewed by the Id. Pr. CIT u/s. 263 of the Act, to find it as factually incorrect. His observations in the matter are as under:

“8. I have considered the written submission of the assessee and have perused the documents available on records. On examination of records, it is seen that the assessee had made cash deposit during demonetization period to the tune of Rs. 53,66,500/-, which includes Rs. 14,50,000/- on 27-12-2016 & Rs. 39,16,500/- on 29-12-2016. However, it is intimated by the assessee vide his written submission furnished during the course of assessment proceedings that the source of questioned cash deposit was cash of Rs. 54,00,000/- received from M/s. D.S. & Company on 05-11-2016 and in turn which was returned to M/s D.S. & Company on 30-12-2016 with the narration “CASH TRF TO D S AND COMPANY”. The very purpose for withdrawal or receipt of such huge cash of Rs. 54,00,000/- from firm, and subsequent return/ deposit back after an interval is nowhere explained in the written submission made by the assessee during the course of assessment proceedings although the assessee is a partner in the said firm.

8.1 Further, it reveals from the case records that on 09-01-2017, the cash of Rs. 50,00,000/- was deposited in bank account number 197202000001052 maintained with bank of Baroda, Katni and on very next day i.e. on 10-01-2017 the same was transferred via RTGS to M/s D.S. & Company on 12-01-2017. The assessee failed to explain as to why the cash was first deposited in

the bank account of Bank of Baroda and subsequently transferred in his own account with Kotak Mahindra and further remitted to the firm wherein he is partner, why he had not directly deposited the questioned sum in his Kotak's bank account and remitted the same to the firm. This siphoning of money creates suspicion i.e. money deposited in his one account then transferred in second account and finally remitted for destination or firm.

8.2 Looking to the facts and circumstances and in the light of material facts available on record the erstwhile AO has accepted the submission of the assessee without making any necessary enquiry / investigation / verification in the matter including the verification from the firm named M/s D.S. & Company too. However, the AO has failed to verify the very reason of selection of the case for scrutiny. Therefore, the AO is hereby directed to make a thorough investigation in the subject matter and act according to the prevailing provisions of the Act.”

9.2 The Id. CIT-DR, Smt. Neeraja Pradhan, would before us submit that the AO failed to make any enquiry while accepting the submissions of the assessee. The case was selected for complete scrutiny, so that the AO ought to have, in any case, made enquiries as pointed out by the Id. Pr. CIT.

10. The return was selected for complete scrutiny, and to examine, in particular:
- (i) High value receipt of cash shown from third parties in response data, and
 - (ii) Abnormal increase in cash deposits during demonetization period as compared to pre-demonetization period. (Para No. 3 of Assessment order)

Considering the contents of para Nos. 8, 8.1 and 8.2 of the impugned order, and also the submissions by Smt. Pradhan, we are in agreement that the AO ought to have enquired about the purpose of the withdrawal of capital by the assessee; the circumstances when a partner could withdraw his capital from the firm; the reasons for returning the cash by the assessee; and reason for non-depositing of the cash directly to the account of the firm. That apart, the source of cash deposit remains unexplained. If the cash deposited in bank account on 27/12/2016 & 29/12/2016 with withdrawal from the firm DS & Co., what is the source of the cash repaid to

the said firm on 30/12/2016? A date-wise cash statement of the assessee, with it further being in agreement with the cash-book (audited accounts) of the said firm, was in our view imperative for verification by the AO under the circumstances. We accordingly confirm the impugned order, so that the assessment order is, for the stated reasons, erroneous and prejudicial to the interests of the Revenue. We, therefore, decline interference. We decide accordingly.

11. In the result, the assessee's appeal is dismissed.

Order pronounced in open Court on November 29, 2022

Sd/-
(Sanjay Arora)
Accountant Member

Sd/-
(Manomohan Das)
Judicial Member

Dated: 29/11/2022

vr/-

Copy to:

1. The Appellant: Devendra Singh Jadaun, 10/41, Vidhya Dhar Nagar, Jaipur (Rajasthan).
2. The Respondent: Principal CIT-1, Jabalpur.
3. The CIT-D.R., ITAT, Jabalpur.
4. Guard File.

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Jabalpur.