

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'A' Bench, Hyderabad**

**Before Shri R.K. Panda, Accountant Member**  
**AND**  
**Shri Laliet Kumar, Judicial Member**

ITA No.222/Hyd/2022		
Assessment Year: 2017-18		
Smt. Shashikala Gupta Hyderabad PAN:AASPG1838N (Appellant)	Vs.	Income Tax Officer Ward 10(1) Hyderabad (Respondent)
Assessee by:	Shri Darshan Jakharia, CA	
Revenue by:	Shri Rajendra Kumar, CIT(DR)	
Date of hearing:	14/12/2022	
Date of pronouncement:	19/12/2022	

**ORDER**

**Per R.K. Panda, A.M**

This appeal filed by the assessee is directed against the order dated 29.3.2022 of the learned Pr.CIT-1, Hyderabad, relating to A.Y.2017-18.

2. Facts of the case, in brief, are that the assessee is an individual and filed her return of income on 26.07.2017 for A.Y 2017-18 admitting income from House Property and other sources at Rs.3,66,720/-. The case was selected for scrutiny under CASS and issues on which the selection was made was "Large Value Cash deposited during demonetization period as compared to returned income". Notice u/s 143(2) of the Act dated 9.8.2018 was issued and served electronically on the assessee as well as

through speed post on 16.8.,2018. Subsequently, notices u/s 142(1) of the Act were issued calling for certain information on 15.01.2019 & 20.11.2019 and duly served on the assessee through ITBA Portal. In response to the notices issued, the assessee furnished the information as called for from time to time. The Assessing Officer thereafter completed the assessment u/s 143(3) on 28.12.2019 by accepting the income returned.

3. Subsequently, the learned PCIT, on perusal of the assessment records, found that the assessee is maintaining an account bearing A/c No.008010100579247 with Axis Bank where an amount of Rs.15.50 lakhs in cash was deposited during demonetization period. Out of this, the assessee has explained the sources to the extent of Rs.4.50 lakhs only. The sources for the balance deposits of Rs.11 lakhs remained unexplained. This omission by the Assessing Officer according to the learned PCIT rendered the assessment order passed u/s 143(3) dated 28.12.2019 erroneous and prejudicial to the interests of revenue. He, therefore, issued a notice u/s 263 dated 30.11.2021 to the assessee, followed by further opportunities on 17.12.2021 and 13.01.2022 respectively.

4. In response to the said notices, the assessee appeared before the PCIT and submitted the information as called for. The assessee also objected to the proposal for initiating 263 stating that the issues were examined by the Assessing Officer during the course of proceedings u/s 143(3) and therefore, requested the learned PCIT to drop 263 proceedings.

4.1 However, the PCIT was not satisfied with the arguments advanced by the AR of the assessee. He noted that as

per the records, the deposits made in the assessee's bank account is Rs 15.50 lakhs during the demonetization period. The source for the said cash deposits was previous cash withdrawals from the bank account, accumulated income from house property and savings from previous years etc., But the amount of cash deposited on 10.11.2016 is Rs6 lakhs as against the balance that would have been available with the assessee is of Rs 4.50 lakhs. Similarly, another deposit of Rs 9.50 lakhs on 17.11.2016 is incidentally from the cash balance of only Rs 4.50 lakhs out of which cash deposits were made have not been provided. To state that the Assessing Officer has examined something which has not been produced by the Assessing Officer for examination is not correct. According to him, assuming without accepting that the information was produced but the officer had overlooked it would not help the cause of the assessee, as no proper verification has been done by the Assessing Officer resulting in taking a legally permissible view. He observed that in the present case, based on the information available from record, the submissions of the taxpayer that the same has been looked into and allowed by the Assessing Officer seems to be misplaced. According to the PCIT, the decisions rendered in the case laws cited were rendered in the particular context and facts of those cases which cannot be applied as a thumb rule. The taxpayer has not explained the difference of Rs. 11 lacs, between the cash balance available of only Rs 4.5 lakhs, and the deposit of Rs. 15.50 lakhs one on 10.11.2016 and the other on 17.11.2016. Rejecting the various explanations given by the assessee and distinguishing the various decisions cited before him, he held that the order passed u/s 143(3) dated 28.12.19 is erroneous and in so far as it is prejudicial to the interests of revenue. He, accordingly, set aside the order passed u/s 143(3) and directed the Assessing Officer to

pass a fresh order after due verification of the source of cash deposit.

5. Aggrieved with such order of the learned Pr.CIT the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

*“1.The Learned Pr. CIT-1, Hyderabad (Pr. CIT) erred in facts and law while passing the order u/s 263 of the Income Tax Act, 1961.*

*2. The Learned Pr. CIT erred in holding the assessment order dated 28.12.2019 passed u/s 143(3) of the Act as erroneous ignoring that the order has been passed after making necessary inquiries and carefully considering the relevant material available on record (i.e., submissions made by assessee explaining the sources of cash deposits along-with the bank statement supporting the explanation of assessee). Therefore, cannot be considered as erroneous.*

*3. The Learned Pr. CIT erred in holding that balance of cash available with assessee before is only Rs. 4,50,000/-ignoring that from the cash withdrawals reflecting in the bank statement it is evident that Rs. 15,50,000/- was available with assessee ad this and 3 6,00,000) amount was deposited on 10.11.2016 (Rs. 6,00,000) and 17.11.2016 (Rs. 9,50,000/-). This was verified and was found to be correct by the assessing officer in the assessment proceedings, accordingly no addition was made.*

*4. For this and any other grounds that may be raised before or during the course of hearings, it is prayed that relief be granted.”.*

6. The learned Counsel for the assessee strongly objected to the order passed by the learned PCIT by invoking the jurisdiction u/s 263. Referring to page 8 and 31 to 33 of the Paper Book, he submitted that during the course of the assessment proceedings, the Assessing Officer has called for information and documents with reference to the cash deposits during the demonetization period. Referring to paper book pages 12 to 14 and 34 to 36, he submitted that the assessee filed her response to the said notices from time to time by providing all the information and documents as called for by the Assessing Officer for substantiating the source

of such cash deposits made during the demonetization period. He submitted that the case was selected for limited scrutiny assessment solely for the reason of cash deposits during the demonetization period and the assessee has explained the source of such cash deposits before the Assessing Officer and the Assessing Officer, after conducting necessary inquiries has accepted the contention of the assessee and passed the order accepting the returned income. Therefore, the learned PCIT is not justified in setting aside the order passed by the Assessing Officer u/s 263 of the I.T. Act.

7. Referring to the following decisions he submitted that once a query has been raised by the Assessing Officer and explanation is given by the assessee, revision u/s 263 cannot be done:

- (i) ITAT Hyderabad Bench in ITA 923/Hyd/2017 in the case of Narasimha Reddy Peechu vs. Income Tax Officer
- (ii) Hon'ble Rajasthan High Court in the case of CIT vs. Hari Om Stones (423 ITR 198)
- (iii) ITAT Visakhapatnam in ITA No.194/Viz/2018 in the case of Srinivasa Hair Industries vs. ACIT
- (iv) ITAT Delhi in ITA No.3225/Del/2013 in the case of Sanspareils Greenlands (P) Ltd vs. CIT

8. Referring to the decision of the Tribunal in assessee's own case for A.Y 2009-10 and 2014-15 he submitted that similar issue of cash deposits had come up for consideration before the Tribunal and the Tribunal had deleted such addition made by the Assessing Officer which was confirmed by the learned CIT (A). He

submitted that the assessee has no control over the manner in which the Assessing Officer has to pass his order after necessary details were furnished by the assessee as called for by him. He submitted that since the Assessing Officer in the instant case has made adequate inquiry and after being satisfied has accepted source of cash deposits during the demonetization period, therefore, the PCIT should not have invoked jurisdiction u/s 263 of the I.T. Act. He accordingly submitted that the order passed by the PCIT should be set aside and the grounds raised by the assessee should be allowed.

9. The learned DR, on the other hand, heavily supported the order of the PCIT. He submitted that a perusal of the assessment order shows that it is very brief and a cryptic order and the very basis on which the case was selected has not been properly verified by the Assessing Officer. Referring to the copy of the Bank statement filed in the paper book, he submitted that it is not known as to why the assessee has deposited and withdrew the cash on the same day and the Assessing Officer has not verified these facts before accepting the returned income ignoring the fact that the case was selected for limited scrutiny to verify the cash deposits during the demonetization period.

10. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned Pr.CIT and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. It is an admitted fact that the case was selected for limited scrutiny to verify the large cash deposits during demonetization period. We find the Assessing Officer during the course of assessment

proceedings has asked the assessee to explain the source of cash deposits vide his query letter dated 9.8.2018 as well as 1.10.2019. The notice and the annexure to the questionnaire dated 1.10.2019 reads as under:

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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE INCOME TAX OFFICER  
WARD 10(1),HYDERABAD

To: SHASHIKALA GUPTA 104 SURYA TOWERS, S.P.ROAD SECUNDERABAD 500003, Telangana India	
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PAN: <b>AASPG1838N</b>	AY: <b>2017-18</b>	Dated: <b>01/10/2019</b>	Notice No : <b>ITBA/AST/F/142(1)/2019-20/1018531284(1)</b>
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Notice under Sub Section (1) of Section 142 of the Income Tax Act, 1961

Sir/ Madam/ M/s.

In connection with the assessment for the assessment year 2017-18 you are required to:

- Furnish or cause to be furnished on or before **09/10/2019** at **02:30 PM** the accounts and documents specified overleaf.
- Furnish and verified in the prescribed manner under Rule 14 of I.T. Rules 1962 the information called for as per annexure and on the points or matters specified therein on or before **09/10/2019** at **02:30 PM**.
- The above mentioned evidence/information is to be furnished online electronically in 'E-Proceeding' facility through your account in 'e-filing' website of Income Tax Department.
- Para(s) (a) to (c) are applicable if you have an account in e-filing website of Income Tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available).
- In cases where order has to be passed under section 153A/153C of the Income Tax Act, 1961 read with section 143(3), assessment proceedings would be conducted manually.

Yours faithfully,

PANDURANGAM SREEDHAR SOTALA  
WARD 10(1),HYDERABAD

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Please furnish the following information/documents:

1. As seen from the online submissions made on 28.08.2018 & 28.01.2019, wherein you have submitted that the deposits are out of the total previous withdrawals which are on account of repayment of hand loans by Your husband Mr. Vijay Kumar Gupta. But on verification of Axis Bank account statement bearing No. 008010100579247, it shows that the following amounts were deposited in cash by you and immediately on the same day the amounts are being drawn by Mr. Vijay Kumar Gupta through cheques/ self withdrawal through cheque. Thus, it appears to be routing the unaccounted cash through your account. Hence, you are required to submit your explanation for these transactions together with a note on purpose of taking loan and utility with evidence.

Date	Particulars	Withdrawal	Deposits
05.07.2016	Self Cash deposit		950000
05.07.2016	Withdrawals through cheque by Mr. Vijay kumar gupta	350000	
05.07.2016	Self withdrawal through cheque	600000	
10.11.2016	By Self Cash		600000
10.11.2016	Withdrawals through cheque by Mr. Vijay kumar gupta	600000	
17.11.2016	By Self Cash		950000
17.11.2016	Withdrawals through cheque by Mr. Vijay kumar gupta	925000	

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1. Further, as per the return of income and the computation sheet appended to your submission, it is seen that you were in receipt of only House property income and Other source income. In view of this, you are required to explain the sources for depositing huge cash amounting to Rs.25,00,000/- into bank account held in your name. Purpose and utility with evidence

PANDURANGAM SREEDHAR SOTALA  
WARD 10(1), HYDERABAD

(In case the document is digitally signed please  
refer Digital Signature at the bottom of the page)

11. We find the assessee vide his reply dated 10.10.2019 has given detailed reply before the Assessing Officer which reads as under:

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To  
Income Tax Officer  
Ward 10(1)  
Hyderabad.

Sub : Reply to notice U/s 142(1) of the Income tax Act, 1961 dated 01/10/2019  
Ref : ITBA/AST/F/142(1)/2019-20/1018531284(1)  
Assessee : Shashikala Gupta  
PAN : AASFG1838N  
A.Y : 2017-18

Dear Sir,

In continuation to the submission made on 28/01/2019 as a response to the above mentioned notice received vide reference no. ITBA/AST/F/142(1)/2019-20/1018531284(1) dated 01/10/2019, below is my explanation and submission:

- As seen from the online submissions made on 28.08.2018 & 28.01.2019, wherein you have submitted that the deposits are out of the total previous withdrawals which are on account of repayment of hand loans by your husband Mr. Vijay Kumar Gupta. But on verification of Axis Bank account statement bearing No. 008010100579247, it shows that the following amounts were deposited in cash by you and immediately on the same day the amounts are being drawn by Mr. Vijay Kumar Gupta through cheques/ self-withdrawal through cheque. Thus, it appears to be routing the unaccounted cash through your account. Hence, you are required to submit your explanation for these transactions together with a note on purpose of taking loan and utility with evidence.

**Reply:** The explanation for the transactions mentioned in the notice is as follows:

Opening Bank Balance 54,492

Other Debits/(Credits) in Bank Account		Cheque received from (given to) VKG		Cash Withdrawn (Deposited ) in Bank Account		Running Bank Balance	Running Cash Balance
Date	Amount	Date	Amount	Date	Amount		
21-May-16	-558					53,934	
27-May-16	41,932					95,866	-
		02-Jun-16	14,00,000			14,95,866	-
				02-Jun-16	7,00,000	7,95,866	7,00,000
				03-Jun-16	7,00,000	95,866	14,00,000
21-Jun-16	83,864					1,79,730	-
		22-Jun-16	-1,25,000			54,730	-
25-Jun-16	717					55,447	-
				05-Jul-16	-9,50,000	10,05,447	4,50,000
		05-Jul-16	-3,50,000			6,55,447	-
				05-Jul-16	6,00,000	55,447	10,50,000
06-Jul-16	-37,400					18,047	-

CERTIFIED TRUE COPY

Other Debits/(Credits)		Cheque received from (given to) VKG		Cash Withdrawal (Deposited)		Bank Balance	Cash Balance
Date	Amount	Date	Amount	Date	Amount		
						5,18,047	-
		15-Jul-16	5,00,000			18,047	15,50,000
				15-Jul-16	5,00,000	18,280	-
30-Sep-16	233					14,076	-
05-Oct-16	1,25,796	05-Oct-16	-1,30,000			66,536	-
13-Oct-16	52,460					6,66,536	9,50,000
				10-Nov-16	-6,00,000	66,536	-
		10-Nov-16	-6,00,000			1,50,400	-
11-Nov-16	83,864					25,400	-
		12-Nov-16	-1,25,000			9,75,400	-
				17-Nov-16	-9,50,000	9,55,400	20,000
				17-Nov-16	20,000	30,400	-
		17-Nov-16	-9,25,000			72,332	-
15-Dec-16	41,932					72,822	-
31-Dec-16	490					1,14,754	-
09-Feb-17	41,932					1,98,618	-
21-Mar-17	83,864					1,64,858	-
22-Mar-17	-33,760					64,858	-
		03-Mar-17	-1,00,000			65,557	-
31-Mar-17	699						-

Summary of the Bank Transactions is as follows:

Bank Balance	Amount
Opening Balance	54,492
Interest Received	2,139
Cheque Received from Vijay Kumar Gupta	19,00,000
Cheque issued to Vijay Kumar Gupta	-23,55,000
Payment of House Tax	-71,160
Receipt of Rental Income	5,03,184
Cash Deposited	25,00,000
Cash Withdrawal	-25,20,000
Refund amount received	52,460
Charges paid	-558
<b>Closing Balance</b>	<b>65,557</b>

#### Notes

1. Cash of Rs. 25,00,000/- is deposited out of the cash withdrawn of Rs. 25,20,000/-
2. All the transactions with Mr. Vijay Kumar (Spouse) were done through means of cheque only.

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2. Further, as per the return of income and the computation sheet appended to your submission, it is seen that you were in receipt of only House property income on other source income. In view of this, you are required to explain the sources for depositing huge cash amounting to Rs.25,00,000/- into bank account held in your name. Purpose and utility with evidence.

**Reply:** The accumulated income from house property (Rental Income received during the Previous Year 2016-17 amounts to Rs.5,59,092/-), savings from preceding previous years and cheque received from Mr. Vijay Kumar Gupta are the sources of depositing the cash in bank account.

I shall be glad to furnish any other information in the course of assessment.

Yours Faithfully,

Shashikala Gupta  
(Submission e-verified)

Date: 10/10/2019  
Place: Hyderabad

12. We find the Assessing Officer after considering the reply given by the assessee has accepted the source of such cash deposits and did not make any addition on account of the same. Under these circumstances, we have to see as to whether the impugned order passed by the Assessing Officer calls for revision u/s 263 of the I. T. Act.

12.1. The Hon'ble A.P High Court in the case of Spectra Shares & Script (P) Ltd vs. CIT, reported in 354 ITR 35 (A.P) while deciding an identical issue has observed as under:

*“If there was an inquiry, even inadequate that would not by itself give occasion to the Commissioner to pass orders u/s 263 merely because he has a different opinion in the matter. It is only in cases of lack of inquiry that such a course of action would be open. An assessment order made by the Income Tax Officer cannot be branded as erroneous by the*

*Commissioner simply because, according to him, the order should have been written more elaborately. There must be some prima facie material on record to show that the tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation, a lesser tax than was just, has been imposed. The power of the Commissioner u/s power of the 263(1) is not limited only to the material which was available before the AO and in order to protect the interests of the Revenue, the Commissioner is entitled to examine any other records which are available at the time of examination by him and to Take into consideration even those events which arose subsequent to the order of the assessment".*

13. The Hon'ble Supreme Court in the case of Malabar Industrial Company Ltd., Vs. CIT [243 ITR 83] (SC) held that the phrase 'prejudicial to the interest of Revenue' had to be read in conjunction with an erroneous order passed by AO. Every loss of Revenue as a sequence of order of the AO cannot be treated as prejudicial to the interest of Revenue. For example, when an AO adopted one of the courses permissible in law, and it has resulted in loss of Revenue, or whether two views were possible and the Assessing Officer has taken one view which the CIT did not agree, it could not be treated as erroneous order prejudicial to the interest of Revenue, unless the view taken by the AO was unsustainable in law.

14. Similarly, the Hon'ble A.P High Court in the case of CIT vs. Anand Food Products (39 Taxmann.com 187) (A.P -H.C) has held that where the Assessing Officer had made inquiries on issues under consideration and assessee had given detailed explanation by furnishing data, the decision of the Assessing Officer cannot be prejudicial to the interest of Revenue, simply because he did not make detailed discussion. Various other decisions relied on by the learned Counsel for the assessee also support the proposition that when the Assessing Officer has made detailed inquiries by raising query on which the case was selected

for scrutiny and the assessee has filed requisite details, the order cannot be held to be erroneous so as to invoke jurisdiction u/s 263 of the I.T. Act since the twin conditions are not fulfilled.

15. We further find, the Explanation (2) to proviso to section 263, which was introduced by the Finance Act, 2015 w.e.f. 1.6.2015 clearly states 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 the Revenue, if in the opinion of the PCIT or CIT the order is passed without making inquiries or verification which should have been made. However, in the instant case, the Assessing Officer has made adequate inquiries by calling for details and the assessee has furnished its reply substantiating the source of such cash deposits, and the Assessing Officer after going through the same has accepted the explanation of the assessee. Therefore, the order of the Assessing Officer, in our opinion, cannot be said to be erroneous.

16. It has been held in various decisions that for invoking jurisdiction u/s 263 of the I.T. Act, the twin conditions namely, (a) the order is erroneous and (b) the order is prejudicial to the interest of the Revenue must be satisfied. However, in the instant case, the order may be prejudicial to the interest of the Revenue, but it cannot be said to be erroneous since the Assessing Officer, after conducting necessary inquiries by calling for information and having gone through the details furnished by the assessee has taken a possible view. Merely because the learned PCIT does not agree with the view taken by the Assessing Officer, the order cannot be said to be erroneous or not a possible one. Under these circumstances, since one of the twin conditions i.e. the order is not erroneous is not satisfied, therefore, we hold that the learned

PCIT is not justified in invoking jurisdiction u/s 263 of the I.T. Act. Accordingly, the order of the PCIT passed u/s 263 of the I.T. Act is set aside and the grounds raised by the assessee are allowed.

17. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 19<sup>th</sup> December, 2022

<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>ACCOUNTANT MEMBER</b>
--	--

Hyderabad, dated 19<sup>th</sup> December, 2022.

***Vinodan/sps***

Copy to:

S.No	Addresses
1	Smt. Shashikala Gupta, 101, Surya Towers, SP Road, Secunderabad
2	Income Tax Officer Ward 10(1) Room No.516, Block 5 <sup>th</sup> Floor, IT Tower, AC Guards, Masab Tank, Hyderabad
3	CIT (A)-NFAC Delhi
4	Pr. CIT-1, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*