

IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE  
(Conducted Through Virtual Court)

**Before: Shri T.R. Senthil Kumar, Judicial Member  
And Shri B.M. Biyani, Accountant Member**

**ITA No. 63/IND/2022  
Assessment Year: 2017-18**

Atul Kumar Anchalia 108, Jawahar Path Jaora 457226, Madhya Pradesh  PAN No: ABOPA3513F  (Appellant)	Vs	The P.C.I.T.-1, Indore  (Respondent)
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**Appellant by : Shri Manish Dafaria, C.A.  
Respondent by : Shri P.K. Mishra, CIT-DR**

Date of hearing : 04-11-2022  
Date of pronouncement : 03-01-2023

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee against the Revision order dated 07.03.2022 passed by the Principal Commissioner of Income Tax, Indore-1, passed under section 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2017-18.

2. The brief facts of the case is that the assessee is an individual and deriving income from Business & Profession and Income from Other Sources. The assessee filed his Return of Income on 03.02.2018 admitting total income at Rs. 2,34,180/-. The case was selected for limited scrutiny to verify (1) Transfer of property reported in SFT but capital gains is not declared in Return of Income and (2) Large Cash deposits in bank account and assessee has also purchased/sold one or more property(ies) during the year. Accordingly the Assessing officer issued notice u/s. 143(2) and 142(1) fixing the case for hearing on various dates. On filing replies by the assessee from time to time, the assessment was completed accepting the Return of Income of Rs. 2,34,180/- without making any additions or deletions vide order dated 28.11.2019 passed u/s. 143(3) of the Act.

2.1. On examination of records by Ld. PCIT regarding the cash deposits of Rs. 12,00,000/- in saving bank account. The assessee claimed that it engaged in money lending business which is seasonal and assessee gives loan to the Villagers/agriculturists in crop sowing season and the loan are repaid by them after harvesting time. The assessee claimed to have maintained regular books of account for money lending business and there is a discrepancies in the interest of Rs. 2,45,118/- under money lending business. Thus the source of deposit in the savings bank account remained unproved. The assessee filed its Return of Income in ITR-1 which is meant for income from Pension/Salary, Income from one House Property, but a person engaged in any business cannot file the return in form ITR-1. This clearly proves

that the assessee is not engaged in money lending business and assessee has not provided cash book for examination during the assessment proceedings. The A.O. also has not made any enquiry as to how such huge amount of Rs. 12,00,000/- is deposited in the bank account of the assessee. Further the assessee has not declared capital gain on the sale of agricultural land on 27.04.2016 & 01.08.2016 and not proved the above lands are agricultural land and no income from agricultural activity was produced. Thus the Assessing Officer has not made any enquiry, but simply accepted the claim of the assessee without further verification of the claim of agricultural land.

2.2. For the above reasons, the assessment was passed on 28.11.2019 appears to be erroneous in so far as it is prejudicial to the interest of the Revenue. Therefore by virtue of the power vested u/s. 263 of the Act, the assessment order is proposed to be revised. The assessee was given a show cause notice to explain why the proposed Revision should not be carried out. In response, the assessee submitted that Specific queries had been raised by the Ld. A.O. during the original assessment proceedings. A proper and detailed explanations had been submitted by the assessee on the cash deposits namely withdrawal of Rs. 13,74,000/- in the earlier year had been submitted to the Ld. A.O. and the same had been used for disbursing loan to agriculturists/villagers.

2.3. After considering the above reply, the Assessing Officer accepted the assessee's explanation. Thus the Assessment order passed in consequence of proper verification cannot be treated as

erroneous order or prejudicial to the interest of the Revenue. The assessee submitted copy of the Sale Deed to the Assessing Officer during the assessment proceedings. After going through the registered Sale Deed, the Assessing Officer accepted the claim of exemption u/s. 2(14) of the Act and the accepted the Nil income of capital gains. Thus the Ld. PCIT is not correct in invoking Revision proceedings u/s. 263 of the Act and relying upon various case laws and requested to drop the Revision proceedings.

2.4. After considering the above reply, the Ld. PCIT held that the person engaged in any business cannot file the Return in ITR-1. It is neither the assessee's claim of money lending business nor the cash deposits in the bank accounts are proved and Assessing Officer had not made any enquiry, as to how such huge amount of cash is deposited in bank account, while the withdrawals were nominal. Similarly, the assessee has never declared agriculture income during the year under consideration nor in the earlier returns, how the sale of land is exempt u/s. 2(14) of the Act, which was not verified by the Assessing Officer during the assessment proceedings. Thus invoking Explanation 2 of Section 263(1) of the Act namely

- (a) the order is passed without making inquiries or verification which should have been made;
- (b) the order is passed allowing and relief without inquiring into the claim.

2.5. The Ld. PCIT relying upon various case laws and held that the assessment order passed by the Assessing Officer as an erroneous

in so far as it is prejudicial to the interest of Revenue. As the A.O. has failed to conduct enquiries with regard to the various issues and bring to tax the correct amount. Therefore the said assessment order is set aside with a direction to examine the issue in detail by giving proper opportunity to the assessee.

3. Aggrieved against the Revision order, the assessee is in appeal before us raising the following Grounds of Appeal:

*1. That on the facts and circumstances of the case and in law, the order passed by the Commissioner of Income-tax (CIT), u/s 263 of the Income-tax Act, 1961 setting aside the assessment framed u/s 143(3) of the Act as erroneous and prejudicial to the interest of the revenue, is without jurisdiction, bad in law and void ab-initio.*

*2. That on the facts and circumstances of the case and in law and without prejudice to above grounds of appeal, the order passed by Ld. CIT u/s. 263 is bad in law and deserves to be set aside as the same has been passed based on selective and incorrect reading of facts and also without appreciating the submissions made and the documents furnished by the assessee in response to notice of hearings u/s. 263.*

*3. That on the facts and circumstances of the case and in law and without prejudice to above grounds of appeal, the Ld. CIT erred in holding the assessment order as erroneous and prejudicial to the interest of revenue on the very same issues which had been scrutinized by the Assessing Officer specifically while framing the assessment u/s 143(3) of the Act.*

3.1. Ld. Counsel Mr. Manish Dafaria appearing for the assessee reiterated the submissions made before the Ld. PCIT and filed a Paper Book and compilation of case laws. Ld. Counsel taken us through page no. 21 of the Paper Book wherein the Assessing Officer vide 142(1) notice requested the following:

*“ 4. Please furnish the details of cash deposit in Bank and sources thereof alongwith evidence if any and also submit comparative details regarding deposit of cash in Bank for the preceding previous year.*

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6. Please justify reason description- 1. Transfer of property reported in SFT but capital gains is not declared in Return of Income. 2. Large Cash deposits in bank account and assessee has also purchased/sold one or more property (ies) during the year.

3.2. The assessee replied to the Assessing Officer as follows:

4. The details of cash deposited during the year under consideration and in earlier year-

SB India Jawahar Peht Jaora 53018508386  
Asst Year 2017-18 (Under Assessment)

Deposits-		Deposits-	
Date	Amount	Date	Amount
05/10/16	900000	07/04/15	32000
15/11/16	300000	29/03/16	600000
	0		0
	1200000		632000

Asst Year 2016-17 (preceding previous year)

		withdrawals	
Date	Amount	Date	Amount
07/04/17	32000	17/10/15	300000
29/03/16	600000	07/11/15	274000
		08/12/15	100000
		02/01/16	700000
	0		0
	632000		1374000

Above 2 years' cash deposits figures reveal the following bare facts-

The assessee had been regular and frequent in depositing cash in bank.

His money lending work is almost seasonal, that to say, money is distributed in crop seasons and returned back after sale of crops by the villagers/ agriculturists.

The assessee has to keep sufficient cash balance with it during crop-sowing seasons.

He deposited the excess cash than required with the bank.

The cash so deposited was out of sufficient cash balance available in the Cash Book.

The Cash during round the year comes in and goes out in interest Business, whose details are kept in the regular books of account like girvi bahi, girvi ledger etc.

These few facts of the business-style justifies the cash deposits in the banks.

Further during demonation period, a reasonable cash was deposited.

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6. As regard Sale/Transfer of Property, the facts to be looked into as under-

The assessee had purchased an agriculturer land at Village KUMHARI on 4/07/2004 in Rs. 2,91,000 + purchase exp Rs. 3,03,00/-.

The Purchase deed of the said agriculture land is available with the assessee.

Total Area available for sale as on 01/04/2016 as under:-

Khasara Number	62/5	62/4
Total Area in Hct.	0.101	0.039
Sold On	27/04/16	5962
Area Sold Hct	0.045	-0.039
Sale Amount	31,55,000	Sold with 62/2

Sold on	02/08/16	
Area Sold in Hct	-0.056	
Sale Amount	30,27,000	
Total area sold in Hcts	0.101	0.039

Since above agriculture land was situated in a village having population less than 10000

Hence no any capital gain arose on such sale of agriculture land.  
No TCS was made on above sale.

3.3. The Ld. Counsel further stated that vide 142(1) notice dated 24.09.2019, the A.O. requested the assessee furnish the copy of the cash book and ledger and also furnished source of cash deposits. The assessee replied copy of the cash book where from the cash was deposited in the bank account copy also enclosed. Thus the Ld. A.R. pleaded that the Assessing Officer before completing the assessment made proper enquiries after going through the detailed reply made by the assessee. Thus the assessment order cannot be treated as an order passed without conducting proper enquiry by the Assessing Officer and therefore requested to drop the Revision proceedings and relied upon Hon'ble Gujarat High Court in the case of Aryan Arcade Ltd. vs. Pr. CIT [2019] 412 ITR 277 (Guj.), the Hon'ble Allahabad High Court in the case of Krishna Capbox (P)

Ltd. [2015] 60 taxmann.com 243, the Jurisdictional Madhya Pradesh High Court in the case of Ratlam Coal Ash Co. [1987] 34 taxmann.com 443 and Delhi High Court in the case of Vikas Polymers [2010] 194 Taxmann.com 57.

3.4. The Ld. A.R. further submitted that the Ld. PCIT wrongly assumed that the land situated in “Jaora Municipality” and wrongly concluded it is not an agricultural land where as land situated in Gram Kumhari which is in Jaora Tahsil and not in Jaora Municipality. Further the Ld. PCIT has reproduced the reply filed by the assessee and not justified why the submissions made by the assessee is not found acceptable. Further the Ld. PCIT given only one opportunity against the Revision notice and passed the order u/s. 263 in a pre-mediated manner without going into merits of the case. Thus the conclusion reached by Ld. PCIT on the assessment order being erroneous is based on the same set of documents which have been duly considered by the Ld. A.O. while framing the assessment order. Thus PCIT is taking a different view, what was taken by the Assessing Officer, cannot be a good ground for invoking the Revision proceedings u/s. 263 of the Act and therefore requested to quash the Revision order.

4. Per contra, the Ld. CIT-DR Shri P.K. Mishra appearing for the Revenue submitted that the original assessment was taken up for scrutiny assessment only for limited scrutiny namely to verify transfer of property reported in SFT but capital gains is not declared in Return of Income and verify the large cash deposits in the bank account by the assessee.

4.1. On perusal of the assessment order as well as the 142(1) notices, the Assessing Officer has not made proper and necessary enquiry on the sale of agriculture lands and whether the assessee has returned any agricultural income in the preceding two assessment years from the above lands by the assessee. The Assessing Officer also has not verified why the assessee filed the Return of Income in Form No. 1, which is not eligible to be filed by the assessee, who is claimed to be engaged in the business of money lending. The Ld. Assessing Officer has simply accepted the submissions of the assessee without making any proper enquiry while passing the assessment order and also allowed the claim of exemption u/s. 2(14) on sale of land. As held by the Hon'ble Delhi High Court in the case of Gee Vee Enterprises 99 ITR 375 (Delhi) wherein it has been held " the Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return, when the circumstances of the case are such as to provoke an inquiry". Thus invoking Explanation 2 of Section 263(1) of the Act, the assessment order passed by the A.O. has no doubt erroneous order and it is prejudicial to the interest of revenue. Thus the Ld. CIT-DR pleaded the Revision order passed u/s. 263 by the Ld. PCIT is very much sustainable in law and does not require any interference.

5. We have given our thoughtful consideration and perused the materials available on record including the Paper Book filed by the

assessee. It is seen from the assessment order passed by the Assessing Officer is without any details and no information about the claim of agricultural land. When the sale of two lands amounting to Rs. 31,55,000/- and Rs. 30,27,000/- respectively. The Assessing Officer has not raised any question about agricultural income derived from the above lands by the assessee. The assessing officer has also not verified the nature of cultivation from the above lands in the previous assessment years, population of the village and distance from the nearest Municipality. Thus in our considered opinion, the Assessing Officer has not made necessary enquiries before allowing the claim u/s. 2(14) of the Act. Similarly the cash deposits in Bank accounts is not verified by the A.O. with proper enquiry.

5.1. It is appropriate to quote herein the Hon'ble Supreme Court judgment in the case of Daniel Merchants Pvt. Ltd. vs. Income Tax Officer in SLP(C) No. 27799/2017 and Ors. dated 29.11.2017 while dismissing the assessee's appeal has held as follows:

*In all these cases, we find that the Commissioner of Income Tax had passed an order under Section 263 of the Income Tax Act, 1961 with the observations that the Assessing Officer did not make any proper inquiry while making the assessment and accepting the explanation of the assessee(s) insofar as receipt of share application money is concerned. On that basis the Commissioner of Income Tax had, after setting aside the order of the Assessing Officer, simply directed the Assessing Officer to carry thorough and detailed inquiry. It is this order which is upheld by the High Court. We see no reason to interfere with the order of the High Court.*

*The Special Leave Petitions are dismissed.*

*Pending application(s), if any, stands disposed of accordingly.*

5.2. Further, the Hon'ble Jurisdictional High Court in the case of Nagal Garment Industries (P.) Ltd. vs. CIT [2020] 113 taxmann.com 4 (M.P.) has upheld the findings of the Tribunal as follows:

*"8. The Income-tax Appellate Tribunal, by relying on the decision of the Supreme Court rendered in the case of Malabar Industrial Co. Ltd. vs. CIT [2000] 243 ITR 83/109 Taxman.com 66, the order passed by the Supreme Court in the case of Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 and CIT vs. Amitabh Bachchan [2016] 69 taxmann.com 170/240 Taxmann 221/384 ITR 200 (SC) relevant extracts of which have been quoted by the Income-tax Appellate Tribunal in paragraphs 4.2 and 4.3 of its order, has arrived at a conclusion that as the Assessing Officer has passed the order of assessment without making a proper enquiry and without applying his mind to the return and the documents filed by the assessee, as such the order is erroneous as well as prejudicial to the interest of revenue. The Tribunal has also recorded a finding of fact, on the basis of the record available, that in the instant case, though the Assessee has submitted records before the Assessing Officer, he has simply accepted the claim of the assessee without examining the same and therefore, the present case is one where the impugned order of assessment is erroneous as well as prejudicial to the interest of revenue on account of lack of enquiry and application of mind to the facts of the case by the Assessing Officer."*

6. In our considered opinion, the Ld. PCIT has rightly invoked the provision of Section 263, wherein the assessment order passed by the Assessing Officer is on account of inadequate enquiry and non-application of mind to the facts of the case presented by the assessee. Therefore the Ld. PCIT set aside the erroneous assessment order passed by the Assessing Officer, with a direction to examine the issues afresh and determine the appropriate tax liability by giving adequate opportunity to the assessee. We do not find any infirmity in the order passed by the Ld. PCIT. Therefore it does not require any interference. Thus the grounds raised by the Assessee are hereby rejected.

7. In the result, the appeal filed by the Assessee is hereby dismissed.

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 03-01-2023

**Sd/-**  
**(B.M. BIYANI)**  
**ACCOUNTANT MEMBER**  
**Indore: Dated 03/01/2023**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order

Assistant Registrar  
Income Tax Appellate Tribunal,  
Indore Bench, Indore

Strengthened preparation & delivery of orders in the ITAT	
1) Date of dictation	30/12/2022
2) Date on which the typed draft is placed before the Dictating Member & Other Member	/01/2023
3) Date on which the approved draft comes to the Sr. P.S./P.S.	/01/2023
4) Date on which the fair order is placed before the Dictating Member for pronouncement	/01/2023
5) Date on which the fair order comes back to the Sr. P.S./P.S.	/01/2023
6) Date on which the file goes to the Bench Clerk	/01/2023
7) Date on which the file goes the Head Clerk	
8) Date on which the file goes to the Assistant Registrar for signature on the order	
9) Date of Dispatch of the order	