

**IN THE INCOME TAX APPELLATE TRIBUNAL****(DELHI BENCH 'G' : NEW DELHI)****BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.1089/Del/2022, A.Y. 2017-18

Sh. Sanjeev Kumar Gupta R-14/15, Rajnagar Ghaziabad PAN : ADCPG4763D	Vs.	Pr. CIT, CGO Complex-1 Ghaziabad
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Assessee by	Sh. Akhilesh Kumar, Adv.
Revenue by	Sh. H.K.Chaudhary, CIT DR

Date of hearing:	17.01.2023
Date of Pronouncement:	19.01.2023

**ORDER****Per Anubhav Sharma, JM :**

The Assessee has come in appeal challenging the order dated 24.03.2022 u/s 263 of the Income Tax Act 1961 ( hereinafter referred as the Act), passed by PCIT, Ghaziabad (hereinafter referred to as the 'Revisional Authority') for the assessment year 2017-18 in regard to assessment order dated 09.12.2019 u/s 143(3) of the I.T.Act, 1961 by the Assistant Commissioner of Income Tax, Circle 2(1)(1), Ghaziabad (hereinafter referred to as the for short 'Ld. AO')

2. The facts in brief are that assessee filed return declaring total income of Rs. 55,39,900/- after claiming deduction under Chapter,-VI-A of Rs. 1,83,915/-. The case of the assessee was selected for compulsory scrutiny under CASS

giving reason for selection of cash deposit during the demonetization period. After giving due notice u/s 143(2) and 142(1), the assessment was completed at return of income, however, Ld. Revisional Authority considered the assessment to be erroneous and prejudicial to the interest of revenue for which a show cause notice with following details was issued.

*“2. From perusal of assessment record, for the year under consideration, following discrepancies/ errors have been noticed:-*

*2.1. It is observed that the source of payment of Rs. 18,00,000/- on 18-11-2016 as income tax of Rs. 40,00,000/- declared under IDS, 2016 was not explained. Thus the amount of Rs. 18,00,000/- was required to be added u/s. 68 read with 115BBE of the I.T. Act 1961, but the same was not done. Revenue loss of Rs. 18,49,365/- is found on such omission. Further, it is also observed from the records that no enquiry has been made by the A.O. on the said issue during assessment proceeding.*

*3. In view of the above, the assessment order passed by the AO, Circle- 2(2)(1), Ghaziabad is erroneous and prejudicial to the interest of revenue and may be cancelled or modified by invoking the provisions of section 263 of the Income Tax Act, 1961.”*

3. In response to same on behalf of the assessee it was submitted that as Director of M/s. Summer Cool Home Appliances Ltd. the payment of Rs. 18,00,000/- was made from the company account and debited in the account of assessee. Copy of the ledger account was also submitted. However, Ld. Revisional Authority was not satisfied and after taking into account the various judicial pronouncements with regard to scope of Section 263, it observed in para no. 4.1, 4.2 and 4.5 as below :-

*“4.1 Examination of above submissions filed by the assessee and supporting bank statement does not reveal that the said debit entry in the bank account of M/s Summer cool Home Appliances Pvt. Ltd. pertains to payment of taxes on income declared under IDS, 2016 by the assessee Shri Sanjeev Kumar Gupta. Further, neither any enquiry was made by the A.O. during assessment proceedings*

*with regard to source of payment of tax of Rs. 18,00,000/- by the company nor the assessee had offered any explanation on this issue.*

*4.2 I have considered the submissions made by the assessee, perused the assessment order and examined all relevant details and documents, and find that the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of the revenue for the reason that the A.O. was required to examine the source of payment of Rs. 18,00,000/- but he failed to make any enquiry or verification on this issue.*

*4.5 Therefore, I am of the opinion that the issue involved in this case requires reexamination and further verification so as to arrive at correct and true income of the assessee. Therefore, the assessment order passed u/s. 143(3) of the I.T. Act on 09.12.2019 by the Assistant Commissioner of Income Tax Circle-2(1)(1), Ghaziabad is set aside with the direction to pass a fresh assessment order in accordance with the provisions of Income Tax Act 1961 after examination and verification on the issue discussed above in **para 4.1 and 4.2.**”*

4. The assessee is in appeal raising following grounds :-

*“1. Because the Ld. Pr. CIT erred in law and on facts in invoking the provisions of Sec. 263 of the Income-tax Act, 1961 by issuing show cause notice dt. 12/03/2022, thereby assuming jurisdiction illegally without satisfying the mandatory jurisdictional conditions as per law, therefore the initiation of proceedings u/s 263 of the Act, is arbitrary, without jurisdiction and bad in law and notice/order u/s 263 are liable to be quashed.*

*2. That on the facts and circumstances of the case and in law, ld. Pr. CIT is completely wrong and incorrect in alleging that assessee has not explained source of a sum of Rs. 18 lakhs paid under IDS, 2016 and AO has not made enquiry on that issue in as much as in response to enquiry assessee had filed the evidences of source of said Rs. 18 lakh, therefore notice/order u/s 263 is against all the cannons of law.*

*3. That, ld. Pr. CIT further erred in returning a wholly incorrect and wrong finding that evidence does not prove payment of amount under question despite all the evidences on record and also erred in cancelling the order with general direction to conduct enquiries instead of arriving at a definite conclusion after*

*conducting detailed inquiries on such issue, therefore order u/s 263 is against the settled law on the issue.*

*4. The appellant craves the leave to add, modify, amend or delete any of the grounds of appeal before or at the time of hearing and all the above grounds are independent and without prejudice to each other.”*

5. Heard and perused the record.

6. Ld. AR made submissions relying paper book filed submitting that at one end the issue was thoroughly examined by Ld. AO and on the other hand necessary information was also submitted before the Ld. Revisional Authority who failed to take a reasoned call.

6.1 Ld. DR however supported the orders of Ld. Revisional Authority.

7. Appreciating the matter on record and the submissions it can be observed that during the assessment proceedings in consequence to notice u/s 142(1), the assessee had informed Ld. AO vide its communication available at page no. 16 of the paper book that the assessee had deposited Rs. 18,00,000/- from State Bank of India account of M/s. Summer Cool Appliances Ltd. Ld. AO while passing the assessment order has observed in the assessment order of the fact that in response to the queries relevant documents were furnished by the assessee which were examined on test check basis and duly placed on record.

8. The Bench is of considered opinion that when the compulsory scrutiny of cash deposit during demonetization period was the very issue under the assessment and the assessee had replied to the queries including one referred above and available at page no. 16 of paper book, then it cannot be said that there was any lack of inquiry on the part of Ld. AO.

9. Furthermore, at page no. 10 of the paper book, there is reply submitted to Ld. Revisional Authority which also stands reproduced in the impugned order

of Id. Revisional Authority. Therein, assessee had specifically pleaded about the fact of source of deposit of Rs. 18,00,000/-. The Bank account of Summer Cool Home Appliances Ltd. was disclosed. It was mentioned that assessee is Director of M/s. Summer Cool Home Appliances Ltd.

10. A perusal of same at page no. 20 to 23 of the paper book establish firmly the fact that the assessee was having a credit balance of 1,28,95,403/- in his loan account with M/s. Summer Cool Home Appliances Ltd. on 28.11.2016 with debit in the account of assessee as Director, payment of Rs. 18,00,000/- was made under IDS, 2016 on account of assessee. Even after having these facts before it in a very summarily manner, Ld. Revisional Authority preferred to observe lack of inquiry on the part of Ld. AO where directing AO to re examine further and verify the issue.

11. The Bench is of considered opinion that without giving any reasonable finding to disbelieve and discredit the submissions of the assessee towards the show cause notice the Ld. Revisional Authority has passed the impugned order which is not sustainable under law. Accordingly, the ground raised are sustained. The impugned order of Id. Revisional Authority is set aside. The **appeal of assessee is allowed.**

**Order pronounced in the open court on 19<sup>th</sup> January, 2023.**

**Sd/-**  
**(N.K.BILLAIYA)**  
**ACCOUNTANT MEMBER**

*Date:- 19.01.2023*

*\*Binita, SR.P.S\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**Sd/-**  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI