

आयकरअपीलीयअधिकरण,इंदौरन्यायपीठ,इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI CHANDRA MOHAL GARG, JUDICIAL MEMBER
AND
SHRIB.M. BIYANI, ACCOUNTANT MEMBER

ITA No.87/Ind/2022
Assessment Year: 2017-18

Shri Umesh Kumar Agrawal, Harda	बनम/ Vs.	Pr. CIT-1, Bhopal
(Appellant / Assessee)		(Respondent / Revenue)
PAN: ADYPA 9036 B		
Assesseeby	Shri S.N. Agrawal & Pankaj Mogra, ARs	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing	17.11.2022	
Date of Pronouncement	20.01.2023	

आदेश/O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by revision-order dated 08.03.2022 passed by learned Pr. Commissioner of Income-Tax-1, Bhopal [“**Ld. PCIT**”] u/s 263 of Income-tax Act, 1961 [“**the Act**”], which in turn arises out of assessment-order dated 23.12.2019 passed by learned ITO-1, Harda [“**Ld. AO**”] u/s 143(3) for Assessment-Year [“**AY**”] 2017-18, the assessee has filed this appeal on the grounds raised in the Appeal-Memo.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Briefly stated the facts are such that the assessee filed return of income of the relevant AY 2017-18 on 30.10.2017 declaring taxable income

of Rs. 3,48,940/- and agricultural income of Rs. 10,72,985/- which was subjected to scrutiny for examination of "Large agricultural income shown in ITR and large cash deposit during demonetization". Finally, the Ld. AO completed the assessment u/s 143(3) determining taxable income at Rs. 3,88,940/- and accepting the agricultural income of Rs. 10,72,985/-. Subsequently, the Ld. PCIT examined the record of assessment-proceeding and viewed that the assessment-order passed by Ld. AO is erroneous in so far it is prejudicial to the interest of revenue, which attracts revisionary-jurisdiction u/s 263. The reason of framing such a view, as mentioned by Ld. PCIT in the show-cause notice dated 31.12.2021, is such that the assessee had claimed to have taken agricultural land of 10 acres from Smt. Rupa Bai w/o Shri Premnarayna Agarwal for the period 01/05/2015 to 30/04/2017 (2 years) for Rs. 1,00,000/- per year through "Khotchitti" dated 29.04.2015. But, however, during the course of assessment, the assessee had neither produced original KhotChitti nor any evidence to prove the payment of Rs. 1,00,000/- per year having been paid to Smt. Rupa Bai. Further, the assessee had not declared any agricultural income during immediately preceding AY 2016-17 despite the fact that KhotChitti is claimed to have been paid for the period 01/04/2015 to 30/04/2017. Thus, the agricultural income declared in the AY 2017-18 under consideration stood unverifiable and the Ld. AO has accepted the same without verification, which has rendered the assessment-order as erroneous-cum-prejudicial to the interest of revenue.

4. By the aforesaid show-cause notice, the assessee was asked to explain as to why the assessment-order may not be revised. In response thereto, the assessee made detailed submissions to Ld. PCIT.

5. However, the submissions made by assessee did not impress the Ld. PCIT. The Ld. PCIT also observed that since the section 263 has been amended and Explanation 2, as reproduced below, had been introduced therein, the assessment-order is deemed to be erroneous-cum-prejudicial to

the interest of revenue if the same had been passed without inquiries or verification which should have been made:

“Explanation 2 – “For the purpose of this section, it is hereby declared 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 revenue, if in the opinion of the Principal Commissioner or Commissioner -

- (a) The order is passed without making inquiries or verification which should have been made;*
- (b) The order is passed allowing any relief without inquiring into the claim;*
- (c)*
- (d) ...”*

6. Finally, the Ld. PCIT concluded that the Ld. AO has not carried out the inquiry/verification which he should have done and hence the assessment-order is erroneous in so far as it is prejudicial to the interest of revenue. Accordingly, the Ld. PCIT passed revision-order u/s 263 whereby the assessment-order was set aside to the file of Ld. AO with a direction to make assessment de novo.

7. Aggrieved by such revision-order, the assessee has filed this appeal.

8. By means of various grounds raised in the Appeal Memo which are not being reproduced for the sake of brevity, the appellant-assessee requires us to adjudicate whether or not the revision-order passed by Ld. PCIT u/s 263 is valid in the eyes of law?

Submission of Ld. AR:

9. Ld. AR straightaway carried us to a Paper-Book filed by him and submitted that during the course of assessment-proceeding, the Ld. AO has made specific queries to assessee *quat* the issue of agricultural income raised by Ld. PCIT in the show-cause notice u/s 263 and the assessee has also filed enough details/documents in response thereto, which is very much evident from the following details/documents forming part of assessment-record available with the department:

- (i) Paper Book Page No. 29 to 31 – Vide Point No. 19 of the notice dated 16.09.2019 u/s 142(1), the AO asked the assessee to provide the details of your agricultural income for F.Y. 2014-15, 2015-16 & 2016-17 and also produce supporting documents thereof.
- (ii) Paper Book Page No. 32 to 33 – Vide Point No. 12 of the reply-letter dated 04.10.2019, the assessee filed copies of sale-bills of agriculture and Income & Expenditure A/c of agriculture.
- (iii) Paper Book Page No. 34 to 36 – Vide Point No. 5 of the notice dated 23.10.2019 u/s 142(1), the AO asked the assessee to provide the details of agricultural income for F.Y. 2014-15, 2015-16 & 2016-17 and also produce supporting documents thereof. The AO specifically asked the details of agricultural income of Rs. 10,72,985/- shown during the F.Y. 2016-17. The AO also asked details of agricultural lands, copies of registries, proof of holding, etc.
- (iv) Paper Book Page No. 37 to 38 – Vide Point No. 6 of the reply-letter dated 04.11.2019, the assessee referred his earlier reply dated 04.10.2019. Further, the assessee also filed khotchitti by which the land was taken on khot. Further, the assessee also filed an affidavit of the lessor who had given land on khot.
- (v) Paper Book Page No. 39 to 40 – Vide Point No. 1 of the notice dated 04.12.2019 u/s 142(1), the AO asked the assessee to provide original khotchitti as well as the documentary evidence of the payment of Rs. 1,00,000/- per year made to the lessor.
- (vi) Paper Book Page No. 41 – Vide Point No. 1 of the reply-letter dated 09.12.2019, the assessee filed original copy of the khotchitti. Further, vide point no. 2, the assessee submitted details of payment as 07.09.2016 – Rs. 35,000; 27.09.2016 – Rs. 30,000; 02.11.2016 – Rs. 35,000; thus aggregating to Rs. 1,00,000/-.

- (vii) Paper Book Page No. 42 to 76 – The assessee has placed copies of the Agricultural Ledger A/c, Bills of crop sale and sample copies of cheques through which the sale-proceed of agricultural crop was received.
- (viii) Paper Book Page No. 77 – A copy of the khotchitti dated 29-04-2015 executed between the assessee and the lessor Smt. Rupa Bai, is filed. This document is signed by both parties and also notarised.

10. Ld. AR then argued that all these details / documents as filed by assessee were duly examined and considered by Ld. AO and having done so, the Ld. AO completed assessment of assessee, which is very much clear from a bare reading of following paragraph of the assessment-order itself:

*“Keeping in view of the submissions, discussion with the AR of the assessee and documents placed on record, the **agriculture income** of the assessee during the F.Y. 2017-18 may be considered reasonable and thus is acceptable.”*

11. Clearly therefore, the Ld. AR contended, the assessee had filed all details / documents during the course of assessment. Therefore, this is not a case of “no enquiry” as understood by Ld. PCIT.

Submission of Ld. DR:

12. Per contra, Ld. DR supported the revision-order, but could not contradict the submissions made by Ld. AR.

Our analysis:

13. We have heard the rival contentions, perused the material on record and duly considered the facts of the case in the light of applicable legal positions. On a careful consideration of various documents placed in the Paper-Book, as noted in the foregoing discussion, we find that during the course of assessment-proceeding, there were specific queries raised by Ld. AO with regard to the issue contemplated by Ld. PCIT and the

assessee too made detailed replies / submissions. To this extent, there is no dispute or rebuttal by revenue. Clearly, therefore, it is discernible that the Ld. AO has considered those replies / submissions and thereafter taken a plausible view. Further, the action of Ld. AO in accepting the replies / submissions of assessee does not lack bonafides and cannot be said to be faulty. At this stage, we are consciously aware of the decision taken by Hon'ble ITAT, Mumbai in **Reliance Payment Solutions Ltd. Vs. Pr. CIT (2022) 136 taxmann.com 277** where it was held thus:

"9. Clearly, therefore, as long as the action of the Assessing Officer cannot be said to be lacking bonafides, his action in accepting an explanation of the assessee cannot be faulted merely because it could have been lawful to make mere detailed inquiries or because he did not write specific reasons of accepting the explanation. As for learned PCIT's observations regarding accepting the explanation "without appropriate evidence", there is nothing to question the bonafides of the Assessing Officer or to elaborate as to what should have been 'appropriate' evidence. The fact remains that the specific issue raised, in the revision order was specifically looked into, detailed submissions were made and these submissions were duly accepted by the Assessing Officer. Merely because the Assessing Officer did not write specific reasons for accepting the explanation of the assessee cannot be reason enough to invoke powers under section 263, and non-mentioning of these reasons do not render the assessment order "erroneous and prejudicial to the interest of the revenue".

14. Regarding introduction of Explanation 2 to section 263, as claimed by Ld. PCIT in his order, we only need to submit that it is held in several decisions that the said Explanation does not give unfettered power to the PCIT to assume revisional-jurisdiction to revise every order of the Assessing Officer to re-examine the issues already examined during assessment-proceeding. It is judicially interpreted in several decisions that the intention

of legislature behind introduction of Explanation 2 could not have been to enable the PCIT to find fault with each and every assessment-order in unlimited terms, since such an interpretation would lead to unending litigation and there would not be any point of finality of assessment-proceeding done by Ld. AO.

15. Hon'ble **ITAT, Rajkot** in **M/s Pramukh Realty, Junagadh, ITA No. 93/Rjt/2022 dated 30.06.2022**, has extensively dealt a case where the AO raised queries during assessment-proceeding and the assessee filed details / documents. After a thorough analysis, the Hon'ble Bench has held that in such circumstances, revision u/s 263 cannot be done. The relevant paragraphs of the decision are reproduced below:

"5. The learned AR before us filed a paper book running from pages 1 to 157 and contended that all the necessary details about the advances received from the parties, sales shown in the financial statement and details of the service tax returns were filed during the assessment proceedings. The learned AR further contended that the assessment was framed by the AO after considering the necessary details and verification and application of mind. The learned AR in support of his contention drew our attention on pages 151 to 153 of the paper book where the copy of the notice under section 142(1) of the Act was placed. Likewise, the learned AR also drew our attention on pages 154 to 157 of the paper book where the reply of the assessee in response to the notice issued under section 142(1) of the Act was placed. Thus, the learned AR contended that there cannot be said that the assessment order is erroneous and causing prejudice to the interest of Revenue in the given facts and circumstances on account non-verification.

6. On the contrary, the learned DR before us contended that reconciliation of the amount shown in the service tax return and financial statement was not available before the AO during the assessment proceedings. Accordingly the learned DR vehemently supported the order of the learned PCIT.

7. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the present case relates whether the assessment order has been passed by AO without making inquiries or verification with respect to the difference in the figures as discussed above and hence the assessment is erroneous insofar prejudicial to the interest of the Revenue. Thus, requiring revision by Pr. CIT u/s 263 of the Act.

7.1 An inquiry made by the Assessing Officer, considered inadequate by the Commissioner of Income Tax, cannot make the order of the Assessing Officer erroneous. In our view, the order can be erroneous if the Assessing Officer fails to apply the law rightly on the facts of the case. As far as adequacy of inquiry

is considered, there is no law which provides the extent of inquiries to be made by the Assessing Officer. It is Assessing Officer's prerogative to make inquiry to the extent he feels proper. The Commissioner of Income Tax by invoking revisionary powers under section 263 of the Act cannot impose his own understanding of the extent of inquiry. There were a number of judgments by various Hon'ble High Courts in this regard.

7.2 Delhi High Court in the case of CIT Vs. Sunbeam Auto 332 ITR 167 (Del.), made a distinction between lack of inquiry and inadequate inquiry. The Hon'ble court held that where the AO has made inquiry prior to the completion of assessment, the same cannot be set aside u/s 263 of the Act on the ground of inadequate inquiry. The relevant observation of Hon'ble Delhi High Court reads as under:

"12. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry", that such a course of action would be open. ———

From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. There must be some prima facie material on record to show that 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 what was just has been imposed.

15. Thus, even the Commissioner conceded the position that the Assessing Officer made the inquiries, elicited replies and thereafter passed the assessment order. The grievance of the Commissioner was that the Assessing Officer should have made further inquiries rather than accepting the explanation. Therefore, it cannot be said that it is a case of 'lack of inquiry'."

7.3 The Hon'ble Bombay High Court in case of Gabriel India Ltd. [1993] 203 ITR 108 (Bom), discussed the law on this aspect in length in the following manner: "The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue, must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasijudicial controversies as it must in other spheres of human activity.

7.4 The Mumbai ITAT in the case of Sh. Narayan Tatu Rane Vs. ITO, I.T.A. No. 2690/2691/Mum/2016, dt. 06.05.2016 examined the scope of enquiry under Explanation 2(a) to section 263 in the following words:-

"20. Further clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the AO vis-à-vis its reasonableness in the facts and circumstances of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquiries or verification that would have been carried out by a prudent officer. Hence, in our view, the question as to whether the amendment brought

in by way of Explanation 2(a) shall have retrospective or prospective application shall not be relevant.”

7.5 The Hon'ble Supreme Court in recent case of *Principal Commissioner of Income-tax 2 v. Shree Gayatri Associates**[2019] 106 taxmann.com 31 (SC), held that where Pr. CIT passed a revised order after making addition to assessee's income under section 69A in respect of on-money receipts, however, said order was set aside by Tribunal holding that AO had made detailed enquiries in respect of such on-money receipts and said view was also confirmed by High Court, SLP filed against decision of High Court was liable to be dismissed. The facts of this case were that pursuant to search proceedings, assessee filed its return declaring certain unaccounted income. The Assessing Officer completed assessment by making addition of said amount to assessee's income. The Principal Commissioner passed a revised order under section 263 on ground that Assessing Officer had failed to carry out proper inquiries with respect to assessee's on money receipt. In appeal, the Tribunal took a view that Assessing Officer had carried out detailed inquiries which included assessee's on-money transactions and Tribunal, thus, set aside the revised order passed by Commissioner. The Hon'ble High Court upheld Tribunal's order. The Hon'ble Supreme Court while dismissing the SLP filed by the Department held as under:-

“We have heard learned counsel for the Revenue and perused the documents on record. In particular, the Tribunal has in the impugned judgment referred to the detailed correspondence between Assessing Officer and the assessee during the course of assessment proceedings to come to a conclusion that the Assessing Officer had carried out detailed inquiries which includes assessee's on-money transactions. It was on account of these findings that the Tribunal was prompted to reverse the order of revision. No question of law arises. Tax Appeal is dismissed”.

7.6 The Supreme Court in the another recent case of *Principal Commissioner of Income-tax-2, Meerut v. Canara Bank Securities Ltd*[2020] 114 taxmann.com 545 (SC), dismissed the Revenue's SLP holding that 263 proceedings are invalid when AO had made enquiries and taken a plausible view in law, with the following observations: *“Having heard learned counsel for the parties and having perused the documents on record, we see no reason to interfere with the view of the Tribunal. The question whether the income should be taxed as business income or as arising from the other source was a debatable issue. The Assessing Officer has taken a plausible view. More importantly, if the Commissioner was of the opinion that on the available facts from record it could be conclusively held that income arose from other sources, he could and ought to have so held in the order of revision. There was simply no necessity to remand the proceedings to the Assessing Officer when no further inquiries were called for or directed”*

7.7 From an analysis of the above judicial precedents, the principle which emerges is that the phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer

cannot be treated as prejudicial to the interests of the revenue, for example, when an Assessing Officer adopts one of the course permissible in law and it has resulted in loss of revenue; or where two views are possible and the Assessing Officer has taken one view with which the Commissioner of Income-tax does not agree, it cannot be treated as an erroneous order causing prejudice to the interests of the Revenue unless the view taken by the Assessing Officer is unsustainable in law, or the AO has completely omitted to make any enquiry altogether or the order demonstrates non-application of mind.

7.8 Now in the facts before us, in the case of the assessee the AO during the course of assessment proceedings, made enquiries on this issue and after consideration of written submissions filed by the assessee and documents / evidence placed on record, framed the assessment under section 143(3) of the Act without making the addition of the amount as note above. This fact can be verified from the notice under section 142(1) of the Act by the AO and submission in reply of the assessee against such notice.

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7.9 From the above it is revealed that it is not the case that the AO has not made any enquiry. Indeed the Pr. CIT initiated proceedings under section 263 of the Act on the ground that the AO has not made enquiries or verification which should have been made in respect of cash deposited during the demonization period. It is not the case of the Pr. CIT that the Ld. AO did not apply his mind to the issue on hand or he had omitted to make enquiries altogether. In the instant set of facts, the AO had made enquiries and after consideration of materials placed on record accepted the genuineness of the claim of the assessee.

7.10 At this juncture, it is also important to note that the learned PCIT in his order passed under section 263 of the Act has made reference to the explanation 2 of section 263 of the Act. It was attempted by the learned PCIT to hold that there were certain necessary enquiries which should have been made by the AO during the assessment proceedings but not conducted by him. Therefore, on this reasoning the order of the AO is also erroneous insofar prejudicial to the interest of revenue. In this regard, we make our observation that the learned PCIT has also not specified the nature and the manner in which the enquiries which should have been conducted by the AO in the assessment proceedings. Thus, in the absence of any specific finding of the learned PCIT with respect to the enquiries which should have been made, we are not convinced by his order passed under section 263 of the Act.”

16. In view of above discussion and for the reasons stated therein, we are persuaded to hold that the facts of the present case do not warrant application of section 263. Therefore, the revision-order passed by Ld. PCIT is not a valid order. We, thus, quash the revision-order and restore the

original assessment-order passed by Ld. AO. The assessee succeeds in this appeal.

17. Resultantly, this appeal of assessee is allowed.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 20/01/2023
Order pronounced in the open court on/...../2023

Sd/-

Sd/-

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक/Dated : 20.01.2023

Patel/Sr. PS

Copies to:	(1)	The appellant
	(2)	The respondent
	(3)	CIT
	(4)	CIT(A)
	(5)	Departmental Representative
	(6)	Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to 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	