

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH : COCHIN**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.154/Coch/2022
Assessment Year : 2017-18

Shri. James Stephen Pulimoottil, Pulimoottil Investments, Thodupuzha P.O., Idukki – 685 584. PAN : AJEPS 3930 Q	Vs.	ITO, Ward – 1, Thodupuzha.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Mathew Joseph, CA
Revenue by	:	Smt. J M Jamuna Devi, Sr DR

Date of hearing	:	07.12.2022
Date of Pronouncement	:	19.12.2022

ORDER

Per Padmavathy S, Accountant Member

This appeal is against the order of CIT(A), Kochi, passed under section 263 of the Income Tax Act, 1961 (hereinafter called ‘the Act’), dated 27.01.2022, for the Assessment Year 2017-18. Grounds raised by the assessee are as under:

1. *The learnt Pr. CIT went wrong in setting aside the assessment order by treating it as erroneous for the reason of not making inquiries about the source for the deposit of Specified Bank*

Notes(SBN) in November amounting to Rs 20,93,500/- in bank which was made subsequent to the first deposit of Rs 10,000. He ought to have found that there was no prohibition for the deposit of SBN more than once during the demonetisation period.

2. *The learnt Pr. CIT went wrong in setting aside the assessment order by treating it as erroneous even after examining the assessment order in which it has been clearly stated that the deposit was made out of the cash balance held by the assessee on 8/11/2016 in respect of the money lending business.*
3. *The learnt Pr. CIT went wrong in setting aside the assessment order without considering the reply dated 23/11/2011 to the show cause notice u/s 263 furnished through e- mail on 24/11/2021.*

2. The assessee is an individual engaged in the business of money lending. The assessee filed the return of income on 05.08.2017 declaring an income of Rs.12,21,170/-. The case was selected for scrutiny under CASS and a notice under section 143(2) of the Act was duly served on the assessee. In response to notice, the assessee furnished the details including the books of account. The assessee also furnished cash book with regard to cash deposits during the demonetization period. The AO completed the assessment accepting the income returned by the assessee. The PCIT, on perusal of assessment records, noticed that the AO has not made proper enquiry with regard to deposits made by the assessee in specified bank notes. To this extent, the PCIT considered the Assessment Order to be erroneous and prejudicial to the interest of the Revenue. The PCIT issued a show cause notice in this regard by stating:

The assessee had deposited Specified Bank Notes (SBA') (Rs.1000/- o id • Rs.500/-) into the bank account no. 913010033124171 with. Axis Rank, Thodupuzha. Branch during the period 08.11.2016 to 31.12.2016 after the demonetization came into effect, amounting to Rs. 21,03,500/-. The details of the same are as under:

Date	Amount	SBN
10.11.2016	Rs.10,000	1000x10
12.11.2016	Rs.10,000	1000x10
14.11.2016	Rs.20,00,000	1000x700, 500x2600
17.11.2016	Rs.83,500	500x167
Total	Rs.21,03,500	

The assessee was not authorized to accept SEM during the post demonetization period. Further, assessee has not furnished any documentary evidence nor filed any satisfactory explanation to prove the justification for accepting the SBN during the said period. Therefore, the SBN cash deposits, except for the first day cash deposit of Rs.10,000/- on 10-11-2016 has to be treated as assessee's unexplained investment and brought to tax 1.4,1 s 115BBE of the Act. However the AO has failed to do so.

Thus, it is clear that the AO has mistakenly and erroneously omitted to consider the above facts, while completing the assessment, thereby causing prejudice to the interests of revenue.

Since the assessment order is found erroneous in so far as it is prejudicial to the interest of revenue, this is a fit case for revision u/ s. 263."

3. The assessee according to the PCIT did not furnish any further details before the PCIT and accordingly PCIT set aside the order of

the AO for a denovo examination and to pass a speaking order in accordance with law. Aggrieved, the assessee is in appeal before the Tribunal. The learned AR submitted that the relevant details with regard to cash deposits during the demonetization period have been submitted before the AO. The learned AR drew our attention to the Assessment Order wherein he has acknowledged the fact that the assessee has submitted the cash book in this regard and the same has been examined by the AO. So it is the contention of the learned AR that the AO, after examining the details, has applied his mind before taking the decision accepting the income returned by the assessee. The order of the AO is not erroneous or prejudicial to the interest of the Revenue. The learned DR relied on the order of the PCIT.

4. We heard the rival submissions and perused the material on record. It is noticed that the PCIT has invoked the revisionary power under section 263 of the Act with regard to the specific deposits made by the assessee in specified bank notes into the bank account with Axis Bank, Thodupuzha Branch from 08.11.2016 to 31.12.2016 to the tune of Rs.21,03,500/-. He also noticed that the assessee has not responded to the show cause notice issued by the PCIT. It is further noticed that the AO has not brought out the details examined by him with regard to the deposit of specified bank notes during the demonetization period and has passed a cryptic order accepting the income returned by the assessee. Therefore, in our view, the PCIT is justified in invoking the provisions of section 263 of the Act on the ground that there is lack of enquiry on the part of the AO. The PCIT,

while passing the order under section 263 of the Act, has set aside the Assessment Order for a denovo examination and in this regard we direct the AO to examine the issues afresh taking an independent view in accordance with law uninfluenced by the observations of the PCIT. We accordingly modify the order u/s.263.It is ordered accordingly.

5. In the result, appeal filed by the assessee is dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N. V. VASUDEVAN)
Vice President

Sd/-
(PADMAVATHY S)
Accountant Member

Bangalore,
Dated: 19.12.2022.
/NS/*

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|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Cochin.