

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR  
(VIRTUAL COURT)  
BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 105/Asr/2022**  
Assessment Year: 2014-15

Sh. Iqbal Singh  
Shop No. 4 & 5,  
New Grain Market,  
Moga-142 001, Punjab  
[PAN: BVLPS 5370L]  
**(Appellant)**

**V.** Pr. Commissioner of Income  
Tax, Ludhiana -1  
  
**(Respondent)**

Appellant by Sh. Rupender Kansal, Adv.

Respondent by Sh. Hitendra Bhauraoji Ninawe, CIT- DR

Date of Hearing : 19.12.2022  
Date of Pronouncement : 31.01.2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

This appeal has been filed by the assessee against the order of the Ld. Pr. Commissioner of Income Tax, Ludhiana-1 dated 31.03.2022 in respect of Assessment Year 2014-15.

2. The assessee has raised the following grounds of appeal:

- “1. That the order u/s 263 passed by the Learned Principal Commissioner of Income Tax, Ludhiana-1 is illegal, unjustified & arbitrary and is liable to be quashed.
  2. That the order passed u/s 263 dated 31.03.2022 by the Ld. Pr. CIT, Ludhiana-1 is void ab-initio as there is no power under the statute invoke section 263 qua order passed in consequence to first revision order u/s 263 & that too by again setting aside the second order passed in consequence to first revision order u/s 263, accordingly the same deserve to be quashed.
  3. That the Learned Pr. CIT-Ludhiana-1 has erred in exercising the power of revision for the purpose of directing the AO to hold another investigation when the AO has complied with the directions of the predecessor Pr. CIT, Ludhiana-3 in the preceding order u/s 263 passed on 25.03.2019.
  4. That the Ld Pr. CIT, Ludhiana-1 has erred in the eyes of law by not giving the opportunity of being heard as mandated u/s 263. Hence, the order deserves to be quashed.
  5. That the Ld Pr. CIT, Ludhiana-1 has erred in finding that assessment already framed was erroneous & prejudicial to the interest of revenue as the assessment was framed by the AO after thorough investigation & proper application of mind.
  6. That the Ld Pr. CIT, Ludhiana-1 has erred in applying the (Explanation 2) to section 263 inserted w.e.f 01.06.2015 as the concerned Assessing Officer had duly made appropriate enquiries and applied his mind and assessed the income.
  7. That in any case the order of the Learned Pr. CIT Ludhiana -1 passed u/s 263 is against the law and deserves to be quashed.
  8. That the Appellant craves leave for permission to add, amend or alter any ground of appeal at the time of hearing.”
3. At the outset, the Ld. Counsel submitted that the Learned Pr. CIT-Ludhiana-1 has exercised the power of revision u/s 263 of the Act, directing the AO to carry out another investigation in the present case where the AO

has complied with the directions of the predecessor Pr. CIT, Ludhiana-3 in the passing assessment order u/s 143(3) r.w.s. 263 on 25.03.2019. Thus, the appellant assessee has challenged the 2<sup>nd</sup> revision order passed u/s 263 dated 31.03.2022 by the Ld. Pr. CIT, Ludhiana-1 in respect of the same assessment year on identical issue as void ab-initio, as there is no power under the statute to invoke section 263 qua order passed in consequence to first revision order u/s 263 of the Act on identical issue and accordingly, prayed that the same deserve to be quashed. The Ld. AR has filed a paper book as per the index listed in tabular form as under:

| Sr. No. | Particulars                                                                    | Pages  |
|---------|--------------------------------------------------------------------------------|--------|
| 1.      | Copy of ITR & Computation of Income                                            | 1-3    |
| 2.      | Assessment Order u/s 143(3) dated 16.11.2016                                   | 4-6    |
| 3.      | Show Cause Notice of First Revision u/s 263                                    | 7-8    |
| 4.      | Order u/s 263 dated 25.03.2019                                                 | 9-12   |
| 5.      | Assessment Order u/s 143(3) r.w.s. 263 dated                                   | 13-15  |
| 6.      | Show Cause Notice u/s 263 dated 29.03.2022                                     | 16-18  |
| 7.      | Order u/s 263 dated 31.03.2022                                                 | 19-22  |
| 8.      | Notice u/s 142(1) dated 06.12.2019                                             | 23-25  |
| 9.      | Reply dated Nil before ITO Ward-1, Moga in response to Notice dated 06.12.2019 | 26-90  |
| 10.     | Reply dated Nil in response to Notice dated                                    | 91-114 |

4. The Ld. DR stands by the impugned order. However, He has not controverted the fact that the 2<sup>nd</sup> revision order passed u/s 263 dated

31.03.2022 by the Ld. Pr. CIT, Ludhiana-1 in respect of the same assessment year on identical issue.

5. Heard the rival contentions and perused the material on record and case law cited before us. Admittedly, it is an undisputed fact that it is the 2nd revision order passed u/s 263 dated 31.03.2022 by the Ld. Pr. CIT, Ludhiana-1 in respect of the same assessment year on identical issue. In our view, the order passed u/s 263 dated 31.03.2022 by the Ld. Pr. CIT, Ludhiana-1 is void ab-initio as the PCIT invoked section 263 qua the order passed in consequence to first revision order u/s 263 on identical facts and thereby again set aside, the assessment order.

6. Considering the identical issue regarding limited scrutiny on peculiar facts of cash deposit of 12 lakh during demonetization period, the PCIT invoked his jurisdiction under section 263 of the Act which is not permissible. The law is now no more res integra that once the issue is considered by the Assessing Officer, the remedy of the revenue could not lie in invoking the jurisdiction under section 263 of the Act, especially when the entire books of account and documents were produced by the Assessee before the Assessing Officer. In addition, interestingly the PCIT while passing the order under section 263 for the 2nd time has quashed the assessment order, as the 1st Assessment Order passed under section

143(3) of the Act dated 16-11-2016, was already cancelled by the first round of 263 order dated 25/03/2019.

7. In the case of Principal Commissioner of Income-tax vs. Padma Kumar Jain [2022] 145 taxmann.com 113 (Jharkhand), the Hon'ble HIGH COURT OF JHARKHAND has observed that admittedly, in the instant case the entire documents were produced in the original assessment proceeding as well as in the subsequent assessment proceeding which was conducted after the first 263 order; as such again in the second round of 263, the direction made by the PCIT is erroneous and has no legs to stand in the eye of law.

8. It is settled law that the Ld Pr. CIT can revised the order only if it is proved that the assessment order is erroneous in so far as prejudicial to the interests of the revenue. The question as to when an order can be termed as "erroneous" was explained by Hon'ble Bombay High Court in the case of Gabriel India Ltd [1993] 203 ITR 108/71 Taxman 585 (Bom.) as under: —

*"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 the 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 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 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 a 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 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 what was just has been imposed."*

9. The Hon'ble Supreme Court has held in the case of Parashuram Pottery Works Co. Ltd. v. ITO [1977] 106 ITR 1 that there must be a point of finality in all legal proceedings and the stale issues should not be reactivated beyond a particular stage and the lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity.

10. In the above view, we accept the grievance of the assessee as genuine. The order u/s 263 passed by the Learned Principal Commissioner of Income Tax, Ludhiana-1 held to be arbitrary, and as such quashed.

11. In the result, the appeal of the assessee is allowed.

*Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 on 31.01.2023.*

**Sd/-**  
**(Anikesh Banerjee)**  
**Judicial Member**

**Sd/-**  
**(Dr. M. L. Meena)**  
**Accountant Member**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By Order