

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT

[ CONDUCTED THROUGH VIRTUAL COURT ]

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 124/Rjt/2022  
Assessment Year 2017-18**

Mukesh Chand Mal Pitti, Office No. S/6, 2 <sup>nd</sup> Floor Ratnkala Arcade, Plot No. 231, Ward No. 12B, Gandhidham-370201 PAN: AESPP9402K (Appellant)	Vs	Pr. CIT, Rajkot-1 (Respondent)
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**Assessee by: Shri R.K. Doshi, A.R.  
Revenue by: Shri Shramdeep Sinha, CIT-D.R.**

Date of hearing : 06-02-2023  
Date of pronouncement : 22-02-2023

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This assessee's appeal for A.Y. 2017-18, arises from order of the Principal Commissioner of Income Tax, PCIT, Rajkot-1 dated 02-03-2022,

in proceedings under section 263 of the Income Tax Act, 1961; in short “the Act”.

2. The assessee has taken the following grounds of appeal:-

<i>Grounds of Appeal</i>		<i>Tax effect relating to each Ground of appeal</i>
1.	<i>Grounds of appeal as under are without prejudice to one another.</i>	
2.	<i>The Revision Order under section 263 of the Act is bad in law and contrary to the facts of the case.</i>	
3.	<i>The learned PCIT has erred in concluding that the assessment has been completed without conducting any inquiries/verification or incorrect application of law tantamount to erroneous orders as also order prejudicial to the interest of Revenue</i>	
4.	<i>The learned PCIT has erred in initiating the Proceeding u/s. 263 of the Act based on suspicion.</i>	
5.	<i>The orders of he learned PCIT is illegal, unjustified and against the principles of natural justice.</i>	
6.	<i>Without prejudice to the above your petitioner craves leave to add, amend, alter, vary or withdraw all or any of the grounds on or before the hearing of appeal.</i>	
<i>Total tax effect (see note below)</i>		

3. The brief facts of the case are that the Principal CIT observed that the assessee had deposited demonetised cash of ₹ 27 lakhs in two of its bank accounts in four instalments on different dates. The Principal CIT issued notice under section 263 of the Act on the ground that the AO has not verified the cash deposit during the demonetization period nor sought any explanation while finalising the assessment under section 143(3) of the Act. The Principal CIT took the submissions of the assessee on record and passed an order holding that the assessing Officer has passed an order which is erroneous and prejudicial to the interest of revenue and accordingly set aside the same.

4. The assessee is in appeal before us against the aforesaid order passed by Principal Ld. CIT(Appeals). Before us, the counsel for the assessee submitted that Ld. PCIT erred in holding that no enquiries were made by the A.O. to verify the cash deposits, during the course of assessment proceedings. The case of the assessee was selected for scrutiny under CASS for verifying “cash deposited during the demonetization period”. Accordingly, the AO issued notice under section 142(1) of the Act dated 11-10-2019 calling for various details for verifying cash deposit of ₹ 27 lakhs made during the cash demonetisation period. In response to the same, the assessee filed submission dated 18-10-2019 and submitted various details called for by the AO including details for cash deposited during demonetisation period. The counsel for the assessee submitted that the bank certificate of Lakshmi Vilas Bank having details of cash deposited during demonetisation was submitted during the assessment proceedings. Further, the assessee also submitted certificate of Allahabad Bank having details of

cash deposited during demonetisation before the AO during the course of assessment proceedings. Further, the assessee also submitted bank statement of Lakshmi Vilas Bank during the course of assessment proceedings and also the bank statement of Allahabad Bank was submitted before the AO during the course of assessment proceedings for his consideration. Further, the assessee submitted cash book for the financial year 2016-17 and also the VAT returns in form 205 and form 205A of the financial year 2016-17 were submitted during the course of assessment proceedings. Accordingly, the counsel for the assessee submitted that the issue regarding deposit of cash during the demonetisation period was discussed before the AO in great depth, as is evident from the records of the assessment proceedings and accordingly, Principal CIT has erred in facts and in law in holding that the order passed by the AO is erroneous and prejudicial to the interests of the revenue.

5. In response, the DR placed reliance on the observations made by the Principal CIT in the 263 order.

6. We have heard the rival contentions and perused the material on record. Regarding the scope of proceedings u/s 263 of the Act, an inquiry made by the Assessing Officer is 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 High Courts in this regard.

6.1 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 on the ground of inadequate inquiry

*“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'.”

6.2 In **Gabriel India Ltd. [1993] 203 ITR 108 (Bom)**, law on this aspect was discussed in the following manner (page 113)

*“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 quasi-judicial controversies as it must in other spheres of human activity.”*

6.3 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.*

6.4 Before deciding the issue, it would be useful to refer to some Supreme Court decisions on this subject which would throw useful light on the scope of enquiry under Explanation (a) to section 263 of the Act.

6.5 The Supreme Court of India in the case of **Principal Commissioner of Income-tax, Surat-2 v. Shreeji Prints (P.) Ltd.[2021] 130 taxmann.com 294 (SC)** dismissed SLP filed by the assessee against order passed by High Court holding that where assessee-company had received unsecured loans from two different companies and Assessing Officer had made inquires in detail and accepted genuineness of same, such view of Assessing Officer being a plausible view could not be considered erroneous or prejudicial to interest of revenue. The facts of this case were that respondent assessee has filed its return of income showing total income of Rs. 62,55,900/- which was assessed under section 143(3) of the Act, 1961 by an assessment order dated 14th March 2016. The respondent company received unsecured loans from M/s. GeorgettTradeCom Pvt Ltd and M/s. PurbaAgro Food Pvt Ltd amounting to Rs. 2.49 Crore and the Assessing Officer allowed these unsecured loans. The Principal Commissioner of Income-tax invoked section 263 of the Act, 1961 for revising the assessed income of the respondent assessee. It was noticed by the PCIT that the unsecured loans obtained by the respondent assessee are shown as investment in the name of the assessee in the share application as well as in the balance sheet of the respective companies. The PCIT passed an order

under section 263 of the Act directing the Assessing Officer to pass fresh assessment order under section 143(3) of the Act, 1961 on the aspect of unsecured loans shown by the respondent assessee. The Hon'ble Supreme Court made the following observation while deciding in favour of the assessee:

*“Thus, the Tribunal has considered in detail the aspect of revisional power to be exercised by the PCIT in the facts of the case and has given a finding of facts that the Assessing Officer has made inquiries in detail and after applying mind, accepted the genuineness of loans received by the respondent assessee from the aforesaid two companies and such view of the Assessing Officer is a plausible view, and therefore, the same cannot be said to be erroneous or prejudicial to the interest of the Revenue.”*

6.6 The Supreme Court in another 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 revisional order 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 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

revisional 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 revisional order passed by Commissioner. The High Court upheld Tribunal's order. The 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”*

6.7 The Supreme Court in the 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”*

6.8 The Supreme Court in the case of **Principal Commissioner of Income-tax--8 Mumbai v. Sumatichand Tolamal Gouti [2019] 111 taxmann.com 287 (SC)** held that where High Court upheld Tribunal's order holding that AO had made detailed enquiries while allowing assessee's claim for deduction of business expenditure and, thus, revisional order passed by Commissioner was not sustainable, SLP filed against High Court's order was liable to be dismissed. The facts of this case were that in course of assessment, Assessing Officer allowed assessee's claim for deduction of certain expenditure on purchase of CDs on Jain Religion by expending an amount of Rs. 10.4 crores, after due examination. The Commissioner passed revisional order holding that Assessing Officer had not carried out any enquiries as to nature of expenditure being capital or not. The Tribunal, however, allowed assessee's appeal holding that Assessing Officer had carried out detailed enquiries and taken a view which was a plausible view. Accordingly, Tribunal set aside revisional order passed by Commissioner. The High Court upheld order passed by Tribunal. The Supreme Court on

consideration of above facts held that SLP filed against High Court's order was to liable to be dismissed. The Supreme Court made the following observations, while passing the order:

*“It is by now well settled that, the Commissioner can exercise revisional powers under Section 263 of the Act only when it is found that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue. In the present case, the Tribunal noted the observations of the Assessing Officer in the order of remand to the effect that Jain munis do not advocate spread of religion through use of computers, source of electronic media is usually shunned, very small section of the community uses computer technology for religious purposes as plenty of printed literature is available in the market. All these factors led to the market value of the CDs declining dramatically. It was on account of these reasons, that the assessee had incurred substantial loss arising out of reduction in the value of stock lying at the end of the year. The Tribunal, therefore noted that the Assessing Officer had carried out detailed enquiries and taken a plausible view.”*

6.9 Now coming to the facts before us, from the records we observe that the issue regarding the cash deposited by the assessee during the demonetisation period has been discussed in detail during the course of assessment proceedings. The assessment proceedings were initiated specifically for the reason “verifying the cash deposited during demonetisation period”. Accordingly, the AO issued notice for verifying

the cash deposits made by the assessee, in response to which the assessee furnished the details which have been mentioned in the preceding paragraphs. Therefore, this is not a case where no enquiry was made by the AO during the course of assessment proceedings. Further, we also observe that the assessee also duly filed his reply in response to the notice issued by the AO and various details like Certificates from Lakshmi Vilas bank and Certificate from Allahabad Bank, bank statements of Lakshmi Vilas bank and Allahabad Bank, cash book for financial year 2016-17, VAT returns for financial year 2016-17, VAT audit report for financial year 2016-17 etc. were submitted before the AO in response to this query regarding the cash deposits made by the assessee during the demonetisation period. We further observe that it is also not the case of the Principal CIT that the AO has taken a view which is legally impermissible. Therefore, from the above facts, we are of the considered view that the AO had made enquiries into the aspect of cash deposit in the bank accounts of the assessee during demonetization period, and after due consideration of the response filed by the assessee, accepted the contention of the assessee and did not make any addition to the returned income. Accordingly, in our view, this is not a case where no enquiry has been made by the assessee officer during the course of assessment proceedings. In our view, Pr. CIT has incorrectly observed in the instant facts that the Ld. AO failed to apply his mind to the issues on hand or he had omitted to make enquiries altogether or had taken a view which was not legally plausible in the instant facts. As held by various Courts, Principal CIT cannot in 263 proceedings set aside an assessment order merely because he has different opinion in the matter. In our view, s 263 of the Act does not visualise a case of substitution of the judgment of

the Principal CIT for that of the Assessing Officer who passed the order unless the decision is held to be wholly erroneous. As noted in various judicial precedents highlighted above, the Principal CIT, 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-visit the entire assessment and determine the income himself at a higher figure.

6.10 Now on the issue that the Ld. AO passed a cryptic order and did not discuss in detail regarding assessee's submissions on various queries raised vide the various notices, in our view it is a well settled position of law that if from the assessment records, it is evident that the Ld. AO has made due enquiries in response to which assessee has filed its submissions, then even if the assessment order does not discuss all aspects in detail with regards to claim of the assessee, it cannot be held that the order is erroneous and prejudicial to the interests of the Revenue. The above proposition has been upheld in the case of **CIT v. Reliance Communication 69 taxmann.com 109 (Bombay), Smt. Anupama Bharat Gupta v. ITO in ITA 1685/Ahd/2018, Goyal Private Family Specific Trust [1988] 171 ITR 698, CIT v. Mahendra Kumar Bansal [2008] 297 ITR 99 (All.) (para 10) etc.** We thus find no error in the order of Ld. AO so as to justify initiation of 263 proceedings by the Ld. Pr. CIT. The Grounds of appeal raised by the assessee are thus allowed.

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

Order pronounced in the open court on 22-02-2023

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 22/02/2023**

**Sd/-**  
**(SIDHHARTHA NAUTIYAL)**  
**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,  
Rajkot