

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. 123/Rjt/2022
Assessment Year 2017-18**

Prashantsinh Ajitsinh Chauhan, Block No. 303, Ravidarshan Appartment, B/h. Aakashnagar Appartment, Amin Marg, Rajkot-360001 PAN: ABDPC1146K (Appellant)	Vs	Principal CIT, Rajkot-1 (Respondent)
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**Assessee by: Shri R.K. Doshi, Ld. A.R.
Revenue by: Shri Shramdeep Sinha, Ld. CIT-D.R.**

Date of hearing : 06-02-2023
Date of pronouncement : 24-02-2023

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 17-03-2022, 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:-

“(1) Grounds of Appeal as under are without prejudice to one another.

(2) The Revision Order under section 263 of the Act is bad in law and contrary to the facts of the case.

(3) The learned PCIT has erred in concluding that the assessment has been completed without conducting any inquiries/verification tantamount to erroneous orders as also order prejudicial to the interest of Revenue.

(4) The learned PCIT has erred in confirming the initiating Proceeding u/s.263 of the Act.

(5) The learned PCIT has erred in passing the order under section 263 of the Act in a limited scrutiny case where the ACIT, Circle 1(1), RKT has discharged his obligations as per the Instructions of CBDT vide F.No. 225/402/2018/ITA.II dated 28th November 2018.

(6) The orders of the learned PCIT is illegal, unjustified and against the principles of natural justice.

(7) 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.”

3. The brief facts of the case were that the return of income for assessment year 2017-18 was filed by the assessee on 20-01-2018 declaring total income of Rs. 87,34,990/-. The assessment was completed u/s. 143(3) of the Act on 08-12-2019 accepting the returned income of Rs. 87,34,990/-. On going through the assessment records, the PCIT observed that the assessee had deposited cash aggregating to Rs. 4,98,28,191/- during the demonetization period from 09-11-2016 to 30-12-2016 in various installments in several bank accounts held by the assessee with HDFC Bank and Union Bank of India. However, on verification of the ITR, the PCIT noticed that the assessee has shown total deposit of only Rs. 96,36,280/-.

The Assessing Officer had not sought any explanation in the matter of cash deposit of Rs. 4,01,91,911/- (Rs. 4,98,28,191/- - Rs. 96,36,280/-). Accordingly, the PCIT observed that the issue of such huge of cash deposits in the bank account for the year under consideration was not verified by the Assessing Officer. Accordingly, the PCIT issued notice to the assessee u/s. 263 of the Act.

4. Before the PCIT, the submissions of the assessee were two fold. Firstly, the issue under consideration with respect to cash deposited by the assessee in various bank accounts has already been examined by the Assessing Officer who had called for various details, bank statements of the assessee and after examination of such details and reply, the assessment has been completed by the Assessing Officer. The second contention of the assessee before the PCIT was that the case of the assessee was selected for limited scrutiny under CASS for the reason of default in TDS and disallowance for such default. So, the Assessing Officer only verified the limited reason/scope for which the case was selected for scrutiny and scope of assessment cannot be expanded in proceedings u/s. 263 of the Act. In support of its contention, the assessee relied on various judicial precedents that scope of limited scrutiny assessment cannot be expanded/enhanced during the course of 263 proceedings by the PCIT. However, the PCIT rejected both the contentions of the assessee on the ground that the Assessing Officer has clearly failed to enquire into the source of huge cash deposit made in the bank account during the demonetization period. Further, as per the Instruction 20 of 2015 dated 21-12-2015, if during the course of assessment proceedings in limited scrutiny cases it comes to the Assessing

Officer that there is judicial escapement of income of Rs. 5 lakhs in respect of his charge, requiring substantial verification of in any other issue then the case would have been taken up for complete scrutiny with the approval of PCIT/CIT concerned. Secondly, in Instruction of CBDT dated 050-09-2019 in cases selected for limited scrutiny in which credible information has been received, then such issues can be examined during the course of assessment proceedings with prior administrative approval of the PCIT/CIT as per procedure laid down in Circular dated 28-11-2018. The Assessing Officer did not apply his mind and ignored the above Instruction of CBDT, so there was failure on the part of the Assessing Officer to consider the instructions/directions of the higher authorities and there was evident lack of inquiry on the issue. Accordingly, Id. PCIT held that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the revenue. While passing the order, the PCIT made the following observations:-

“As has been discussed in preceding paras that the AO has failed to enquire into the sources of the huge cash deposits made in the bank accounts during the demonetization period. He should have examined the comparative cash deposits of the demonetization period made by the assessee vis a vis the corresponding year of the preceding year so as to judge the genuineness of the cash sales vis a vis cash deposits made in the demonetization period. Similarly, he could have comparatively examined the cash sales prior to and post to demonetization period vis a vis the cash deposits in the demonetization period to judge the genuineness of the claim of cash sales. However no such verifications have been carried out by the AO in the assessment proceedings. Atleast some outdoor enquiries could have been made by the AO to ascertain the genuineness of the cash sales effected as claimed by the assessee during the demonetization

copies of his bank account for the year under consideration during the assessment proceedings. Further, the counsel for the assessee submitted that in the instant case, the case of the assessee was opened under limited scrutiny under CASS to examine the issue of default in TDS and disallowance u/s. 40(a) of the Act for such default. The counsel for the assessee submitted that the scope of limited scrutiny assessment cannot be expanded by the PCIT in 263 proceedings as held by the various judicial precedent on this issue. Regarding the contention of the PCIT that looking into the instant facts and in the light of Circulars/Instructions issued by CBDT, it was the duty of the Assessing Officer to convert limited scrutiny assessment to full scrutiny assessment, the counsel for the assessee drew our attention to Guidelines for manual selection of return for complete scrutiny for financial year 2019-20 dated 5th Sep, 2019, which states in cases selected for limited scrutiny if there is credible specific information received from law enforcement/intelligence/regulatory authority or the agency regarding tax evasion in such cases, then only the issues arising from such information can be examined during the course of assessment proceedings in such limited scrutiny cases with prior approval PCIT/CIT as per procedure laid down in Board Circular dated 28-11-2018. Accordingly, the contention of the counsel for the assessee before us is that in the instant case, since the case was opened under limited scrutiny, the scope thereof cannot be expanded by the PCIT to look into those issues which were not in the scope of “limited scrutiny assessment”. In response, Id. Departmental Representative submitted that order of the Assessing Officer is prejudicial since the officers of the Department are bound by the Instructions/Circulars issued by the CBDT and therefore looking into the facts of the instant case,

the Assessing Officer should have converted the limited scrutiny assessment to full scrutiny assessment looking into the instant facts.

6. We have heard the rival contentions and perused the material on record. In the present case, we observe that during the course of assessment proceedings, various details including bank statements were called for by the AO and were submitted by the assessee by way of reply dated 18-11-2019. We also observe that the assessment proceedings were initiated under “limited scrutiny assessment” under CASS for the reason “default in TDS and disallowance for such defaults”. The Principal CIT is of the view that the act of the assessing Officer in not converting the limited scrutiny assessment into full scrutiny assessment, looking into the fact that substantial amount was deposited by the assessee in the bank accounts held by him during the demonetization period, makes the order of the AO erroneous and prejudicial to the interests of the Revenue. In our view, the fact that cash deposits were made in the bank account held by the assessee during the demonetization period, does not, by itself lead to the conclusion that there was an understatement of income on part of the assessee or there was unexplained income on the part of the assessee and therefore, this alone cannot be a reason for converting limited scrutiny to full/complete scrutiny. Further, we observe that the AO called for details of deposits made in the bank accounts held by the assessee and in response thereto, the assessee also submitted details of cash deposits made in the bank accounts held by him during the demonetization period. During the course of assessment, the above details were scrutinized by the AO and no infirmity was found with respect to the same.

6.1 On the issue whether scope of limited scrutiny assessment can be expanded by PCIT in 263 proceedings, in the case of **Sahita Construction Company Vs Pr.CIT (ITAT Indore) in ITA No.119/Ind/2021**, the Tribunal held that when the assessment is taken up for limited scrutiny, Ld. Pr. CIT cannot hold the assessment order as erroneous and prejudicial to the interest of revenue in respect of issue **which was not a reason for selection of the case for limited scrutiny**. The AO observed that perusal of records shows that assessee's case was selected for limited scrutiny through CASS for verification of "contract receipts/fees mismatch, sales turnover mismatch and tax credit mismatch". The issue of payment to contractors and tax deducted thereon was never a part of reasons for the limited Therefore, there was no occasion for the Ld. AO to examine this issue for payment to contractors. It is well settled that in case of limited scrutiny matter Ld. AO has to work within the parameters observed by the Central Board of Direct Taxes; Instruction dated 29.12.2015 and various other circular issued in this behalf. Since the assessee's case was selected for limited scrutiny on certain issues and Ld. AO has examined these issues and framed the assessments and the issue of examination of payment to contractors was not a part of the limited scrutiny reasons, in our considered view, Ld. Pr. CIT erred in assuming jurisdiction u/s 263 of the Act and also erred in holding that assessment order is erroneous and prejudicial to the interest of revenue. In the case of **Balvinder Kumar v. Principal CIT [2021] 125 taxmann.com 83 (Delhi - Trib.)**, the ITAT held that in case of limitedscrutiny, Assessing Officer could not go beyond reason for which matter was selected for limited scrutiny thus, it would not be open to Principal Commissioner to pass revisionary order under section 263 on other aspects and remit matter to

Assessing Officer for fresh assessment. On the aspect, the Pune Tribunal in the case of **Deccan Paper Mills Co. Ltd. v. CIT [IT Appeal no. 1013 & 1635 (Pun.) of 2015]**, made the following observations:

"40. Now, coming to the aspect of book profits which was considered by the Commissioner and the order of the Assessing Officer was held to be erroneous and prejudicial to the interest of revenue. In this regard, it may be pointed out that the case of assessee was picked up for scrutiny under CASS for the limited purpose of verifying the Chapter VI-A deduction. Once the case is picked up for specific purpose under CASS, then it is outside the purview of the Assessing Officer to look into any other aspect other than the aspect for which it is picked up. Hence, the Assessing Officer has not formed any opinion in respect of computation of book profits in the hands of assessee. Once, no such opinion has been formed by the Assessing Officer, the Commissioner has erred in holding the order of the Assessing Officer to be erroneous and prejudicial to the interest of revenue in this regard. Accordingly, we reverse the findings of the Commissioner. Accordingly, we hold that the order passed by the Commissioner under section 263 of the Act is invalid and the same is quashed for both the assessment years."

6.2 In the case of **R&H Property Developer (P.) Ltd. v. Pr. CIT [IT Appeal No. 1906 (Mum.) of 2019, dated 30-7-2019]**, the Mumbai ITAT made the following observations in this regard:

'As a matter of fact, what cannot be done directly cannot be done indirectly. Accordingly, in terms of our aforesaid observations, we are of the considered view that as the A.O had aptly confined himself to the issue for which the case of the assessee was selected for limited scrutiny, therefore, no infirmity can be attributed to his order for the reason that he had failed to dwell upon certain other issues which were clearly beyond the realm of the reason for which the case of the assessee was selected for limited scrutiny as per the AIR information. We thus not being able to concur with the view taken by the Pr. CIT that the order passed by the A.O under sec. 143(3), dated 10-10-2016 is erroneous, therefore, set aside his order and restore the order passed by the A.O. As we have quashed the order passed by the Pr. CIT under sec. 263 on the ground of invalid assumption of jurisdiction by him, therefore, we refrain from adverting to and therein adjudicating the contentions advanced by the Id. A. R on the merits of the case, which thus are left open.'

- 6.3 Similar view was taken by the ITAT the following decisions as well:
- (i) Aakash Ganga Promoters & Developers v. Pr. CIT [IT Appeal No. 164 (CTK) of 2019, dated 18-12-2019]
 - (ii) Sonali Hemant Bhavsar v. Pr. CIT [IT Appeal No. 742 (Mum.) of 2019, dated 17-5-2019]
 - (iii) Agrawal Promoters vs. Pr. CIT in ITANo.1708/CHD/2017 (I.T.A.T., Chandigarh)
 - (iv) Mrs. Sonali Bhavsar vs. PCIT ITANo.742/Mum/2019 (I.T.A.T., Mumbai)

- (v) Rakesh Kumar vs. CIT ITANo.6187/Del/2015 (I.T.A.T., Delhi)
- (vi) Baby Memorial Hospital vs. ACIT ITANo.420/Coch/2019
(I.T.A.T., Cochin)
- (vii) Sanjeev Kr. Khemka v. Pr.CIT [1361/Kol/2016 - order dated
02.06.2017] ITAT Kolkata Benches.

6.4 Therefore, respectfully following the judicial precedents cited above hold that Ld. Pr. CIT erred in assuming revisionary powers u/s 263 of the Act and the impugned order of Ld. Pr. CIT is hereby set aside.

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

Order pronounced in the open court on 24-02-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 24/02/2023

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