

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I. T. A. No. 8/Asr/2021**  
Assessment Year: 2016-17

Sh. Gurpreet Singh Khurana 52, Guru Gobind Singh Nagar, Jalandhar [PAN:- CPOPK 0383P]] <b>(Appellant)</b>	Vs.	Pr. C.I.T.-1, Jalandhar  <b>(Respondent)</b>
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Appellant by : Sh. J. S. Bhasin, Adv.  
Respondent by: Smt. Rajinder Kaur, CIT-DR

Date of Hearing: 14.02.2023  
Date of Pronouncement: 15.02.2023

**ORDER**

**Per Anikesh Banerjee, J.M.:**

The instant appeal of the assessee is directed against the order of the ld. Principal Commissioner of Income-tax, Jalandhar, (in brevity of PCIT) order passed u/s. 263 of Income-tax Act, 1961(in brevity the Act) date of order 05.12.2020, for assessment year 2016-17. The impugned order was emanated from the order of ld. Income-tax Officer, Ward -1(5), Jalandhar(in brevity AO), order passed u/s. 143(3), date of order 12.12.2008

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

“1. *That neither in facts nor on law, the ld. Pr. CIT was justified in exercising jurisdiction under section 263 of the Income Tax Act, 1961, in this case.*

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2. *That the predecessor PCIT having finally heard and closed the matter on 11.03.202, the latter PCIT, was not competent to revisit the case, which had otherwise, become barred by time. As such, the impugned order is void ab initio.*
- 2.. *That the Id Pr. CIT, while summarily setting aside the order, neither applied his mind to the detailed explanations and documents filed by assessee in 263 proceedings, nor to the assessment order, bearing categorical findings of the ITO on issue involved.*
3. *That the impugned cash and debtors, realized in AY 2017-18, when already disputed and added in that year u/s. 143(3), direction of Id. PCIT, to also assessee the same in AY 2014-15, mindless of assessee's pending appeal, would amount to double taxation, not permissible in law.*
4. *That the order under appeal is against law and facts of the case."*

3. The Id. Counsel for the assessee has filed written submissions which is kept in the record. In argument, the Id. Counsel placed that the assessment was completed u/s. 143(3) which is selected for scrutiny under the Computer Assisted Security Selection (CASS) under Limited, with the following reasons:

- i. Whether the Sundry creditors are genuine.
- ii. Whether the share capital is genuine and from disclosed sources.
- iii.. Whether cash in hand shown in the return of income is correct.

The Id. Counsel for the assessee argued that the assessment was completed with an addition in different heads.

4. Notice u/s. 263 was issued by the Id. PCIT with the reasons for unverified Sundry Debtors, Cash in hand and closing cash in hand. The Id. Counsel placed those sundry debtors and cash was already assessed & added in the next assessment year 2017-18, date of order 27.12.19, **APB Page 26-42.**

5. The Id. Counsel argued that the assessment for assessment year 16-17 was completed on the basis of limited scrutiny. So, the Id. AO was empowered to verify within a specific ambit. In the notice u/s. 263 issues which are mentioned was never be the part of the limited scrutiny in assessment. The cash balance which was mentioned in the notice u/s. 263 was also the part of the assessment order. The Id. Counsel specifically mentioned that the Id. PCIT has never taken any cognizance on submission of assessee& very mechanical manner setting aside the order of the Id. AO. The Id. Counsel relied on the order of Hon'ble jurisdictional High Court in the case **Commissioner of Income-tax v. R. K. Metal Works [1978] 112ITR445 (PUNJ & HAR.)**. The relevant paragraph is extracted as follows: -

*“A perusal of the order of the Commissioner of Income-tax clearly shows that the criticism of the Tribunal is well-founded. There is no indication in the order of the Commissioner as to the basis on which he came to the prima facie conclusion that the capital borrowed by the firm was utilised for purposes other than that of the firm's business. **When the assessee filed a detailed written statement before him, the Commissioner did not deal with any of the points raised in the statement. He thought that the best course in the circumstances was to remand the matter to the Income-tax Officer for consideration of the points raised in the assessee's written statement. That certainly was not the proper course to be adopted by him. It was necessary for the Commissioner to state in what manner he considered that the order of the Income-tax Officer was erroneous and prejudicial to the interests of the revenue and what the basis was for such a conclusion. After indicating his reasons for such a conclusion, it would certainly have been open to him to remand the matter to the Income-tax Officer for such other investigation or enquiry as might be necessary. But that was not the course which the Commissioner pursued. The Tribunal was, therefore, justified in setting aside the order of the Income-tax Commissioner. The learned counsel for the revenue urged that, while setting aside the order of the Commissioner, the Tribunal had purported to restore the order passed by the Income-tax Officer and this meant that the Commissioner was precluded from taking up the matter again. We do not want to express any opinion on this question, since our jurisdiction is confined only to answering the question referred to us. The question referred to us is answered in the affirmative. There will be no order as to costs.**”*

(Emphasis Supplied)

6. The Id. CIT-DR vehemently argued and relied on the order of the revenue authorities

7. We heard the rival submissions and relied on the document available on the record. Application of Section 263 is arisen out from the order of assessment. The assessment was completed within the very specific ambit, under limited scrutiny. The Id. AO was not empowered to verify the other issues which was beyond the limited scrutiny. The verification of 'cash in hand' was the part of limited scrutiny. The Id. AO had taken cognizance the issue in the order. The lac of investigation cannot be replaced by the no investigation. The Id. Counsel invited our attention in the order of Id. PCIT about the observations in the order of 263. Para 5 of the order 263 is re-produced as below:

*“5. Due to change of incumbent, a letter was issued to the assessee on 06.11.2020 fixing the case for hearing on 25.11.2020. In response to this letter the assessee sought adjournment and the case was again fixed for hearing on 9.12.2020. On 09.12.2020, the counsel of the assessee attended the proceedings and stated that the reply filed by him earlier may be considered. I find that in the reply, the assessee has made various claimed about transaction, interest free loans, Sundry Debtors etc. which need to be verified and since such verification/ enquiries have not been made by the A.O. at assessment stage. Therefore, the order passed by the Assessing Officer is held to be erroneous and prejudicial to the interest of the revenue. The case is, therefore, set aside sdto the file of the A.O. for fresh assessment on the above mentioned issue.”*

8. We also relied on the order of Hon'ble jurisdictional High Court, *supra*. There is undoubtedly absence of the observation of PCIT to ascertain the assessment order erroneous and prejudicial to the interest of revenue. We find that the setting aside of the order of the Id. AO is uncalled for.

We set aside the order of the ld. PCIT and order passed u/s. 263 is liable to be quashed.

9. In the result appeal of the assessee **ITA No. 8/ASR/2021** is allowed.

*Order pronounced in the open court on 15.02.2023*

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

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

*\*GP/Sr. PS\**

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(A),
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T
- (6) The Guard File

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By Order