

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'F', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member
Sh. Yogesh Kumar US, Judicial Member**

ITA No. 1066/Del/2022: Asstt. Year: 2017-18

Rajeev Gupta, 1658-59, Dariba Kalan, New Delhi-110006	Vs.	DCIT, Central Circle-46(1), Delhi
(APPELLANT)		(RESPONDENT)
PAN No. ACFPG9713R		

Assessee by : Sh. Ashok Jain, CA

Sh. Ashu Goel, CA

Revenue by : Sh. Shashi Bhushan Shukla, CIT DR

Date of Hearing: 08.12.2022

Date of Pronouncement: 03.03.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id Pr. CIT-10, Delhi dated 15.03.2022 for Assessment Year 2017-18.

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

"1. That the order U/s 263 of Income Tax Act, 1961 of Ld. Commissioner of Income Tax Delhi - 10 setting aside the assessment framed u/s 143(3)/153A of the Act is against the law, facts, circumstances, natural justice and all other principles and rules of law as such is liable to be quashed.

2. That Ld Commissioner of Income Tax Delhi - 10 erred in setting aside the order passed u/s 143(3) r.w.s 153A dated 15.03.2022 even though the conditions precedent for validity excising his jurisdiction u/s 263 were not satisfied. As such notice is arbitrary and order is without jurisdiction.

3. That on the facts and circumstances of the case and in law, the CIT erred in holding that the assessment order is erroneous in so far as it is prejudicial to interest of revenue on the basis of false & misleading presumptions and conjectures that the cash deposited of Rs.

5.12,00,000 during demonetization period in IndusInd Bank Account Number 201000456088 belongs to assessee.

4. That on the fact and circumstances of the case and in law, Ld. Pr. CIT Delhi-10 erred in holding that assessment order passed by the A.O. is erroneous in so far as it is also prejudicial to the interest of revenue. thereby setting aside the said assessment order to the file of the A.O. to re-examine the issue of cash deposited by the appellant after making necessary verification, inquiries and investigations which clearly stands verified by AO during assessment proceedings.

5. That the order of DCIT, Central Circle - 26. New Delhi U/s 143(3)/153A dated 24.12.2019 was neither erroneous nor it was prejudicial to interest of revenue considering the facts and circumstances of the case and provisions of law. As such action of Ld Pr. CIT Delhi to set aside the same U/s 263 is without jurisdiction and needs to be undone.

6. That the order of the Ld. CIT is also bad in law as it is based on considering the fresh material which was not part of the record of the DCIT at the time of passing the order by the Ld. DCIT and issuing specific direction to pass the order in a particular manner which cannot be done in proceedings u/s 263 of the Income Tax Act 1961."

3. In this case a search and seizure operation u/s 132 of the Act was carried on 23.03.2018 and the assessment has been completed u/s 153A accepting the returned income of Rs. 74,92,620/-.

4. Later based on the information provided by the ADIT(Inv.)(Hq)-2, OCM Cell- 2, New Delhi vide his letter F.No. ADIT(Inv.)(Hq)-2/OCMCell-2/2020-21/221dated 03.02.2021,with regard to the cash deposits wherein mentioned that an amount of Rs.5,12,00,000/- was credited to the account no. 201000456088 related to Shri Rajeev Gupta during the demonetization period.

5. On an enquiry the assessee submitted that he do not have any such account and he had only four accounts in Yes Bank Ac/no. 1669070001764-SB Account, State Bank of India Ac/No. 10820065223-Current Account, Kotak Mahindra Bank Ac/ No.

523010116771-SB Account and HDFC Bank Ac/ No.
5981000028170-SB Account.

6. Subsequently, the Ld Pr. CIT called information u/s 133(6) of the Act from the Manager, IndusInd Bank on 16.08.2021 Ac/ "No. 201000456088". It was categorically mentioned that the account is in the name Orchid Infrastructures Development Pvt. Ltd. wherein, the deposits have been reflected on 13.12.2016, 21.12.2016 and 31.12.2016. The bank statement has been duly provided to the Id. PCIT. The account is a current account-Corporate Current Account showing the name of "Orchid Infrastructures Development Pvt. Ltd.", N-2, South Extension Part-I, New Delhi-110049. In spite of the clear findings, the Id PCIT went ahead pitifully setting aside the impugned assessment order with a direction to the AO to make fresh assessment. Such action of the Id PCIT under no circumstances can be sustained.

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

Order Pronounced in the Open Court on 03/03/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 03/03/2023

Ajay Kumar Keot, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR