

**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. 116/Asr/2022
Assessment Year: 2017-18

Diamond Heritage
KC Planet Nakodar
Road, Jalandhar, 144003

[PAN: AAIFD 2601A]

(Appellant)

V. Pr. Commissioner of Income
Tax, PCIT, Jalandhar-1

(Respondent)

Appellant by : Sh. K. Bhagat, CA & Sh. Vikas Bhagat, Adv.
Respondent by : Smt. Balwinder Kaur, CIT DR

Date of Hearing : 14.03.2023
Date of Pronouncement : 22.03.2023

ORDER

Per Dr. M. L. Meena, AM:

The present appeal has been filed by the assessee against the order of the Ld. Pr. Commissioner of Income Tax, Jalandhar-1, dated 30.03.2022 in respect of Assessment Year 2017-18 challenging therein the order passed u/s 263 of the Income Tax Act, 1961.

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

- “1. The learned Principal CIT has erred in holding that the assessment order under section 143(3) dt. 27.12.2019 is erroneous in so far as it is prejudicial to the interest of revenue and thereby setting aside the order by invoking the revisionary power under s. 263. The facts as well as the legal position have not been properly appreciated by the learned Principal CIT.*
- 2. That the Principal CIT has failed to appreciate the fact that the earlier assessment, which was framed under s. 143(3) have been completed after due application of mind and by taking into consideration all the facts and, thus, the setting aside of already completed assessment is against the facts and circumstances of the case.*
- 3. That the Principal CIT has erred in invoking the provisions of Expln. 2 to s. 263 as the AO had made due enquiries during the course of assessment proceedings and applied his mind to the issues taken by the Principal CIT under s. 263(1) and, thus, setting aside the assessment is not in order.*
- 4. That the learned Principal CIT has grossly erred in invoking the provisions of s. 263 in spite of the fact that all the facts and material were duly considered by the Ld. AO during the course of assessment proceedings. Because the Principal CIT is of the opinion that there is inadequate enquiry or Principal CIT takes a different view should not be made the basis for invoking the provisions of s. 263. As such the learned Principal CIT was not justified in invoking the provisions of s. 263.*
- 5. That the appellant craves leave to amend, alter or add to the above grounds of appeal, before the appeal is heard or disposed off.”*

3. At the outset, the Id. counsel submitted that the assessee's case was selected under limited scrutiny for the reason of cash deposit during demonetization period and abnormal increase in sales with decrease in profit as compared to preceding year as mentioned in para 1 of the

assessment order. The counsel argued that the Id. Pr. CIT has stated that the case was selected for complete scrutiny is factually incorrect. Hence, the Id. Pr.CIT has erred in invoking the provisions of section 263 to direct the AO to look into all other issues apart from the issues other than by cash deposit as mentioned in clause D, pg. 8 of the impugned order whereby the PCIT has questioned the loan creditors and debtors taken during the year. The Id. AR has further submitted that the Id. AO has considered all the facts and material during the course of assessment proceedings in respect of cash deposit during the demonetization period, an increase in sales in consonance to the profit shown by the assessee. He contended that the Id. PCIT was not justified in holding that it was a case of inadequate enquiry without pointing out or doubting specific issue on entries of the cash deposit in the bank accounts during the demonetization period. Merely, the PCIT has taken a different view based on presumption and assumption to invoke the provisions of section 263 is bad in law. He, therefore, requested that the PCIT's order u/s 263 be set aside.

4. Per contra, the Id. CIT-DR stands by the impugned order of the PCIT.
5. We have heard both the sides and perused the material on record and case law cited above. Admittedly, the assessee's case was selected

for limited scrutiny under CASS for the reason of large cash deposit during the demonetization period and abnormal increase in the sales. It is seen that the AO has issued notices u/s 142(1) of the Act along with the questionnaire dated 20.08.2019 to the assessee. In compliance to notice, the assessee has filed requisite information on ITB system with relevant supporting documents electronically. The AO has categorically stated that during the course of assessment proceedings, query was raised regarding large cash deposit during the demonetization period. In compliance, the assessee has submitted before the AO that the cash was deposit out of cash sales from the business of retail trade, gold ornaments, and silver articles and bullion and in support of its claims he has produced gross receipt, gross profit and net profit statement, computation of income, audit balance sheet, loss of account and audit report u/s 44AB with respective schedules for the assessment year under consideration and the immediate previous year. The Assessing Officer being satisfied with the explanation made by the assessee with statement of accounts, duly supported with the documentary evidences, held that no adverse inference is drawn in its case.

6. It is evident from the assessment order that the AO has verified the transaction regarding the cash deposit during the demonetization period

and the cash sales. The allegation of the Pr.CIT that source of cash deposit during the demonetization has remained unverified without reference to the cash sales as examined by the Assessing Officer has no substance and remained uncorroborated with the support of documentary evidence. In our view, merely based on presumption, questioning the cash deposit during the demonetization period and other issues other than the limited scrutiny such as cash creditors are beyond the domain of the jurisdiction of the PCIT u/s 263 of the Act. Therefore, the action of the PCIT invoking jurisdiction u/s 263 of the Act without pointing out specific defects/errors, or specific point of investigation the decision of Id. PCIT to hold the assessment order erroneous and prejudicial to the interest of the Revenue, is bad in law.

7. In the present case, the Id. PCIT has failed to satisfy the twin conditions, as the assessment order sought to be revised was neither erroneous or nor prejudicial to the interest of the Revenue, even if one of the conditions is absent, either the order of the ITO is erroneous or prejudicial to the interest of the Revenue, the PCIT cannot invoke jurisdiction u/s 263 of the Act. The PCIT is required to establish that there was loss of Revenue lawfully payable by the assessee due to the action of

the Assessing Officer in the course of assessment proceedings on account of lack of enquiry.

8. The Hon'ble Apex Court in the case of Malabar Industrial Co. Ltd. v. CIT 243 ITR 0083 held as under:

"Held

A bare reading of provisions of s. 263 makes it clear that the prerequisite to exercise of jurisdiction by the CIT suo motu under it, is that the order of the ITO is erroneous insofar as it is prejudicial to the interests of the Revenue. The CIT has to be satisfied of twin conditions, namely, (i) the order of the AO sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent—if the order of the ITO is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue—recourse cannot be had to s. 263(1). There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the AO; it is only when an order erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. The phrase 'prejudicial to the interests of the Revenue' is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue of the ITO, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue. The phrase 'prejudicial to the interests of the Revenue' has to be read in conjunction with an erroneous order passed by the AO. Every loss of revenue as a consequence of an order of AO cannot be treated as prejudicial to the interests of the Revenue, for example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the ITO is unsustainable in law.—Dawjee Dadabhoy & Co. vs. S.P. Jain & Anr. (1957) 31 ITR 872 (Cal) : TC 57R.129, CIT

*vs. T. Narayana Pai (1975) 98 ITR 422 (Kar) : TC 57R.185, CIT vs. Gabriel India Ltd. (1993) 114 CTR (Bom) 81 : (1993) 203 ITR 108 (Bom) : TC 57R.213 and CIT vs. Smt. Minalben S. Parikh (1995) 127 CTR (Guj) 333 : (1995) 215 ITR 81 (Guj) : TC 57R.312 **approved**; Venkatakrisna Rice Co. vs. CIT (1987) 62 CTR (Mad) 152 : (1987) 163 ITR 129 (Mad) : TC 57R.303 **disapproved**.”*

9. In the present case, it could not be said that the assessment order was passed by the AO without making enquiries on the issues of limited scrutiny. The AO has taken one view and where only one view was plausible for such view, no second view can be taken to make the order erroneous and prejudicial to the interest of the Revenue. Thus, the Id. PCIT's views cannot be approved to substitute the view of the Assessing Officer.

10. In the above view, we accept the grievance of the assessee as genuine. We hold that the order of the PCIT is infirm and perverse to the facts on record and therefore, the impugned order is held bad in law and as such annulled.

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

Order pronounced in the open court on 22.03.2023

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