

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

Smt. Harneet Kaur Juneja
R/o 216 Lajpat Nagar,
Jalandhar (Punjab)

[PAN: AJBPJ 4673Q]

(Appellant)

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

(Respondent)

I.T. A. No. 67/Asr/2022
Assessment Year: 2012-13

Sh. Sukhjot Singh
Village & P.O. Manik Dheri,
Hoshiarpur (Punjab)

[PAN: BHAPS 9843P]

(Appellant)

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

(Respondent)

I.T. A. No. 68/Asr/2022
Assessment Year: 2017-18

Sh. Manmohan Singh Kapur
Deed Writer, New Tehsil
Complex, Hoshiarpur
(Punjab)

[PAN: AFVPK 2468N]

(Appellant)

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

(Respondent)

Appellant by : Sh. Surinder Mahajan, CA
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:

These appeals have been filed by the assesseees against the order passed u/s 263 of the Ld. Pr. Commissioner of Income Tax, Jalandhar-1.

2. The assessee has raised the following similar grounds of appeal in ITA No. 66/Asr/2022:

- "1. That Learned Pr. Commissioner of Income Tax-1, Jalandhar has grossly erred in holding that assessment order passed by the Assessing Officer ('AO') was erroneous and prejudicial to the interest of revenue. Action of the Pr. Commissioner of Income Tax-1, Jalandhar in invoking provisions of clause (a) Explanation 2 sub-section (1) of section 263 of the Act is illegal & bad in law.*
- 2. That on the facts and circumstances of the case, Learned Pr. Commissioner of Income Tax-1, Jalandhar has grossly erred in law in holding that Assessing Officer had no material on record to accept the explanation that Rs. 20,00,000/- was not unexplained cash credit.*

3. *That on the facts and circumstances of the case, Learned Pr. Commissioner of Income Tax-1, Jalandhar has grossly erred in law in holding that onus cast upon the assessee u/s 68 of the Act had not been discharged by her.*
4. *That on the facts and circumstances of the case, Learned Pr. Commissioner of Income Tax-1, Jalandhar has grossly erred in law in holding that income declared by the assessee was to be taxed u/s 115BBE of the Act.*
5. *That the order of the Learned Pr. Commissioner of Income Tax-1, Jalandhar u/s 263 is arbitrary, unjust, is based on assumptions & presumptions since no error existed or prejudice was caused to revenue, therefore, the order of the Learned Pr. Commissioner of Income Tax-1, Jalandhar passed u/s 263 of the Act deserves to be quashed.*
6. *That the Appellant requests for leave to add or amend the grounds of appeal before the appeal is heard or disposed off.”*

3. Grounds of appeal in ITA No. 67/Asr/2022

- “1. *That Learned Pr. Commissioner of Income Tax, Jalandhar-1 (‘Ld. CTT) has grossly erred in holding that assessment order passed by the Assessing Officer (‘AO’) was erroneous and prejudicial to the interest of revenue. Action of the Learned Pr. Commissioner of Income Tax, Jalandhar-1 (‘Ld. CIT’) in invoking provisions of section 263 of the Act is illegal & bad in law.*

2. *That on the facts and circumstances of the case, Learned Pr. Commissioner of Income Tax, Jalandhar-1 ('Ld. CIT') has grossly erred in law in passing order u/s 263 of the Act even though the assessment order u/s 143(3)/147 of the Act dated 19.11.2019 passed by the Assessing Officer was neither erroneous nor prejudicial to interest of revenue.*
 3. *That on the facts and circumstances of the case, Learned Pr. Commissioner of Income Tax, Jalandhar-1 ('Ld. CIT') has grossly erred in law in passing order u/s 263 of the Act, when the assessment has already been concluded by the Assessing Officer u/s 143/147 of the Act after seeking explanations and making all the enquiries necessary for completion of assessment reopened u/s 148 of the Act for specific issue of Rs. 37,30,000/- cash deposited in bank account with SBI, Mini Secretariat Branch, Hoshiarpur.*
 4. *That even otherwise also original order passed u/s 143(3)/147 dated 19.11.2019 which has been sought to be revised by Ld. Pr. Commissioner of Income Tax was a nullity in the eyes of law and had no existence since assessee was never provided copy of reasons recorded to initiate proceedings u/s 147 of the Act in spite of specific request by the assessee to provide copy of reasons recorded. Non-providing of copies of reasons recorded inspite of specific request has resulted the assessment proceedings void ab-initio and consequent assessment framed no-nest.*
 5. *That the appellant requests for leave to add or amend the grounds of appeal before the appeal is heard or disposed off."*
4. Grounds of appeal in ITA No. 68/Asr/2022
- "1. *That Learned Pr. Commissioner of Income Tax, Jalandhar-1 ('Ld. CIT') has grossly erred in holding that assessment order passed by the*

Assessing Officer ('AO') was erroneous and prejudicial to the interest of revenue. Action of the Learned Pr. Commissioner of Income Tax, Jalandhar-1 ('Ld. CIT') in invoking provisions of section 263 of the Act is illegal & bad in law.

2. *That on the facts and circumstances of the case, Learned Pr. Commissioner of Income Tax-1, Jalandhar has grossly erred in holding that assessment has been framed without carrying out any enquiry at all on the issue of large agriculture income.*
3. *That Learned Pr. Commissioner of Income Tax-1, Jalandhar has grossly erred in holding that assessment order passed by the Assessing Officer ('AO') was erroneous and prejudicial to the interest of revenue. Action of the Pr. Commissioner of Income Tax-1, Jalandhar in invoking provisions of clause (a) Explanation 2 sub-section (1) of section 263 of the Act is illegal & bad in law.*
4. *That the order of the Learned Pr. Commissioner of Income Tax, Jalandhar-1 ('Ld. CIT') u/s 263 is arbitrary, unjust, is based on assumptions & presumptions since no error existed or prejudice was caused to revenue, therefore, the order of the Learned Pr. Commissioner of Income Tax, Jalandhar-1 ('Ld. CIT') passed u/s 263 of the Act deserves to be quashed.*
5. *That on the facts & circumstances of the case, Learned Pr. Commissioner of Income Tax, Jalandhar-1 ('Ld. CIT') has grossly erred in setting aside the assessment framed with the directions to pass fresh order after making necessary enquiry/investigations. Non issuance of specific directions for assessment to be framed clearly proves that it is a case of*

only change of opinion and the assessment framed is neither erroneous nor prejudicial to the interest of the revenue.

6. *That the Appellant requests for leave to add or amend the grounds of appeal before the appeal is heard or disposed off.”*

5. The appellants have challenged the order of the Ld. PCIT passed u/s 263 on the common issues of being initiated on the basis of audit objection and lack of enquiry on the part of the AO, and therefore, these appeals were heard together and adjudicated by this consolidated order for the sake of brevity.

6. The appellants in ITA No. 66/Asr/2022 and 68/Asr/2022 have raised common additional ground that proceedings u/s 263 of the Act have been initiated on the basis of audit objection raised by Income Tax Officer (Audit) to which replies were filed by Assessing Officer wherein Assessing Officer explained in detail that objection raised was not acceptable and 68/Asr/2022 on account of inadequate enquiry or no enquiry. These issues were raised by way of the additional grounds pertains to legal issue challenging validity of proceeding u/s 263 of the Act, that goes to the root of the matter hence admitted and adjudicated accordingly.

7. The ITA No. 66/Asr/2022 is discussed as a lead case for adjudication.

The Ld. PCIT held the assessment order passed by the Assessing Officer is held to be erroneous in so far as it is prejudicial to the interests of revenue in terms of the provisions of clause (a) of Explanation 2 below sub section (1) of section 263 of the I.T. Act, 1961 by observing as under:

“(iii) As a follow up to the declaration of demonetization, CBDT issued Instruction No 3 of 2017 dated 21.2.2017 laying down “SOP for verification of cash transactions relating to demonetization”. Annexure to F.No.225/100/2017/ITA-11 titled "Source Specific General Verification Guidelines" directed that in case of taxpayers (other than minors) not having any business income, no further verification was required to be made if total cash deposit is up to Rs. 2.5 lakh. The source of such amount could be household savings/ savings from past income or amounts claimed to have been received from any of the sources mentioned in Paras 2 to 6 of the annexure. [Paras 2 to 6 were for Cash out of receipts exempt from tax, Cash withdrawn from bank, Cash received from identifiable persons with PAN, Cash received from identifiable persons without PAN, and Cash received from unidentifiable persons. All these could be accepted after verification of the person/the transaction. The basis for verification could be income earned during past years and its source, filing of ROI and income shown therein, cash withdrawals made from accounts etc.].

(iv) As per the ITR filed for the year under reference, the only source of income of the assessee is Interests from M/s Juneja Iron & Steel Co (Rs. 2,47,449) and Interest from banks. Further, Rs. 2,47,809/- was claimed as interest paid on borrowed capital invested in Self occupied house property.

(v) The assessee deposited cash of Rs 20,00,000/- during demonetization period and was thus obliged to explain the nature and source of cash credits of Rs 20,00,000/-. Income of Rs. 17,50,000/- only was declared under the head Misc. income. Rs 2.5 lac is not a standard deduction. As per the above mentioned internal departmental guideline, verification was not required to be made where the cash deposited during demonetization was upto Rs. 2.5 lac.

(vi) The explanation given by the assessee is that the cash of Rs. 20,00,000/- was deposited out of "her past savings of 16 years of married life and savings of two minor children". It was a bald statement by the assessee that was not substantiated in any manner. It was accepted by the AO without making any enquiries or verifications as were called for in the facts and circumstances of the case. The source of cash deposit of Rs 20,00,000/- during the demonetization period, for which the case was selected for scrutiny under CASS, thus remained unverified during assessment proceedings as neither her explanation was substantiated by the assessee in any manner nor were any enquiries/verifications made by the AO at his own level.

(vii) It was only because the assessee did not have any evidence to substantiate her explanation that Rs 17,50,000/- was offered by her to tax as Miscellaneous income of Rs. 17,50,000/- of the current Asst, year (cash deposited in excess of Rs. 2,50,000/-). The explanation offered by the assessee was not substantiated in any manner by the assessee as is required under the provisions of section 68 of the Act. The AO had no material on record to accept the explanation that Rs 20,00,000/- was not unexplained cash credit as the

primary onus cast upon the assessee u/s 68 of the Act had not been discharged by her.

(viii) The income of Rs. 20,00,000/-, including Rs 17,50,000/- declared by the assessee in the return of income, was required to be taxed u/s 115BBE of the income Tax Act 1961, as substituted wef 1.4.2017. As per the substituted clause (a) of sub section (1) of section 115BBE, tax at special rate as provided in section 115 BBE is to be charged on total income as referred to in Sections 68, 69, 69A, 69B, 69C or 69D and reflected in the return of income furnished under section 139. Hence, tax on this income was to be charged under section 115BBE even if it had been declared by the assessee in the return of income. Income has been erroneously taxed at lower tax rate in this case causing prejudice to revenue.

4. In view of the above facts and discussion, the assessment order passed by the Assessing Officer is held to be erroneous in so far as it is prejudicial to the interests of revenue in terms of the provisions of clause (a) of Explanation 2 below sub section (1) of section 263 of the I.T. Act, 1961.”

8. The Ld. Counsel submitted that the proceedings u/s 263 of the Act have been initiated on the basis of audit objection raised by Income Tax Officer (Audit) vide his audit memo dated 27.08.2021 to which replies were filed by Assessing Officer vide his letter dated 13.12.2021 and 17.12.2021 wherein Assessing Officer explained in detail that objection raised was not acceptable. He contended that it is settled law that proceedings u/s 263 of the Act cannot be initiated on the basis of audit objection. In support of its contention, the Ld. AR has filed a brief synopsis that reads as under:

- “1. The assessee filed return declaring income of Rs. 16,99,277/- on 07-03-2018(**Page 1-3 of paper book**). Notice u/s 143(2) of the Act dated 14.08.2018 was issued for limited scrutiny being cash deposited during demonetization period (**Page 4-7 of paper book**). Notice u/s 142(1) of the Act dated 04.09.2019 was issued wherein assessee was asked to explain source of Rs. 20,00,000/- deposited in saving bank account with Indian Overseas Bank, Jalandhar during demonetization period (**Page 8-9 of paper book**).
2. That assessee vide letter dated 19.09.2019 explained source of Rs. 20,00,000/- deposited in saving bank account during demonetization period (**Page 10-16 of paper book**). Assessing Officer again vide letter dated 05.10.2019 asked to explain cash deposited during demonetization period(**Page 17-20 of paper book**). Assessee vide letter dated 24.10.2019 again explained source of Rs. 20,00,000 cash deposited during demonetization period in saving bank account with Indian Overseas Bank (**Page 21-23 of paper book**). Again vide letter dated 07.11.2019 assessee explained source of cash deposited during demonetization period (**Page 24-30 of paper book**). Assessing officer vide notice u/s 142(1) dated 17.12.2019 asked the assessee to explain why Rs. 20,00,000/- deposited during demonetization period be not taxed u/s 115BBE of the Act (**Page 31-33 of paper book**). Reply to notice was filed vide letter dated 19.12.2019 wherein detailed submissions were made and it was explained that provisions of section 115BBE of the Act are not attracted (**Page 34-35 of paper book**).
3. That audit of assessment framed was carried out by Income Tax Officer Audit, Jalandhar and he vide orders dated 27.08.2021 concluded that Rs. 20,00,000/- cash deposited during demonetization period should have been brought to tax u/s 115BBE of the Act as against Rs. 17,50,000/- offered to tax by assessee at normal rate (**Page 36-39 of paper book**). Assessing Officer vide his letter dated 13.12.2021 addressed to Pr. CIT-1, Jalandhar offered his comments on the audit objection and concluded that audit objection raised by Income Tax Officer (Audit) is not acceptable (**Page 40-42 of paper book**). Assessing Officer vide letter dated 17.12.2021 addressed to Addl. C1T Range-IV, Jalandhar offered his comments on internal audit objection in the case of Harneet Kaur Junejaand concluded that audit objection raised by Income Tax Officer (Audit) is not acceptable (**Page 43-46 of paper book**).

4. That show cause notice u/s 263 of the Act dated 11.02.2022 was issued by the Pr. CIT, Jalandhar, copy enclosed herewith at page no. 6-8 wherein assessee was asked that assessment framed u/s 143(3) of the Act is erroneous and prejudicial to interest of revenue since assessment has been framed by the Assessing Officer without carrying out the necessary enquiries and verifications. Reply to the show cause notice was filed **(Page 47-59 of paper book)**. Pr. CIT, Jalandhar has set aside the assessment framed to the file of the Assessing Officer to pass fresh order.

Our Submissions

Additional ground of appeal no. 1

1. That Income Tax Officer Audit, Jalandhar vide his orders dated 27.08.2021 concluded that Rs. 20,00,000/- cash deposited during demonetization period should have been brought to tax u/s 115BBE of the Act as against Rs. 17,50,000/- offered to tax by assessee at normal rate **(Page 36-39 of paper book)**. Assessing Officer vide his letter dated 13.12.2021 offered his comments on the audit objection and concluded that audit objection raised by Income Tax Officer (Audit) is not acceptable **(Page 40-42 of paper book)**. Further Assessing Officer vide his letter dated 17.12.2021 again submitted that audit objection raised by Income Tax Officer (Audit) is not acceptable **(Page 43-46 of paper book)**.
2. That proceedings u/s 263 of the Act have been initiated on the basis of audit objection raised by Income Tax Officer (Audit) vide his audit memo dated 27.08.2021 to which replies were filed by Assessing Officer vide his letter dated 13.12.2021 and 17.12.2021 wherein Assessing Officer explained in detail that objection raised is not acceptable.
3. That it is an established law that proceedings u/s 263 of the Act cannot be initiated on the basis of audit objection.

Reliance is being placed on:

- a) **COMMISSIONER OF INCOME TAX vs. SOHANA WOOLLEN MILLS HIGH COURT OF PUNJAB AND HARYANA (2008) 296 ITR 0238 (Page 1-4 of case laws index)**
- b) **JEEWANLAL (1929) LTD. vs. ADDITIONAL COMMISSIONER OF INCOME TAX & ORS. HIGH COURT OF CALCUTTA (1977) 108 ITR 0407 (Page 5-9 of case laws index)**

- c) **B & A PLANTATION & INDUSTRIES LTD. & ANR. vs. COMMISSIONER OF INCOME TAX & ORS. HIGH COURT OF GAUHATI (2007) 290 ITR 0395 (Page 10-26 of case laws index)**
- d) **JASWINDER SINGH vs. COMMISSIONER OF INCOME TAX IN THE ITAT CHANDIGARH (2012) 150 TTJ 0033 (UO) (Page 27-36 of case laws index)**
- e) **DWARKA DASS & CO vs. INCOME TAX OFFICER IN THE ITAT CHANDIGARH (1983) 16 TTJ 0304 (Page 37-39 of case laws index)**
- f) **SARTAJ SINGH vs. PRINCIPAL COMMISSIONER OF INCOME TAX IN THE ITAT AMRITSAR (2016) 48 ITR (Trib) 0604 (Amritsar) (Page 40-46 of case laws index)**
- g) **PARAMJIT SINGH vs. PRINCIPAL COMMISSIONER OF INCOME TAX IN THE ITAT CHANDIGARH (2016) 48 CCH 0199 ChdTrib (Page 47-56 of case laws index)**
- h) **DASHMESH MOTORS MUKTSAR vs. PRINCIPAL COMMISSIONER OF INCOME TAX IN THE ITAT AMRITSAR (2016) 47 CCH 0506 AsrTrib (Page 57-62 of case laws index)**
- i) **AMRIT PARKASH SEHGAL HUF VS. ITO JALANDHAR ITA 12/ASR/2020 (Page 63-76 of case laws index)**

Additional ground of appeal no. 2

1. That Ld. Principal Commissioner of Income Tax-1, Jalandhar passed order u/s 263 of the Act wherein Ld. Principal Commissioner of Income Tax-1, Jalandhar at para 5 page 4 of the order has observed as under:-
The assessment order dated 21.12.2019 is set aside to this extent to the fde of the Assessing Officer to pass fresh order after making necessary enquiries/investigations in the light of the discussion made above and after giving due opportunity to the assessee of being heard.
2. That from the observations of the Ld. Principal Commissioner of Income Tax-1, Jalandhar, it will be observed that there is no specific direction by the Ld. Principal Commissioner of Income Tax-1, Jalandhar. No decision about theerroneous nature of the order has been taken by Ld. Principal Commissioner of Income Tax-1, Jalandhar which is not permitted under the law. Once Commissioner of Income Tax concludes that order passed by the Assessing Officer is erroneous he has to give a categorical finding with regard to error in the order of the Assessing Officer while passing order u/s 263 of the Act. CIT cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous.

- Reliance is being placed on**
- a) **COMMISSIONER OF INCOME TAX vs. KANDA RICE MILLS HIGH COURT OF PUNJAB AND HARYANA (1989) 178 ITR 0446 (Page 77-79 of case laws index)**
 - b) **ITO VS DG HOUSING PROJECT LTD 343 ITR 0329(DELHI (Page 80-88 of case laws index)**
 - c) **COMMISSIONER OF INCOME TAX vs. MAITHAN INTERNATIONAL HIGH COURT OF CALCUTTA (2015) 375 ITR 0123 (Cal) (Page 89-107 of case laws index)**
 - d) **DIRECTOR OF INCOME TAX vs. JYOTI FOUNDATION HIGH COURT OF DELHI (2013) 357 ITR 0388 (Delhi) (Page 108-114 of case laws index)**
 - e) **VARDHMAN INDUSTRIES LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX IN THE ITAT CHANDIGARH (2016) 181 TTJ 0017 (Chd) ((UO) (Page 115-121 of case laws index)**
 - f) **DAMINI RESORTS & BUILDERS (P) LTD. vs. COMMISSIONER OF INCOME TAX IN THE ITAT CHANDIGARH (2015) 167 TTJ 0001 (Chd) ((UO)) (Page 122-137 of case laws index)**
 - g) **M/S. RADHISHWARI DEVELOPERS P. LTD. VS PR. CIT 1TA NO.493/IND/2018INDORE BENCH, INDORE20.07.2021**
 - h) **RAKESH KHANDELWAL VS PR. CIT ITA NO.204/IND/2019 INDORE BENCH, INDORE 29.01.2020**

Additional ground of appeal no. 3

1. *That case of the assessee was selected for limited scrutiny under CASS with the reason large value cash deposited during demonetization period as compared to returned income. Throughout assessment proceedings, Assessing Officer through various notices raised queries towards large value cash deposited during demonetization period. Replies to queries raised were filed from time to time and assessment was framed at returned income. Assessing Officer was not authorized to travel beyond issues in the limited scrutiny.*
2. *That it is an established law that proceedings u/s 263 of the Act cannot be initiated in case of limited scrutiny under CASS when the issue has been examined in detail. Assessing Officer cannot be asked to go beyond issues for which case was selected under limited scrutiny.*

Reliance is being placed on

- a) **GIFT LAND HANDICRAFTS vs. COMMISSIONER OF INCOME TAX* IN THE ITAT DELHI 2007) 108 TTJ 0312**
- b) **PADMAVATHI vs. INCOME TAX OFFICER IN THE ITAT CHENNAI BENCH 'C' (2019) 76 ITR (Trib.) 0055 (Chennai) (S.N.),**
- c) **INCOME TAX OFFICER vs. PERICLES FOODS (P) LTD. IN THE ITAT MUMBAI (2007) 26 CCH 0426 MumTrib (2007) 17 SOT 0602**
- d) **M/S SU-RAJ DIAMOND DEALERS PVT. LTD vs. PRINCIPAL COMMISSIONER OF INCOME-TAX IN THE ITAT MUMBAI BENCH 'G' (2020) 203 TTJ 0137 (Mumbai)**
- e) **MRS. SONALI HEMANT BHAVSAR VS. PR. CIT-29 [ITA NO. 742/MUM/2019, DATED 17.05.2019 (MUMBAI)]**
- f) **SANJEEV KR. KHEMKA VS. PR. CIT-15, KOLKATA [ITA NO. 1361/KOL/2016 (KOLKATA)]**

Ground of appeal no. 1 to 5

1. *That words erroneous and prejudicial to the interest of revenue have not been defined in the law. 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 make certain assessment, the same cannot be branded as erroneous simply because, the order should have been written more elaborately. Case may be visualized 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 estimates himself. On perusal of the records one 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 high figure than the one determined by the Income himself at the higher figures. Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be termed to be erroneous. It may be said in such a case that the order in question is prejudicial to the interest of the revenue.*

Reliance is being placed on

- a) **COMMISSIONER OF INCOME-TAX VS. GHABRIAL INDIA LTD. 203 ITR 108 (BOM.) (Page 138-145 of case laws index)**
- b) **MALABAR INDUSTRIAL CO. LTD, VS. COMMISSIONER OF INCOME-TAX 243 ITR 83 (SUPREME COURT)**

2. That order passed by the Assessing Officer after enquiring on all the matters cannot be held to be erroneous because every loss of revenue as a consequence of an order of A.O. cannot be treated as prejudice to the interest of revenue.

For this proposition reliance is being placed on:

- a) **COMMISSIONER OF INCOME-TAX vs. ARVIND JEWELLERS HIGH COURT OF GUJRAT (2002) 177 CTR (Guj) 546 : (2003) 259 ITR 502 (Guj) (2002) 124 TAXMAN 615. (Page 146-150 of case laws index)**
- b) **COMMISSIONER OF INCOME TAX vs. SUNBEAM AUTO LTD. HIGH COURT OF DELHI (2009) 227 CTR (Del) 133 : (2011) 332 ITR 167 : (2010) 189 TAXMAN 436 : (2009) 31 DTR 1 (Page 151-154 of case laws index)**
- c) **COMMISSIONER OF INCOME TAX vs. DESIGN & AUTOMATION ENGINEERS (BOMBAY) (P) LTD. HIGH COURT OF BOMBAY (2008) 13 DTR (Bom) 145 : (2010) 323 ITR 632 : (2009) 177 TAXMAN.**
- d) **COMMISSIONER OF INCOME TAX vs. MUNJAL CASTING HIGH COURT OF PUNJAB & HARYANA (2008) 2 DTR (P&H) 20 : (2008) 303 ITR 23 : (2008) 168 TAXMAN 241.**
- e) **COMMISSIONER OF INCOME TAX vs. MAX INDIA LTD. SUPREME COURT OF INDIA (2007) 213 CTR (Supreme Court) 266 : (2007) 295 ITR 282 (Supreme Court): (2008) 166 TAXMAN 188 (SC)**
- f) **COMMISSIONER OF INCOME TAX vs. MAHENDRA KUMAR BANSAL HIGH COURT OF ALLAHABAD (2008) 214 CTR (All) 349 : (2008) 297 ITR 99 (All)**
- g) **COMMISSIONER OF INCOME TAX vs. DEEPAK MITTAL HIGH COURT OF PUNJAB AND HARYANA (2010) 37 DTR 0008, (2010) 324 ITR 0411**
- h) **COMMISSIONER OF INCOME TAX vs. LEISURE WEAR EXPORTS LTD. HIGH COURT OF DELHI (2010) 46 DTR 0097, (2012) 341 ITR 0166**
- i) **NARAIN SINGLA VS. PR. CIT\ 62 TAXMAN.COM 225 (CHD. TRIB.)**
- j) **JIWAN KUMAR VS. PCIT IT AT AMRITSAR BENCH, AMRITSAR, ITA NO. 182/ASR/2016**
- k) **DHARAMPAL VS. PCIT IT AT AMRITSAR BENCH, AMRITSAR, IT A NO. 219 & 672/ASR/2015**
- l) **RAMAN LAKHA VS. ITO WARD-2, HOSHIARPURITA NO. 324/ASR/2016**

3. That in para (vii) page 3 order Ld Pr. CIT-1, Jalandhar has observed as under:

It was only because the assessee did not have any evidence to substantiate her explanation that Rs 17,50,000/- was offered by her to tax as Miscellaneous income of Rs. 17,50,000/- of the current Asst. year (cash deposited in excess of Rs. 2,50,000/-). The explanation offered by the assessee was not substantiated in any manner by the assessee as is required under the provisions of section 68 of the Act. The AO had no material on record to accept the explanation that Rs 20,00,000/- was not unexplained cash credit as the primary onus cast upon the assessee u/s 68 of the Act had not been discharged by her.

Ld. Pr. CIT-1, Jalandhar while passing order u/s 263 of the Act is of the opinion that onus cast on the assessee u/s 68 of the Act has not been discharged by her. It is submitted that provisions of section 68 of the Act are not attracted on cash deposits in saving bank account with banks. These observations of Ld. Pr. CIT- 1, Jalandhar itself makes the order passed u/s 263 of the Act illegal and bad in law since provisions of section 68 of the Act are not attracted on cash deposits in saving bank account with banks.

Reliance is being placed on

- a) **COMMISSIONER OF INCOME TAX vs. BHAICHAND H. GANDHI HIGH COURT OF BOMBAY SOURCE : (1983) 141 ITR 67 (BOM) : (1982) 11 TAXMAN 59**
- b) **SUNDAR LAL JAIN vs. COMMISSIONER OF INCOME TAX HIGH COURT OF ALLAHABAD SOURCE : (1979) 117 ITR 316 (ALL)**
- c) **ANAND RAM RAITANI vs. COMMISSIONER OF INCOME TAX HIGH COURT OF GAUHAT (1997) 139 CTR (Gau) 235 : (1997) 223 ITR 544 (Gau)**
- d) **SHERATON APPARELS vs. ASSISTANT COMMISSIONER OF INCOME TAX* HIGH COURT OF BOMBAY (2002) 175 CTR 0651, (2002) 256 ITR 0020, (2002) 123 TAXMAN 0238**
- e) **YAD WINDER SINGH vs. INCOME TAX OFFICER AMRITSAR TRIBUNAL (2016) 46 CCH 0660**
- f) **SANJEEV KUMAR vs. INCOME TAX OFFICER WARD 6(3) PATHANKOT, AMRITSAR TRIBUNAL (2016) I.T.A NO. 445 TO 449(Asr)/2015”**

9. Per contra, the Ld DR although supported the impugned order, however, he has not filed any rebuttal to the contention raised by the counsel.

10. Heard rival contentions, perused the material on record, impugned order, written submissions and case law cited before us. Admittedly, an audit of assessment framed was carried out by Income Tax Officer (Audit), Jalandhar wherein vide orders dated 27.08.2021 it was concluded that Rs. 20,00,000/- cash deposited during demonetization period should have been brought to tax u/s 115BBE of the Act as against Rs. 17,50,000/- offered to tax by assessee at normal rate (Page 36-39 of paper book). The Assessing Officer (In short "the AO") vide his letter dated 13.12.2021 addressed to Pr. CIT-1, Jalandhar offered his comments on the audit objection and concluded that audit objection raised by Income Tax Officer (Audit) is not acceptable (APB, Pgs. 40-42). The AO vide letter dated 17.12.2021 addressed to Addl. CIT Range-IV, Jalandhar offered his comments on internal audit objection in the case of Harneet Kaur Juneja that audit objection raised by Income Tax Officer (Audit) is not acceptable (APB, Pgs. 43-46). The Ld. Counsel argued that since the proceedings u/s 263 of the Act have been initiated on the basis of audit objection raised by Income

Tax Officer (Audit) vide his audit memo dated 27.08.2021 to which replies were filed by Assessing Officer vide his letter dated 13.12.2021 and 17.12.2021 wherein Assessing Officer explained in detail that objection raised is not acceptable and hence, the subject proceedings u/s 263 of the Act, cannot be initiated on the basis of the same audit objection, and hence, it is bad in law. In support, he placed reliance on the judgement of the Hon'ble HIGH COURT OF PUNJAB AND HARYANA in the case of "COMMISSIONER OF INCOME TAX vs. SOHANA WOOLLEN MILLS", (2008) 296 ITR 0238 (Page 1-4)

11. It is further noticed that the case of the assessee was selected for limited scrutiny under CASS with the reason large value cash deposited during demonetization period as compared to returned income. The AO during the course of the assessment proceedings, issued various notices wherein he raised queries towards large value cash deposited during demonetization period. The appellant assessee file replies to queries raised and The AO being satisfied with the replies of the assessee passed the assessment at returned income. It is settled law that the AO was not authorized to travel beyond issues in the limited scrutiny and Accordingly, the proceedings u/s 263 of the Act, cannot be initiated by the PCIT, in the

case of limited scrutiny under CASS when the issue has been examined in detail by the AO and where the AO cannot be asked to go beyond issues for which case was selected under limited scrutiny. In support, he placed reliance on various decisions of Tribunal, the latest one is that in the case of *M/S SU-RAJ DIAMOND DEALERS PVT. LTD vs. PRINCIPAL COMMISSIONER OF INCOME-TAX IN THE ITAT MUMBAI BENCH 'G'* (2020) 203 TTJ 0137 (Mumbai).

12. In the present case, it is noted that that the assessment order was passed by the Assessing Officer after making enquiries on all the issues of selection of case under limited scrutiny and even in the case of full scrutiny, the assessment order cannot be held to be erroneous, if the assessment order is passed by the A.O., after conducting the necessary enquiries and taking one plausible view where two view are possible and specific point of losses or leakages of revenue due to lack of enquiry on the part of the AO are not pointed out by the Ld. PCIT after taking rebuttal of the assessee on record.

13. It is pertinent to mention that in the present cases, the assessment was framed u/s 143(3) of the Act after carrying out the necessary enquiries and verifications. It is seen that the Ld. PCIT has not appreciated the facts

narrated in the reply furnished by the appellant to the show cause notice (APB, Pgs. 47-59) and that discussion made by the AO in the assessment order with necessary enquiries made.

14. We have to understand that lack of enquiry/no enquiry is different from inadequate enquiry and it is only in case of no enquiry by the AO, Pr. CIT/CIT can exercise jurisdiction u/s 263 of the Act and not in case where the AO has made enquiries as seems appropriate in the facts and circumstances of the case. In the instance case, inquiry on relevant issue has been made by AO, hence no action invited u/s 263. Our view gets support from the Judgement given by the Hon'ble Delhi High Court in case of "CIT vs. Sunbeam Auto Ltd", 332 ITR 167 (Del.) Where in it was held as under: -

"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 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".

15. On similar facts, the coordinate Bench has allowed the appeal in I.T.A. No.75/Asr/2022 vide order dated 15/9/2022 in the case of 'Leela Gupta vs PCIT-1', Jalandhar wherein it has held that-

“During the notice u/s 142(1) the assessee submitted the relevant documents before the revenue authorities. On basis of these documents the order was passed by the Id. AO. It cannot be said that the issue was untouched and unverified by the assessing authority. Mere change of opinion an order cannot be called as erroneous. We directed that the order passed by the PCIT is unjust for, and the order is setting aside.”

16. In the above view, we hold that the impugned order in ITA No. 66/Asr/2022 and 68/Asr/2022 passed on the issue of audit objection and in ITA No. 66/Asr/2022 on No/Lack of enquiry by the PCIT is perverse to facts on record in holding assessment order erroneous and prejudice to the interest of revenue. Accordingly, the impugned orders passed by the PCIT -1, Jalandhar u/s 263, are cancelled being bad in law.

17. In the result, appeal of the assesseees in ITA Nos. 66/Asr/2022; 67/Asr/2022 and 68/Asr/2022 are allowed.

Order pronounced in the open court on 22.03.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

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

GP/Sr./P.S.

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