

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D", MUMBAI  
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
**ITA No. 1818/Mum/2022 (A.Y. 2012-13)**

**Manoj Lingayya Hegde,**

C/o Saiemaas Family Restaurant & Bar,  
RTO, Service Road, New Dev Ashish Co-op.  
Hsg. Soc. Ltd. Teen Hath Naka,  
Thane (West)-400604.

**PAN: AALPH1665D**

..... Appellant

Vs.

Pr.CIT (Central),  
Aayakar Sadan, Bodhi Towers,  
Salisbury Park, Gultekadi,  
Pune-411037.

..... Respondent

Appellant by	:	Sh. Rajesh Athavle, Adv.
Respondent by	:	Smt. Riddhi Mishra, CIT-DR
Date of hearing	:	09/11/2022
Date of pronouncement	:	13/01/2023

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by the assessee is directed against the order of Pr. Commissioner of Income Tax (Central), Pune (for short 'LD. PCIT') dated 07.03.2022 under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (for short 'the Act') for A.Y. 2012-13. Assessee filed appeal with delay of 70 days. To explain this delay in filing of appeal assessee filed an application dated 14-07-2022 and

submitted that he received the order passed u/s 263 on 07-03-2022 but on 11-02-2022 assessee lost his brother(copy of his death certificate is enclosed vide page no.2 of the paper-book. Due date of filing this appeal was 05-05-2022 whereas actually filed 15-07-2022. We found it a reasonable cause in delay of filing the appeal as assessee has lost his own brother in Feb 2022 itself. Considering the reason submitted by assessee and duration of delay we found it reasonable **hence delay in filing of appeal is condoned** and assessee's appeal will be adjudicated as per the grounds of appeal raised by him. The assessee has raised the following grounds of appeal:

*"The appellant objects to the order dated 7 March 2022 passed under Section 263 of the Income tax Act by the Pr. Commissioner of Income tax, Pune (Pr. CIT) for the aforesaid assessment year on the following among other grounds:*

- 1. The learned Pr. CIT erred in revising the assessment order passed under section 143(3) r.w.s. 147 dated 30 December 2019. He erred in not appreciating that the order passed was neither erroneous nor prejudicial to the interest of the revenue. He erred in not considering the decision of the Supreme Court in the case of Malabar Industrial Co. Ltd. (243 ITR 83).*
- 2. The learned Pr. CIT erred in directing the assessing officer to treat the loan of INR 1,17,59,000, which was not disclosed the Income tax return, as the unexplained income of the appellant.*
- 3. The learned Pr. CIT erred in not appreciating that the assessing officer has already made additions of INR 1,47,16,107 by treating application of the above loan as explained expenditure, unexplained money and unexplained investment in Assessment Years 2012-13, 2013-14 and 2015-16 and therefore, addition cannot be made again by attacking on the source of the said loan as explained income.*
- 4. The learned Pr. CIT erred in not dropping the revision proceedings initiated under Section 263 on the ground that the appellant has already opted for the Vivad se Vishwas scheme 2020 for the additions made on account of unexplained money, unexplained expenditure and unexplained investment in assessment orders for the Assessment Years 2012-13, 2013-14 and 2015-16 and Certificate under section 5(1) of the Direct Tax Vivad se Vishwas Act has already been issued to the appellant.*

*5. Each one of the above grounds of appeal is without prejudice to the above.”*

2. Brief facts of the case are that the assessee is a proprietor of M/s Hotel Saiemaa’s Family Restaurant and Bar. Assessee e-filed return of income for the AY under consideration on 17-09-2012 declaring total income of Rs. 7,36,280/-. A survey u/s 133A of the act was conducted at assessee’s business premises on 26-10-2018 and 27-10-2018 during the course of survey certain incriminating documents was found and impounded as per annexure A. During the course of survey statement of assessee was recorded u/s 131 with reference to impounded document to explain the page wise content of the said documents.

3. We have gone through the order of AO, notice u/s 263 issued by LD. PCIT central Pune vide pg no. 3 and 4 of the paper-book, order of LD. PCIT u/s 263 vide dated 07-03-2022 and submissions of the assessee along with copies of documents impounded during the survey proceedings. It is observed that by virtue of this survey proceeding assessee’s assessments were re-open not only the AY under consideration i.e. 2012-13 but also for assessment year 2013-14 and 2015-16 also. This action of reopening was taken as the documents impounded during the survey carrying transactions for AY 2012-13, 2013-14 and 2015-16 also.

4. The matter before us pertains to AY 2012-13 only but we have gone through the assessment orders for AY 2013-14 and 2015-16 also as submitted by assessee vide page no. 29 to 53 and 63 to 84 of the paper-book. We have considered the show cause notices issued u/s 148 vide page no. 24 to 27, 54 to 61 and 85 to 92 for AY 2012-13, 2013-14 and 2015-16 respectively.

5. We have thoroughly considered the assessment orders vis a vis reasons for reopening supplied for respective AY. We found that each and every entry found in the impounded documents has been deliberated and discussed by the AO and assessee. The entries found unexplained and out of books were duly added by the AO in the income of the assessee in relevant AY. Although assessee chosen to walk for the direct tax Vivad se Vishwas act 2020 for AY 2012-13,2013-14 and 2015-16 respectively. Form no.5 are furnished vide pg no. 5,28 and 62 for AY 2012-13,2013-14 and 2015-16 respectively.

6. We have gone through the notice dated 17-03-2021 issued by LD. PCIT u/s 263. The only objection LD. PCIT had was that out of total loans of Rs. 4 cr. taken by the assessee only Rs. 2,82,41,000/- was disclosed in the ITR while balance amount of Rs. 1,17,59,00/- was not disclosed in the ITR and the same was not satisfactorily explained by the assessee in terms of identity etc. In this regard assessee submitted before the LD. LD. PCIT vide page 5 of the order u/s 263 that “addition in the hands of the assessee can be made either for unexplained source of income or the addition can be made for undisclosed investment in the assets and expenditure. Both the additions can’t be made simultaneously. In this case AO chosen the second path i.e. additions made with reference to unexplained investments in assts and expenditure”.

7. logically, the approach opted by AO can’t be said to be wrong as the same has been worked out after thorough verification of the impounded documents and the submissions of the assessee. we observed that by adopting this approach the total addition in three years made by AO IS amounting to Rs. 1,47,16,107/- whereas the objection of LD. PCIT is limited to Rs. 1,17,59,000/-. It is found that if

AO would have followed the directions of the LD. PCIT addition would have been limited upto Rs.1,17,59,000/- only whereas because of the approach adopted by AO addition in the hands of assessee were made to the tune of Rs. 1,47,16,107/-.

8. It is further noted that whatever the addition made by AO were duly accepted by the assessee and to settle the litigation he opted for Vivad se Vishwas scheme and paid due taxes also. Vide page no.92 to 95 of the paper- book we observed that initially assessee preferred an appeal before the Ld.CIT(A) for all the 3 AYs but later on withdrawn the same after opting Vivad se Vishwas scheme. It is further observed that LD. PCIT while passing the order u/s 263 looks to be in haste and totally injudicious as he hasn't considered the orders of the AO, contents of the impounded documents and form no.5 filed by the assessee issued under Vivad se Vishwas scheme for all the 3 AYs.

9. We do not find any substance in the order of LD. PCIT passed under sec 263 because the order passed by the AO was neither erroneous nor prejudicial to the interest of the revenue. In this terms we set aside the order of LD. PCIT passed u/s 263 as the same is beyond law and facts of the case and passed without proper application of mind.

**3. In the result, appeal filed by the assessee is allowed.**

Order pronounced in the open court on 13<sup>th</sup> day of January, 2023.

Sd/-  
(ABY T VARKEY)  
JUDICIAL MEMBER  
Mumbai, दिनांक / Dated: 13/01/2023  
SK, Sr.PS  
**Copy of the Order forwarded to:**

Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) /The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy. /Asstt.Registrar)  
**ITAT, Mumbai**