

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

(CONDUCTED THROUGH VIRTUAL COURT)

**BEFORE Ms. MADHUMITA ROY, JUDICIAL MEMBER &
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

ITA No.86/Ind/2022
(Assessment Year: 2017-18)

Smt. Sudha Modi, Nishant Colony 74 Bungalows, Bhopal (M.P.)	Vs.	The PCIT-1 Bhopal
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AHWPM1842P		
(Appellant)	..	(Respondent)

Revenue by :	Shri Gagan Tiwari, Advocate
Assessee by :	Shri P. K. Mishra, CIT.D.R.

Date of Hearing	21.12.2022 & 21.03.2023
Date of Pronouncement	29.03.2023

O R D E R

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 25.02.2022 passed by the PCIT-1, Bhopal (M.P.) (hereinafter referred to as 'PCIT') under Section 263 of the Income-Tax Act, 1961 (hereinafter referred to as 'the Act') arising out of the order dated 29.11.2019 passed by the DCIT/ACIT-5(1), Bhopal (hereinafter referred to as 'Ld. AO') under Section 143(3) of the Act for Assessment Year 2017-18.

2. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on record.

3. The assessee filed her return of income for A.Y. 2017-18 on 07.11.2017 declaring her total income at Rs.74,230/-. The case was selected for limited scrutiny under Section 143(3) of the Act under CASS and notice under Section 143(2) of the Act was served upon the assessee by email through ITBA Portal on 25.09.2018. The reason for limited scrutiny under CASS was large value cash deposits during demonetization as compared to return of income. Notice under Section 133(6) of the Act was duly issued to the Union Bank of India on 02.05.2019 requiring the bank statement of the reported bank account in SFT. It was found from the said bank documents that the assessee deposited cash of Rs.11,08,000/- during demonetization. Specific queries were issued on 18.01.2019 and 03.04.2019 requiring the assessee to furnish the details of cash deposit and the source thereon. In response to the same, the assessee duly submitted all details. After being satisfied on perusal of the details, evidences including e-submissions filed by the assessee on 17.05.2019, the Ld. AO accepted the returned income of the assessee.

However, the same was, subsequently, found to be erroneous. As per the Ld. PCIT, it was finalized without enquiry or verification and thus further directed to be reassessed by the Ld. AO by invoking Section 263 of the Act. Hence, the instant appeal before us.

4. The brief facts leading to the case is this that the assessee purchased a plot of land admeasuring 1.019 acre from Shri Bholaram, S/o Shri Kishan R/o. of Gram Bawadia Kalan, Tehsil Huzur, Bhopal through sale deed, registered

at the office of the Sub-Registrar, Bhopal on 3rd June, 2006, recorded in Book No. 1-A, Vol. No. 24497, Page No. 99 to 104, Document No. 818 and thereafter alongwith two co-owners entered into an agreement for sale on 12.05.2018 and received an amount of Rs.10,58,500/- from the prospective purchaser Shri Sanjeev Agrawal upon execution of the Agreement of Sale. The relevant documents including the agreement of sale was duly furnished before the Ld. AO during scrutiny assessment. The said agreement was executed jointly to sell their lands to Shri Sanjeev Agrawal and they received a total sum of Rs 75,00,000/- including Rs. 50,00,000/- in cash. In fact, the assessee received a sum of Rs. 10,58,500/- as her share proportionate to the area of land belonged to her, in respect to the consideration amount decided in between the parties. However, some dispute relating to the property cropped up and a suit for specific performance was filed before the Hon'ble Additional District Judge, Bhopal M.P., which was ultimately decreed on 13.10.2012 against which a First Appeal before the Hon'ble High Court of Madhya Pradesh was filed. Relevant to mention that the sale transaction did not materialized and is still pending. This particular fact has been placed on record by the assessee before the Ld. AO by filing the relevant orders passed by the different judicial forums. The same is also filed before us by way of paper book on 02.01.2013, appearing from page Nos. 1 to 30 of the same. In that view of the matter, it was the case made out by the assessee that as the land deal remained disputed and the matter is subjudice, the cash was kept with herself during the pendency of the court proceedings and the same cash was deposited by her during demonetization. All other relevant documents including the copy of the agreement was also filed before the Ld. AO during the scrutiny assessment and having regard to the facts and circumstances of

the case, particularly, the order passed by different judicial forums, the Ld. AO accepted the plea taken by the assessee and further accepted the return of income filed by the assessee. On the other hand, the cash kept by the assessee at home idle for more than eight years was not found to be viable particularly when the assessee has been depositing cash in bank on a regular year to year basis in F.Y. 2014-15 & 2015-16 and therefore, the Ld. PCIT proposed to initiate the proceedings under Section 263 of the Act which was culminated into quashing of the order dated 29.11.2009 passed under Section 143(3) of the Act with a further direction upon the Ld. AO to make de novo examination, enquiry and verification of the all aspects of the matter and to pass an order afresh upon granting opportunity of being heard to the assessee, on the premise that the Ld. AO failed to conduct the investigation on the facts required to be examined and verified to complete assessment as per law particularly in view of amended provision of Clause (a) to Explanation 2 of Section 263(1) of the Act.

5. It appears from the records placed before us and also scrutiny assessment order dated 29.11.2019 passed by the Ld. AO that sufficient enquiry was made to the issue involved in this particular case including the source of deposit of cash of Rs.11,08,000/- by the assessee during demonetization period. The said fact is evident from the following observation made by the Ld. AO :

“3. The reason for Limited Scrutiny was communicated to the assessee by the now us 143(2) of Income Tax Act, 1961 on 25.09.2018 by email through ITBA portal.

4. Notice u/s 133(6) of the Income Tax Act, 1961 was issued to the Union Bank India on 02.05.2019 requiring the bank statement of the reported bank account in SFT.

According to the information/documents received from the bank, it is seen that the assessee has deposited cash of Rs. 11,08,000/- during demonetization.

5. *Notices u/s 142(1) of the Act, along with specific questionnaire was issued on 15.01.2019 and 03:04 2019 requiring the assessee to furnish the details of cash deposited by her during demonetization and their sources. The assessee was further summoned u/s 131 of the Income Tax Act 1961 on 16.05.2019.*

6. *In response to the notices us 142(1) of the Income Tax Act, 1961, the AR of the assessee CA Shri Amit Jain made e-submissions on 17.05.2019. According to the assessee she had entered into an agreement to sale a land located at Bawadia Kalan on 12.05, 2008 to Shn Sanjeev Agrawal s/o Shi SK Agrawal She has furnished copy of said agreement as edence According to the submission of the assessee supported by the said agreement three putative sellers had agreed to jointly sell their lands to Shri Sanjeev Agrawal and they received a total sum of Rs 75,00,000/- and out of this sum of Rs 50,00,000/- was received in cash. The assessee received a sum of Rs 10.58,500/- in cash in proportion to her share in land being sold. The AR of the assessee has further submitted that the land deal got disputed between the sellers and the buyer and the matter is subjudice. Since the land deat did not materialize therefore the assessco had kept the cash with herself during the pendency of the court proceedings and the same cash was deposited by her during demonetization The assessee has furnished copy of agreement to sale and the relevant court order in support of the claim of the property dispute. These submissions of the assessee are placed on record*

7. *The submission of the assessee was considered and found satisfactory. In view of the above the returned total income of the assessee is assessed u/s 143(3) of the Income Tax Act, 1961, for AY 2017-18 is as under:*

<i>S. No.</i>	<i>Particulars of Income</i>	<i>Income</i>
<i>1</i>	<i>Returned total income of the assessee</i>	<i>Rs: 74,230</i>
<i>2</i>	<i>Assessed total income of the assessee</i>	<i>Rs. 74,230/</i>

Assessed us 143(3) of the Income Tax Act, 1961 as above. Issue demand notice and challan Charge interest us 234A 2348 234C & 234D as per rules, if any. Give credit to prepaid taxes, if any, after necessary verification.”

6. In fact, we find without going into this particular aspect of the matter that the assessee though received the amount in cash out of the agreement for sale entered into by the assessee alongwith two co-owners with the prospective purchaser, namely, Sanjeev Agrawal, the same was kept with him due to the dispute arose in regard to the title of the property resulting into court proceedings initiated by the parties and was pending adjudication before

different judicial forums, the Ld. CIT(A) sought to invoke the provision of Section 263 of the Act attempting to take advantage of Explanation 2 of Clause (a) of Section 263(1) of the Act alleging no enquiry and/or investigation conducted by the Ld. AO on this particular fact of depositing cash of Rs.11,08,000/- by the assessee which in our considered opinion, is nothing but non-application of mind and further colourable exercise of power, arbitrary, whimsical and erroneous in nature. In this regard, we have considered the judgment passed by the Mumbai ITAT in the case of Sh. Narayan TatuRane Vs. ITO, I.T.A. No. 2690/2691/Mum/2016, dt. 06.05.2016 as relied upon by the Ld. AR. The same examined the scope of enquiry under Explanation 2(a) to section 263 in the following words:-

“20. Further clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the AO vis-à-vis its reasonableness in the facts and circumstances of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquiries or verification that would have been carried out by a prudent officer. Hence, in our view, the question as to whether the amendment brought in by way of Explanation 2(a) shall have retrospective or prospective application shall not be relevant.”

7. We note that the said amendment gives power to the Ld. PCIT to see as to whether the Ld. AO has passed order upon carrying out enquiries or verification which a reasonable and a prudent officer would have carried out but the explanation did not confer a special or unfettered right and/or power in

the hands of the PCIT to revise each and every order according to his whims and fancies alleging the order passed by the Ld. AO is being passed without making enquiry or verification which ought to have been made by a prudent officer. Rather the statutory duty, on the other hand, cast upon the PCIT is to show distinctly that the same has not been conducted properly by the Ld. AO which, in our considered opinion, in this particular fact of case, is found to be just opposite as it is established from the observation made in the order so passed by the Ld. AO. The fact of the case and the corroborative evidences is sufficient enough to accept the plea taken by the assessee in not depositing the amount in Bank and kept it with him for a long period particularly keeping in view of the order passed by the Hon'ble Additional District Judge, Bhopal M.P. and the proceeding pending in First Appeal before the Hon'ble High Court at M.P.

8. Even otherwise, it is also held in several decisions that the said Explanation does not give unfettered power to the PCIT to assume revisional-jurisdiction to revise every order of the Assessing Officer to re-examine the issues already examined during assessment-proceeding. It is judicially interpreted in several decisions that the intention of legislature behind introduction of Explanation 2 could not have been to enable the PCIT to find fault with each and every assessment-order in unlimited terms, since such an interpretation would lead to unending litigation and there would not be any point of finality of assessment-proceeding done by Ld. AO.

9. So far as the jurisdiction of the Ld.PCIT under Section 263 of the Act is concerned, we have carefully considered the judgment relied upon by the

assessee in the case of CIT vs. Nirma Chemicals Works (P.) Ltd. (supra). We find, while holding the Tribunal committed an error in upholding the exercise of powers under section 263 of the Act by the Ld. CIT(A) to be valid in the facts and circumstances of the case, the Hon'ble Court has been pleased to observe as follows:

"24. There is another aspect of the matter. The assessee had challenged jurisdiction of the Commissioner of Income-tax to exercise powers under section 263 of the Act. For an order of the Assessing Officer to be interfered with in exercise of revisional powers the Commissioner of Income-tax has to find in the first instance that the order is erroneous and, secondly, the order is prejudicial to the interests of the revenue. The conditions are twin condition's as held by the Apex Court and both of them have to be fulfilled before the Commissioner of Income-tax can exercise jurisdiction under section 263 of the Act. In the case of Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83 the Apex Court has held (headnote) : "The phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue, unless the view taken by the Income-tax Officer is unsustainable in law."

25. Applying the aforesaid tests to the facts of the case it is not possible to uphold the order of the Tribunal as regards jurisdiction after considering the law enunciated by the Apex Court. The Assessing Officer after making due inquiries, as noted hereinbefore, adopted one view and granted partial relief under section 80-1 of the Act. The Commissioner of Income-tax takes a different view of the matter. However, that would not be sufficient to permit the Commissioner of Income-tax to exercise powers under section 263 of the Act because when two views are possible and the Commissioner of Income-tax does not agree with the view taken by the Assessing Officer, the assessment order cannot be treated as erroneous and prejudicial to the interests of the revenue unless the view taken by the Assessing Officer is unsustainable in law. That is not the position in the present case. In fact even the partial denial of relief under section 80-1 of the Act has been found to be incorrect by the appellate authority. Therefore, existence of two views stands established. In the aforesaid circumstances, the Commissioner of Income-tax could not have exercised jurisdiction under section 263 of the Act as per settled legal position.

26. The view expressed by this court in the case of Shashi Theatre (P.) Ltd. (supra), therefore, is in consonance with not only the requirement of law but concludes the issue insofar as the present case is concerned. Just as it is not possible to decide grant of investment allowance in relation to one or the other item without considering the eligibility thereof, similarly deduction under section 80-1 of the Act cannot be considered without deciding whether a particular portion of profits and gains has been derived from an industrial undertaking which fulfils the requisite conditions stipulated by the section.

27. In the aforesaid set of facts and circumstances of the case and the view that the court has adopted, it is not necessary to enter into any discussion as regards merits of the controversy which has been brought before this court by the other questions at the instance of the assessee and the question at the instance of the revenue. The reference is answered accordingly by holding that the Tribunal committed an error in upholding the exercise of powers under section 263 of the Act by the Commissioner of Income-tax to be valid in the facts and circumstances of the case, when not only was there a prohibition as stipulated by Explanation (c) of section 263 of the Act but even the twin requirements, viz., pre-conditions for exercise of jurisdiction under section 263 of the Act were not fulfilled.

28. The reference stands disposed of accordingly. There shall be no order as to costs."

10. There is no iota of doubt that the Ld. AO has made a detailed enquiry in the case of the assessee in the scrutiny proceeding, particularly, in regard to the issue raised by the Ld. PCIT in the order impugned. Upon making the exhaustive enquiry and excessive documents so placed by the assessee before the Ld. AO, the return of income filed by the assessee has been accepted. We would like to mention that though the PCIT sought to justify his point of view in holding the order passed by the Ld. AO erroneous so as to prejudicial to the interest of the Revenue due to lack of enquiry, such finding is totally found to be non-applicability of mind and a colorable exercise of power by the PCIT. We find that in this case proper and adequate enquiry has been conducted by the Ld. AO in regard to the entire aspect of the matter, particularly, the Court case relating to the dispute on the land and the orders passed by different judicial forums and upon adequate examination of the records placed by the assessee, the assessment was completed. Simply because the money was deposited during demonetization the same cannot lead to the conclusion of having any ingenuine plea of the assessee as narrated above. Thus, the order passed by the Ld. PCIT quashing the order passed by the Ld. AO holding it erroneous and prejudicial to the interest of the Revenue due to lack of adequate enquiry is not sustainable in the eye of law. In that view of the matter, under the particular

facts and circumstances of the case, when record reveals sufficient enquiry has been conducted by the Ld. AO in coming to a conclusion and completing the assessment, the impugned order invoking a provision of Section 263 of the Act in a mechanical and stereo type manner without taking into consideration the factual matrix of the matter, is found to be not sustainable in law and thus quashed.

11. In the result, appeal filed by the assessee is allowed.

This Order pronounced on 29/03/2023

Sd/-
(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Indore; Dated 29/03/2023
S. K. Sinha, Sr. PS

True Copy

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Indore
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

(Sr.PS)
ITAT, Indore