

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

आयकर अपील सं./ITA No.95/SRT/2022

निर्धारण वर्ष/Assessment Year: (2017-18)

(Physical Hearing)

7 Star Dreams, Block No.26, F.P. No.26, T.P.S. No. 66, Nr. Sweet Home Kosad, Surat – 394107.	Vs.	The PCIT-1, Surat.
(Appellant)		(Respondent)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABFZ2575L		

Appellant by	Shri Sapnesh Sheth, CA
Respondent by	Shri Ashok B. Koli, CIT(DR)
Date of Hearing	16/03/2023
Date of Pronouncement	30/03/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

By way of this appeal, the assessee has challenged the correctness of the order dated 17.03.2022 passed by the Learned Principal Commissioner of Income-tax (in short “Ld. PCIT”) under section 263 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), for the assessment year 2017-18. Grievances raised by the assessee, which being interconnected, will be taken up together, are as follows:

“1. On the facts and circumstances of the case as well as law on the subject, the learned Pr. Commissioner of Income-tax has erred in passing revisionary order u/s 263 of the I.T. Act setting aside the order of ld. assessing officer passed u/s 144 of the Act dated 23.12.2019 for the year under consideration although said order is not prejudicial to the interest of revenue.

2. On the facts and circumstances of the case as well as law on the subject, the learned Pr. Commissioner of Income-tax has erred in observing that order passed by assessing officer u/s 144 of the Act is erroneous on the ground that assessing officer has erred in restricting addition to the tune of Rs.45,20,566/- @ 10% of sundry creditors, without giving any basis, even though section 68 of the Act was invoked.

3. *It is therefore prayed that order passed by Pr. Commissioner of Income-tax u/s 263 of the I.T. Act setting aside the order of assessing officer and directing assessing officer to pass fresh assessment order may please be quashed.*

4. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

2. The facts of the case which can be stated quite shortly are as follows: Assessee firm, M/s 7 Star Dreams had filed its return of income for assessment year 2017-18 on 18.03.2018, declaring total income of Rs.23,07,670/-. The assessee`s case was selected for complete scrutiny under CASS and the assessment has been completed u/s 144 of the Income Tax Act (herein after referred to as the ‘Act’) on 23.12.2019 by determining of total assessed income of Rs.4,71,75,087/-.

3. Later on, Learned Principal Commissioner of Income-Tax (in short “Ld PCIT”) has exercised his jurisdiction under section 263 of the Income-Tax Act, 1961. On perusal of assessment records for AY 2017-18, it was observed by Ld PCIT that during the year under consideration, the assessee firm has shown total sundry creditors as on 31.03.2017 of Rs.4,91,28,896/-. Out of which, amount of Rs.39,23,230/- is in the name of Surat Municipal Corporation; therefore, the remaining creditors comes to Rs.4,52,05,666/-(Rs.4,91,28,896- Rs.39,23,230). Therefore, an amount of Rs.4,52,05,666/- is found credited in books of accounts of the assessee as sundry creditors and the assessee firm failed to offer satisfactory explanation in this regard during the course of assessment proceedings. While finalizing of the assessment proceedings, Rs.45,20,566/- being 10% of total sundry creditors of Rs.4,52,05,666/- was treated as unexplained, cash credits in books of accounts of the assessee and added to the total income of the assessee u/s 68 of the Act. The Ld PCIT noted that during the course of the assessment proceedings, the assessee firm failed to explain the genuineness of total credit entries of Rs.4,52,05,666/- (except credit of Rs.39,23,230 in the name of SMC). However, the Assessing Officer has made disallowance of 10% of total sundry creditors being as amount of Rs.45,20,566/- as unexplained cash credit without making any inquiry and without application of his mind in this issue. The Assessing Officer has passed the order under

section 144 of the Act dated 23.12.2019 without application of mind. This made the order erroneous in so far as it is prejudicial to the interest of the Revenue and requiring revision of the order under section 263 of the Act, 1961 for AY.2017-18. Accordingly, proceedings for revision of order under section 263 of the Act were initiated by issuing show cause notice bearing DIN ITBA/REV/F/REV1/2020-21/1040280843(1) dated and duly served on assessee.

4. In response to show cause notice, the assessee submitted its reply before the Ld. PCIT, which is reproduced below:

“1. In your above notice, it is observed that assessment order dated 23.12.2019 was passed u/s 144 of the Act determining total income at Rs.4,71,75,08/-. However, on going through assessment records for AY 2017-18, your honour observed that assessee firm has shown total sundry creditors as on 31.03.2017 of Rs. 4,91,28,898/- out of which sundry creditors of Rs.4,52,05,868/- were remained unexplained during the course assessment proceedings and thereby assessing officer made addition u/s 68 of the Act @ 10% of total sundry creditors i.e. Rs.45,20,566/- on account of unexplained cash credits made in the books of accounts of the assessee. On this basis, your honour has alleged that assessment order passed by the assessing officer is erroneous and prejudicial to the interest of the revenue.

2. In this context, it is submitted that the assessing officer passed order u/s 144 of the Act making huge addition of Rs.4,48,67,417/- under various heads as against the returned income of Rs.23,07,670/-. Thus, assessing officer has made addition to -the extent of 20 times of returned income which clearly denotes that high pitched assessment has been done by passing order u/s 144 of the Act. The assessee has filed an appeal before CIT(A) on 22.01.2020 challenging all the additions made in assessment order (proof enclosed). Now the order u/s 263 of the Act must not be passed for the reason that assessing officer made addition only to the extent of 10% of sundry creditors. This is more so because the addition made @ 10% of sundry creditors is subject matter of appeal before CIT(A) & therefore as per the provisions of the Act, order u/s 263 of the Act should not be passed in respect of issues which is pending in appeal.

3. It is further relevant to mention here that the assessing officer rejected books of accounts by invoking provisions of section 145(3) of the Act and the figure of sundry creditors [reflected in the rejected books of accounts cannot be the subject matter of addition. 'Even otherwise also by rejecting the books of accounts, the assessing officer has already made huge additions under various heads which needs to be taken into consideration before holding said order as erroneous on the ground that he made addition to the extent of only 10% of sundry creditors. In fact once books of accounts are rejected, no addition should be made u/s 68 of the Act in respect of the sundry creditors figure appearing in the rejected books of accounts. Thus, now no further addition on account of sundry creditors should be made by passing order u/s 263 of the Act as it will be against the principles of natural justice, equity and fairplay.

4. Even otherwise, it is submitted that no addition at all should have been made on account of sundry creditors balance. The sundry creditors appearing in the balance sheet are very much genuine and majority of the same stands supported by contra confirmation of accounts submitted herewith.

5. Now as huge addition running into crores of rupees is already made, there is no loss to the revenue and consequently, the order of assessing officer cannot be termed as prejudicial to the interest of the revenue. There are twin requirements for passing order u/s 263 of the Act which is –

- 1) The order should be erroneous &
- 2) The same should be prejudicial to the interest of revenue.

However, in the instant case the second condition does not stand satisfied. Also as explained above, the issue relating to sundry creditors is subject matter of appeal.”

5. However, the Ld. PCIT has rejected the contention of the assessee and held that AO has made the addition of Rs.45,25,655/- @ 10% of the total sundry creditor of Rs.4,52,55,666/- without inquiring into the matter and without application of his mind. Thus, the assessment order dated 23.12.2019 is erroneous in so far as it is prejudicial to the interest of Revenue. Accordingly, Ld PCIT directed the Assessing Officer to pass fresh assessment order after taking into consideration the issues as may have been already been considered by AO together with the issue discussed herein above.

6. Aggrieved by the order of the Ld. PCIT, the assessee is in appeal before us.

7. Learned Counsel for the assessee submitted that during the assessment proceeding, the Assessing Officer rejected the books of account of the assessee under section 145(3) of the Act. Having rejected the books of accounts of the assessee, Assessing Officer has also made line by line adjustment on other issues which is not acceptable in the eye of law. The Ld. Counsel submitted that once the books of account were rejected than other line by line addition should not be made and for that Ld. Counsel relied on the judgment of CIT vs Babubhai Neminath Mutin (73 taxmann.com 100)(Karnataka HC). The Ld. Counsel further submitted that the main issue on which the Ld. PCIT has exercised his

jurisdiction under section 263 of the Act was that Assessing Officer had made estimated addition at the rate of 10% of sundry creditors. The Ld. PCIT observed that the Assessing Officer either has to disallow entire sundry creditors or to allow those sundry creditors for which confirmation, bank statements and other evidences were available to prove the genuineness of the creditors. Therefore, the Ld. PCIT stated that Assessing Officer should not have made the addition at the rate of 10% of sundry creditors and therefore he exercised the jurisdiction under section 263 of the Act to revise the assessment order passed by Assessing Officer under section 144 of the Act dated 23.12.2019.

8. The ld. Counsel further pointed out that during the assessment proceeding, the assessee submitted reply before the Assessing Officer in respect of the sundry creditors. Therefore, in response to the notice of the Assessing Officer, the assessee has submitted details of sundry creditors and the Assessing Officer having examined the details of sundry creditors took the conscious decision to make addition at the rate of 10% of sundry creditors. Therefore, since the Assessing Office took a plausible view and therefore the Ld. PCIT should not have exercised his jurisdiction under section 263 of the Act to revise the issue which was already examined by the Assessing Officer during the assessment stage and took a plausible view. This way, ld Counsel prays the Bench that order passed by ld PCIT may be quashed.

9. On the other hand, Learned CIT-DR for the Revenue relied on the order of Ld. PCIT vide para 5 of the PCIT order. The Ld. CIT-DR pointed out that after rejection of books of accounts, the Assessing Officer can make both the additions on account of sundry creditors as well as other line by line adjustments/additions. Therefore, Ld. ld. CIT-DR for the Revenue submitted that order passed by the Ld. PCIT should be upheld.

10. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case

including the findings of the Id. PCIT and other material brought on record. Before us, the Ld. Counsel for the assessee submitted the following documents:

- (i) Notice under section 263 issued by PCIT (vide PB. 7 to 9)
- (ii) Letter filed before assessing officer during assessment proceedings along with the proof of upload on IT portal (vide PB. 10 to 12)
- (iii) Details of sundry creditors having closing balance more than Rs.1,00,000/- filed with above letter before Assessing Officer (vide PB. 13 to 14)
- (iv) List of sundry creditors exceeding Rs;1,00,000/- filed with above letter before Assessing Officer (vide PB.15 to 20)
- (v) Letter filed before assessing officer during assessment proceedings along with the proof of upload on IT portal (vide PB.21 to 25)
- (vi) Ledger Confirmation of sundry creditors submitted during the course of scrutiny proceedings filed with above letter (vide PB.26 to 35)

11. Therefore, we note that after rejecting books of account, the Assessing Officer made inquiry in respect of sundry creditors. The assessee submitted the details of sundry creditors and confirmation of sundry creditors which is placed at page no.26 to 35 of the assessee's paper book. After going through the details of the sundry creditors and confirmation of sundry creditors, the Assessing Officer was of the view that there was some discrepancy in the list of sundry creditors, therefore he made an estimated disallowance at the rate of 10% of sundry creditors, therefore we note that Assessing Officer has examined thoroughly the issue raised by the Ld. PCIT in his revision order under section 263 of the Act. Therefore, it is not a case of lack of inquiry. However, we note that the issue raised by the Ld. PCIT under section 263 of the Act, has been thoroughly examined by the Assessing Officer and took a plausible view, therefore to that extent the order of the AO should not be erroneous.

12. We note that assessing officer has examined the issue of sundry creditors during the assessment stage. The relevant portion of the assessment order wherein the AO has discussed the issue of sundry creditors is reproduced below for ready reference:

“7. Addition on account of Sundry creditors: Vide notices u/s. 142(1) of the Act, in respect of sundry creditors amount appearing in Balance-sheet, the assessee was specifically requested to furnish as under:

“Please furnish the following information in respect of sundry creditors above Rs.1,00,000/- as on 31.03.2017:

Sr. No.	Name Creditor	PAN	Latest communication address	Balance as on 31.03.2017	Balance as on 31.03.2016

7.1. However, in response, the assessee only furnished a list of sundry creditors without any 'latest communication address' and 'PAN'. In absence of such basic details, it was not possible for the Department to verify the genuineness of credit entries in the form of sundry creditors outstanding in the books of accounts of the assessee. Therefore, vide show-cause notice dated 09.12.2019, the assessee was requested as under:

“Vide notice u/s. 142(1) of the Act dated 12.10.2019 and 13.11.2019, you were requested to furnish details of sundry creditors. However, you have not furnished PAN and address of such persons. You are requested to furnish PAN and present address of all persons along with their balance confirmations as on 31.03.2017. In absence of the details, you are requested to show cause as to why sundry creditors of Rs.4,91,28,896/- as appearing in B/sheet should not be treated as unexplained cash credits u/s. 68 of the Act.”

7.2. However, in response to show-cause notice, the assessee has not furnished any details. The assessee has not furnished any details such as PAN, address and balance confirmations, ITR of such parties, bank account of the opposite parties etc. to prove genuineness of amount standing credited in its books of accounts as on 31.03.2017. Total sundry creditors as on 31.03.2017 are Rs.4,91,28,896/-. Out of which, amount of Rs.39,23,230/- is in the name of Surat Municipal corporation. Therefore, the remaining creditors comes to Rs.4,52,05,666/-.

Therefore, an amount of Rs.4,52,05,666/- is found credited in books of accounts of the assessee as 'sundry creditors' and the assessee fails to offer satisfactory explanation in this regard. However, for the sake of natural justice, 10% of total sundry creditors is treated as unexplained, which comes to Rs.45,20,566/- and the same is treated as unexplained cash credits in books of accounts of the assessee and treated as income of the assessee u/s. 68 of the Act. Penalty proceedings u/s. 271AAC r.w.s 274 of the Act is initiated separately.”

13. From the above findings of the assessing officer it is vivid that assessing officer has verified and examined the issue of sundry creditors. Not only that assessing officer has issued notice u/s 142(1) of the Act, calling the details of sundry creditors and in response to the notice of the AO, the assessee has

submitted relevant details and documents relating to sundry creditors. Thus, AO has applied his mind and took decision to add 10% of sundry creditors.

14. The Hon'ble Apex Court in *Malabar Industries Ltd. vs. CIT* [2000] 243 ITR 83(SC) wherein their Lordship have held that twin conditions needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of the Revenue. In the following circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application of law; or (iii) Assessing Officer's order is in violation of the principle of natural justice; or (iv) if the order is passed by the Assessing Officer without application of mind; (v) if the AO has not investigated the issue before him; then the order passed by the Assessing Officer can be termed as erroneous order. Coming next to the second limb, which is required to be examined as to whether the actions of the AO can be termed as prejudicial to the interest of Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of *Malabar Industries (supra)* held that this phrase i.e. "*prejudicial to the interest of the revenue*" has to be read in conjunction with an *erroneous order* passed by the Assessing Officer. Their Lordship held that it has to be remembered that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue **"unless the view taken by the Assessing Officer is unsustainable in law"**.

15. In the conclusion we are of the view that none of the reasons set out by the CIT for invoking the jurisdiction u/s 263 of the Act are sustainable. The impugned order of the CIT has to be quashed for the reason that order of the AO

sought to be revised in the impugned order was neither erroneous nor prejudicial to the interest of the revenue for the reason of any lack of inquiry that the AO ought to have made in the given facts and circumstances of the case. We accordingly quash the order u/s 263 of the Act and allow the appeal of the assessee.

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

Order pronounced on 30/03/2023 by placing the result on the Notice Board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 30/03/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat