

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

आयकर अपील सं./ITA No.119/SRT/2022

(निर्धारणवर्ष / Assessment Year: (2017-18)

(Physical Court Hearing)

Balubhai Brijbhukhandas Choksi, Mota Bazar, Navsari-396445	Vs.	Principal Commissioner of Income- tax-Valsad, Room No. 301, 3 <sup>rd</sup> Floor, Income Tax Office, Palak Arcade, Pali Hill, Santinagar, Tithal Road, Valsad-396001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAIFB 9804 B		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Assessee by : Shri Hiren M. Diwan, C.A

राजस्व की ओर से /Respondent by: Shri Ravinder Sindhu, CIT-D.R

सुनवाई की तारीख/ Date of Hearing : 25/01/2023

घोषणा की तारीख/ Date of Pronouncement : 17/04/2023

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

By way of this appeal, the assessee has challenged the correctness of the order passed by the Learned Principal Commissioner of Income Tax-Valsad (in short "ld. PCIT"] dated 30.03.2022 under section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for assessment year 2017-18.

2. Grounds of appeal raised by the assessee are as follows:

*"1) The learned Principal Commissioner of Income Tax-Valsad (hereinafter referred to as 'the ld. PCIT" has erred in and on facts in setting aside the original assessment order made by the ld. A.O and directing him to frame the fresh assessment order.*

*2) The ld. PCIT has erred in law and on facts in directing the ld. A.O to consider while framing the fresh assessment order the issue of cash deposits made into the bank account during the demonetization period.*

*3) The ld. PCIT has erred in law and on facts in directing the ld. A.O to tax the cash deposits made into the bank account during the demonetization period under the provisions of section 115BBE of the Act.*

4) *The learned PCIT has erred in law and on facts in observing in the order dated 30-03-2022 passed u/s 263 of the Act that in the submission made in response to show cause notice dated 19-03-2022 issued u/s 263 of the Act, the appellant did not make any counter submissions to the issues raised while proposing to revise the assessment u/s 263 of the Act vide above show cause notice.*

5) *The ld. PCIT has erred in law and on facts in assuming jurisdiction u/s263 of the Act.*

6) *The appellant craves leave to add, amend, alter, modify, substitute, delete, change or vary all or any of the ground or grounds of appeal.”*

3. Brief facts as discernable from the orders of lower authorities are that assessee is engaged in the jewellery business and filed his return of income for the assessment year 2017-18 on 10.07.2017, declaring total income of Rs.3,11,330/-. Thereafter the assessee's case was selected for scrutiny under CASS. The assessment u/s143(3) has been completed on 30.12.2019 and total income was determined at Rs.3,11,330/-.

4. Later, Ld. PCIT exercised his jurisdictional power u/s 263 of the Act and issued a show cause notice vide DIN No.ITBA/REV/F/REV1/2021-22/1041045949(1) dated 19.03.2022. The reasons to exercise the jurisdiction under section 263 of the Act, are given in the notice, which is reproduced below:

*“To  
M/s Balubhai Brijbhukhandas Choksi  
Mota Bazar, Navsari,  
Sir/Madam,  
Sub: Action u/s263 of the Income Tax Act, 1961, in the case of M/s Balubhai Brijbhukhandas Choksi (PAN:AAIFB9804B) A.Y. 2017-18-Show Cause notice –  
Regarding  
Please refer to the above,*

*2. The assessee is engaged in the jewellery business. The assessee filed his return of income for the A.Y. 2017-18 on 10.07.2017 declaring total income at Rs.3,11,330/-. The case was selected for complete scrutiny under CASS. The assessment u/s 143(3) of the I.T Act has been completed on 30.12.2019 and total income was determined at Rs.3,11,330/-.*

*3. One of the reasons for selection of case for scrutiny assessment is abnormal increase in cash deposits during demonetization period as compared to pre-demonetization period.*

*On perusal of the assessment record it was observed that the order is passed without making inquiries and verification which should have been made. Further the order is passed allowing relief without making inquiry into the claim.*

*The Assessing Officer has not even gone through the return of income filed by the assessee. For example during the demonetization the Government of India has started one scheme known as PMGKDS 2016 in which cash could have been deposited. As for this scheme following conditions were there*

*5. Subscription and Mode of investment in the Bonds Ledger Account-*

*(a) The deposits shall be accepted at all the Authorised Banks.*

*(b) The deposits shall be made in multiples of rupees one hundred.*

*(c) The deposit by a declarant shall not be less than twenty-five per cent of the undisclosed income declared under sub-section (1) of section 199C of the Taxation and investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016*

*(d) The entire deposit shall be made, in one or more payments, before filing declaration under sub-section (1) of section 199C ibid.*

*(e) The deposit shall be made in the form of cash or draft or cheque drawn in favour of the authorized bank accepting such deposit or by electronic transfer.*

*It is noted that assessee is a firm and the firm has accepted depositing Rs.12,50,000/- towards PMGKS 2016. However, the source of this amount has not been routed through the P & L account. How the taxes have been paid and accounted for and whether the balance amount has been taken to balance sheet is also not clear. The accounts are audited and it is not clear how the assets have been matched without routing the amount through the profit and loss accounts. This was a vital flaw and as firm as well as the chartered accountant who has audited the accounts should have been asked to explain. However the AO has not done that and instead adopted the higher GP method which is patently wrong. On this issue itself the assessment order needs to be revised.*

*It is apparent from the assessment record that during the demonetization period the assessee had deposited cash in form of Specified Bank Notes amounting to Rs.71,73,500/- on 10.11.2016 in its bank account maintained with Bank of Baroda. The assessee stated that the said cash was deposited during the demonetization periods are part of the business receipts/sales only. On verification of cash balance summary vis-à-vis computerized cash books available on record. It is noticed that the opening cash balance as on 1<sup>st</sup> day of April, 2016 was of Rs.4,08,590/- and closing cash-on-hand on 31.10.2016 was of Rs.34,28,400/-. It is noticed that from 1<sup>st</sup> April 2016 to September 2016, the assessee has shown total cash sales of Rs.14,01,757/- and has shown other receipts aggregating to Rs.5,02,385/-. However, during the period from 1<sup>st</sup> November, 2016 to 8<sup>th</sup> November, 2016 just before demonetization, the assessee*

has shown substantial amount cash receipt aggregating to Rs.24,61,851/-. From cash sales and other receipts from debtors aggregating to Rs.15,45,985/-, which was utilized for depositing cash in bank account during demonetization period. It is apparent from the month wise details of cash sales that the cash sales for the period from 1<sup>st</sup> November, 2016 to 8<sup>th</sup> November, 2016 has been abruptly jumped on higher side, whereas no such trend is seen in the corresponding period of immediate preceding year. Similarly, cash sales for the October, 2016 has been shown at Rs.22,46,640/- and other receipts from debtors have been shown at Rs.13,50,783/-. As such, the cash sales and other receipts from debtors have been increased abnormally in comparison to cash sales of October 2015. It is noticed that the assessee has not explained the exact reason for abnormal increase in cash sales during this particular period with supporting documentary evidence. On verification of case records, it is seen that only extract of ledger accounts and copy of bills have been placed on records by AO. No third party verification is carried out. The AO has failed to investigate the genuineness of sales and cash claimed to have received from the debtors. The AO has not examined the issue of abnormal increase in sales during pre-demonetization period as per the instruction/SOP issued by the CBDT from time to time and thereby the AO did not do the due diligence to corroborate and cross verify the details provided by the assessee or vital documentary evidence relating to preceding financial year to prove the genuineness of cash deposited by the assessee during demonetization period.

3.2 On verification of month-wise stock of gold and gold ornaments available on record, it is noticed that the assessee has claimed shortage of gold of 169.788 grams. It is noticed that the AO has not made any inquiry regarding shortage of gold and accepted the claim of assessee without examination of genuineness of assessee's claim.

3.4 Further also noticed from the month-wise stock gold and gold ornaments available on record, it is noticed that the assessee has shown average closing stock of gold and gold ornaments at 2224.485 grams upto September, 2016. However, the stocks of gold and gold ornaments have been decreased abnormally in the month of October 2016 and November 2016. The AO has not examined the abnormal decrease in stock just before demonetization period.

3.5 On verification of details regarding cash advance received from debtors during the period from 01.09.2016 to 30.11.2016 available on record, it is noticed that the assessee has claimed to have been received advances from different 9 parties aggregating to Rs.8,63,000/- and sales were made on later date after demonetization period. The assessee has submitted ledger account and copy of sales bills. However the AO has not made any inquiry and accepted the claim of the assessee without examination of veracity of assessee's claim.

4. Further total cash deposit of Rs.59,23,500/- made by the assessee has not been verified by the AO as per SOP issued by CBDT vide Instruction No.3/2017, dated 21.02.2017. Instruction No.04/2017 dated 03.03.2017, SOP date 15.11.2017, SOP dated 05.03.2019, internal Guidance Note issued vide F.No.225/145/2019-ITA-II, dated 13.06.2019. However, it seems that the AO, without verifying the genuineness of sale and without making any inquiry accepted the sales and cash

received from the debtors. The action of the AO was not in accordance with the Instruction/guidelines issued by CBDT (supra) to clean the black money deposited in SBN during demonetization period. The whole cash deposit of Rs.59,23,500/- (After giving benefit of Rs.12,50,000/- declared under PMGKY) remained unexplained which should have been charged by applying tax rate u/s 115BBE of the Act, but the AO has wrongly accepted the G.P. @ 17.54% declared by the assessee which is against the interest of Revenue.

5. According to Section 68 of the I.T. Act where any sum is found credited in the books of an assessee maintained for any previous year and the assessee offers no explanation about the nature and source of the same are not satisfactory in the opinion of AO, the sum so credited may be charged to income tax as the income of the assessee of that previous year. For the reference the Taxation Laws Act 2016 amendment in the Section 115BBE for A.Y 2017-18 w.e.f 01.04.2017 is reproduced as under:

“To sum up the total tax in the cases covered u/s 115BBE is worked out as under:

1. Tax on income u/s 115BBE 60%
  2. Surcharge 25% of such tax
  3. In case where income not included in return filed u/s 139 penalty u/s 271AAC 10% of such tax.
- a) The amount of Income Tax calculated on the income referred to in Sections 68, 69, 69A to 69D at the rate of 60% (plus surcharge @ 25% on such tax and cess, as applicable). Thus effectively the rate comes to 77.25% if such income is reflected in the Return of Income furnished u/s 139. It may be noted that if such income is not reflected in the Return of Income furnished u/s 139, then penalty of 10% on tax payable u/s 115BBE shall be imposed u/s 271AAC w.e.f A.Y 2017-18. In such a case the burden including penalty will come to 83.25%.
- b) The amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in sections 68, 69, 69A to 69D.
- c) Moreover, no deduction in respect of any expenditure or allowance (or set off of any loss) shall be allowed to the assessee under any provision of the income-tax Act in computing his income referred to in Sections 68,69A to 69D.

6. In view of the above, you are therefore, required to show-cause as to why the said assessment order be not set-aside by invoking the provisions of section 263 of I.T. Act, 1961. You are request to submit your reply on or before 25.03.2022. ”

5. In response to the notice, the assessee submitted his reply dated 25.03.2022. The Ld. PCIT after considering the reply of the assessee observed that in the assessee`s case in the Audit Report submitted along with the return while explaining the method of valuation of stock it is stated that it is at lower of

cost (average cost price of the year or net realizable value). So the method described is such a vague method and Assessing Officer has not verified whether the stock has been valued properly or not. The assessee has shown loss of 170 gram of gold in two days i.e. on 10.09.2016 and 28.02.2017, the value of loss is more than Rs.4.5 lakhs but no question has been asked by Assessing Officer. The purchases are inclusive of VAT, however sales do not show VAT. This fact is also ignored by the Assessing Officer.

6. The Id PCIT also observed that assessee has shown cash sales amounting to Rs.47,46,723/- and deposited an amount of Rs.7,75,850/- during October to 8.11.016, however in the corresponding previous year the cash sales was negligible.

The Id PCIT thus noted that these above abnormalities have been ignored by the Assessing Officer. Thus, Id PCIT noted that assessment order is not based on proper appreciation of facts and therefore it is erroneous in nature as vital aspects like valuation of closing stock has been ignored therefore the order is also prejudicial to the interest of revenue and therefore Id PCIT set aside the assessment order passed u/s 143(3) of the Act dated 30.12.2019 and directed the Assessing Officer to frame the assessment **De novo assessment** after making proper enquiries on aforesaid issues.

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

8. Shri Hiren M. Diwan, Learned Counsel for the assessee, at the outset submitted that in assessee's case, the Assessing Officer made adequate inquiries, in respect of issues raised by Id PCIT, by issuing notice u/s 142(1) of the Act. In response to above notice u/s 142(1) of the Act, the assessee has submitted his reply vide letter dated 06.05.2019, which is placed at paper book pages 1 to 4. Besides, the Assessing Officer has discussed the issue raised by Id PCIT, in the assessment order itself, therefore Id Counsel contended that Assessing Officer made deep enquiry about the issue raised by Id PCIT in his revision order. In addition to this, Ld. Counsel also submitted audited balance-sheet and the profit

and loss for A.Y 2017-18, which is placed at paper book pages 17-28. The assessee also submitted copy of specimen sales bills, which is placed at Paper Book pages 29-30. Based on these documents and evidences, the Ld. Counsel contended that Assessing Officer has made adequate inquiries during the assessment proceedings.

9. Shri Diwan, also pleaded that the issue under consideration is squarely covered by the order of Co-ordinate Bench of this Tribunal in the case of K.N. Diamond and Labdhi Jewellerd Pvt. Ltd. vs. PCIT,Valsad in ITA Nos.104 & 106/SRT/2022 dated 22.12.2022, wherein it was held as follows:

*“15. We have considered the rival submission of both the parties and have gone through the order of Assessing Officer as well as ld. PCIT passed under section 263 of the Act. Before advertng to the facts of the present case, we may refer the scope of provisions of section 263 of Income tax Act. The Supreme Court in case of Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 832 (SC), held that the prerequisite for the exercise of jurisdiction by the Commissioner suo-motu is that the order of the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer 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 Income-tax Officer 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 section 263(1) of the Act. It can be exercised only when an order is erroneous, the section 263 will be attracted.*

*16. Further, Hon'ble Bombay High Court in CIT Vs Gabriel India Ltd (233 ITR 108 Bom /71 Taxman 585) held that the power of suo-motu revision under sub-section (1) of section 263 is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision under this sub-section, viz., (i) the order is erroneous; and (ii) by virtue of the order being erroneous prejudice has been caused to the interests of the revenue. It has, therefore, to be considered firstly as to when an order can be said to be erroneous. One finds that the expressions 'erroneous', 'erroneous assessment' and 'erroneous judgment' have been defined in Black's Law Dictionary. According to the definition, 'erroneous' means 'involving error; deviating from the law'. 'Erroneous assessment' refers to an assessment that deviates from the law and is, therefore, invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the Assessing Officer in fixing the amount of valuation of the property. Similarly, 'erroneous judgment' means 'one rendered according to course and practice of Court, but contrary to law, upon mistaken view of law, or upon erroneous application of legal principles. The Hon'ble High Court also held that from the definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance*

with law. If an assessing officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualize a case of substitution of the judgment of the Commissioner for that of the ITO, who passed the order, unless the decision is held to be erroneous. Cases may be visualized where the ITO 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 estimate himself. The Commissioner, on perusal of the records, 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 figure higher than the one determined by the ITO. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the ITO 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 simply because the Commissioner does not feel satisfied with the conclusion. It may be said in such a case that in the opinion of the Commissioner the order in question is prejudicial to the interests of the revenue. But that by itself will not be enough to vest the Commissioner with the power of suo-motu revision because the first requirement, viz., that the order is erroneous, is absent. Similarly, if an order is erroneous but not prejudicial to the interests of the revenue, then also the power of suo-motu revision cannot be exercised. Any and every erroneous order cannot be the subject-matter of revision because the second requirement also must be fulfilled. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed. Therefore, in order to exercise power under section 263(1) there must be material before the Commissioner to consider that the order passed by the ITO was erroneous insofar as it is prejudicial to the interests of the revenue and that it must be an order which is not in accordance with the law or which has been passed by the ITO without making any enquiry in undue haste. An order can be said to be prejudicial to the interests of the revenue if it is not in accordance with the law in consequence whereof the lawful revenue due to the State has not been realized or cannot be realized. There must be material available on the record called for by the Commissioner to satisfy him prima facie that the aforesaid two requisites are present. If not, he has no authority to initiate proceedings for revision. Exercise of power of suo-motu revision under such circumstances will amount to arbitrary exercise of power. It is well-settled that when exercise of statutory power is dependent upon the existence of certain objective facts, the authority before exercising such power must have materials on record to satisfy it in that regard. If the action of the authority is challenged before the Court, it would be open to the Courts to examine whether the relevant objectives were available from the records called for and examined by such authority. The decision of the ITO could not be held to be '**erroneous**' simply because in his order he did not make an elaborate discussion in that regard. Moreover, the Commissioner himself, even after initiating proceedings for revision and hearing the assessee, could not say that the allowance of the claim of the assessee was erroneous, he simply asked the ITO to re-examine the matter, which was not permissible.

17. Again advertng to the facts of the present case. As recorded above during the assessment the assessing officer examined the issue in depth as recorded in para -2 (supra). The assessing officer noted that assessee has made cash deposited of Rs.77.00 lakhs in HDFC bank during demonetization period. Show cause notice to explain the deposit of cash was issued to the assessee and was asked to furnish the details regarding source of such huge cash amount during such demonetization period. The assessee in response such show cause notice submitted that cash was deposited from the sales made during the year. We find that the assessee furnished the required details and contended that Rs.29,31,752/- was deposited in cash from the sale in the month of October, 2016 and Rs.49,57,789/-was on account of cash sale from the period of 01.11.2016 to 08.11.2016 respectively. Further, the Assessing Officer compared such details with earlier year and find certain discrepancy. The Assessing Officer issued fresh show cause notice to the assessee to furnish complete details of customers to whom the sales were made in cash from 01.10.2016 to 08.11.2016 and was asked to furnish supportive evidence to explain the genuineness of such sales for such period. The assessee filed its reply, vide reply dated 17.12.2019. The assessee in its reply explained that there is nothing abnormal about cash sales, which took place in the current year, just there was a currency note demonetization during the assessment under consideration should not lead to presumption that this transaction is abnormal and suspicious. The assessee provided the details with date of sales, name of customers, address of customers, description of sales gross weight of jewellery, diamond weight and amount utilized on such sales. The assessee took plea that as per Rule 114B of the Income Tax Rules, 1963, the assessee is not under obligation to obtain PAN of the customers, in case the sale was not exceeding rupee two lakh in any of the case. The assessee stated that independent inquiry may be made. We find that assessee also provided sales made in the month of October, 2016 VAT returns, filed before VAT authority under statutory obligation, copy of VAT return of the month of October and November, 2016. The assessee also furnished cash book, sale book for the month of October and November, 2016, wherein stock register showing the entries of sales and names and complete address of the customers to whom cash sales were made. The assessee stated that there is no scope of any doubt that assessee has furnished names and addresses of such customers, sales invoices, statutory VAT return. We further find that after considering the material before assessing officer, the assessing officer made addition of 10% of the total cash deposit during the month of October and November 2016. On the basis of aforesaid factual discussions and on the basis of details called for by Assessing Officer, we find that the Assessing Officer after calling the details of cash deposit, while making addition of 10% of cash deposit of Rs. 77.00 lacs, being income component, which is a reasonable addition. The addition made by assessing officer is plausible and legally sustainable view, which cannot be branded as erroneous.

18. The coordinate bench of Rajkot Tribunal in Premji Valji & Sons in ITA NO. 125/Rjt) 2022, while considering the appeal against the order under section 263, wherein the assessment order was revised by ld PCIT on the similar issue of deposits of cash during demonetization period held that when the assessing officer made inquiries and after considering the material accepted the genuineness of the claim of the assessee, the assessment order is not erroneous. However, the appeal in hand is on better footing, as the assessing officer has

made addition of 10% of such deposits to tax the profitability as if such transaction was a result of inflated sales.

19. The Hon'ble Jurisdictional High Court in *Aryan Arcade Ltd., Vs PCIT* (2019) 412 ITR 277 (Gujarat) held that merely because Commissioner held a different belief that would not permit him to take the order in revision, it if further held that when Assessing Officer made full enquiry, he made up his mind, the notice of revision is not valid. In *CIT Vs Nirma Chemical Works (P) Ltd* (supra), the Hon'ble High Court also held that when assessing officer after making due inquiries had adopted one of the view and granted partial relief, merely because Commissioner took a different view of the matter, it would not be sufficient to permit commissioner to exercise his powers under section 263. The Hon'ble Court in para 22 of its order on the objection of the revenue that there is no discussion of the issue in the assessment order held that the contention on behalf of the revenue that the assessment order does not reflect any application of mind as to the eligibility or otherwise under section 80-I of the Act requires to be noted to be rejected. An assessment order cannot incorporate reasons for making/granting a claim of deduction. If it does so, an assessment order would cease to be an order and become an epic some. The reasons are not far to seek. Firstly, it would cast an almost impossible burden on the Assessing Officer, considering the workload that he carries and the period of limitation within which an order is required to be made; and, secondly, the order is an appealable order. An appeal lies, would be filed, only against disallowances which an assessee feels aggrieved with.

20. Thus, in view of the aforesaid factual and legal discussions, in our view, the investigation conducted and the view adopted by the assessing officer in the present case, if not accepted by the Ld. PCIT, is nothing but change of opinion. It is settled position in law that no revision of assessment order is permissible on mere change of opinion.

21. As we have already held that on the basis of material before the assessing officer, he took reasonable, plausible and legally sustainable view, which cannot be branded as erroneous. There is no doubt that while accepting the claim in the assessment, there may be some loss of revenue, tax can be levied only with the authority of law, and 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 unless the view adopted by assessing officer permissible in law. Once the assessing 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 assessing officer is unsustainable in law. In our view the observation of Ld. PCIT held that Assessing Officer passed assessment order without making proper inquiries and verifications and cash sales were not made in accordance with law as per Instruction of Central Board of Direct Taxes Circular No.4/2017 dated 03.03.2017, or the source of cash deposits remained unexplained, is not correct. In the result, the grounds of appeal raised by the assessee is allowed.

22. In the result, the appeal of the assessee is **allowed.**”

10. Thus, Ld. Counsel contended that the issue raised by Ld. PCIT is squarely covered in favour of assessee therefore the order of Ld.PCIT may be quashed.

11. On the other hand, Learned CIT-DR for the Revenue submitted that assessee has not explained his source of cash deposit during the demonetization scheme and assessee has also not submitted the details of stock before the assessing officer. The Assessing Officer has not made inquiry in respect of shortage of cash and closing stock valuation, therefore order passed by Assessing Officer is erroneous and prejudicial to the interest of revenue. The Ld. DR for the Revenue also pointed out that Assessing Officer has not examined the issue of abnormal cash deposit and no explanation about the negative stock has been submitted by assessee during the assessment stage, hence order passed by ld PCIT may be upheld.

12. Per contra, Ld. Counsel submitted that assessee has explained the issue in respect of increased sales and closing stock, which is placed at Paper Book page no.1 and during the assessment proceedings, the Assessing Officer has raised same query as raised by the Ld.PCIT and assessee has submitted his reply during the assessment stage, which is placed at PB page-6, therefore the order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of revenue.

13. We have heard the rival parties and have gone through the material placed on record. We note that Assessing Officer has framed the assessment order u/s 143(3) dated 31.12.2019, wherein the issue raised by Ld. PCIT has been discussed in para-7 and 8 of the assessment order, which is reproduced below:

*“7. In this case, the assessee had deposited substantial amount of cash during demonetization period (Rs.71,73,500) and had also submitted cash book, stock register and sale & purchase register with bill and vouchers. Further, the assessee had submitted copy of quarterly VAT return showing the turnover. Thus, the case was covered under para (ii) and (iii) of the directions issued.*

*8. In the matter, it was also noted that for A.Y 2017-18 the assessee had shown G.P. @ 17.54% in comparison to G.P shown for A.Y. 2016-17 @ 13.29% and for*

A.Y 2015-16 @ 12%. Thus, there was increase in G.P. Further, the assessee had also disclosed an amount of Rs.12,50,000/- in PMGKY, 2016.”

14. Therefore, we note that Assessing Officer has made adequate inquiries in respect of the issues raised by the Ld. PCIT.

15. We note that during the assessment stage, the Assessing Officer has issued notice under section 142(1) of the Act, which is placed at paper book page no.1, wherein, the assessing officer made enquiry about the issue raised by Id PCIT. The notice issued by Assessing Officer under section 142(1) is reproduced below for ready reference:



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE INCOME TAX OFFICER  
WARD 1, NAVSARI

To, BALUBHAI BRIJBHUKHANDAS CHOKSI MOTA BAZAR MOTA BAZAR, NAVSARI NAVSARI NAVSARI 396445, Gujarat India	
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PAN: AAIFB9804B	AY: 2017-18	Dated: 29/01/2019	Notice No : ITBA/AST/F/142(1)/2018-19/1014920047(1)
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**Notice under Sub Section (1) of Section 142 of the Income Tax Act, 1961**

Sir/ Madam/ M/s,

In connection with the assessment for the assessment year 2017-18 you are required to:

- Furnish or cause to be furnished on or before 06/02/2019 at 04:15 PM the accounts and documents specified overleaf.
- Furnish and verified in the prescribed manner under Rule 14 of I.T. Rules 1962 the information called for as per annexure and on the points or matters specified therein on or before 06/02/2019 at 04:15 PM.
- The above mentioned evidence/information is to be furnished online electronically in 'E-Proceeding' facility through your account in 'e-filing' website of Income Tax Department.
- Para(s) (a) to (c) are applicable if you have an account in e-filing website of Income Tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available).
- In cases where order has to be passed under section 153A/153C of the Income Tax Act, 1961 read with section 143(3), assessment proceedings would be conducted manually.

Yours faithfully,

PRAKASH K  
WARD 1, NAVSARI

**ANNEXURE**

Your case has been selected for scrutiny on the ground of Abnormal increase in cash deposits during demonetisation period as compared to predemonetisation period. You are requested to offer your explanation with documentary evidences in this regard. In connection with the assessment Proceedings in your case, you are requested to furnish the following details/information:-

1. A brief note on the activities carried out by assessee specifying the goods traded, brand name etc. during the year under consideration.
2. Complete address of your offices, branches and godowns along with telephone Numbers, if any.
3. Furnish the address of the premises where the books of account have been kept and maintained during the year.
4. Copy of returns of income filed along with computation of income, P&L A/c, Balance Sheet and Audit Report for the A.Y. 2016-17 & 2017-18.
5. Details of all bank accounts maintained by you along with bank a/c Number, branch, address and bank statements for the period from 01/04/2016 to 31/03/2017.
6. Copy of cash book and bank book maintained during the year under consideration.
7. Give following details for deposits, loans and advances given. Whether any money has been advanced free of interest? Please lead evidence to show business purpose for advancing such interest free loans/ advances

No.	Name of person	Advance amount	Date from	Date to	Interest rate	Interest accrued	Purpose
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8. Copy of TDS returns filed along with annexure.

9. Name and complete address of the parties from whom / to whom purchases and sales exceeding Rs.1,00,000/- were made during the year. Furnish copies of a/c with contra a/c in respect of purchase / sale exceeding Rs 1.00 lacs.

10. Whether day to-day stock register/record is maintained? If yes, given month wise details of purchases and sales in quantity and value. If not, then state as to how they are verifiable vis-à-vis purchases/sales? Also, furnish details of moth-wise purchases and sales made during the year under consideration in terms of quantity and value with basis for determining the same.

Month	Opening stock	Purchase		Sales		Closing stock
		Value	Quantity	Value	Quantity	
1	2	3	4	5	6	7

11. Details of sales, GP, NP for current year & 3 preceding years in following format

A.Y.	Total Sales	Gross Profit (GP)	Net Profit (NP)	GPM (%)	NPM (%)

12. Details of security pledged in respect of secured loans and for overdraft facilities along with copy of sanction letter of bank in this regard. Whether the securities pledged have been reflected in balance sheet.

13. Confirmed copy of accounts for unsecured loans/ advances received giving name, PAN, address, assessment details. Also furnish the computation of income, income & expenditure a/c and balance sheet of persons giving new loans/ advances to prove their creditworthiness.

16. In response to above notice u/s 142(1) of the Act, the assessee has submitted his reply vide letter dated 06.05.2019, which is placed at paper book pages 1 to 4. From these facts, it is abundantly clear that assessing officer made adequate enquiry during the assessment proceedings.

17. We note that during the assessment year under consideration i.e. A.Y. 2017-18, the assessee has shown gross profit @ 17.54% in comparison to gross profit shown in the preceding year A.Y. 2016-17 @ 13.29%, and for A.Y. 2015-16 @12%. Therefore on account of increased sales, the assessee has shown his increased gross profit @ 17.54% and therefore disclosed additional income earned during the assessment year under consideration and hence Assessing Officer has examined this issue and applied his mind and then after allowed the claim of the assessee. Therefore, Assessing Officer after examining the increase in the gross profit of assessee and after taking into account that the assessee had disclosed an amount of Rs.12,50,000/- in the PMGKY,2016, and allowed the claim of assessee.

18. We note that 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**".

19. Taking note of the aforesaid dictum of law laid down by the Hon'ble Apex Court, we note that jurisdictional condition as required u/s 263 of the Act to revise the order of the Assessing Officer is absent in assessee's case, since the order of the Assessing Officer cannot be termed as '**erroneous as well as prejudicial to the interest of the revenue**'. The whole cash deposit of Rs.59,23,500/- (After giving benefit of Rs.12,50,000/- declared under PMGKY), the AO had in fact enquired the issue raised by Id PCIT. The Assessing Officer made adequate enquiry in respect of closing stock also. Therefore, we are of the considered opinion that Assessing Officer's order cannot be termed as *erroneous as well as prejudicial to the interest of the revenue* and therefore, jurisdictional condition as prescribed by statute for invoking revisional jurisdiction is absent and therefore, we are inclined to quash the impugned order of the Id. PCIT.

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

Order is pronounced on 17/04/2023 by placing record on notice board.

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

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

सूरत /Surat

दिनांक/ Date: 17/04/2023

Dkp Outsourcing Sr.P.S

**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

**// True Copy //**

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat