

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAJKOT” BENCH, RAJKOT**

[Conducted through E-Court at Ahmedabad]

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 31/Rjt/2022
(निर्धारण वर्ष / Assessment Year : 2017-18)

Devdeep Textiles Dhoraji Road, Nr. Railway Fatak, Jetpur, Gujarat - 360370	बनाम/ Vs.	The Principal Commissioner of Income Tax -1 Rajkot-360001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAHFD7020N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Rushit Sheth, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Shramdeep Sinha, CIT.D.R.

सुनवाई की तारीख / Date of Hearing	17/04/2023
घोषणा की तारीख /Date of Pronouncement	20/04/2023

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal at the instance of the assessee is directed against the order dated 04.02.2022 passed under Section 263 of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) by the Principal Commissioner of Income Tax, Rajkot-1 (hereinafter referred to as ‘the PCIT’), arising out of the order

dated 19.10.2019 passed by the Learned ACIT, DC/AC Circle-1(2), Rajkot 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 firm having trading activity of printed saree and dress material, filed its return of income for A.Y. 2017-18 on 13.07.2017 declaring total income at Rs.4,91,05,510/- after a deduction of Chapter VI-A of Rs.25,500/-. The case was selected for limited scrutiny through Computer aided Scrutiny Selection (in short 'CASS') on the issue of expenses incurred for earning exempt income. Notice under Section 143(2) of the Act dated 10.08.2018 was served upon the assessee followed by notice under Section 142(1) of the Act dated 13.06.2019 asking for certain details in regard to the issue involved in the matter whereupon required details were filed on 19.06.2019. Upon perusal of such details furnished by the assessee, the Ld. AO ascertained that the assessee has not earned any exempt income during the period of assessment and accepted the returned income. Subsequently, the Ld. PCIT raised the issue of excess remuneration paid of Rs.74,08,119/-. As the particular fact was not examined by the Ld. AO, the order passed by the Ld. AO dated 19.10.2019 accepting the returned income found to be erroneous and in as much as it is prejudicial to the interest of the Revenue. He, therefore, set aside the issue to the file of the Ld. AO for assessment afresh after conducting necessary verification and enquiries and upon providing opportunity of being heard to the assessee.

4. At the very threshold of the matter, the Ld. Counsel appearing for the assessee submitted before us that since the matter was selected for limited scrutiny on the issue of expenses incurred for earning exempt income which was, in turn, examined by the Ld. AO and found to be not true and thereupon the returned income was accepted, the same cannot be reopened by exercising jurisdiction under Section 263 of the Act by the Ld. PCIT finding the order erroneous and prejudicial to the interest of the Revenue.

5. Ld. DR, on the other hand, failed to controvert such submissions made by the Ld. Counsel appearing for the assessee. It is a fact that the order passed under Section 143(3) of the Act in limited scrutiny was only in respect of the issue of expenses incurred for earning exempt income which was finalized by the Ld. AO upon making requisite enquiry in the matter and finally accepted the returned income filed by the assessee. The Ld. PCIT failed to observe any negative finding in regard to such issue involved in the said scrutiny proceeding. Therefore, the order passed by the Ld. AO under Section 143(3) of the Act dated 19.10.2019 cannot be said to be erroneous so far as it is prejudicial to the interest of Revenue. The power vested with the Ld. PCIT under the provision of Section 263 of the Act is not sufficient enough to reopen the scrutiny proceeding on a different issue than which was posed to the Ld. AO in limited scrutiny. We, therefore, find substance in the submissions made by the Ld. AO. We also find that the Ld. DR has failed to bring any such judicial pronouncement in support of the order passed by the Ld. PCIT under Section 263 of the Act in the present facts and circumstances of the case. We find that the power vested with Ld. PCIT in terms of the provision of Section 263 of the Act does not permit him to hold the order passed under Section 143(3) of the Ld. AO erroneous and prejudicial to the

interest of Revenue in the instant case. In that view of the matter, we do not hesitate to hold that the order passed by the Ld. PCIT under Section 263 of the Act setting aside the assessment framed under Section 143(3) of the Act as erroneous and prejudicial to the interest of the Revenue is without jurisdiction, bad in law and void ab initio. The same is, thus, quashed.

6. In the result, assessee's appeal is allowed.

This Order pronounced on 20/04/2023

Sd/-

(WASEEM AHMED)

ACCOUNTANT MEMBER

Ahmedabad; Dated 20/04/2023

S. K. SINHA

True Copy

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, Ahmedabad
6. गार्ड फाईल / Guard file.

Sd/-

(MADHUMITA ROY)

JUDICIAL MEMBER

By order/आदेश से,

Deputy/Asstt. Registrar
ITAT, Rajkot