

**IN THE INCOME TAX APPELLATE TRIBUNAL “DB” BENCH: PATNA  
VIRTUAL HEARING AT KOLKATA**  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No.179/PAT/2022  
Assessment Year: 2017-18**

Niraj Kumar Suman (PAN: BQSPS 8910 A)	Vs.	PCIT, Patna-1, Patna
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	17.04.2023
Date of Pronouncement / आदेश उद्घोषणा की तिथि	26.04.2023
For the Appellant / निर्धारिती की ओर से	Shri Amol Sinha, Advocate
For the Respondent / राजस्व की ओर से	Smt. Rinku Singh, CITDR

**ORDER/ आदेश**

**Per Rajesh Kumar, AM:**

This is the appeal preferred by the assessee against the order of the Ld. Principal Commissioner of Income Tax, Patna-1 [hereinafter referred to as ‘Ld. PCIT’] passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) dated 12.03.2022 for the assessment year 2017-18.

2. The only issue raised by the assessee is against the wrong assumption of jurisdiction u/s 263 of the Act by the PCIT in respect of an item of income which has

been offered to tax under Direct Tax Vivad-se-Viswas Scheme, 2020 and form 5 has already been issued.

3. Facts in brief are that the PCIT exercised the jurisdiction setting aside the assessment order passed by the AO on an issue which has been examined by AO during assessment proceedings and an addition was also made of Rs. 34,18,139/- during the assessment proceedings. During the assessment proceedings, the AO has issued notice u/s 133(6) of the Act to the bank and called for the bank statements of the assessee and it is only on the basis of the bank statement, the AO has made the addition. Thereafter the assessee has gone into VSVS scheme and form 5 duly issued after depositing the tax as per form 3.

4. The Ld. Counsel for the assessee submitted before us that the jurisdiction exercised by the PCIT is invalid and bad in the eyes of law as the assessee has already settled dispute by going into VSVS scheme 2020. Thus the Ld. Counsel prayed that order passed u/s 263 of the Act may kindly be quashed. The Ld. A.R relied on the decision of Hon'ble Madras High Court in the case of Gopalakrishnan Rajkumar vs. PCIT in [2022] 140 taxmann.com 394 (Mad) in para 46 in defense of his arguments.

5. The Ld. D.R on the other hand relied on the order of PCIT.

6. After examining the facts on record and having considered rival contentions, we observe that the PCIT has exercised jurisdiction in respect of an issue on which the AO has already made an addition in the assessment order after calling for information from the bank of the assessee by issuing notice u/s 133(6) of the Act and analyzing the bank statement furnished and the debit entries therein. Thereafter we note that the assessee has gone into VSVS scheme in respect of addition made by AO and Form 5 has already been issued by the competent authority under the Direct Tax Vivad-se-Viswas Scheme, 2020. In our opinion, the PCIT cannot invoke the revisionary jurisdiction u/s 263 of the Act where the assessee has already availed the benefit of VSVS scheme by paying taxes under the said scheme. The case of the assessee find support from the decision of Hon'ble Madras High Court in the case of

Gopalakrishnan Rajkumar (supra). In view of this fact, we are inclined to set aside and quash the revisionary jurisdiction exercised by PCIT.

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

Order is pronounced in the open court on 26<sup>th</sup> April, 2023

Sd/-

(Sonjoy Sarma /संजय शर्मा)  
Judicial Member /न्यायिक सदस्य

Sd/-

(Rajesh Kumar / राजेश कुमार)  
Accountant Member / लेखा सदस्य

Dated:26<sup>th</sup> April, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Niraj Kumar Suman, A, Block Plot No. 23, Chattarpur Extension, New Delhi, East Delhi-110074
2. Respondent – PCIT, Patna-1, Bihar
3. DR, Patna Bench, Patna

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By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata