

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : H : DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.914/Del/2022
Assessment Year: 2017-18

Bimla Devi,
H.No.398/12, Parav Mohalla,
Samalkha,
Panipat,
Haryana – 132101.

Vs ITO,
Ward 1,
Panipat,
Haryana – 124 001.

PAN: AALCA0777A

(Applicant)

(Respondent)

Assessee by : Shri Amit Kaushik, Advocate
Revenue by : Shri Raghunath, Sr. DR

Date of Hearing : 04.05.2023
Date of Pronouncement : 09.05.2023

ORDER

PER M. BALAGANESH, AM:

This appeal in ITA No.914/Del/2022 for AY 2017-18 arises out of the order of the Principal Commissioner of Income Tax, Rohtak [hereinafter referred to as 'Id. PCIT', in short] in DIN & Order No.ITBA/REV/F/REV5/2021-22/1042056625(1) dated 30.03.2022 against the order of assessment passed

u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.11.2019 by Income-tax Officer, Ward-3, Panipat (hereinafter referred to as 'Id. AO').

2. The only issue to be decided in this appeal is as to whether the Id. PCIT was justified in invoking revision jurisdiction u/s 263 of the Act in the facts and circumstances of the case.

3. We have heard the rival submissions and perused the materials available on record. We find that assessee is an individual and engaged in the business of developing properties. The return of income was filed for the A.Y. 2017-18 on 05.08.2017 declaring total income of Rs 19,69,150/- plus agricultural income of RS 90,510/-. The case of the assessee was selected for limited scrutiny for verification of issue of 'Cash deposit during the year'. In the course of assessment proceedings, the Id. AO issued multiple notices u/s 142(1) of the Act on various dates wherein the very same fact of cash deposit made during the demonetization period was sought to be examined. Infact the Id. AO had even stated that the assessee had deposited a sum of Rs 1,47,95,841/- in the bank during demonetization period and sought details for the same for explaining the sources thereon. The assessee replied that no such cash was deposited by the assessee during the demonetization period. The assessee furnished the entire bank statements before the Id. AO in this regard. The assessee also stated that only a sum of Rs 24,28,000/- was deposited in cash during the year and gave the sources for the same as under:-

Opening balance of cash as on 01.04.2016	- Rs 3,28,000/-
Cash withdrawals made	- Rs 5,00,000/-
Gift received from family members and relative	- Rs 16,00,000/-

4. The Id. AO agreed to the contention of the assessee that no cash deposit of Rs 1,47,95,841/- as mentioned in ITS data was made by the assessee. With regard to other cash deposits made by the assessee in the sum of Rs 24,28,000/-, the Id. AO examined the explanation of the assessee vis a vis the bank statements submitted thereon together with the affidavits of the donors for gifts received. As far as opening cash balance of Rs 3,28,000/- is concerned, the assessee stated that she had been filing her income tax returns regularly for more than 10 years. The Id. AO however, did not agree to this contention alone of the assessee and proceeded to make an addition towards cash balance in the sum of Rs 75,000/- in the assessment completed u/s 143(3) of the Act on 30.11.2019. This assessment was sought to be revised by the Id. PCIT by invoking his revision jurisdiction u/s 263 of the Act on the ground that the Id. AO had not made detailed enquiries with regard to the source of cash deposits made by the assessee during the year. Accordingly, he treated the order passed by the Id. AO as erroneous and prejudicial to the interest of the revenue. Aggrieved by this revision order u/s 263 of the Act passed by the Id. PCIT, the assessee is in appeal before us.

5. At the outset, we find that out of the three sources of availability of cash balances with the assessee which would explain the cash deposits, the Id. PCIT has grievance only with the cash gifts received from family members and relatives in the sum of Rs 16,00,000/-. The main grievance of the Id. PCIT is that out of gifts received from 5 donors, 3 were having income below taxable limits and moreover none of the 5 persons had corresponding withdrawals to make those gifts to the assessee. The Id. PCIT in his show cause notice issued u/s 263 of the Act stated that **no enquiry** was made by the Id. AO in this regard. The assessee filed a reply to the said show cause notice and also appeared for a personal hearing on 21.03.2022 and explained the contentions to

the Id. PCIT. This fact is even recorded by the Id. PCIT in para 4 of his order. We find that the assessee had explained that she had received Rs 7 lakhs as gift from her two sons and Rs 9 lakhs as gift from her brothers. The assessee submitted copy of bank statements, income tax return acknowledgements and affidavits of close relatives , which were also filed before the Id. AO. The assessee also submitted that the said cash gifts were received for the purpose of purchasing the residential plot for construction of her house. It was specifically submitted that 3 of the 5 donors had corresponding cash withdrawals which would enable them to give such gifts to the assessee. The Id. PCIT merely dismissed this explanation of the assessee that the donors having sufficient bank balances in their kitty could have advanced the gift to the assessee by way of banking channels and there was no need to withdraw money from their bank account and give cash gift to the assessee. The Id. PCIT also stated that the 3 brothers of the assessee could not have given the gift of Rs 3 lakhs each considering their economic status. Accordingly, the **Id. PCIT concluded that the receipt of cash gifts of Rs 16 lakhs ought to have been treated as unexplained cash credit of the assessee to be taxed u/s 68 of the Act.** The Id. PCIT concluded that **adequate enquiries with regard to the cash gifts received were not conducted by the Id. AO** , which makes his order erroneous and prejudicial to the interest of the revenue. The Id. PCIT also invoked the provisions of Explanation 2 to section 263 of the Act directly in para 11 of his order. It is pertinent to note that the said Explanation was not invoked by the Id. PCIT in the show cause notice issued u/s 263 of the Act and no opportunity was given to the assessee in that regard in the entire revision proceedings. The final observations of the Id. PCIT in para 11 of his order are reproduced hereunder for the sake of convenience :-

“11. Keeping in view of the facts and circumstances of the case as discussed above, it is observed that the AO had passed the order dated 30.11.2019 in a very casual manner without due diligence and without conducting proper enquiries in respect of cash deposit. Therefore, the assessment completed u/s 143(3) of the Act is erroneous so far as it is prejudicial to the interest of the revenue in terms of provisions of section 263 of the Act, especially in view of Explanation 2 inserted by the Finance Act, 2015 w.e.f. 01.06.2015. Accordingly, the assessment order passed by the AO on 30.11.2019 u/s 143(3) of the Act for the A.Y. 2017-18 is partially set aside with the direction to pass an order accordingly, in accordance with law keeping in view the observations made above and after affording reasonable opportunity of being heard to the assessee.”

6. We find from the paper book filed by the assessee before us, detailed enquiries were indeed conducted by the Id. AO in the assessment proceedings with regard to the source of cash deposits made during the year. The following documents would prove the same :-

a) Notice u/s 143(2) of the Act dated 11.08.2018 selecting the return for limited scrutiny specifically to examine the 'cash deposit during the year', enclosed in pages 20 to 23 of the paper book.

b) Notice u/s 142(1) of the Act dated 01.03.2019 issued by the Id. AO wherein vide question no. 5 thereon, the assessee was specifically asked to furnish the source of cash deposits made during the year under consideration. This is enclosed in pages 24 to 25 of the paper book.

c) Another notice u/s 142(1) of the Act dated 18.07.2019 issued by the Id. AO sending reminder to the assessee to furnish the details already called for. This is enclosed in pages 26 to 27 of the paper book.

d) Yet another notice u/s 142(1) of the Act dated 12.11.2019 issued by the Id. AO specifically asking about the source of cash deposit of Rs 1,47,95,841/- made in Canara Bank, Samalkh during the demonetization period but no such transaction was found to have been reported in the ITR

wherein specific column have been provided. This is enclosed in pages 28 to 29 of the paper book.

e) Reply of assessee vide letter dated 18.11.2019 furnishing all the details called for by the Id. AO in the aforesaid notices. The said reply is enclosed in Pages 30 to 39 of the paper book. In the said reply, the assessee disclosed the various bank accounts held by her together with the relevant account numbers . The bank statements of both the bank accounts were furnished along with the said reply. The assessee denied having made any deposit of cash during demonetization period in the sum of Rs 1,47,95,841/- in Canara Bank. The assessee even stated that not even a single rupee was deposited during the demonetization period and also enclosed the bank statement in support of her contentions. The assessee further stated that only a sum of Rs 24,28,000/- was deposited in cash during the year and explained the source for the same as explained supra.

f) Further another notice u/s 142(1) of the Act dated 21.11.2019 was issued by the Id. AO asking for the source of cash deposit of Rs 24,28,000/- made by the assessee. This is enclosed in Pages 41 to 42 of the paper book.

g) The assessee filed a reply dated 26.11.2019 before the Id. AO explaining the complete sources of cash deposits made in the sum of Rs 24,28,000/-. In this reply, the assessee specifically stated with regard to receipt of cash gifts as under:-

<u>Name of the Donor</u>	<u>Relationship</u>	<u>Amount</u>
Jai Bhagwan, S/o Gian Chand	Brother	3,00,000
Vinod Kumar, S/o Gian Chand	Brother	3,00,000

Rajesh Kumar, S/o Gian Chand	Brother	3,00,000
Lalit Kumar, S/o Sohan Lal	Son	3,00,000
Deepak Kumar, S/o Sohan Lal	Son	4,00,000

The assessee furnished the affidavits of Shri Jai Bhagwan, Shri Vinod Kumar and Shri Rajesh Kumar together with their income tax returns, copy of computation of income , copy of PAN card, copy of aadhar card and copy of bank statement which proves that the income of the donors were not deposited in their respective savings bank account and was kept as cash in hand before giving cash gift to the assessee. The assessee also furnished the affidavits of Shri Lalit Kumar and Shri Deepak Kumar together with their copy of income tax returns, copy of computation of income, copy of PAN card, copy of aadhar card and copy of bank statement showing the withdrawal of cash from bank before making gift to their mother i.e assessee. The said reply together with all the supporting documents are enclosed in pages 42 to 81 of the paper book.

7. We find that the Id. AO on examination of the aforesaid documents had certainly taken a plausible view in the matter of receipt of cash gifts of Rs 16 lakhs by the assessee from her brothers and sons. Infact the supplementary reply was also given before the Id. PCIT in the revision proceedings u/s 263 of the Act together with all supporting documents by duly proving the creditworthiness of brothers together with their immovable property details. Further the Id. PCIT directed the Id. AO to issue notice u/s 133(6) of the Act to the various donors and re-examine the veracity of the gifts received by the assessee. **This direction was given by the Id. PCIT before the completion of revision proceedings u/s 263 of the Act. The Id. AO**

accordingly issued notices u/s 133(6) of the Act to the donors and all the donors duly replied directly before the Id. AO in response to notice u/s 133(6) of the Act by duly confirming the fact of giving gifts to the assessee by explaining their sources. The evidences in this regard are enclosed in pages 134 to 226 of the paper book. We find that from the perusal of the order of Id. PCIT u/s 263 of the Act , the Id. PCIT does not even whisper about these verification being carried out by the Id. AO at the behest of Id. PCIT during revision proceedings. In these facts and circumstances, in our considered opinion, we hold that the Id.AO in the original assessment proceedings itself had made adequate enquiries with regard to the cash gifts received by the assessee in the sum of Rs 16 lakhs ; that the Id. AO had again examined the veracity of the gifts at the behest of Id. PCIT during revision proceedings u/s 263 of the Act, by issuing notices u/s 133(6) of the Act, which stood directly complied with by the donors and no adverse inferences were drawn by the Id. AO on the documents furnished by the donors. Hence the Id. AO had taken the only plausible and correct view on the issue of receipt of cash gifts of Rs 16 lakhs by the assessee . Once a plausible view has been taken by the Id. AO, the same cannot be subjected to revision u/s 263 of the Act. The law is very well settled on this issue by the decisions of Hon'ble Supreme Court in the case of Malabar Industrial Co Ltd reported in 243 ITR 83 (SC) and CIT vs Max India Ltd reported in 166 taxman 188 (SC) . Hence we hold that the Id. PCIT had grossly erred in invoking revision jurisdiction u/s 263 of the Act in the facts and circumstances of the instant case. Accordingly, the revision order passed u/s 263 of the Act is hereby quashed. The grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 09.05.2023

Sd/-

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 09th May, 2023.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi