

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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.578/Del/2022
Assessment Year: 2017-18

Arvi Lights,
1783/1, Kundan Mansion,
Bhagirath Place,
Chandni Chowk,
Delhi – 110 006.

Vs ITO,
Ward 47(5),
Delhi.

PAN: ABBFA8083H

(Applicant)

(Respondent)

Assessee by	:	Shri Rajiv Jain, CA
Revenue by	:	Shri Raghunath, Sr. DR
Date of Hearing	:	03.05.2023
Date of Pronouncement	:	10.05.2023

ORDER

PER M. BALAGANESH, AM:

This appeal in ITA No.578/Del/2022 for AY 2017-18 arises out of the order of the Pr. Commissioner of Income Tax, Delhi-10 [hereinafter referred to as 'Id. PCIT', in short] in DIN & Order No.ITBA/REV/F/REV5/2021-22/1039802410(1) dated 16.02.2022 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.05.2019 by the Id. Assessing Officer, Ward 47(5), Delhi (hereinafter referred to as 'Id. AO').

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

3. We have heard the rival submissions and perused the material available on record. The assessee is a partnership firm engaged in the business of trading of electrical goods. The return of income for the AY 2017-18 was filed by the assessee firm on 07.10.2017 declaring the total income at Rs.4,29,390/-. The assessment was completed u/s 143(3) of the Act by the Id. AO on 31.05.2019. The hearings were conducted by the Id. AO on 24.08.2018, 15.10.2018, 17.01.2019, 29.01.2019, 14.02.2019, 26.02.2019, 19.03.2019, 10.04.2019, 23.04.2019 and 02.05.2019. During the course of scrutiny assessment proceedings, the Id. AO sought information from the assessee by raising 29 queries which also included queries raised on cash deposits made by the assessee in the bank accounts together with its sources. The assessee filed the requisite information and documents on 08.03.2019, 23.04.2019 and 29.05.2019. The assessee had explained that the cash deposits in bank accounts were made out of cash sales of electrical goods made by the assessee and also furnished the sales ledger, month-wise sales details and cash book for the whole financial year 2016-17 relevant to AY 2017-18. This fact is even acknowledged by the Id. AO in page 4 of his order. Ultimately, the assessment was completed by the Id. AO by disallowing 1/10th of conveyance & telephone expenses as attributable towards personal nature and assessed income was determined at Rs.4,54,630/- u/s 143(3) of the Act on 31.05.2019. This assessment was sought to be revised by the Id.PCIT by invoking the revision jurisdiction u/s 263 of the Act by treating the order passed by the AO as erroneous and prejudicial to the interest of the Revenue on the ground that the Id. AO had not enquired about the cash deposits made by the assessee in the sum of Rs.80,50,000/- with Indus Ind Bank during the demonetization period. Accordingly, a show-cause notice was issued u/s 263 of the Act by the Id. PCIT to the assessee. The main crux of the showcause

notice is that though the assessee had furnished monthwise cash sales made during the financial year 2016-17, the total cash sales made in the month of November, 2016 and December, 2016 worked out to Rs.17,39,875/- and Rs.12,800/- only respectively, whereas the total cash deposits made during that period as per the 360 degree profile was Rs.80,50,000/-. Hence, there is a difference of Rs.62,97,355/- which was deposited in cash during the demonetization period which is not commensurate with the cash sales made during those two months. Since the Id. AO has not examined properly the source of those cash deposits, his order was treated as erroneous and prejudicial to the interest of the Revenue by the Id. PCIT.

4. The assessee filed detailed written submissions before the Id.PCIT vide letter dated 11.03.2021 placed at pages 172-180 of the paper book filed before us. The assessee submitted that during the course of assessment proceedings, 11 notices were issued by the Id. AO which contained three separate questionnaires as under:-

(i) First questionnaire was issued along with notice u/ s 142(1) of the Act dated 09.01.2019 which was repeated in the reminders dated 18.01.2019, 04.02.2019 and 19.02.2019. In this questionnaire the Id AO beside other details specifically asked for:

- a. Note on business activities
- b. Detail of bank account
- c. Details of purchases
- d. Detail of Sales
- e. G.P. ratio
- f. Confirmations and details of Debtors and Creditors
- g. Detail of opening and closing stock

(ii) Second questionnaire was issued along with notice u/s 142(1) of the Act dated 11.03.2019 which was again repeated in the reminders dated 01.04.2019, 11.04.2019 and 25.04.2019. In this questionnaire, the Id AO specifically asked for:

- a. Details of purchases
- b. Detail of Sales
- c. Details and confirmations from creditors
- d. Sources of cash deposited in the bank,

- e. Copy of the cash book for the period from 01.04.2016 to 31.03.2017, and
- f. Detail of cash sales in the specified format.

(iii) Third and final questionnaire was issued along with notice u/ s 142(1) of the Act dated 28.05.2019.

5. The assessee responded to the various questionnaires by filing the requisite details and more particularly in respect of cash deposited during the period 01.04.2016 to 31.03.2017 by furnishing the following documents:-

- (i) The assessee is a partnership firm and is engaged in the business of electrical goods
- (ii) Sales turnover of the assessee during the F.Y. 2016-17 corresponding to the A.Y. 2017-18 amounted to Rs. 7,04,03,658.50, opening stock at Rs. 91,83,619.44 and closing stock at Rs. 22,08,197.73
- (iii) Quantitative detail of stock
- (iv) Detail of closing stock of Rs. 22,08,197.73
- (v) Detail of opening stock of Rs. 91,83,619.44
- (vi) Monthly detail of bifurcation of total sale of Rs. 7,04,03,658.50 during the year between cash sales at Rs. 2,04,77,437.50 and other sales at Rs 4,99,26,221 ,
- (vii) Complete cash book for the year showing aggregate cash receipts during the year Rs. 2,29,17,809 (including opening cash in hand at Rs. 7,20,657/- and receipt from cash sales), aggregate payments Rs. 2,21,53,547/- (including cash deposited in bank) and closing cash in hand at Rs. 7,64,262/-.
- (viii) Detail of five bank accounts maintained by the assessee
- (ix) Statement of State Bank of India A/c No 34798167797
- (x) Ledger account and bank statement of IndusInd Bank Current- A/c No 201000780602

- (xi) Ledger account and bank statement of IndusInd Bank CC- A/ c No 603014027201
- (xii) Ledger account and bank statement of Deutsche Bank Current- A/c No 000024536940019
- (xiii) Ledger account and bank statement of Deutsche Bank CC- A/c No 100024536940019
- (xiv) G.P. Chart for last 3 years showing current year G.P. at 8.54 percent as against 6.89 percent in the previous year.

6. The assessee submitted before the Id. PCIT that complete enquiries were made by the Id. AO in the assessment proceedings regarding the source of cash deposits made by the assessee in the bank account. The assessee also furnished the month-wise cash sales made in respect of electrical goods and also stated that the monthly cash sales of the assessee ranged between Rs.10 to Rs.12 lakhs which had peaked during the month of October 2016, being Diwali season. Diwali for the relevant year fell on 30.10.2016. The cash sales made in the month of October 2016 was Rs.56,65,521/- which was very high when compared to other months. The said cash balances were indeed available which the assessee, in addition to the opening cash balances which would explain the entire cash deposits made in the bank account during the demonetization period. This fact was very much evident from the cash book filed for the whole year. The assessee also explained its grievance to the Id. PCIT that the sales in the month of December was only Rs.12,800/-. It was explained by the assessee that in view of non-availability of new currency to the general public in adequate quantity, the consumers did not have adequate cash in the new currency to make purchase of electrical goods. It was submitted that the Id. AO not only enquired the source of cash deposited in the bank during the financial year 2016-17 which included Rs.80,50,000/- deposited in the bank during the demonetization period, but also verified and cross-verified the information and the details furnished by the assessee and completed the

assessment u/s 143(3) of the Act after due examination and application of mind. When the total cash sales made by the assessee during the year was to the tune of Rs.2,04,77,437.50, it was submitted that the Id. PCIT was not justified in saying that the cash deposit of Rs.62,97,325/- remained unexplained by taking the cash sales figure only of November and December 2016. The Id. PCIT, however, did not heed to any of these contentions of the assessee and reiterated his stand that there was a sudden increase in cash sales in the month of October, 2016 to the tune of Rs.56 lakhs which reflected a jump of more than five times when compared to other months. Accordingly, he disbelieved the same and concluded that the Id. AO has not made thorough enquiries with regard to the cash deposit made during the demonetization period totaling to Rs.80,50,000/-. By stating so, the Id.PCIT treated the order passed by the AO as erroneous and prejudicial to the interest of the Revenue and invoked the revision jurisdiction under section 263 of the Act by setting aside the order of the Id. AO to make fresh assessment after making thorough enquiries and investigation into the taxability of the cash deposit during the demonetization period of Rs.80,50,000/- keeping in view the provisions of section 68/69 of the Act. Aggrieved, the assessee is in appeal before us.

7. At the outset, we find that the Id. PCIT observed in page 3, para 9 of her order and stated that the assessee did not respond to the notice within due time. This is factually incorrect as the assessee had already filed the written submissions dated 11.03.2021 before her predecessor PCIT which is already on record. In fact, the Id.PCIT had reproduced the entire written submissions of the assessee in pages 4-8 of her order. We find that the Id. PCIT in page 9, para 12 of her order has stated that the assessee, vide submissions dated 11.03.2021, has squarely admitted that no cash was deposited before the demonetization period during the relevant assessment year which proved that the assessee has not any value of cash before 08.11.2016. In our considered opinion, this fact is factually and grossly incorrect as from the perusal of the written submissions filed by the assessee on 11.03.2021

which is already reproduced by the Id.PCIT in her order, we find that no such statement was ever made by the assessee. This goes to prove that the Id.PCIT had approached the entire issue with a pre-conceived notion in order to reach a pre-determined destination, without any application of mind. The various enquiries made by the Id. AO during the course of assessment proceedings with regard to the source of cash deposits made in the bank account by issuing various questionnaires and the three replies filed thereon by the assessee which are also forming part of the paper book and even the order of Id.PCIT goes categorically to prove that the assessee has always submitted that cash deposit made by the assessee during the whole year including the demonetization period were made out of cash sales made by the assessee. In fact, the assessee had also furnished the entire cash book for the whole year before the Id. AO as well as the Id. PCIT to drive home the point that the assessee always had positive cash balances in his books which was utilized to make cash payments as well as cash deposits in the bank account. The cash deposits made by the assessee in the bank account during the whole year, admittedly, included Rs.80,50,000/- made during the demonetization period. We further find that the assessee has even made cash deposits in the bank account upto 08.11.2016 in the sum of Rs.94,23,500/-. The cash deposits made during the period 09.11.2016 to 31.12.2016 (demonetization period) was Rs.80,50,000/-. The cash deposits made in the bank account during the period 01.01.2017 to 31.03.2017 was Rs.25 lakhs. The cash balance available with the assessee as on 08.11.2016 as per its books was Rs.82,79,131/- which itself would explain the entire cash deposits made by the assessee in the sum of Rs.80,50,000/- during the demonetization period, even ignoring the entire cash sales made in November and December 2016. The total cash sales made by the assessee during the year was Rs.2,04,77,437.50 as tabulated under:-

Month	Cash Sales
April	10,55,940.00
May	20,88,705.00
June	18,22,700.00
July	13,79,577.00
August	10,67,095.00
September	23,38,088.00
October	56,65,521.00
November	17,39,875.00
December	12,800.00
January	10,49,547.00
February	11,14,367.50
March	11,43,222.00
Total	2,04,77,437.50

8. It is not in dispute that the assessee had furnished the aforesaid monthly sales tabulation, sales ledger for the whole year and cash book for the whole year before the Id. AO and Id. PCIT. In our considered opinion, the explanation given by the assessee that there was a huge increase in sales in the month of October, 2016 due to Diwali season is found to be reasonable as it is the normal practice followed by the consumers to buy more electrical goods during the Diwali season. Hence, the sales are likely to peak during that season for all consumer products, more

particularly, electrical products. We also find that the explanation offered by the assessee that the sales had considerably reduced in the month of December, 2016 in the sum of Rs.12,800/- due to the fact that there was severe restrictions imposed by the bank in making available the new currency to the account holders. Hence, obviously, for want of cash in the new currency, the sales during that month is bound to reduce. Moreover, considering the behavior of the assessee in regularly making cash sales on daily basis and frequently depositing such cash in the bank account on a weekly basis or a fortnightly basis, we do not find any infirmity in the assessee's holding a cash balance of Rs.82,79,131/- as on 08.11.2016. As stated, supra, it is pertinent to note that the assessee had indeed deposited cash in the bank account from 01.04.2016 to 08.11.2016 in the sum of Rs.94,23,500/-. While it is so, there is no reason to suspect the cash deposit made during demonetization period in the sum of Rs.80,50,000/-. More so, when the same were sourced out of cash sale made by the assessee prior to the date of deposit. Yet another crucial point which becomes a clinching evidence in the instant case is as and when the sales were made, the assessee had correspondingly reduced the stock of electrical goods in its books which goes to prove that the assessee had maintained proper quantitative details of opening stock, purchases, sales and closing stock of goods. We find that in the order of Id. PCIT, nowhere the closing stock details maintained by the assessee was even sought to be doubted. Hence, there is absolutely no case on merits to re-examine the source of cash deposits made in the bank account during the demonetisation period in the sum of Rs.80,50,000/-. Even otherwise, we find that the Id. AO has made adequate enquiries in the original assessment proceedings itself as is evident from the detailed questionnaire issued by the AO and the replies filed thereon by the assessee and, more particularly, a specific para earmarked by the AO in page 4 of the assessment order by giving a factual finding that the cash deposits were made out of cash sales made by the assessee. Once an adequate enquiry has been made by the Id. AO and has taken only correct and plausible view, the same cannot be disturbed by the Id. PCIT by invoking his revision

jurisdiction u/s 263 of the Act. The law is very well settled on this issue by the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd., reported in 243 ITR 83 and CIT vs. Max India Ltd., reported in 166 Taxman 188. Hence, we have no hesitation in quashing the revision order passed by the Id.PCIT u/s 263 of the Act in the facts and circumstances of the instant case. Accordingly, grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 10.05.2023.

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 10th May, 2023.

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi