

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted Through Virtual Court)

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 69/Rjt/2022  
Assessment Year 2017-18**

Smt. Ushaben Varma, 14, Shakti Tenament, Near Ranjit Niradhar Ashram, Palace Road, Jamnagar-361001  PAN:ABDPV6118N (Appellant)	Vs	The Pr. CIT, Jamnagar, Jamnagar  (Respondent)
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**Assessee Represented: Shri Sagar Shah, A.R.  
Revenue Represented: Shri Shramdeep Sinha, CIT-DR**

Date of hearing : 15-05-2023  
Date of pronouncement : 26-05-2023

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee as against the Revision order dated 07.03.2022 passed by the Principal Commissioner of Income Tax, Jamnagar National Faceless Appeal Centre, Delhi, (in short referred to as "NFAC"), arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961

(hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2017-18.

2. The brief facts of the case is that the assessee is an individual who filed her Return of Income on 23.11.2017 in form no. ITR-1 declaring the total income from salary of Rs.10,25,052/- from the Central Excise Department. The assessee also declared income of Rs. 43,598/- as income from other sources. The return was taken up for limited scrutiny assessment in order to verify cash deposit during the demonetization period as follows:

(i) State Bank of India, Jamnagar	Rs. 2,00,000/-
(ii) The Nawanagar Co.op. Bank Ltd.	Rs. 3,43,000/-
(iii) The Nawanagar Co.op. Bank Ltd. (Term loan account)	<u>Rs. 5,43,977/-</u>
Total	<u>Rs. 10,86,877</u>

2.1. On perusal of assessment records by Ld. PCIT, It is noticed that the assessee had deposited cash of Rs. 10,86,877/- during the demonetization period i.e. 09.11.2016 to 30.12.2016 in the accounts maintained with the State Bank of India & The Nawanagar Co.Op. Bank Ltd. On further verification, it is found that the assessee made cash withdrawals of Rs. 5,50,000/- and that the assessee had deposited Rs. 2,30,000/- from SBI during the period from 01.04.2016 to 08.11.2016 whereas the assessee had deposited cash of Rs. 10,86,877/- during the demonetization period. Thus the assessee's claim of cash deposit made out of cash withdrawals from the banks is not justifiable. Further the assessee had not submitted any details of personal expenditure as required for day to day use. Thus the assessee failed to submit source of cash deposit during the demonetization period and the cash deposit

of Rs. 10,86,877/- remains unexplained and required to be added u/s. 69A of the Act and required to be taxed u/s. 115BE of the Act accordingly. Thus the assessing officer in the course of assessment proceedings neither verified nor inquired the above facts and also not discussed anything in the assessment order which is prima facie erroneous and prejudicial to the interest of the Revenue within the meaning of provisions of the provisions of section 263 of the Act. Therefore the Ld. PCIT issued a show cause notice why not to revise the assessment order invoking section 263 of the Act.

2.2. The assessee replied to the show cause notice as follows:

1. *The assessee has contended that she had withdrawn cash of Rs. 5,50,000/- from the State Bank of India through the cheques mentioned above. However, on close scrutiny of the bank statement called for by the Assessing Officer u/s 133(6) of the Act and as available in the case-records, it has been noticed that there is no entry of cheque No.8359331 claimed to be used for withdrawing the cash of Rs.3,00,000/-. In absence of such noting by the Bankers in the bank statement, it has to be presumed that no such cash was withdrawn by the assessee as claimed in her explanation provided to the A.O. during the course of assessment proceedings.*

2. *Further, the remaining amount of cash of Rs.2,50,000/- has also been found to be withdrawn in the month of October, 2016 which is found to be reflected in the bank statement also. The bank statement also reflected a transaction for Rs.3,50,000/- for the cheque No.835932 issued on 15.10.2016 in favour of Urban Gajanan Furniture which was to be treated as amount spent against the purchase of furniture items from this shop.*

3. *Further, in the bank statement maintained with Nawanagar Co. Op. Bank Ltd., the assessee is found to have deposited cash of Rs.2,30,000/- during pre- demonetization period and the balance amount of Rs.2,45,000/- has been deposited during the demonetization period out of the cash withdrawn from the State Bank of India reported at Rs.5,50,000/-.*

4. *Thus, except for the amount of Rs.2,45,000/- deposited during the demonetization period, the cash of Rs.2,30,000/- has been deposited out of the cash withdrawn from the bank account with State Bank of India and thus, the entire amount of Rs.5,50,000/- has been consumed for depositing the cash with the Nawanagar Bank. Therefore, the cash*

*deposited in the bank account with State Bank of India and reported at Rs.2,98,000/- remained unexplained.*

*5. Further, neither had the assessee furnished any details of cash deposited of Rs.5,43,877/- as reported through the return of income which remained to be verified by the Assessing Officer.*

2.3. The above explanation was considered by the Ld. PCIT and the same was not found to be acceptable for the reason that the assessee is a Government Servant and drawing salary through RTGS transfer in her Bank Account. Therefore the A.O. ought to have called the details of net take home salary along with other personal and social expenses, the details of earning of other dependent members, payment of rent, electricity bills, etc., so as to find out the available cash so withdrawn from the banks, during the pre-demonetization period. However, no sufficient inquiries have been made by the A.O. and simply accepted the submissions made by the assessee. The A.O. has not carried out any inquiry to prove the genuineness of such cash deposits. Therefore the Ld. PCIT set aside the assessment order so as to frame de-novo assessment after carrying out necessary inquiries. If the explanation offered by the assessee is not satisfactory then the A.O. may invoke the provisions of Section 69A of the Act so as to tax the portion of unexplained cash in the hands of the assessee and shall charge the tax at the special rate as provided u/s. 115BBE of the Act with enhanced surcharge.

3. Aggrieved against the Revision order, the assessee is in appeal before us raising the following Grounds of Appeal:

*All the Grounds of Appeal mentioned here in below are without prejudice to one-another.*

1. *The order passed by the Ld. Principle Commissioner of Income Tax, Jamnagar under section 263 of the Income Tax Act is bad in law as well as on facts and is required to be quashed.*
2. *The Id. PCIT, Jamnagar has erred in passing order u/s 263 of the Act, dated 07.03.2022, setting aside the order of the ITO, Ward- 2(6), Jamnagar u/s 143(3) dated 23.11.2017 holding the same to be erroneous and prejudicial to the interest of Revenue within the meaning of Section 263 of the Income Tax Act.*
3. *The Id. PCIT, Jamnagar has erred in holding that the cash deposited of Rs.10,86,877/- is required to be added u/s. 69A of the Act and also required to be taxed u/s. 115BBE of the IT Act.*
4. *The Id. PCIT, Jamnagar has erred in law as well as on facts in holding that the AO has neither verified nor inquired the above facts and also not mentioned anything about the inquiries and their outcomes in the assessment order based on that he has based on surmises and conjecture hold that the order passed on 30.11.2019 by the AO is prima facie erroneous and prejudicial to the interest of revenue within the meaning of the provisions of section 263 of the Act, the view of the PCIT is purely arbitrary and against the facts placed on record.*
5. *The Id. PCIT, Jamnagar, has erred in law as well on facts in characterizing the order of the ITO as framed without enquiries/ verification as regards the source of cash so deposited during the pre-demonetization and demonetization period and holding that the source of the cash deposited appears to be non-inquired and therefore, the order of the Ld. PCIT, Jamnagar is erroneous and prejudicial to the interest of Revenue.*
6. *The Ld. Principal Commissioner of Income Tax, Jamnagar has erred in law as well as facts, in holding that Assessing Officer ought to have called the details of net take home salary along-with other personal and social expenses, the details of earnings and dependent members, payment of rent electricity bills, etc. since the case of Assessee was under Limited Scrutiny for the reason "Cash Deposit during Demonetization Period" whereas Ld. Principal Commissioner of Income Tax, Jamnagar wants Assessing Officer to make verification out of scope of Limited Scrutiny.*
7. *The Id. PCIT, Jamnagar has erred in law as well as on facts in setting aside the order u/s 143(3) on the basis of converting the case from limited scrutiny to full scrutiny and he has also erred in law as well as on facts in directing the assessing officer to do particular mode of enquiry even at the stage of proceeding u/s. 263 of the Act and the PCIT has exceeded his jurisdiction u/s. 263 of the Act.*
8. *The Id. PCIT, Jamnagar has erred in law as well as on facts in holding that the AO's order suffered from lack of enquiry and non-application of mind merely because the AO, conscious of all facts and information, chose one of the possible views in law by opting to accept the contentions of the assessee and this was not an error prejudicial to the interest of the revenue. Therefore, the order of the assessment did not suffer from any lack of enquiry and non-application of mind.*
9. *The Ld. PCIT, Jamnagar has erred in law as well as on facts in ignoring the explanation submitted by Assessee vide written submission through mail dated 20/02/2022.*

*10. The Ld. PCIT, Jamnagar has erred in law as well as on facts in referring to the Judicial pronouncements vide Para 5 of as he has not stated how the facts in Judicial pronouncements referred by Principal Commissioner of Income Tax, Jamnagar are squarely applicable to the facts of the instant case.*

*11. The ld. PCIT, Jamnagar has erred in law as well as on fact in Invoking the provision of section 263(1) explanation 2 without holding the specific error or omission while passing the order u/s. 143(3) of the Act thus, the order of the PCIT is nothing but a change of opinion and is required to be quashed.*

*12. The Id. PCIT, Jamnagar has erred in directing the AO to do the mode of inquires in framing the de-novo assessment and the thus, the direction given by the Ld. PCIT is bad in law as well as on facts and this there is change of opinion and he has failed to established where the AO has made wrong in passing the order under question. Merely the AO has not conducted the inquiries as per the will and wishes of the PCIT the order cannot be said to be prejudicial and the thus the action of the PCIT is challenged by filling this appeal before the Honorable ITAT.*

4. The Ld. Counsel Mr. Sagar Shah appearing for the assessee submitted before us a Paper Book consisting of various documents and case laws and pleaded that the Assessing Officer during the original assessment proceeding has called for information relating to the cash deposit made by the assessee during the demonetization period. The Ld. A.O. having satisfied with the explanation offered by the assessee and after perusing the bank accounts of Nawanagar Co.Op. Bank Ltd., State Bank of India, accepted the Returned Income filed by the assessee.

4.1. Now by this Revision proceedings, the Ld. PCIT enlarging the scope of “limited scrutiny” by not verification by the Assessing Officer namely the details of net take home salary, along with other personal and social expenses, the details of earning and dependent members, payment of rent, electricity bills, etc., so as to find out the available cash so withdrawn from the banks during the pre-demonetization period. The Ld. Counsel further submitted as per CBDT Instruction Nos. 7/2014, 20/2015 and 5/2016 and CBDT

letter dated 13.11.2017, the A.O. could not go beyond reason for selection of matter for “limited scrutiny”. Further it would not be open for Ld. PCIT to pass Revision order and remit the matter to the Assessing Officer on aspects “other than limited scrutiny” as an erroneous and prejudicial to the interest of Revenue and relied upon Delhi Bench Tribunal decision in the case of Balvinder Kumar vs. PCIT reported in [2021] 125 taxmann.com 83 and Mumbai Bench Tribunal decision in ITA No. 742/Mum/2019 dated 17.05.2019 in the case of Mrs. Sonali Hemant Bhavsar vs. PCIT (Mum).

4.2. Ld. Counsel further relied upon Hon’ble Supreme Court judgment in the case CIT vs. Max India Ltd. wherein it is held that 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 taken by the A.O. is unsustainable in law. Thus the Ld. Counsel pleaded that the Revision order is liable to be quashed since the assessment order is neither erroneous nor prejudicial to the interest of Revenue.

5. Per contra, the Ld. CIT-DR, Shri Shramdeep Sinha appearing for the Revenue submitted before us that the Assessing Officer during the scrutiny assessment only considered the cash deposits with Nawanagar Co.Op. Bank Ltd. of Rs. 3,43,000/- and State Bank of India of Rs. 2,00,000/-. The Assessing Officer has not verified the cash credit of Rs. 5,43,877/- made by the assessee in the Nawanagar Co.Op. Bank Ltd. This is clearly reflecting in the questionnaire issued by the Ld. A.O., u/s. 142(1) of the Act dated

20.11.2019 which is placed in the Paper Book at page nos. 23 & 24. The Ld. D.R. further drawn our attention to the reply filed by the assessee only relating to the above two cash deposits in the bank accounts vide assessee's letter dated 22.11.2019 which is available at page no. 25 of the Paper Book. Even in the Revision proceedings, the assessee has not explained the cash credits of Rs. 5,43,877/- with Nawanagar Co.Op. Bank Ltd. Thus Ld. CIT-DR pleaded that the Assessment order is an erroneous order which is liable for Revision u/s. 263 of the Act and the same is sustainable in law.

6. We have given our thoughtful consideration and perused the materials available on record including the Paper Book filed by the assessee. Perusal of the assessment order makes it clear that it is a non-speaking order. As rightly pointed out by the Ld. CIT-DR, the A.O. has made inquiry about the cash deposits of Rs. 3,43,000/- with Nawanagar Co.Op. Bank Ltd. and Rs. 2,00,000/- with the State Bank of India by the assessee. The A.O. failed to make inquiry about the cash credit of Rs. 5,43,877/- at Nawanagar Co.Op. Bank Ltd. made by the assessee. Thus in our considered opinion, the A.O. has not done proper enquiry while framing the assessment order. We are not in agreement with the contention of the assessee, the Ld. PCIT enlarging the scope of "limited scrutiny" by not verification by the Assessing Officer namely the details of net take home salary along with other personal and social expenses, the details of earning of other dependent members, payment of rent, electricity bills, etc. These enquiries only determine the cash deposit made by a Government Employee, which enquiry was not

done by the Assessing Officer while framing the assessment order. Thus the assessment order without necessary enquiry is an erroneous order and prejudicial to the interest of Revenue. Therefore the invocation of Revision proceedings by the Ld. PCIT to revise the assessment order is fully justified. Thus the grounds raised by the assessee are devoid of merits and the same are liable to be rejected.

7. In the result, the appeal filed by the Assessee is hereby dismissed.

Order pronounced in the open court on 26-05-2023

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 26/05/2023**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
राजकोट