

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'A' NEW DELHI]**

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 920/DEL/2021 (A. Y 2010-11)

Anand Sharma Housse No. 187, Sector-30, Faridabad, Haryana- 121001 PAN:BAAPS1084H (APPELLANT)	Vs.	ITO Ward -1(1) Faridabad (RESPONDENT)
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Assessee by :	Shri V. K. Bindal, CA & Mrs. Rinki Sharma, ITP
Department by:	Shri Kanwaljit Singh, CIT(DR)

Date of Hearing	29.05.2023
Date of Pronouncement	31.05.2023

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee against the order dated 15/03/2021 passed by the Office of the Pr. Commissioner of Income Tax (hereinafter referred to (Appeals) Faridabad- for assessment year 2010-11.

2. The assessee has raised the following grounds of appeal :-

“ 1. That learned PCIT, erred in law and facts by initiating the provisions of Sec-263 of Income Tax Act, as the order of A.O is not erroneous and not prejudicial to the interest of Revenue.

2. That the learned PCIT erred in law and on facts by initiating order u/ s 263(1) of Income Tax Act, and setting aside the order of A.O Dt-13/11/2017 passed u/s 143(3)/147 of Income Tax Act

3. That the learned PCIT erred in law and on facts by initiating order u/s 263(1) of Income Tax Act setting aside order of A.O Dt. 13/11/2017 passed u/s 143(3)/147 of Income Tax Act, as A.O himself rectified his order u/s 154 on 14/02/2020 and added Rs.2059000/- to the income, based on audit objections

4. That the Appellant denies his liability to be assessed at Rs. 2719820/- and to pay a tax accordingly.

Additional Grounds of Appeal

“6. The learned PCIT erred in passing manually the final order u/s 263 of the Act on 15/03/2021 without quoting the mandatory document identification number (DIN) in conformity with Para-2 and Para-3 of Circular No. 19/2019 dated 14/08/2019 and thus, the said order deserves to be held as invalid, bad in law and void-ab-initio. Moreover, the same is not digitally signed too.

7. The impugned show cause notice issued manually on 31/12/2020 to initiate the revisionary proceedings u/s 263 of the Act was non est as the impugned SCN was issued without quoting the mandatory document identification number (DIN) in conformity with Para-2 and Para-3 of Circular No. 19/2019 dated 14/08/2019 and thus, the said SCN deserves to be held as invalid, bad in law and void-ab-initio.”

3. Brief facts of the case are that, the assessment proceedings was completed u/s 143(3)/147 of the Act vide order dated 13/11/2017 by the A.O. at an income of Rs. 6,60,820/- by making an addition of Rs. 25,000/-. The Ld. PCIT on perusal of the assessment record of the assessee for the Assessment Year 2010-11 noticed following discrepancies:-

“The assessee was engaged in the business of trading of petrol with the name and style of M/s Nirmal Filling Station . The assessee has made an addition of Rs. 20,59,000/- in the capital account of his concern during Financial Year 2009-10 but not explanation was submitted during the assessment proceedings.”

The Ld. PCIT was of the opinion that, the assessment order passed u/s 143(3)/147 of the Act is prima facie erroneous in so far as it is prejudicial to the interest of the Revenue, accordingly initiated proceedings u/s 263 of the Act and vide order dated 15/03/2021 set aside the assessment order dated 13/11/2017 passed u/s 143(3)/147 of the Act for the Assessment Year 2010-11 and restore to the file of A.O. for making fresh assessment with a direction to make necessary enquiry into the details of addition of Rs. 20,59,000/-.

4. Aggrieved by the order of the PCIT 15/03/2021 the assessee preferred the present Appeal on the grounds mentioned above.

5. The Ld. Counsel for the assessee vehemently submitted by canvassing on the Ground No. 3 of the Appeal that the Ld. PCIT erred in law and facts by initiating order u/s 263(1) of the Act setting aside the order dated 13/11/2017

passed u/s 143(3)/147 of the Act as the A.O. himself rectified in the order passed u/s 154 of the Act on 14/02/2020 and made addition of the very same amount of Rs. 20,59,000/- to the income based on the audit objection. Therefore, invoking the provision of Section 263 of the Act and restoring the issue to the file of the A.O. to make enquiry once again by the PCIT is illegal.

6. The Ld. DR relied on the order of the PCIT and submitted that the grounds of Appeal of the assessee are devoid of merit, therefore, the Appeal is liable to be dismissed.

7. We have heard both the parties and perused the material available on record. It is found that after passing the assessment order dated 13/11/2017 u/s 143(3)/147 of the Act the A.O. by invoking Section 154 of the Act, made addition of Rs.20,59,000/- in following manners:-

“Return declaring income of Rs. 6,35,820/- was filed by the assessee on 17/04/2017 and assessment in this case was completed u/s 147/143(3) of the Act on 13/11/2107 at an income of Rs.6,60,820/- by making addition of Rs.25,000/- on account of unvouched expenses.

Later on, it was noticed that the assessee engaged in the business of trading in petrol in the name and style of M/s Nirmal Filling Station. In the capital account of this concern an addition of Rs.20,59,000/- has been made in F.Y. 2009-10 and the same was not considered at the time of passing of assessment order.

To rectify the mistake, notice u/s 154/155 dated 09.09.2019 fixing the case for 23.09.2019 was issued to the assessee. In response to this notice, assessee did not file any reply, it implicate that the assessee has nothing to say in this regard. Therefore, mistake being apparent from record is rectified u/s 154 of I T Act.

With these observations, the taxable income and tax liability of the assessee is recalculated as under:-

<i>Income assessed vide order dated 13.11.2017</i>	<i>:</i>	<i>Rs. 6,60,820/-</i>
<i>Add as discussed above</i>	<i>:</i>	<i>Rs.20,59,000/-</i>
<i>Total taxable income</i>	<i>:</i>	<i>Rs. 27,19,820/-</i>
<i>Tax on taxable income (including intt.)</i>	<i>:</i>	<i>Rs.14,53,920/-</i>

8. Considering the fact that the A.O. had already passed the order u/s 154 of the Act on 14/02/2020 by making very same addition which was the subject matter of order impugned of the PCIT dated 15/03/2021, we are of the opinion that, the order passed by the Ld. PCIT u/s 263(1) of the Act in directing the A.O. to frame the assessment order once again will amounts to double jeopardy to the Assessee. Therefore, we allow the Ground No. 3 of the Assessee and Impugned order dated 15/03/2021 passed u/s 263(1) of the Act by the PCIT is quashed. Since, we have allowed of Ground No. 3 and quashed the order impugned, the other grounds of the assessee requires no adjudication as the same remained only academic.

9. In the result, Appeal of the assessee is partly allowed.

Order pronounced in the open court on : **31/05/2023**.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Dated : 31/05/2023

R.N, Sr. PS

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to :-

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI