

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 299/Asr/2019
Assessment Year: 2014-15**

M/s Haryana Plast Pvt Ltd H. No. 1616, Sector 13, Urban Estate, Kurukshetra, Haryana. [PAN:-AAACH5844E] (Appellant)	Vs.	PCIT-1 Jalandhar (Respondent)
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Appellant by	Sh. T N Singla, CA
Respondent by	Sh. Hitendra Bhouraoji Ninawe, CIT DR.

Date of Hearing	12.06.2023
Date of Pronouncement	14.06.2023

ORDER

Per: Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Principal Commissioner of Income-tax-I, Jalandhar (in brevity PCIT) order passed u/s 263 of the Income-tax Act (in brevity the Act) for assessment year 2014-15. The assessment was duly framed by the Id. Income-tax Officer, Ward-2, Hoshiarpur (in brevity the AO) order passed u/s. 143(3) of the Act.

The assessee has taken the following grounds:

“1. That the order of the Learned Pr. Commissioner of Income Tax-I is bad, against law and facts.

2. That the Pr. Commissioner of Income Tax-I has wrongly invoked powers u/s. 263 of the Income Tax Act, 1961.

3. That the Pr. Commissioner of Income Tax-I has wrongly passed order u/s. 263 of the Income Tax Act, 1961 on surmises or conjectures.

4. That the issue involved was already examined by the learned Assessing Officer and completed assessment is wrongly reopened by the Pr. Commissioner of Income Tax-I.

5. That the Appellant craves leave to add, alter or withdraw any ground of appeal before the final hearing.”

2. The brief fact of the case is that the assessment was completed u/s. 143(3) under the limited scrutiny through CASS. The case of the assessee was selected through CASS to verify the unsecured loan from person who had not filed their return of income (Form 3CD), mismatch between income declared by remittee in ITR and amount of remittance received (Form 15CA) and mismatch in the amount paid to the related person u/s. 40A(2)(b) reported in the audit report and ITR. Accordingly, the assessment was completed by the ld. AO. The notice u/s 263 was issued by the ld. PCIT and called the assessment erroneous and prejudicial to the interest of the revenue related to unsecured loan received by the assessee from Sh. Satya Pal Kumar amount of Rs.45,00,000/-. The ld. PCIT proposed for addition of the said amount u/s. 68 of the Act and setting aside the order of the ld. AO for non-verification of the said unsecured loan. The assessee filed submission with detail before the ld. PCIT in compliance of the notice

u/s263. But the Id. PCIT passed the revisional order u/s. 263 and directed to set aside the order of the Id. AO due to erroneous and prejudicial to the interest of the revenue. Being aggrieved the assessee filed an appeal before us by challenging the revisional order.

3. The Id. AR for assessee filed written submission, which is kept in the record. The Id. AR first invited our attention in the relevant paragraph of the order of Id. PCIT, which is extracted as below:

“On perusal of the order u/s. 143(3) of the I.T. Act, 1961 dated 04.11.2016, in your case and on examination of record for the Assessment year 2014-15, the following discrepancies have been noticed.

(i) During the financial year 2013-14, the assessee company has introduced fresh unsecured loan from Sh. Satya Pal Kumar S/o. Sh. Jai Ram R/O 3910/15, Hill Road, Kacha Bazar, Ambala Cant. Amounting to Rs.45,00,000/-. A perusal of the assessment records shows that the assessee company has failed to get the nature and source of these funds verified from the creditor Sh. Satya Pal Kumar. Therefore, as provision of section 68 of the Income Tax Act, 1961, the AO should have treated the credit of Rs.45,00,000/- as unexplained income and added back the same to the returned income of the assessee. In this regard, it is

pertinent to mention there that an amendment has been effected in the section 68 of the Income Tax Act, 1961 effective from the assessment year 2013-14 vide which it has been mandated that such sums shall treated as explained only when the nature and source of funds is also explained by the recipient assessee company in the hands of the shareholder.”

4. The Id. AR placed that during the assessment the Id. AO completed the verification under ambit of limited scrutiny under CASS system. The Id. AR drawn our attention in the relevant paragraph of the assessment order, page 1 & 2 which is extracted as below:

“The company consist of two directors viz. Sh. Mangeshwar Kumar and Sh. Sunny Singhi. The assessee has furnished the detailed information as required. The case was discussed in detail and necessary details/ information called for and filed. The books of account comprising of computer generated cash book, ledger alongwith bill/vouchers were produced and examined by the test check. The case of the assessee was selected through CASS to verify unsecured loans from persons who have not filed their returned income (Form 3CD), mismatch between income declared by remittee in ITR and amount of remittance received (Form 15CA) and mismatch in the amount paid to the related persons u/s. 40A(2)(b)

reported in Audit Report and ITR. The same has been verified and no discrepancy was found.”

4.1 The Id. AR further argued that show cause notice issued by Id. PCIT u/s. 263 is itself defective for non-mentioning of particular explanation of the relevant section. The Id. AR further placed that the relevant documents were submitted before the Id. PCIT for verification of transaction of unsecured loan which was duly submitted before the Id. AO during the assessment proceedings on dated 28.07.2016. The copy of the letter is annexed in **APB page 1 to 2**. The Id. AR relied on the documents, annexed with paper book which are duly submitted before both the revenue authorities by the assessee. The details are as follows: -

<u>Sl. No.</u>	<u>Particulars</u>	<u>APB Page</u>
1.	Confirmation of Sh. Satya Pal	6 to 7
2.	Copy of bank account of Sh. Satya Pal A.Y. 2014-15	8
3.	Copy of PAN card of Sh. Satya Pal	9
4.	Copy of passbook of Sh. Satya Pal	10 to 12
5.	Copy of Bank account statement of Smt. Garima Kumar for A.Y. 2014-15	13
6.	Confirmation from PNB with regard to the amount credited in the account of the assessee.	14 to 15

The ld. AR prayed that the order passed by ld. PCIT u/s. 263 shall be liable for quashed.

5. the ld. DR. vehemently argued and relied on the order of the revenue authorities.

6. We heard the rival submissions and relied on the documents available in the record. During the hearing the ld. AR submitted catena of judgment which are reproduced as below.

6.1. Hon'ble Supreme Court of India Principal Commissioner of Income-tax, Surat-2v.ShreejiPrints (P.) Ltd, [2021]130 taxmann.com 294 (SC)

“Section 69, read with section 263, of the Income-tax Act, 1961 -Unexplained investments (Unsecured loans) - Assessment year 2013-14 – Assessee company had received unsecured loans from two different companies - Commissioner noting that said loans were shown as investment in assessee's name in balance sheet of respective companies exercised his revisionary powers and passed an order without giving an opportunity to assessee of being heard, invoking Explanation 2 to section 263 - High court by impugned order held that since Assessing Officer has made inquires in details and accepted genuineness of loans received by assessee, such view of Assessing Officer was a plausible view and same cannot to be considered erroneous or prejudicial to interest of revenue - Whether SLP against said impugned order was to be dismissed - Held, yes”

6.2. ITAT, Amritsar Bench in the case of Smt. Rajinder Kaur Vs. ITO, ITA No. 171/Asr/2022 Date of Pronouncement- 22/03/2023.

“7. Heard rival contentions, perused the material on record, impugned order, written submission and case law cited before us. Admittedly, the proceedings were initiated u/s 263 of the Act on the basis of audit objection (APB, Pgs. 13-16) and consequent order passed u/s 263 of the Act is opposed to judgment of Honorable Punjab and Haryana High Court in the case of SOHANA WOOLLEN MILLS (Supra).

8. From the record, it is established that the Ld. PCIT has initiated the proceedings u/s 263 of the Act by invoking provisions contained in clause (a) of explanation 2 to sub section 1 of section 263 of the Act. In our view, the subject proceeding initiated by the Ld. PCIT u/s 263 of the Act, is illegal and bad in law, since the provisions contained in clause (a) of explanation 2 below to section of section 263 of the Act were introduced by Finance Act 2015 are not applicable retrospectively and therefore, clause (a) of explanation 2 to sub section 1 of section 263 of the Act, is not applicable to Assessment Year (2011-12), under consideration.

9. In the above view, we hold that the order of the Learned Commissioner of Income Tax, Jalandhar-1 (‘Ld. CIT’) passed u/s 263 of the Act, is bad in law and as such it is quashed.

10. In the result, appeal of the assessee is allowed.”

7. Unsecured loan of the assessee was duly verified before the ld. AO during the scrutiny proceedings. The ld. AO is bound by limited scrutiny in the CASS

system. Respectfully considering the orders of Apex court & coordinate bench the investigation by the Id. AO cannot be called 'lack of investigation'. The Id. PCIT has not brought any material on record to show that the view taken is contrary to law or the investigation is erroneous. In the light of these discussions and placing respectful reliance on the decisions of Hon'ble Supreme Court & Coordinate bench of Amritsar, supra, in our considered view that the Id. PCIT is not justified in setting aside the order of the Id. AO. Accordingly, the order U/s 263 of the Id. PCIT is quashed.

8. In the result, appeal of the assessee **ITA No. 299/ASR/2019** is allowed.

Order pronounced in the open court on 14.06.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order