

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.125/Ind/2021
(Assessment Years:2016-17)

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| Shreepal Humad Near Civil Hospital, Bus Stand Road, Manasa Madhya Pradesh | vs. | Pr. CIT-1 Indore |
| (Appellant / Assessee) | | (Respondent/ Revenue) |
| PAN: AAXPH1346 K | | |
| Assessee by | Shri Ashish Goyal & N.D. Patwa, ARs | |
| Revenue by | Shri P.K. Mishra, CIT-DR | |
| Date of Hearing | 13.04.2023 | |
| Date of Pronouncement | 21 .06.2023 | |

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 25.03.2021 of Pr. Commissioner of Income Tax (in short Pr. CIT) Indore passed u/s 263 of the Income Tax Act for Assessment Year 2016-17. The assessee has raised following grounds of appeal:

“1. That the Learned Pr. CIT erred in invoking the provisions of section 263 of the Income Tax Act and initiating the revision proceedings. That on the facts and circumstances of the case and in law, the regular assessment order passed by the Ld. AO is neither erroneous nor prejudicial to the interest of the revenue and therefore the revision proceedings initiated u/s 263 are unwarranted and uncalled for.

2. *The Learned Pr. CIT erred in holding that the regular assessment order was passed by the AO without making required enquiries and investigations. That on the facts and in the circumstances of the case due enquiries were conducted by the AO in the regular assessment proceedings in respect of all the issues on the basis of which the case was selected for limited scrutiny.*

3. *The Learned Pr. CIT erred in exceeding his authority and jurisdiction by issuing directions and underlining the method and manner of conducting enquiries by the AO even in respect of the issues where enquiries were already conducted.*

4. *The Learned Pr CIT erred in passing the order u/s 263 of Income Tax Act by ignoring the fact that the appellant has filed application under VSV scheme,2020 for settlement of the issues under consideration. That on the facts and circumstances of the case and in law order passed u/s 263 is unwarranted and uncalled for.*

5. *That the appellant craves leave to add, to alter, amend, modify, substitute, delete and/or rescind all or any of the grounds of appeal on or before final hearing, if necessity so arises.”*

2. The present appeal has been filed on 30th June 2021 against order dated 25.03.2021, therefore, there is a delay of 36 days in filing the present appeal. Ld. AR of the assessee has submitted that the delay is covered by the judgment of Hon’ble Supreme Court in case *Suo-moto Cognizance of extending the Limitation reported in 441 ITR 722 (SC)*.

3. Ld. DR has not disputed that the delay in filing the appeal is covered by the judgment of Hon’ble Supreme Court.

4. Having considered the rival submissions, at the outset, we note that the Hon’ble Supreme Court in case of *Suo-moto Cognizance of extending the Limitation(supra)* has finally issued the directions in Para 5 as under:

“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

(i) The order dated 23-3-2020 is restored and in continuation of the subsequent orders dated 8-3-2021, 27-4-2021 and 23-9-2021, it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as

may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

(ii) Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.

iii. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

Accordingly, in view of the judgment of Hon'ble Supreme Court in suo-moto cognizance for extension of the limitation, the appeal of the assessee is treated as filed within limitation.

5. In the case of assessee the assessment u/s 143(3) was completed on 15.12.2018 at a total income of Rs.10,29,930/- as against the return income of Rs.2,18,480/-. Thereafter, the Pr. CIT had gone through the record and noted that the AO has not considered certain points and the order was passed without making any inquiry on the issues as referred in the show cause notice dated 04.02.2021 as under:

"On perusal and examination of the records it appears that the order u/s 143(3) of the I. T. Act, 1961 dated 15/12/2018 for the A.Y. 2016-17 is erroneous in so far as it is prejudicial to the interest of revenue as the order has been framed without making proper enquiries and investigation with respect to same issue.

2. As per the information available on records it was noticed from the balance sheet as on 31/03/2016 only two ICICI bank accounts declared in the books of accounts. Three bank accounts viz. Punjab National Bank, Bank of India and Bank of Baroda were not disclosed in the books of accounts. On verification of the incomplete period bank

statements of all the above banks, it is prima facie found that the aggregate cash deposits in these incomplete period bank statements is more than cash deposits considered for making addition of net profit. The excess cash deposits is Rs. 10,16.075/-. Further the assessee declared sale of Rs. 42.70.290/- with gross profit of Rs. 6.05, 138/- which comes to 14.17%. Accordingly GP should have been applied @14.17% instead of NP @8% as the whole of the undisclosed turnover in respect of saving bank account transactions and no expenses should have to be allowed there from as per the provisions of the Act.

Further as per the details on the records, the assessee has taken loan/deposits of Rs. 14 lakh from different persons. Identity or creditworthiness of depositors not verified.

3. The AO did not examine these facts by conducting any enquiry or investigation. Therefore, the assessment order passed by the AO appears to be erroneous in so far as it is prejudicial to the interest of the revenue. You are, therefore required to show cause as to why the provisions of section 263 should not be invoked in your case for the reasons mentioned above."

6. Thus, the Pr. CIT has invoked the provisions of section 263 of the Act on two issues i.e. regarding addition made by the AO in respect of undisclosed turnover by applying net profit @ 8% instead of applying the GP rate and secondly, no inquiry was made by the AO to verify the identity and creditworthiness of the persons from whom the assessee has taken loans/deposit of Rs.14 lakhs. The Pr. CIT after considering the reply of the assessee has set aside the order passed by the AO on both these issues and directed the AO to re-examine the issue of determination of income on undisclosed turnover of the assessee on the correct amount of undisclosed turnover as well as application of G.P.. Aggrieved by the order of the Pr. CIT the assessee has filed the present appeal.

7. Before the Tribunal the ld. AR of the assessee has submitted that the case of the assessee was selected for limited scrutiny on the basis of AIR information for cash deposit in the bank account maintained with ICICI Bank, Bank of Baroda and Punjab National Bank. The assessee produced a complete bank statements for all the accounts during the assessment proceedings which were duly verified and examined by the AO while passing the assessment order. Pr. CIT has invoked the provisions of

section 263 of the Act on two issues i.e. AO has applied net profit in respect of undisclosed turnover instead of gross profit which is declared by the assessee @ 14.17% and secondly the cash loan taken by the assessee. Ld. AR has submitted that so far as the estimation of the profit by the AO on the undisclosed turnover is concerned the total sale cannot be regarded as profit of the assessee and therefore, only the profit element has to be adopted as income of the assessee from such turnover. He has relied upon the judgment of Hon'ble jurisdictional High Court in case of *CIT vs. Balchand Ajit Kumar 135 taxman 180 M.P.* and submitted that the Hon'ble High Court has held that the total sales cannot be regarded as profit of the assessee. The net profit rate has to be adopted and once net profit rate is adopted, it cannot be said that there is a perversity of approach. Therefore, the AO has conducted an inquiry and estimated the income of the assessee on disclosed turnover by applying net profit. The view taken by the AO is one of the possible views then the Pr. CIT has no power to invoking provisions of section 263 of the Act merely, because he does not agree with the view of the AO. He has further submitted that Pr. CIT has also observed that the AO has not considered the correct amount of cash deposit in the bank account for the purpose of undisclosed turnover to the tune of Rs.10,16,075/- whereas the AIR Information which is basis of the scrutiny proceedings included the name of all bank accounts held by the assessee along with cash deposits total amounting to Rs.1,01,43,080/- including a sum of Rs.42,24,540/- in the ICICI, bank. The AO has taken the correct amount while computing undisclosed turnover and estimated the income. He has further submitted that all the bank accounts are part of the balance sheet and disclosed in the return of income, therefore, there was no basis of verifying the excess cash deposit of Rs.10,16,075/- as alleged by the Pr. CIT. The assessee has produced complete bank account statement before AO from the period 01.04.2015 to 31.03.2016. Therefore, there is no question of incomplete bank account statement furnished by the assessee. There may be instance of no transactions for certain months in one or two of the bank account and thus, there is no entry in the bank statements in respect of those months

for the financial year. He has further contended that the assessee has opted for Vivad Se Vishwas Scheme 2020 and paid due tax arising from the assessment order. The assessee challenged the assessment order in the appeal before the Ld. CIT(A) and during the pendency of the appeal before the Ld. CIT(A) opted for Vivad Se Vishwas Scheme-2020. The department has accepted the declaration and issued form no.5, therefore, once the dispute is settled under the Vivad Se Vishwas Scheme then the assessment order cannot be reopened in any of the proceedings under the Act as per section 5 of the Vivad Se Vishwas Act, 2020.

8. In support of his contention he has relied upon the judgment of Hon'ble Madras High Court in case of *Gopalakrishnan Rajkumar vs. Pr. CIT 140 taxmann.com 394* as well as judgement of Hon'ble Supreme Court in case of *Killick Nixon Ltd. vs. DCIT 125 taxmann 1055 (SC)* and submitted that where the assessee has settled its case under Vivad Se Vishwas Scheme, the provision of section 263 cannot be invoked for revising the assessment order. Similarly, the Hon'ble Supreme Court has held that the order of the designated authority passed under Vivad Se Vishwas Scheme intended to be conclusive in respect of the tax arrears and sum payable after such determination towards full and final settlement of tax arrears. Consequently, the assessment order cannot be reopened.

9. On the other hand, Ld. DR has submitted that Pr. CIT has rightly taken up the issue of applicability of G.P. rate in respect of undisclosed turnover instead of N.P. Rate as indirect expenditure are not allowable against the undisclosed turnover as already claimed by the assessee against disclosed turnover. Therefore, the G.P. rate would be appropriate method of estimating the income from the undisclosed turnover instead of net profit. He has further submitted that Pr. CIT has also pointed out that AO has taken short amount of undisclosed turnover to the tune of Rs.10,16,075/- . He has contended that the issue of applicability of G.P. rate was not subject matter of appeal and consequently not subject matter of settlement under Vivad Se Vishwas Scheme. He has pointed out that in respect of the second issue regarding cash loan shown by the assessee,

no inquiry was conducted by the AO while passing assessment order, therefore, the order of the AO is erroneous for lack of inquiry and the Pr. CIT has rightly invoked the provisions of section 263 of the Act. He has relied upon the impugned order of the Pr. CIT.

10. We have considered the rival submissions and relevant material on record. As regards the first issue taken up by the Pr. CIT while issuing show cause notice u/s 263 we find that the assessee has challenged the order of the AO in the appeal before the Id. CIT(A) on the issue of addition made by the AO on account of estimation of income on undisclosed turnover by applying net profit rate @ 8%. The assessee opted for Vivad Se Vishwas Scheme 2020 for settlement of tax dispute arising from the assessment order passed by the AO. Finally, the said dispute was settled under the Vivad Se Vishwas Scheme 2020 and the designated authority has issued certificate in form no.5 dated 23.12.2021. Therefore, the subject matter (estimation of the Income on undisclosed turnover) was very much before the Pr. CIT and has been settled under the Vivad Se Vishwas Scheme 2020, as per form 5 issued by the designated authority on 23.12.2021. Section 5 of Vivad Se Vishwas Scheme Act 2020 provides the immunity to the taxpayers from opening of the matter covered under the Vivad Se Vishwas Scheme in any other proceedings under this Act. For ready reference we produced section 5 of Vivad Se Vishwas Act-2020 as under:

“5.1) The designated authority shall, within a period of fifteen days from the date of receipt of the declaration, by order, determine the amount payable by the declarant in accordance with the provisions of this Act and grant a certificate to the declarant containing particulars of the tax arrear and the amount payable after such determination, in such form as may be prescribed.

(2) The declarant shall pay the amount determined under sub-section (/) within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the designated authority in the prescribed form and thereupon the designated authority shall pass an order stating that the declarant has paid the amount,

(3) Every order passed under sub-section (7), determining the amount payable under this Act, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the Income-tax Act or under any other law for the time being in force or under any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India

Explanation. For the removal of doubts, it is hereby clarified that making a declaration under this Act shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a party in appeal or writ petition or special leave petition to contend that the declarant or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.”

11. An identical issue has been considered by the Hon'ble Madras High Court in case of *Gopalakrishnan Rajkumar vs. Pr. CIT (supra)* as under:

“32. The reason for reopening of the assessment was that the petitioners did not admit the capital gains in their returns filed by them. Eventually, the aforesaid proceedings culminated in an order dated 27.12.2018 under [Section 143\(3\)](#) read with 147 of the [Income Tax Act](#), 1961.

33. Aggrieved by the same, the petitioners have also filed appeal before the CIT Appeals. It is during the pendency of the aforesaid proceedings before the CIT Appeals under [Section 246A](#) of the Income Tax Act, 1961.

34. The Finance Minister in the parliament had introduced the “Direct Tax Vivad Se Vishwas Act, 2020. The respective petitioners opted to settle the dispute with Income Tax Department by filing declarations in Form 1 and 2 on 31.08.2020.

35. The Designated Authority namely, the third respondent has also issued Form 3 on 10.12.2020 to the respective petitioners. On 09.02.2021, the respective petitioners have also received an intimation regarding the payments made by the petitioners pursuant to Form 3 dated 10.12.2020. Thereafter, the Impugned Notice for revising the assessment orders dated 27.12.2018 have been issued to the respective petitioners.

36. In the aforesaid notice, it has been stated that the amounts received cannot be treated as a capital gains, on account of transfer of long term capital asset which was in the name of M/s.Karpagam Studios. The notice indicates that the petitioners could not have claimed deduction under [Section 54\(F\)](#) of the Act. It has also stated

that the date of completion as per the completion certificate of CMDA falls after three years specified under [Section 54\(F\)](#) of the Act.

37. Therefore, under [Section 54\(F\)](#) was to be withdrawn and the gross receipt was to be treated as an income from other source.

38. The respective petitioners have also replied to the same to their Chartered Accountant on 26.02.2021 stating that the Impugned Notice under [Section 263](#) of the Income Tax Act, 1961 was without jurisdiction inasmuch as the petitioners have settled the case under the Direct Tax Vivad Se Vishwas Act, 2020.

39. The question therefore that arises for consideration is whether the impugned proceedings initiated after the petitioners opted to settle the dispute under the Direct Tax Vivad Se Vishwas Act, 2020 are sustainable or not?

40. The expression disputed tax has been defined in Section 27 of the Direct Tax Vivad Se Vishwas Act, 2020 reads as under:

(j) “disputed tax”, in relation to an assessment year or financial year, as the case may be, means the income-tax, including surcharge and cess (hereafter in this clause referred to as the amount of tax) payable by the appellant under the provisions of the [Income-tax Act](#), 1961, as computed hereunder:— (A) in a case where any appeal, writ petition or special leave petition is pending before the appellate forum as on the specified date, the amount of tax that is payable by the appellant if such appeal or writ petition or special leave petition was to be decided against him;

(B) in a case where an order in an appeal or in writ petition has been passed by the appellate forum on or before the specified date, and the time for filing appeal or special leave petition against such order has not expired as on that date, the amount of tax payable by the appellant after giving effect to the order so passed;

(c) in a case where the order has been passed by the Assessing Officer on or before the specified date, and the time for filing appeal against such order has not expired as on that date, the amount of tax payable by the appellant in accordance with such order;

(D) in a case where objection filed by the appellant is pending before the Dispute Resolution Panel under [section 144C](#) of the Income-tax Act as on the specified date, the amount of tax payable by the appellant if the Dispute Resolution Panel was to confirm the variation proposed in the draft order;

(E) in a case where Dispute Resolution Panel has issued any direction under sub-section (5) of [section 144C](#) of the Income-tax Act

and the Assessing Officer has not passed the order under sub-section (13) of that section on or before the specified date, the amount of tax payable by the appellant as per the assessment order to be passed by the Assessing Officer under sub-section (13) thereof;

(F) in a case where an application for revision under [section 264](#) of the Income-tax Act is pending as on the specified date, the amount of tax payable by the appellant if such application for revision was not to be accepted:

Provided that in a case where Commissioner (Appeals) has issued notice of enhancement under [section 251](#) of the Income-tax Act on or before the specified date, the disputed tax shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued:

Provided further that in a case where the dispute in relation to an assessment year relates to reduction of tax credit under [section 115JAA](#) or [section 115D](#) of the [Income-tax Act](#) or any loss or depreciation computed thereunder, the appellant shall have an option either to include the amount of tax related to such tax credit or loss or depreciation in the amount of disputed tax, or to carry forward the reduced tax credit or loss or depreciation, in such manner as may be prescribed.

(k) "[Income-tax Act](#)" means the [Income-tax Act](#), 1961;

(l) "last date" means such date as may be notified by the Central Government in the Official Gazette;

(m) "prescribed" means prescribed by rules made under this Act;

(n) "specified date" means the 31st day of January, 2020;

(o) "tax arrear" means,—

(i) the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax, and penalty leviable or levied on such disputed tax; or

(ii) disputed interest; or

(iii) disputed penalty; or

(iv) disputed fee, as determined under the provisions of the Income-tax Act.

41. As per Section 3 of the the Direct Tax Vivad Se Vishwas Act, 2020, notwithstanding anything contained in the [Income Tax Act](#) or

any other law for the time inforce the amount payable by a declarant shall be as specified in the table to the said section.

42. As per Section 4(6) of the Direct Tax Vivad Se Vishwas Act, 2020, the declarations filed under Section(1) shall be presumed to have never been made if :-

“a) Any material particular furnished in the declaration is found to be false at any stage;

b) The declarant violates any of the conditions referred to in this Act;

c) The declarant acts in any manner which is not in accordance with the undertaking given by him under sub-section(5) And in such cases, all the proceedings and claims which were withdrawn under [Section 4](#) and all the consequences under the [Income-Tax Act](#) against the declarant shall be deemed to have been revived.”.

43. Section 6 of the Direct Tax Vivad Se Vishwas Act, 2020, makes it very clear that once there is a compliance with the timeliness specified under Section (5), the designated authority shall not institute any proceedings in respect of an offence or aims or levy any penalty or charge any interest under the Income Tax in respect of the tax arrears.

44. Section 5 of the Direct Tax Vivad Se Vishwas Act, 2020, also makes it clear that save as otherwise expressly provided in sub-section(3) of [Section 5](#) or [Section 6](#), noting contained in this Act shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to which the declaration has been made.

45. The intention of the parliament enacting the of the Direct Tax Vivad Se Vishwas Act, 2020, is to bring a closure of disputes in respect of tax arrears. Whether the petitioner had correctly or wrongly availed the benefit of [Section 57\(F\)](#) of the Income Tax Act or not cannot be re-opened once again under [Section 263](#) of the Income Tax Act, 1961.

46. Once the petitioners had opted to settle the dispute under the Direct Tax Vivad Se Vishwas Act, 2020, the proceedings initiated under [Section 263](#) have to go. If on the other hand the respective petitioners had not filed Form 1 and 2 or not accepted with the issue of Form 3, the Impugned Notice seeking to re-open the assessment under [Section 263](#) of the Income Tax Act, 1961 could be justified.

47. The Finance Minister in her speech on 01.02.2020 announced the the Direct Tax Vivad Se Vishwas Scheme to bring down the litigation. The Government intended to reduce the litigation, so that the

taxpayers can buy peace with the department. The aforesaid scheme was to be implemented on 30.06.2020.

48. The taxpayers whose appeals were pending at any level were entitled to avail benefit of the scheme. Therefore, there is no justification in proceeding further with the impugned proceedings initiated by the first respondent under [Section 263](#) of the Income Tax Act, 1961.

12. Thus, the Hon'ble High Court has held that in case the appeal is pending at any level the taxpayer is entitled to avail benefit of the VSV Scheme and therefore, there is no justification in proceeding further with the preceding initiation u/s 263 of the Act. The Hon'ble Supreme Court in case of *Killick Nixon Ltd. vs. DCIT (supra)* while considering the declaration under Kar Vivad Samadhan Scheme 1998 held as under:

“As far as the provisions of KVSS are concerned, we agree with the contention of the learned Senior Counsel for the assessee that the order to be made by the Designated Authority under section 90 is a considered order which is intended to be conclusive in respect of tax arrears and sums payable after such determination towards full and final settlement to tax arrears. Once the declarant makes payment of the amount so determined under section 90, the immunity under section 91 springs into effect. We are also of the view that upon such declaration being made, tax arrears being determined, paid and certificate issued under the KVSS, there is no jurisdiction for the Assessing Officer to reopen the assessment by a notice under section 143 of the Act except where the case falls under the proviso (2) of sub-section (1) of section 90 as it is found that any material particular furnished in the declaration is found to be false. In the present case, it is not the case of the revenue that any material particular furnished by the appellant-assessee in the declaration was found to be false. Consequently, the Assessing Officer could not have re-opened the assessment by a notice under section 143 of the Act.”

13. Therefore, once the tax dispute arising from the assessment order is settled in the VSV scheme and the designated authority has issued certificate under form 5, then the said order of the designated authority is conclusive in respect of tax dispute being settled fully and finally. The scheme of VSV provides immunity to the taxpayers against the reopening of the assessment order. The issue taken up in the proceedings u/s 263 of the was already subject matter of appeal which is settled in VSV scheme.

Hence once the matter is settled under VSV then the impugned order passed by the Pr. CIT on this issue of estimation of income on undisclosed turnover is not justified. Moreover when the AO issued notice u/s 142(1) with Annexure of queries regarding the said issue and the assessee in reply has filed all the relevant details and evidence called for by the AO then the estimate of income by the AO by applying net profit rate certainly as a result of the inquiry conducted by the AO. Therefore, this is not a case of lack of inquiry on the part of the AO to render the assessment order as erroneous so far as the prejudicial to the interest of the revenue. The Annexure to notice under section 142(1) is produced as under:

ANNEXURE

Particulars of documents required

- 1. In your last reply you have submitted only the details regarding cash sale made during the F.Y. 2015-16 but as per information, a huge amount of cash was deposited in your account which is not match with your details of cash sales. Therefore you are requested to produce the copies of bank account statements that are in your name for the FY 2015-16*
- 2. Produce documentary evidences regarding source of cash deposited in your saving bank account(s) during the FY 2015-16.*
- 3. Also produce the documentary evidences regarding total tum over and other income in part A-P&L of ITR*

RAGHUVVEER PRASAD

ITO, NEEMUCH

14. Thus, the AO called the assessee to file details regarding cash deposits made during the year under consideration and asked the assessee to produce copies of the bank account statements as well as documentary evidences regarding source of cash deposit in the bank account. The AO also asked documentary evidence regarding total turnover and other income and profit and loss account with the ITR. The assessee filed relevant details and the bank account statements of all the bank accounts maintained by the assessee. We find that the bank

account statement are for the entire financial year though when there were no transactions in some of the months there is no entry for those months. Therefore, that would not said as incomplete bank statement as observed by the Pr. CIT. Secondly, the difference of Rs.10,16,075/- as calculated by the Pr. CIT is without considering the sales already declared by the assessee of Rs.42,70,290/- and the AO in the assessment order has considered all these facts while arriving to the undisclosed turnover and therefore, the comparison by the Pr. CIT of the information reported by AIR with total deposit in the bank account of the assessee is not justified without considering total turnover declared by the assessee of Rs.42,70,290/-. Thus, we find that the Pr. CIT is not justified in invoking the provision of section 263 so far as the issue of estimation of income on undisclosed turnover.

15. As regards the second issue is concerned since the case of assessee was selected for limited scrutiny through CASS only on the issue of deposit of cash in the bank account of the assessee therefore, the AO has not taken up the issue of the cash loan/deposit taken by the assessee while passing the assessment order. Pr. CIT, though taken up this issue in the show cause notice issued u/s 263 however, no direction has been given to the AO in the concluding part of the impugned order as under:

“Accordingly, it was incumbent upon the AO to have made necessary enquiries or verifications, which were required to verify the cash deposits made by the assessee in different banks.

1. Therefore, in view of the above discussions, the order dated 15.12.2018 for A.Y. 2016-17 is erroneous in so far as it is also prejudicial to the interest of revenue on account of passing of the order without making required enquiries/investigations. Accordingly, I am satisfied that provisions of section 263 of I.T. Act 1961 are required to be invoked. Therefore, the assessment for A.Y. 2016-17 framed on 15.12.2018 is hereby set-aside u/s 263 to the file of AO to re-examine the issue of determination of income on undisclosed turnover of the assessee on correct amount of undisclosed turnover as indicated in the preceding discussion and for passing an order as per the law after making necessary verification, inquiries and investigations. It would be not out of place to mention that the AO shall re-examine only the issue which has been indicated above.”

16. Therefore, this issue was not set aside by the Pr. CIT while passing the impugned order and hence no such issue arises in the present appeal.

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

Order pronounced in the open court on 21.06.2023.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 21 .06.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore