

**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.63/Asr/2022
Assessment Year: 2017-18**

Dimple Khanna D/o Krishan Kumar Behl 61 Kenndey Avenue, Amritsar. [PAN:-ABMPK9535B] (Appellant)	Vs.	PCIT-1, Amritsar. (Respondent)
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Appellant by	Sh. R. K. Magow, CA.
Respondent by	Smt. Rajinder Kaur, CIT.DR

Date of Hearing	07.06.2023
Date of Pronouncement	20.06.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Pr. Commissioner of Income Tax-1,Amritsar,[in brevity ‘the PCIT’] order passed u/s 263of the Income Tax Act 1961, [in brevity ‘the Act’] for A.Y. 2017-18.

2. The assessee has taken the following grounds:

- “1. That the order of the learned Pr.CIT-I U/s 263 of the Income Tax Act is illegal, violative of natural justice and without fair of application of mind.*
- 2. That neither in facts nor on law, the Ld.Pr.CIT-I is justified in exercising jurisdiction under Section 263 of the Income tax Act, 1961.*
- 3. That the Ld.Pr.CIT-I, while summarily setting aside the assessment order passed by Income Tax Officer, Ward 5(1) for A.Y 2017-18 neither applied his mind to the detailed explanations and documents filed by assessee in proceedings U/s 263 nor to the assessment order bearing categorical findings of the ITO on issue involved.*
- 4. That the appellant craves leave to add or amend any other grounds of appeal either at the time of the hearing or before the hearing.”*

3. Brief fact of the case is that the assessee is a trader and running the business under name & style of M/s Dimple Impex. The assessee filed income tax return U/s 139 on dated 29.03.2018 for assessment year 2017-18 showing an income of Rs. 328880/-. The firm was operative till 31.03.2016 and filed return under section 44AD for AY 2016-17. The case was selected for Limited Scrutiny to verify the cash deposited during demonetization period. Notices were duly served upon the assessee under section 143(2) and 142(1) of the Act. During assessment the reply was submitted by assessee. The assessment was completed by accepting the return

income. The Id. PCIT was not satisfied the verification of the Id. AO related cash deposit during demonetisation amount to Rs. 18,93,500/-. The Id PCIT had set aside the assessment order for no inquiry related cash deposit. The said order was setting aside for erroneous and prejudicial to the interest of revenue. Being aggrieved assessee filed an appeal before us.

4. The appeal of the assessee was fixed for hearing and matter was heard on dated 11th May 2023. Due to lack of documents related to verification in assessment proceedings. The matter was further put for clarification and date of hearing is fixed on 07.06.2023. The Id. AR placed an adjournment petition with reason that the inspection of assessment folder of department is not completed. The Id. DR during hearing placed the assessment file before the bench related to the appeal. The bench had allowed the Id. AR for inspection. After a detailed inspection the matter was put for argument.

5. The Id. AR for the assessee filed a written submission which is kept in the record. The Id. AR first placed that the revision order was passed related to deposit of cash during demonetisation amount of Rs.18,93,500/- in various bank accounts of the assessee. Out of this cash deposit there is no verification on point of the revenue. But the Id. AR placed that the details documents was filed before the Id. AO in the portal of the Income tax Department and the notice u/s 142 was also

asked for the document which was duly complied by the assessee himself. The copy of the submission and the notice u/s 142(1) are duly enclosed in **APB pages 3 to 28.**

5.1. The Id AR argued that the assessee's business was operative till 31/03/2016. During impugned assessment year the assessee received the payment from debtors which was debited balance since 31/03/2015. The Id. AR argued that confirmation of debtors, M/s Shiva Textiles and M/s Vikas Textiles amount to Rs. 652,000/- &Rs. 498,240/- respectively were duly submitted to the Id. AO in online proceeding. The assessee also received Rs. 473,600/- from debtor, M/s Arora Trader during FY 2015-16

5.2. The Id. AR also placed that the Id. PCIT had not completed any verification before issuance of the order u/s 263. So, there is no application of mind in relation to the Id. PCIT in this issue.

5.3. The Id AR respectfully placed the judgments which are reproduced as below:-

5.3.1. Hari Iron Trading Co.v.Commissioner of Income-tax, [2003] 131 Taxman 535 (Punjab & Haryana)

"A bare perusal of the aforesaid provision shows that the Commissioner can exercise powers under sub-section (1) of section 263 of the Act only after examining "the record of any proceedings under the Act". The expression 'record' has also

been defined in clause (b) of the Explanation so as to include all records relating to any proceedings available at the time of examination by the Commissioner. Thus, it is not only the assessment order but the entire record which has to be examined before arriving at a conclusion as to whether the Assessing Officer had examined any issue or not. The assessee has no control over the way an assessment order is drafted. The assessee on its part had produced enough material on record to show that the matter had been discussed in detail by the Assessing Officer.”

5.3.2. 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."

6. The ld. DR vehemently argued and invited our attention in order u/s 263 in para nos. 5 to 8 which are reproduced as below:

"05. Assessment record, assessment order and reply of assessee were duly considered. During demonetization period assessee deposited is Rs. 18,93,500/- in various bank accounts from 09-11-2016 to 30-12-2016. The explanation furnished regarding source of cash deposit is just a concocted story to explain the source of cash deposit. Even return for A.Y. 2016-17 was filed on 21-03-2017 after demonetization showing cash in hand. The assessing officer has not examined even single issue through third party enquiry and blindly accepted the version of assessee and accepted the return of income. This resulted impugned assessment order becomes erroneous.

06. Attention. of the assessee is invited to the amendment in section. Explanation 2 has been inserted by Finance Act w.e.f. 01.06.2015 which is reproduced as under:-

Explanation 2:- For the purpose of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,-

(a) the order is passed without making inquiries or verification which should have been made:

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119;or

(d) the order has been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

07 In my view the order passed by the Assessing Officer also comes within the meaning of the explanation as the Assessing Officer has failed to make necessary inquiries or verification which should have been made.

08. In view of para 05, 06, 07, I am of the considered opinion that the assessment order passed by the Assessing Officer is erroneous in so

far as it is prejudicial to the interest of revenue. Thus, assessment order under consideration is set aside. The Assessing Officer is directed to make denovo assessment after giving reasonable opportunity of being heard to the assessee in view of the observations made above and issue raised in show cause notice.”

7. We heard the rival submission and relied on the documents available in the record. Confirmation from the debtors of the assessee was duly submitted before the Id. AO during the scrutiny proceedings. The Id. AO is bound by limited scrutiny in the CASS system. Respectfully considering the orders of the Hon'ble Jurisdictional High court, **Hari Iron Trading**(supra) and the coordinate bench in the cases of **Smt. Rajinder Kaur** (supra) the investigation by the Id. AO cannot be called no investigation but the 'lack of investigation'. The Id AO is within the ambit of limited scrutiny. So, issue beyond cash deposit in bank is tantamount to beyond jurisdiction of the Id. AO. 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 periphery of limited scrutiny. In the light of these discussions and placing respectful reliance on the decisions of Hon'ble Jurisdictional High 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, the appeal of the assessee bearing **ITA No. 63/Asr/2022** is allowed.

Order pronounced in the open court on 20.06.2023

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