

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

ITA No.128/Hyd/2023		
Assessment Year: 2017-18		
SAP Medicals (P) Ltd Hyderabad PAN:AAMCS4547H (Appellant)	Vs.	Income Tax Officer Ward-3(1) Hyderabad (Respondent)
Assessee by:	Shri K.A. Sai Prasad, CA	
Revenue by:	Shri Vijay Bhaskar Reddy, CIT(DR)	
Date of hearing:	05/07/2023	
Date of pronouncement:	07/07/2023	

ORDER

Per R.K. Panda, Vice-President

This appeal filed by the assessee is directed against the order dated 24/03/2022 of the learned Pr.CIT-1 Hyderabad, relating to A.Y.2017-18.

2. There is a delay of 277 days in filing of this appeal by the assessee for which the assessee has filed a condonation application along with an affidavit explaining the reasons for the delay. After considering the contents of the condonation petition filed along with the affidavit and after hearing the learned DR, the delay in filing of this appeal by the assessee is condoned and the appeal is admitted for adjudication.

3. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the learned PCIT passed u/s 263 of the I.T. Act setting aside the order passed by the Assessing Officer u/s 143(3) with a direction to the Assessing Officer for proper verification.

4. Facts of the case, in brief, are that the assessee is a private limited company engaged in the business of dialysis consumables and equipments. It filed its return of income on 31.10.2017 declaring total income of Rs. 19,68,660/. The case was selected for scrutiny and statutory notices u/s 143(2) and 142(1) were issued from time to time calling for certain information. After considering the submissions filed by the assessee from time to time, the Assessing Officer completed the assessment u/s 143(3) on 17.12.2019 accepting the returned income.

5. Subsequently, the learned PCIT examined the record and noted that the assessee has deposited cash of Rs.39,74,500/- during demonetization period. From the details furnished by the assessee as available on record, he noted that the assessee had cash balance of Rs.10,73,295/- as on 8.11.2016 and has accepted Rs.39,74,500/- from its debtors who are all private hospitals which were deposited into his bank account. According to the learned PCIT, the Assessing Officer has accepted the contention of the assessee which is contrary to the extant provisions during the demonetization period. He was of the opinion that the same amount should have been brought to tax. Since the same has not been done, the learned PCIT held that the order passed by the Assessing Officer u/s 143(3) on 17.12.2019 is

erroneous and prejudicial to the interest of the Revenue. Accordingly, a notice u/s 263 of the I.T Act dated 15.2.2022 was issued to the assessee asking the assessee to explain as to why the order passed by the Assessing Officer should not be set aside. The assessee explained that the money was accepted in demonetized currency from its debtors due to the prevailing circumstances at that time as they were under the belief that they can accept the demonetized currency. It was further submitted that the Assessing Officer accepted the submission, therefore, addition was not made. It was accordingly requested to drop the proceedings initiated u/s 263 of the I.T. Act.

6. However, the learned PCIT was not satisfied with the arguments advanced by the assessee and set aside the order passed u/s 143(3) by invoking the provisions of section 263 of the Act observing as under:

“4.1 The submissions of the taxpayer that the issue of deposit of demonetized currency into its bank account was accepted by the Assessing Officer is not correct as the same is not borne out of record. Assuming without accepting, even if the same was considered by the Assessing Officer, even then the same is not correct as it is violation of the extant provisions regarding dealing with receipt of demonetized currency, as the same was allowed to specified entities like banks, petrol pumps, public transport, government hospitals etc. into which category the tax payer does not fall, therefore, the view of the Assessing Officer will not be legally sustainable. In view of the same, the objections of the taxpayer with-regard to proceedings u/s 263 are rejected.

4.2 Coming to the issue of deposit of Rs.39,74,500/- of money received from its debtors, the sum and substance of the arguments of the taxpayer is that the transactions on the nature of trade transactions. The issue is the taxpayer could have received the money. on transfer from its debtors instead of taking the cash in demonetized notes and depositing the same in its bank account, for which, the reason being given Was that the money was received from the debtors for sales made prior to demonetization period and if it did not accept cash at that point of time, it could not have realized the sale proceeds as most of them would have turned bad debts. In addition to the above, it also

submitted license issued by the Drugs Control Administration, Govt. of Telangana which permits the assessee to sell, stock or exhibit or offer for sale or distribute drugs. Therefore, Therefore, the deposits should be considered for acceptance.

5. As already mentioned above, objections on revision u/s 263 has been rejected. foregoing additional information like license issued by the Drug Control Authority and other related issues which have not been examined by the Assessing Officer, require necessary factual verification. Therefore, the issue of the deposit of Rs.39,74,500/- is restored to the file of the Assessing Officer for his/her verification as per law, by giving two effective opportunities and pass an order as per law”.

7. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal.

8. We have heard the rival arguments made by both the sides and perused the record. It is an admitted fact that the assessee has made cash deposit of Rs.39,74,500/- during the demonetization period which was accepted by him from various hospitals in demonetized currency in violation of the extant provisions regarding dealing in demonetized currency. However, the AO in the instant case has failed to investigate this aspect and passed the order u/s 143(3) accepting the income returned. In our opinion, the order passed by the Assessing Officer in the instant case without enquiring the huge cash deposit of Rs.39,74,500/- in demonetized currency in violation of the extant provisions regarding dealing in demonetized currency has rendered the order erroneous and prejudicial to the interest of the Revenue. Therefore, the learned PCIT, in our opinion, is fully justified in invoking the provisions of section 263 of the I.T. Act. The various decisions relied on by the learned Counsel for the assessee are distinguishable and not applicable to the facts of the present case since there is no application of mind at all by the Assessing Officer to this vital aspect of huge cash deposit during

the demonetized period. Accordingly, the grounds raised by the assessee are dismissed.

9. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 7th July, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 7th July, 2023.

Vinodan/sps

Copy to:

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3	Pr. CIT-1, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order