

**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. 100/Asr/2022**  
Assessment Year: 2012-13

Sh. Vijay Kumar Singla,  
Adv., Distt. Court, Mansa

[PAN: ALPPS 8765A]

**(Appellant)**

**V.** Pr. Commissioner of Income  
Tax-1, Amritsar

**(Respondent)**

Appellant by           S/Sh. Sudhir Sehgal, P.N. Arora &  
                                  P.K. Singla, Adv.  
Respondent by        Sh. S.R. Kaushik, CIT DR

Date of Hearing        : 21.06.2023  
Date of Pronouncement : 06.07.2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

This appeal has been filed by the assessee against the order of the Ld. Pr. Commissioner of Income Tax-1, Amritsar dated 17.03.2022 in respect of Assessment Year 2012-13.

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

- “1. That the Worthy Pr. CIT has erred in assuming the jurisdiction under section 263 of the Income Tax Act and thereby setting aside the order to the file of the AO to frame the assessment de novo.
2. That setting aside the order of the Assessing Officer, the AO failed to make necessary inquiries/verification regarding source of cash deposit of Rs. 23,33,250/- in Punjab National Bank, Mansa. The Worthy Pr. Commissioner of Income Tax-1, Amritsar has failed to consider the fact that the assessment was framed by the Assessing Officer after due application of mind and verification of issue referred to in the notice under section 148 of the Act to his satisfaction in accordance with law. Therefore, finding of the Worthy Pr. Commissioner of Income Tax-1, Amritsar that assessment framed without making adequate inquiries is against the facts of the case.
3. That the learned Pr. Commissioner of Income Tax-1, Amritsar has erred in assuming the jurisdiction under section 263 of the Income Tax Act by invoking the explanation 2 of section 263 of the Act without pointing out in which manner the enquiries for verification should have been made.
4. That the appellant craves to add, amend or alter any ground of appeal on or before the hearing.”

3. The Ld. Principal Commissioner of Income Tax [In short “the PCIT”] issued show cause notice vide his office letter F. No. Pr. CIT-I/ASR/263/2020-21/1808 dated 28.02.2022 stating that the assessment u/s 143(3) r.w.s 147 of the I.T. Act was completed by the AO accepting returned income of Rs. 4,14,120/-; that the case was reopened on the reasons that case of Rs. 23,33,250/- was deposited in Punjab National Bank, Mansa being escaped assessment for the year under consideration and that while examining the record, it is observed that AO didn't enquire

about the source of cash deposit of Rs. 23,33,250/- made with Punjab National Bank, Mansa. Neither the source of cash deposit was verified by the AO and nor any independent enquiry was conducted by AO on the matter. Therefore, the entire amount remained unexplained as per provision of u/s 69A of the Act. Accordingly, he holds the assessment order dated 10.12.2019 passed u/s 143(3) r.w.s. 147 of the Act passed by the Income Tax Officer, Ward-1(4), Mansa for the A.Y. 2012-13 as erroneous and prejudicial to the interest of revenue.

4. The Ld. Counsel for the appellant assessee has submitted that the observation of the Ld. PCIT are not correct as at the time of assessment the Assessing Officer (In short "the AO") has specifically asked the assessee about the source of deposit of Rs. 23,33,250/- as per query at Sr. No. 4 of the notice u/s 142(1) dated 26.11.2019 and assessee has filed the detailed reply in response thereto. After considering the reply and examining the other record the assessment has been framed, accepting the returned income accordingly. The Ld. AR contended that the assessment so framed after taking explanation of the appellant assessee on the deposits so made in the bank, could not be said as prejudicial to the

interest of revenue. The Counsel filed a written synopsis which reads as under:

1. The Appellant is a practicing advocate and filing its return of income declaring the income generated on account of professional receipts in due course. During the year under consideration, the Appellant has deposited Rs. 23,33,250/- in his bank account maintained with Punjab National Bank (Account No. 0313000100179450) out of the cash in hand as per the cash book of the Assessee wherein receipts are on account of professional receipts and cash withdrawals from bank. The said facts were duly explained during the re-assessment proceedings as there were specific queries raised by AO in this regard vide questionnaire dated 26.11.2019 DIN: ITBA/AST/F/142(1)/2019-20/1021090304(1) in Point 4 (**placed at Page No. 5-6 of the Paper Book**). The Applicant has duly filed the detailed reply along with the supporting documents dated 06.12.2019 (**placed at Page No. 8 of the Paper Book**).
2. During the year under consideration, the assessee is in receipt of Rs. 10,80,200/- which has been duly declared in the Return of Income and have been accepted as well. The said receipts are forming part of the cash and bank books of the Appellant, thereafter, the total withdrawal of the Assessee from his bank account are of Rs. 21,07,880/-.
3. Further, the point of consideration is that the cash deposit of Rs. 23,33,250/- is scattered and distributed over the entire year and is not at all the case of one time deposit or bulk deposits. The said fact is evident from the bank statement forming part of the (**Paper Book Part 2 at Page No. 15 to 20**), it is clear that the quantum of deposit and withdrawals from the bank are very nominal and nothing suspicious. For your Honor's ready reference, the month-wise chart of cash Deposit and Withdrawals is as under:

Month	Cash Deposit	Cash Withdrawal
April-11	55900	896000
May-11	327400	305000
June-11	24000	65000
Jul-11	122300	64000
August-11	67650	95080
Sep-11	80500	46000

October-11	22000	95140
Nov-11	13500	13000
December-11	90000	158180
Jan-12	311000	119900
February-12	330000	41000
Mar-12	889000	209580
<b>Total</b>	<b>2333250</b>	<b>2107880</b>

Form the above, it can be construed that apart from the cash receipts on account of professional income, the Appellant is also having enough cash withdrawals during the year under consideration.

- Therefore, the view of the Pr. CIT that the cash deposited by the Appellant in his bank account if out of the undisclosed sources is completely vague and baseless, also, Further, the Ld. AO has genuineness of the cash deposited in the bank account of Rs. 23,33,250/- after a conscious and independent application of mind. Hence, in all such circumstances, the application of provision of section 263 of the Act only on account of difference in opinion of Pr. CIT is invalid and uncalled for.

#### **LEGAL ARGUMENTS OF THE CASE**

- At the outset, we would like invite your Honor's kind attention to the fact that the case of the Assessee re-opened u/s 148 for the sole reason of 'Deposit of cash in bank account', also, there were specific queries raised by AO in this regard vide questionnaire dated 26.11.2019 DIN: ITBA/AST/F/142(1)/2019-20/1021090304(1) in Point 4 (**placed at Page No. 5-6 of the Paper Book**). The Applicant has duly filed the detailed reply along with the supporting documents dated 06.12.2019 (**placed at Page No. 8 of the Paper Book**) and the same were found satisfactory. It is merely the assumption of the Pr. CIT that no enquiry has been made by the Assessing Officer.

5.1 Moreover, the another matter of consideration is that there was only one reason for re-opening of the case i.e., during the Assessment Proceedings u/s 148, the Applicant was to be examined exclusively for the issue of cash deposit of Rs. 23,33,250/- and the observation of the Pr. CIT that the AO was even unable to fulfil this requirement is completely ambiguous when there are substantial evidences on record to prove otherwise. So, It shows from the above explanation that the issue stands examined by the AO and there is no new issue which is pointed out by the PCIT and therefore, the revision proceedings u/s 263

are bad in law and deserves to be quashed and reliance has been placed on the following judgments:

• **SATVIR KAUR v/s Pr. CIT in ITA No. 102/Asr/2022 (ITAT Asr)**

*“Further, the Ld. AO has accepted the deal of sale of agriculture land with a conscious and independent application of mind. Under the facts and circumstances, we hold that the application of provision of section 263 of the Act, on account of difference in opinion of Pr. CIT is invalid and unwarranted.*

*11. In the above view, we accept the grievance of the assessee as genuine. Accordingly, the revision proceedings u/s 263 of the Act are held to be bad in law and as such, the impugned order u/s 263 of the Act is quashed.”*

• **NARAIN SINGLA vs. PCIT in ITA no. 427/CHD/2015**

*“Section 69A, read with section 263, of the Income-tax Act, 1961 - Unexplained moneys (Jewellery) - Assessment year 2011-12 - Commissioner set aside assessment order under section 263 on ground that substantial jewellery was found during search at assessee's premises which was claimed to have been declared under VDIS 1997 by assessee's wife and Assessing Officer accepted that claim without enquiry and without verifying whether same jewellery continued to be held by wife of assessee even at time of search - Whether VDIS certificate issued by Commissioner was quite a valid document to prove possession of jewellery by assessee and Assessing Officer rightly accepted same as such - Held, yes - Whether there being nothing on record to show that assessee's wife had transferred jewellery declared under VDIS before date of search, Assessing Officer's formation of belief that she was having same jewellery at time of search could be said out of place - Held, no - Whether when Assessing Officer was fully aware of matter, he had appraised evidences filed by assessee and then had formed a view to accept same, Commissioner was unjustified in invoking jurisdiction under section 263 - Held, yes [Paras 9 & 10] [In favour of assessee]. Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interest of revenue (Scope of jurisdiction) - Assessment year 2011-12 - Whether if there was an enquiry, even inadequate, that would not, by itself, give occasion to Commissioner to pass order under section 263, merely because he has a different opinion in matter; it is only in case of 'lack of inquiry' that such a cause of action can be open - Held, yes [Para 15] [In favour of assessee]”*

• **CIT vs. ANIL KUMAR SHARMA as reported in 335 ITR 83 (Del HC)**

*“In view of the above discussion, it is apparent that the Tribunal arrived at a conclusive finding that, though the assessment order does not patently indicate that the issue in question had been considered by the Assessing Officer, **the record showed that the Assessing Officer had applied his mind.** Once such application of mind is discernable from the record, the proceedings under Section 263 would fall into the area of the Commissioner having a different opinion. We are of the view that the findings of facts arrived at by the Tribunal do not warrant interference of this Court. That being the position, the present case would not be one of „lack of inquiry□ and, even if the inquiry was termed as inadequate, following the decision in M/s Sunbeam Auto Ltd (supra), "that would not by itself give occasion to the Commissioner to pass orders under Section 263 of the said Act, merely because he has a different opinion in the matter." No substantial question of law arises for our consideration. Consequently, the appeal is dismissed”.*

**• CIT vs. HINDUSTAN MARKETING AND ADVERTISING COR. LTD. As reported in 341 ITR 180 (Del HC)**

*“When we examine the order of the Tribunal juxtaposition and comparing the orders of the Assessing Officers with those of the Commissioner under Section 263 of the Act, **we find that the Tribunal has rightly held that present case is not a case where the enquiries were not made by the Assessing Officer or the relevant material was not collected before framing assessment orders.** Observation of the Commissioner that the income-tax officers did not make sufficient enquiries is totally subjective. It was not a case of lack of enquiry. The Commissioner judged the "sufficiency of enquiry" by subjective standards. It appears that according to the Commissioner, more enquiries should have been made. The observations of the Commissioner were general in nature, namely, there was lack of proper enquiries or investigation or cosmetic treatment was given by the ITOs”.*

5. Per contra, the Ld. DR although supported the impugned order, however, he failed to rebut the contention of the counsel.
6. We have heard the rival contentions, perused the material on record, impugned order, written submission and case law cited. Admittedly, the

appellant assessee's case was reopened for the reasons that cash of Rs. 23,33,250/- was deposited in Punjab National Bank, Mansa being escaped assessment for the year under consideration. However, the Ld. PCIT did not appreciate the merits of the case and the contentions of the appellant that while examining the record, the AO did make enquires about the source of cash deposit of Rs. 23,33,250/- made by the assessee with Punjab National Bank, Mansa. It is after due satisfaction of the AO on verification of the source of cash deposit by way of raising specific quarry in the notice issued U/s 142(1) of the act, on the matter, he has accepted the returned income of the assessee.

7. From the bank statement (APB-II, Pgs.15 to 20), It is evident that the cash deposit of Rs. 23,33,250/- is scattered over the entire year and it is not at all the case of one time deposit or bulk deposits. Thus, it is clear that the quantum of deposit and withdrawals from the bank are very nominal and nothing to suspicious by the PCIT as contended by the Ld. AR. The month-wise chart of cash Deposit and Withdrawals is reproduced as under:

<b>Month</b>	<b>Cash Deposit</b>	<b>Cash Withdrawal</b>
April-11	55900	896000
May-11	327400	305000
June-11	24000	65000

Jul-11	122300	64000
August-11	67650	95080
Sep-11	80500	46000
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February-12	330000	41000
Mar-12	889000	209580
<b>Total</b>	<b>2333250</b>	<b>2107880</b>

8. Form the above, we find that apart from the cash receipts on account of professional income, the Appellant is also having enough cash withdrawals during the year under consideration. Meaning thereby that the view of the Pr. CIT that the cash deposited by the Appellant in his bank account is out of the undisclosed sources is vague and without any basis. In our view, the Ld. AO has accepted the genuineness of the cash deposited in the bank account of Rs. 23,33,250/- after a conscious and independent application of mind. Under the circumstances, we hold that the Ld. PCIT's action of invoking the provision of section 263 of the Act has been on account of difference in opinion of Pr. CIT which is held to be as invalid under law.

9. In the present case, the AO was fully aware of matter, he had appraised evidences filed by assessee and then had formed a view to

accept same, and therefore, the PCIT was unjustified in invoking jurisdiction under section 263. If there was an enquiry, even inadequate, that would not, by itself, give occasion to the PCIT to pass order under section 263, merely because he has a different opinion in matter; it is only in case of 'lack of inquiry' that such a cause of action can be open. Our view gets support from the decision given by the Chandigarh Tribunal in the case of "NARAIN SINGLA vs. PCIT", (supra).

10. Respectfully following Hon'ble Delhi High Court in the case of "CIT vs. ANIL KUMAR SHARMA" (supra) on similar fact, we hold that merely difference of opinion by itself would not give occasion to the Commissioner to pass orders under Section 263 of the said Act. Therefore, the impugned order held to be bad in law and the same is as such quashed.

11. In the result, the appeal filed by the assessee is allowed.

*Order pronounced in the open court on 06.07.2023*

**Sd/-**  
**(Anikesh Banerjee)**  
**Judicial Member**

**Sd/-**  
**(Dr. M. L. Meena)**  
**Accountant Member**

*\*GP/Sr./P.S.\**

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