

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. 221/Ind/2018
(Assessment Year:2010-11)

Nitin Gupta H.No.36 Kainchi Chhola Road, Chhola Bhopal	Vs.	Pr. CIT-2 Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AJUPG 6497Q		
Assessee by	Shri Gagan Tiwari, AR	
Revenue by	Shri P.K. Mishra, CIT- DR	
Date of Hearing	26.07.2023	
Date of Pronouncement	27 .07.2023	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 28.03.2017 of Pr. Commissioner of Income Tax for Assessment Year 2010-11. The assessee has raised following grounds of appeal:

“1. That on facts and in the circumstances of the case, the Ld. CIT has grievously erred in not allowing proper, reasonable and meaningful opportunity before taking the assessment Order in Suo Moto revision u/s 263.

2. That on facts and in the circumstances of the case, the launching of proceedings u/s 263 of Income Tax Act 1961 on the assessee is unlawful and arbitrary. 3. That the learned CIT has failed to

appreciate that the order passed by the AO was neither erroneous nor prejudicial to the interest of the Revenue as income was already estimated and determined on contract receipts and tax was also levied as per law and thus the very invocation of power under s. 263 is wholly illegal and beyond jurisdiction.

4. That the CIT has in assuming jurisdiction under s. 263 grossly failed to appreciate the settled legal position that the assessment order framed under s. 143(3) after making enquiries cannot be subject to revision under s. 263. Even if it is assumed that two views were possible and AO has taken one of the view on which Ld. Commissioner did not agree the same cannot be subjected to be erroneous or prejudicial to the interest of revenue.

5 That on facts and in the circumstances of the case, the Id. CIT fails to understand that transaction appeared in bank account was his business turnover (Petti contract receipts) for which no separate addition can be made treating as unexplained deposit. Hence launching of proceedings u/s 263 is bad and unjust.

6. That the Appellant craves leave to add, alter and amend or to modify any ground(s) on or before the date of hearing.”

2. The assessee is an individual and filed his return of income for the year under consideration on 24.06.2010 declaring total income of Rs.1,65,130/-. The return was initially processed u/s 143(1) and subsequently the assessment was reopened vide notice u/s 148 issued on 24.03.2015. The assessment was completed u/s 147 r.w.s. 144 on 04.03.2016 at total income of Rs.2,50,000/- as against the return income of Rs.1,65,130/-. Thereafter, the Pr. CIT on examination of the assessment record noted that the assessment order is erroneous and prejudicial to the interest of the revenue as the AO has worked out the total turnover of the assessee by taking net profit margin @ 5% on the total income declared by the assessee. Further the AO has made an addition of

5% of the unexplained cash credit instead of examining the issue. Thus, the Pr. CIT was of the opinion that estimation of the turnover by the AO is without basis or record. The AO has not examined books of account or records as well as explanation regarding the cash credits. Finally, Pr. CIT has set aside the assessment order with the direction to the AO to frame assessment *denovo* after affording proper opportunity of hearing to the assessee. Aggrieved by the impugned order of the Pr. CIT the assessee filed the present appeal.

3. We have heard the ld. AR as well as Ld. DR and carefully perusing the impugned order passed by the Pr. CIT u/s 263 of the Act. At the outset, we note that Pr. CIT has passed impugned order *ex-parte* when there was no response from the assessee to the show cause notice issued by Pr. CIT. This fact has been recorded by the Pr. CIT as under:

“2.Accordingly. Notice was issued to the assessee on 21.03.2016 which was served through affixture on 22.03.2017, at the address of the assessee, mentioned supra. Hearing in this case was fixed for 27.3.2017 which remained unattended.”

4. Thus, it appears that apart from show cause notice the Pr. CIT has not given any other notice or opportunity of hearing to the assessee before passing the impugned order. Even otherwise the impugned order was passed within a period of seven days after issuing show cause notice and service was effected through affixture. Thus, it is manifest from the record that the impugned order was passed by the Pr. CIT without giving an appropriate and effective opportunity of hearing to the assessee. Ld. DR has fairly submitted that the matter may be remanded to the record of the Pr. CIT for fresh adjudication after affording an appropriate opportunity of hearing to the assessee.

5. Accordingly in the facts and circumstances of the case, we find that the impugned order passed by the Pr. CIT u/s 263 is not in accordance with the provisions of section 263(1) of the Act and therefore, the same is

set aside and the matter is remanded to the record of the Pr. CIT for passing afresh order after giving an appropriate opportunity of hearing to the assessee. Ld. AR has undertaken to appear before the Pr. CIT whenever the matter is fixed for hearing.

6. In the result, appeal of assessee is allowed for statistical purposes.

Order in pronounced in Open Court on 27/ 07/2023.

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 27.07.2023

Patel/Sr. PS

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

sd/-

(VIJAY PAL RAO)
Judicial Member

By order

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