

**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. 130/Asr/2023
Assessment Year: 2018-19**

Harjot Singh Trimmo Road, House No.204, Gurdaspur Punjab. [PAN:-BVPPS9832P] (Appellant)	Vs.	PCIT-Central, Ludhiana. (Respondent)
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Appellant by	Sh. J. S. Bhasin, Adv.
Respondent by	Sh. Anupam Kant Garg, CIT DR.

Date of Hearing	02.08.2023
Date of Pronouncement	21.08.2023

ORDER

Per: Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Principal Commissioner of Income-Central, Ludhiana, (in brevity 'the PCIT') order passed u/s 263 of the Income-tax Act, 1961 (in brevity the Act) for assessment year 2018-19. The impugned order was emanated from the order of Id. ACIT/DCIT Central Circle, Amritsar, (in brevity 'the AO') order passed u/s 143 (3) of the Act.

2. The assessee has taken the following grounds:

“1. That neither in facts nor on law, the Id. Pr.CIT was justified in exercising jurisdiction under section 263 of the Income Tax Act, 1961, in this case.

2. That the Id. Pr.CIT, while wrongly rejecting assessee's detailed explanation, erred to hold that assessment was finalized without making adequate enquiries qua the surrendered income of Rs.15,11,555/- and the professional income as returned by assessee.

3. That the Id.AO having made adequate enquiries regarding surrendered income and on being satisfied with the explanation furnished by assessee as envisaged in deeming provisions of sec 68/69, the Id.PCIT was not justified in substituting his view by invoking jurisdiction u/s.263.

4. That the Id.PCIT, exercising power u/s.263, was also not justified to hold that the Id.AO ought to have assessed professional income in terms of 44ADA(1) r.w.sub.sec (2) & (3) thereof.

5. That the Id.AO having taken a plausible view sustainable in law on both the above issues after making detailed enquiries, the same could not be substituted by the Id.PCIT by invoking powers u/s.263.

6. That the impugned order, being perverse, contrary to facts, law, and natural justice, is liable to be set aside.”

3. Brief facts as culled out from the records are that the assessee is a doctor by profession. That during the year under appeal, he remained employed with Sigma Scan Centre, Gurdaspur from July 2017 to October 2017 and drew salary of Rs. 4,00,000/-. He also carried out retail trading of medicines, started only last year of impugned assessment year, in the premises of a family concern namely M/s Babbar Multi Specialty Hospital, Library Road, Gurdaspur. In January 2018. He also started his own professional business of Diagnostic Centre under the name & style K.P. Imaging, by installing an X-ray machine in November 2017 and maintained complete books of accounts i.e., cash book, ledger, receipts, and expense vouchers, for this professional work. On dated 06.03.2018, a survey u/s.133A was conducted at the business premises of the assessee. The assessee was made to surrender a sum of Rs.15,11,555/-, bifurcated under following heads:

Rs,5,61,555/- towards difference in stock of medicines

Rs.2,00,000/- towards renovation of business premises and agreed to surrender of Rs.15,11,555 as additional professional income. In the above background, assessee filed his income tax return U/s 139(1) of the Act by declaring total income of Rs.8,98,310/- from all sources including surrendered income. The assessment proceeding was started. As per the assessee during the assessment proceedings, all sources of income, including the surrendered income as well as

expenses etc, were required to be explained and justified with documentary evidence. The assessment was concluded and order was passed u/s. 143(3) accepting the assessee's return income.

The Id. PCIT invoked jurisdiction u/s.263 by issue of show cause notice and proposed to set aside the assessment order, pointing out following discrepancies:

i) That sale of goods and sale of services aggregated to Rs.34,70,000/-. Also the surrendered income of Rs.15,11,555/- was shown in P&L account which should have been separately shown as unexplained investment.

ii) Professional income should have been computed u/s.44ADA and audit report in Form 3CD was required to be filed with return but not filed.

iii) The 50% of above receipts i.e. Rs. 17,35,000/- should have been assessed as professional income u/s.44ADA and the surrendered amount of Rs.15,11,555/- should have been charged separately as unexplained investment. The show cause notice was strongly repelled by assessee by filing detailed replies. However, rejecting the same, the impugned order was passed u/s.263 by setting aside the assessment order dated 26.02.2021.

4. The Id. AR of the assessee has filed written submission which are kept in the record. The Id. AR first argued that the assessment was completed on basis

of the survey u/s 133A of the Act., was carried out at the premises of the assessee on 06.03.2018. The assessee is by profession doctor and he was earning income in three heads as follows: -

- i) salary,
- ii) income from trading business of medicines; and
- iii) the professional income.

During survey the assessee surrendered Rs.15,11,555/-. Out of this Rs.5,61,555/- was difference in stock of medicine in trading business, i) Rs.2 lac for renovation of business premises, ii) Rs.7,50,000/- towards the construction of residential house. The return was filed U/s 139(1). The assessee declared the net profit of trading business @ 8% on the sale of Rs.21,31,500/- u/s 44AD which works out net profit to Rs.1,70,520/-. The assessee further declared the professional income Rs.13,38,500/-. But there is no Tax Audit Report U/s 44AB(d) of the Act for violation of section 44ADA of the Act. The Id. AR placed that though the assessee is not maintaining the net profit as stipulated u/s 44ADA but the assessee maintaining the books of account properly. The Id. AO had verified the books of accounts of the assessee and accepted this income during assessment.

4.1 The Id. AR specifically mentioned that the notice u/s 263 issued on the ground that the surrendered income would not be taxed under the provision of section 115BBE of the Act. The Id. PCIT concluded that the Id. AO had erred to accept the income from the professional income without considering the section 44ADA as the net profit is below 50% or books of account of the assessee was not audited.

4.2 The Id. AR first, invited our attention in **APB page 5** where the notice u/s 142(1) was issued by the Id. AO and specifically mentioned the details related to this assessee's income declared in the return. The relevant paragraph 7 of the notice u/s 142(1) is extracted as below:

“7. During the course of survey proceedings it was stated that no Books of accounts are being maintained and profit is being shown u/s 44AD of the I.T. Act. It is observed that you are running Diagnostic Centre which will come under medical profession and income must be shown @50% of total receipts u/s 44ADA of the I.T.Act. During the course of survey additional income of Rs. 15,11,555/- was offered over & above normal Income for the A.Y.2018-19 on account of difference in stock, renovation of business premises and on account of construction of the residential house which cannot be business receipts and should have been offered separately as unexplained investments. But it is observed that same has been shown as receipts and total income of Rs.7,32,083/- has been shown including surrender amount of Rs. 15,11,555/-. Thus, you

have shown loss of Rs. 7,32,083/- out of total receipt of Rs.34,70,000/-. Whereas you should have shown Net Profit of Rs. 17,35,000/- on total receipt of Rs.34,70,000/- @50% u/s 44ADA of the I.T.Act and further surrendered income of Rs. 15,11,555/- as unexplained investment. Please explain.”

4.3 The Id. AR further argued that the issue was already verified by the revenue and there is no lack of verification from the end of the assessing authority. The Id. AR argued that the Id. AO accepted the professional income and the tax under normal rate on the surrendered value. The Id. AR also invited our attention in **APB page 3** in trading and P & L a/c where the business income was surrendered Rs.15,11,555/- and the net profit was declared Rs.5,61,563/-. The Id. AR has drawn our attention in **APB page 14** where the assessee submitted the letter on surrendered and mentioned that the

“surrendered is subject to no further penal action”.

5. The Id. DR vehemently argued and relied on the order of the Id. PCIT. The Id. DR invited our attention in para no. 6 of revisional order page 4 which is extracted as below:

“06. Thus, the assessee is engaged in a profession and total receipts made by the assessee during the year should be charged u/s 44ADA of the Income Tax Act, 1961. Therefore, net

profit on the total receipt of Rs.34,70,000/- (i.e. Rs.21,31,500/- + Rs. 13,38,500/-) made during the year by the assessee should be shown under the head Business and Profession u/s 44ADA of the Income-tax Act and is to be calculated @ 50% of the total receipt which comes to Rs. 17,35,000/-. Further, the amount of Rs. 15,11,555/- surrendered by the assessee during the course of survey action cannot be treated as business receipts and should have been charged separately as unexplained investment.”

6. We heard the rival submission and considered the documents available in the record. The ld. AR agitated the two issues related to the order, passed U/s 263. The first is the application of tax under Specialrate by invoking Section 115BBE and the second is violation of section 44ADA r.w.s. 44AB(d) of the Act. First, the issue is related to the application of the tax u/s 115BBE related to surrendered income. The issue is already verified by the ld. AO and the subject matter is discussed in the assessment order and was duly accepted. The ld. PCIT was not able to bring any evidence that the assessee has any other source of income other than the business income and professional income. The source of income is well explained and verified during survey proceeding. The surrendered income as was the concealed income which was generated from the business activity and professional activity of the assessee. So, the revisional authority cannot call the assessment order erroneous in this point of view.

6.1 Related to violation of section 44ADA r.w.s. 44AB(d) there are two conditions for computing profit in the professional income which are as below: -

i) maintaining the @50% of the profit if the turnover is below 50 lacs i.e. calculation of presumptive profit

ii) if the profit is below 50% then the books of account should be audited as per the section 44AB(d) of the Act and should be filed with return of income.

But the assessee had failed to do so and had not fulfilled any of the conditions as mentioned in the Act. The Id. AO has no power to verify the books of accounts other than the persuasion of tax audit report, U/s 44AB(d) of the Act. But the net profit calculation U/s 44ADA is restricted only on the professional turnover amount to Rs. 13,38,500/- and should be calculated accordingly. In our considered view, the act of the Id. AO is erroneous- and prejudicial to the interest of revenue.

We respectfully relied on the order of Hon'ble **Supreme Court of India** in

Commissioner of Income-tax v. Paville Projects (P.) Ltd, [2023] 149 taxmann.com 115 (SC)

“7.2 Thus, even as observed in paragraph 9 by this Court in the case of Malabar Industrial Co. Ltd. (supra) that the scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. It is further observed that if due to an erroneous order of the

Income-tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue. However, only in a case where two views are possible and the Assessing Officer has adopted one view, such a decision, which might be plausible and it has resulted in loss of Revenue, such an order is not revisable under section 263.

7.3 Applying the law laid down by this Court in the case of Malabar Industrial Co. Ltd. (supra) to the facts of the case on hand and even as observed by the Commissioner, the order passed by the Assessing Officer is erroneous as well as prejudicial to the interest of the Revenue. Having gone through the assessment order as well as the order passed by the Commissioner of Income Tax, we are also of the opinion that the assessment order was not only erroneous but prejudicial to the interest of the Revenue also. In the facts and circumstances of the case, it cannot be said that the Commissioner exercised the jurisdiction under section 263 not vested in it. The erroneous assessment order has resulted into loss of the Revenue in the form of tax. Under the Circumstances and in the facts and circumstances of the case narrated hereinabove, the High Court has committed a very serious error in setting aside the order passed by the Commissioner passed in exercise of powers under section 263 of the Income-tax Act.

8. In view of the above and for the reasons stated above, present appeal succeeds. The impugned judgment and order passed by the High Court is hereby quashed and set aside and that the order passed by the Commissioner passed in exercise of powers under section 263 of the Income-tax Act is hereby restored.

In result, present appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.”

So, in this point the order passed by the Id. PCIT in exercise of powers under section 263 is partly viable and accepted.

7. Considering the above discussion, appeal of assessee Ground no. 1 is general in nature, Ground nos. 2 & 3 are allowed, Ground nos. 4 & 5 are dismissed, and Ground no-6 is partly allowed.

8. In the result, appeal of the assessee **ITA No. 130/ASR/2023** is partly allowed.

Order pronounced in the open court on 21.08.2023

Sd/-

Sd/-

(Dr. M. L. Meena)
Accountant Member

(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