

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, KOLKATA**

**Before Shri Rajesh Kumar, Accountant Member
&
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No. 2238/KOL/2019
Assessment Year: 2014-2015**

***Pawan Kumar Ruia,.....Appellant
5, Sunny Park,
Kolkata-700019
[PAN: ACNPR3823K]
-Vs.-***

***Assistant Commissioner of Income Tax,....Respondent
Circle-30, Kolkata,
Aayakar Bhawan, Dakshin,
2, Gariahat Road (South), 5th Floor,
Kolkata-700068***

Appearances by:

*Shri Manoj Kataruka, Advocate , appeared on behalf of
the assessee*

*Shri Vijay Kumar, Addl. CIT, Sr.D.R., appeared on behalf
of the Revenue*

**Date of concluding the hearing :11.08.2023/March
31, 2023/11th November, 2022.**

Date of pronouncing the order :22nd August, 2023

O R D E R

Per Rajesh Kumar, Accountant Member:-

The assessee is in appeal before the Tribunal against the order of ld. Principal Commissioner of Income Tax-10, Kolkata dated 11.09.2019 passed

under section 263 of the Income Tax Act, 1961 for A.Y. 2014-15.

2. The only issue raised by the assessee is against the invalid exercise of jurisdiction under section 263 of the Act by the ld. PCIT and thereby cancelling the assessment framed under section 143(3) of the Act dated 17.12.2016 vide order passed order u/s 263 of the Act on the ground of being erroneous as well as prejudicial to the interest of the revenue.

3. The facts in brief are that the assessee filed his return of income on 17.07.2014 declaring total income of Rs.6,52,52,390/-, which was processed under section 143(1) of the Act. The case of the assessee was selected for scrutiny under CASS on the ground of huge cash deposited in the Savings Bank accounts of the assessee and finally the assessment was framed under section 143(3) on 17.12.2016 by accepting the explanation of the assessee. Thereafter the ld. Pr. CIT, on perusal of the assessment records, observed that there was a failure on the part of the ld. Assessing Officer, to carry out proper verification as to the source of huge cash deposits to the tune of Rs.1,95,00,000/- in the savings bank accounts between the period 1.4.2013 to 31.03.2014 and thereby observing that the assessment framed by the ld. Assessing Officer is erroneous as well as prejudicial to

the interest of the Revenue. Accordingly, he issued show-cause notice to the assessee dated 14.01.2019, which was replied by the assessee on 23.09.2019. The assessee also moved before the Hon'ble High Court against the revisionary jurisdiction of the Id. Pr. CIT in the Writ Petition No 3424(W) of 2019, a copy of Writ Petition was filed before the Id. PCIT, but since there was no order from the Hon'ble High Court, the limitation for completing the assessment was 31.03.2019 under section 263(2) of the Act. The Id. PCIT passed the revisionary order on 29.03.2019 revising the assessment framed by the Id. Assessing Officer. Thereafter the Hon'ble Calcutta High Court passed order on 10.04.2019 setting aside the revisionary order dated 29.03.2019 and directing the respondent authority to give hearing to the assessee by issuing fresh notice. Pursuant to the order of Hon'ble High Court, Id. Pr. CIT again issued notice under section 263 on 21.06.2019 fixing the date of hearing on 01.07.2019, which was attended by the Id. Authorized Representative of the assessee Mr. A.K. Goenka and he filed the written submissions before the Id. PCIT. Finally the assessment framed by the Id. Assessing Officer was revised by the Id. PCIT as erroneous and prejudicial to the interest of the Revenue on the ground that the assessee has deposited Rs.2,55,02,500/- in his Bank account during the previous year relevant to A.Y. 2014-15 and accordingly set aside the assessment and directed

the ld. Assessing Officer to assess the income after doing necessary verification in respect of the cash deposits.

4. The ld. A.R. vehemently submitted before the Bench that the case of the assessee was selected for scrutiny under CASS for huge cash deposits in the bank accounts of the assessee and, therefore, the issue of cash deposits in the bank accounts of the assessee stood examined during the assessment proceedings, which culminated in the passing of assessment under section 143(3) of the Act dated 17.12.2016. The ld. A.R. submitted that the order passed by the ld. Assessing officer is correct and valid order as the same was passed after examining the evidences filed by the assessee in support of and explaining the source of cash deposits, which were stated to be deposited out of cash in hand available in the cash book of the assessee and thus were duly recorded in the books of account of the assessee. The ld. A.R. submitted that the order cannot be said to be erroneous as well as prejudicial to the interest of the revenue on the ground that the ld. Assessing Officer has taken a plausible view with which the ld. Pr. CIT is not agreeing. The ld. A.R., therefore, prayed that revisionary jurisdictional exercise by the ld. PCIT may kindly be quashed. The ld. A.R. relied on a series of decisions in support of his case:

(i) Director of Income Tax vs. Jyoti
Foundation in 357 ITR 388 (Del);

- (ii) *Malabar Industrial Co. Ltd. v. CIT*
[2000] 243 ITR 83 (SC),
- (iii) Gabriel India(1993)203 ITR 108 (Bom);
- (iv) ITO Vs D.G. Housing Projects Ltd. (2012)
342 ITR 329(Del).

5. Ld. D.R., on the other hand, submitted that by exercising the revisionary jurisdiction by the ld. PCIT, no prejudice going to be caused to the assessee as the assessee would be given sufficient opportunity in the set aside proceedings to explain the source of money and if the assessee shows about the veracity of its claim and the source of cash deposits, the same would be considered by the ld. Assessing Officer during the set aside proceedings. The ld. A.R. prayed that the revisionary jurisdiction of the ld. Assessing Officer may kindly be affirmed by upholding the order passed under section 263 of the Act.

6. We have heard the rival submissions and perused the material placed before us. Undisputedly, the case of the assessee was reopened under CASS in order to verify the cash deposits in the assessee's bank accounts. The assessment in this case was framed under section 143(3) of the Act vide order dated 17.12.2016. The ld. A.R. stated that the cash was deposited on various dates out of cash available in the books of account of the assessee corroborating the same with the cash book. We also note

that the sources of cash deposits were also available in the cash book. Besides the AO during the assessment proceedings issued notice u/s 142(1) of the Act dated 05.04.2016 and specifically asked the assessee vide para 20 of the said notice/questionnaire to explain the cash deposits of Rs. 1,95,00,000/- in the saving bank account. We note that the assessee replied the said query of the AO vide written submission dated 23.04.2016 vide para 20 submitting that the cash deposits into the bank were out of the cash withdrawals and necessary details and evidences were also produced before the AO. The assessee has produced before the AO the details of large cash deposits and sources thereof with explanatory statement and also copies of bank statement marked for source , cash withdrawals and cash deposits a copy of which is placed at page no 50 to 60 of the paper book. We note that the ld. Assessing Officer after examination of these evidences, has taken a possible view and accepted the pleas of the assessee and made no addition in the assessment framed. We note that the Ld. PCIT has exercised jurisdiction for the reason that the AO has not conducted the proper enquiries by mentioning wrong facts which in fact has been correctly examined by the AO in the assessment proceedings. In our considered opinion , the Ld. PCIT cannot invoke the jurisdiction u/s 263 of the Act to dictate the AO that enquiry should be made in a particular manner or a view taken by the AO which is a plausible view is not acceptable to the Ld. PCIT and that the AO should have been taken another view

which is the correct view as per the 1d PCIT. The case of the assessee finds support from the decision of Hon'ble Delhi High Court in the case of Director of Income Tax vs. Jyoti Foundation (supra) wherein the Hon'ble High Court has held that where the revisionary authority i.e. DIT feels that enquiries were insufficient and further enquiry or details should have been called for then the enquiry should have been conducted by the DIT himself to record a view that assessment order was erroneous and he should not set aside the order and direct the AO to conduct enquiry. We note that while passing this decision the Hon'ble Delhi High Court has referred to the decisions in the case of Commissioner Of Income-Tax vs Gabriel India Ltd. (supra) and Commissioner of Income-taxv. Sunbeam Auto Ltd. in [2011] 332 ITR 167 (Del) and ITO Vs D.G. Housing Projects Ltd. (supra). In the case of ITO-Vs D.G. Housing Projects Ltd. (supra), the Hon'ble Delhi High Court has held that where the 1d PCIT is of the view that the AO has not conducted proper enquiries, the 1d PCIT himself has to conduct the enquiries and prove the order passed by the AO to be erroneous and prejudicial to the interest of the revenue based on the said enquiries and it is not open to the 1d PCIT to set aside the order without conducting enquiries himself. But in the present case the 1d PCIT has just stated that the proper enquiries were not conducted by the AO and therefore the order framed is erroneous and prejudicial to the interest of the revenue. In the present case the 1d PCIT has failed to point out as to how the order framed by the AO is erroneous in so far as prejudicial to the interest of the revenue. The case of the assessee finds support from the decision of Hon'ble Supreme

Court in the case of Malabar Industrial Company Ltd. vs. CIT reported in (supra) wherein the Apex court has held that satisfaction of twin conditions as provided in section 263 of the Act is pre-requisite for assumption of jurisdiction u/s 263 of the Act and even if one of the two or either of the two conditions are satisfied the jurisdiction u/s 263 of the Act is not available to the Id PCIT. Considering the above facts of the case, in our opinion, the order is neither erroneous nor prejudicial to the interest of the revenue. We, therefore respectfully following the ratio laid down in the above decision, quash the order passed u/s 263 of the Act by allowing the appeal of the assessee.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 22nd August, 2023.

Sd/-

Sd/-

(Sonjoy Sarma)
Judicial Member

(Rajesh Kumar)
Accountant Member

Kolkata, the 22nd day of August, 2023

*Copies to : (1) Pawan Kumar Ruia,
5, Sunny Park, Kolkata-700019*

*(2) Assistant Commissioner of Income Tax,
Circle-30, Kolkata,
Aayakar Bhawan, Dakshin,
2, Gariahat Road (South), 5th Floor,
Kolkata-700068*

(3) Pr. Commissioner of Income Tax-10, Kolkata;

(4) Commissioner of Income Tax-;

- (5) *The Departmental Representative*
(6) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.