

आयकर अपीलीय अधिकरण  
पटना पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PATNA BENCH AT KOLKATA**  
[वर्चुअल कोर्ट]  
[Virtual Court]

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

श्री राजेश कुमार, लेखा सदस्य

के समक्ष

Before

**SRI RAJPAL YADAV, VICE PRESIDENT**

&

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**I.T.A. No.: 177/PAT/2022**

**Assessment Year: 2017-18**

***Sunil Prasad.....Appellant***  
***[PAN: ALBPP 5840 M]***

***Vs.***

***Pr. CIT-1, Patna.....Respondent***

**Appearances by:**

***Assessee represented by – Sh. A.K. Rastogi, Adv.***

***Department represented by – Smt. Rinku Singh, CIT, D/R.***

Date of concluding the hearing : July 7<sup>th</sup>, 2023

Date of pronouncing the order : August 28<sup>th</sup>, 2023

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

This appeal preferred by the assessee is against the order passed by Learned Pr. Commissioner of Income Tax (in short Ld. 'Pr. CIT')-1, Patna [hereinafter referred to Ld. 'CIT(A)'] dated 12.03.2022 for the Assessment Year (in short 'AY') 2017-18.

2. The only issue raised by the assessee in the various grounds of appeal is against the invalid jurisdiction exercised u/s 263 of the Act by Ld. Pr. CIT thereby passing a revisionary order which is invalid and bad in the eyes of law.

3. The facts in brief are that the assessee filed its return of income on 27.03.2018 declaring total income at Rs. 10,75,850/-. The case of the assessee was selected for limited scrutiny through CASS because of cash deposited during the demonetization period. Accordingly, the Assessing Officer (in short ld. 'AO') after calling for the information as to the cash deposited during the demonetization period of Rs. 20,86,496/- partly accepted the plea of the assessee and framed the assessment u/s 143(3) of the Act on 04.07.2019 assessing total income at Rs. 14,25,850/- by making addition of Rs. 3,50,000/- out of the cash deposited during the demonetization period which according to the AO remained unexplained. The said order of Ld. AO was not challenged before Ld. CIT(A) by the assessee. Thereafter, Ld. Pr. CIT upon perusal of the assessment record observed that Ld. AO has completed the assessment without making any enquiries with regard to cash deposits during the demonetization period and penalty proceedings were not initiated u/s 271D of the Act which renders the order passed u/s 143(3) of the Act dated 04.07.2019 as erroneous and prejudicial to the interests of the revenue. Accordingly, Ld. Pr. CIT issued notice u/s 263 of the Act dated 11.01.2022 to the assessee. The assessee replied to the said notice through ITBA portal and submitted therein that out of the total cash deposited of Rs. 20,86,496/- including deposits during the demonetization period of Rs. 20,70,000/- was explained before

the AO and Ld. AO was satisfied with the explanation of the assessee to the extent of Rs. 17,36,496/-, whereas , Rs. 3,50,000/- remained unexplained and added the same to the income of the assessee. Ld. Pr. CIT was not convinced with the submissions of the assessee and the assessment was revised by directing the AO to frame the assessment afresh by making enquiries, verification as regards the issue in the order after providing sufficient opportunity to the assessee of being heard.

4. Ld. A/R submitted before the Bench that exercise of revisionary jurisdiction by Ld. Pr. CIT on the issue which stood examined in detail by the AO in the assessment proceedings. Ld. A/R contended that the case of the assessee was selected for limited scrutiny under CASS only for examination of cash deposited during the demonetization period. Ld. AO after calling upon the relevant documents from the assessee and after examination of the same ,partly accepted the plea of the assessee by accepting the source of the cash to the tune of Rs. 17,36,496/- whereas the remaining Rs. 3,50,000/- remained unexplained and therefore, added to the income of the assessee. Ld. A/R argued that the jurisdiction u/s 263 of the Act is not available to Ld. Pr. CIT where the AO has called for the explanation from the assessee and the assessee has furnished all supporting evidences as called for by the AO and only thereafter by carrying detailed enquiry and examination, the plea of the assessee was accepted and Rs. 3,50,000/- was added to the income of the assessee. Ld. A/R contended that the jurisdiction is not available to Ld. Pr. CIT where the AO has taken a plausible view on the basis of evidences available before him after due appreciation of the same, however,

according to Ld. Pr. CIT the AO should have taken a view with which Ld. Pr. CIT does not agree with. Ld. A/R in support of his arguments relied on the decision in the case of *CIT Vs. Mukul Kumar* reported in 2009(4) PLJR 417 and *CIT Vs. Gabriel India Limited* reported in 203 ITR 108 (Bom), *Alkem Laboratories Ltd. Vs. PCIT* in ITA No. 24/PAT/2021 for AY 2015-16 and *Akash Kumar Vs. PCIT* in ITA No. 143/PAT/2019. Ld. A/R therefore, prayed that in view of the ratio laid down in the above decisions, the revisionary order passed by Ld. Pr. CIT is not valid and may kindly be quashed.

5. Ld. D/R on the other hand, strongly relied on the order passed by Ld. Pr. CIT and submitted that the AO has not conducted any enquiry as there was no evidence in the file as to verification/investigation carried out by the AO on the evidences filed by the assessee. Ld. D/R stated that it is not clear as to how and why the addition of Rs. 3,50,000/- was made only out of Rs. 20,86,496/-/- deposited during the demonetization period. Ld. D/R therefore, submitted that Ld. Pr. CIT has rightly held the assessment order as erroneous and prejudicial to the interests of the revenue. Moreover, with the exercise of revisionary jurisdiction the assessee is not put to any loss or prejudice as the assessee would get the due opportunity even in the set aside proceedings. Ld. D/R therefore, prayed that the case of the assessee may kindly be dismissed.

6. We have heard rival contentions and perused the material available on record. Undisputedly, the case of the assessee was selected for limited scrutiny for the reason that the assessee has deposited cash of Rs. 20,86,496/- deposited during the

demonetization period in his bank account. During the assessment proceedings Ld. AO called for the evidences from the assessee as regards the cash deposited which were submitted by the assessee before the AO and Ld. AO, after examining and enquiring into the matter, came to the conclusion that only Rs. 3,50,000/- out of the cash deposited remained unexplained and the same was added to the income of the assessee in the assessment framed u/s 143(3) of the Act dated 04.04.2019. According to Ld. Pr. CIT, the AO has not conducted any enquiry into the amounts deposited during the demonetization period and also no penalty proceeding u/s 271D of the Act was initiated and consequently, he revised the assessment framed by Ld. AO. We observe from the facts of the case and from the rival contentions that the issue was examined during the course of assessment proceedings by the AO and on the basis of the evidences furnished by the assessee a plausible view was taken which appears to be not contrary to the facts on record and therefore, the opinion of Ld. Pr. CIT that Ld. AO has completed the assessment without making any enquiry cannot be concurred with. In our opinion, the AO has conducted a reasonable enquiry by calling for the explanation from the assessee and assessee furnished the evidences on the basis of which a conclusion was made by the AO. The case of the assessee is supported by the decision of Hon'ble Jurisdictional High Court in the case of *Mukul Kumar (supra)* wherein a similar issue has been decided in favour of the assessee. In the case of *Gabriel India Limited (supra)* the Hon'ble Court has held that the assessment order cannot be framed as erroneous unless it is not in accordance with law or against the facts on records. Hon'ble Court has also

held that if the AO acting in accordance with law makes assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately and this section does not visualize a case of substitution of the judgment of the Commissioner for that of the AO who has passed the order, unless the decision is held to be erroneous. The Hon'ble Court has further held that the Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and if left to the Commissioner, he would have estimated the income at a figure higher than the one determined by the AO. In that context the Hon'ble Court has also held that that jurisdiction would not vest the Commissioner with the power to re-examine the accounts and determine the income himself at a higher figure as it is because the AO has exercised the quasi-judicial power vested in him in accordance with law and arrive at a conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. Similarly, in the case of *Malabar Industries Vs. CIT* reported in 243 ITR 83 (SC) the Hon'ble Court has held that the provisions of Section 263 of the Act cannot be invoked to correct each and every type of mistake or error committed by the AO and it is only when an order is erroneous that the Section will be attracted. Hon'ble Court further held that an incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous and in the same category fall orders passed without applying the principles of natural justice or without application of mind. The Hon'ble Court

has also held that every loss of revenue as a consequence of an order of the AO cannot be treated as prejudicial to the interests of the revenue. By giving an example that when the AO adopts one of the courses permissible in law and it has resulted in loss of revenue or where two views are possible and the AO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the AO is unsustainable in law. Therefore, considering the ratio laid down in the above decisions and the facts of the assessee's case, we are of the opinion that the view taken by the AO is not an incorrect view and that the assessment was passed after examining the record, evidences furnished by the assessee. Therefore, accordingly we are inclined to quash the order passed u/s 263 of the Act by allowing the appeal of the assessee.

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

***Kolkata, the 28<sup>th</sup> August, 2023***

*Sd/-*

**[Rajpal Yadav]**  
Vice-President

*Sd/-*

**[Rajesh Kumar]**  
Accountant Member

Dated: 28.08.2023

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Sunil Prasad, Ganga Gopal Market Complex, Municipal Chowk, Chapra (Saran) Bihar-841 301.**
- 2. Pr. CIT-1, Patna.**
3. CIT(A)-
4. CIT-
5. CIT(D/R), Patna Bench, Patna.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata